

IN THE HIGH COURT OF BELIZE, A.D. 2022

Claim No. 502 of 2021

BETWEEN

**EDMOND TIABO (as Executor of
the Estate of Kathleen Tiabo)**

CLAIMANT

AND

ENGLEBERT TIABO

DEFENDANT

BEFORE the Honourable Madam Justice Geneviève Chabot

Trial Dates: July 14th and 15th, 2022

Written Submissions: August 15th, 2022

Appearances:

Richard Bradley, Counsel for the Claimant

Nazira Uc Myles, Counsel for the Defendant

JUDGMENT

1. Kathleen Tiabo (the “Deceased”) passed away on January 26th, 2019. She had ten living children. The Deceased owned two properties in Belize, one known as the “Ebony Street property” and the other as the “King’s Park property”. In 2014, she transferred title of the King’s Park property to the Defendant. In 2015, she added the Defendant as Joint Owner of the Ebony Street property. Both transfers were gifts to the Defendant. The Claimant, as Executor of the Deceased’s estate, claims that the Defendant obtained title to both properties through undue influence.
2. The Court finds that the Claim has been substantiated. The relationship between the Deceased and the Defendant at the time of the transfers, as well as the nature of the transfers, raise a legal presumption of undue influence. The Deceased and the Defendant were in a relationship of influence. The Deceased relied on the Defendant and trusted him in matters related to her financial affairs. The transactions between the Deceased and the Defendant call for an

explanation. The Deceased gifted the Defendant significant assets to the exclusion of her nine other children.

3. The Defendant has failed to discharge his burden of rebutting the presumption of undue influence. The Defendant was unable to provide a satisfactory explanation for the gifts. In addition, the Court has been provided with no evidence to support that the Deceased fully understood the nature and effect of the transfer papers she signed, and that she entered into the transaction independently of any influence on the part of the Defendant. As a result, the Defendant must return the two properties to the Claimant, as Executor of the Deceased's estate.
4. Pursuant to the terms of this Court's ruling dated May 20th, 2022 striking out the Reply to the Counterclaim, the Defendant is however entitled to the sum of BZ\$35,000 corresponding to the sum allegedly withdrawn by the Deceased from the joint Scotiabank account, and to the sum of BZ\$19,550, representing half of the monthly rent paid by the tenants of the Ebony Street property from August 2017 to January 2019.

Background

5. The Deceased owned two properties in Belize City. The two properties are described as follows:
 - (1) All that piece and parcel of land located at No. 27 Corner 6th and St. Thomas Streets, Belize City, Belize, also described as Block 45, Parcel 627, King's Park Registration Section, with all structures and fixtures attached thereto (the "King's Park property").
 - (2) All that piece and parcel of land located at No. 45 Corner Ebony Street and Central American Boulevard, Belize City, Belize, also described as Block 45, Parcel 239, Lake Independence Registration Section, with all structures and fixtures attached thereto (the "Ebony Street property").
6. The King's Park property was first registered on September 23rd, 2004, with the Deceased as the Sole Proprietor. On December 4th, 2007, a charge was executed on the King's Park property in favour of Holy Redeemer Credit Union for \$200,000. The money was used to build a two storey building on the property, which was later rented by the Bernice Yorke Primary School. The charge was discharged on July 30th, 2013. On April 25th, 2014, the Deceased and the Defendant executed transfer papers, and on August 26th, 2014, the Defendant was registered as the Sole Proprietor of the King's Park property.
7. The Ebony Street property was first registered on October 7th, 2014, with the Deceased as the Sole Proprietor. On February 16th, 2015, the Deceased and the Defendant executed transfer papers, and on March 18th, 2019, the Defendant was added to the title as Joint Owner of the Ebony Street property.

8. The Deceased owned a bank account with Scotiabank Limited. Around 2009, the Defendant's name was added to that bank account, but was later removed.
9. On August 4th, 2017, the Magistrate's Court granted the Deceased a protection order against the Defendant, valid for a period of two years. The Magistrate's Court also granted the Deceased an Occupation Order of her residence (the Ebony Street property). The Defendant was ordered to vacate the premises on the same day.
10. In 2018, the Deceased filed Claim No. 123 of 2018 with the Supreme Court of Belize to recover title ownership of the two properties. She passed away before the final resolution of that matter.
11. The Claimant alleges that the transfer of the properties, along with the Defendant adding his name to the Scotiabank account, was done by the Deceased as a result of undue influence. The Claimant, in his capacity as Executor of the estate of the Deceased, seeks to recover the properties from the Defendant.
12. The Defendant denies any and all allegations of undue influence, and maintains that the Deceased transferred the properties to him voluntarily.

Issues

13. There are three issues for determination in this Claim:
 - (1) Whether the Defendant obtained title to the King's Park property and/or the Ebony Street property by undue influence.¹
 - (2) Whether the Defendant unlawfully collected rent from the properties and owes such rent to the Estate.
 - (3) Whether the Claimant unlawfully collected rent from the Ebony Street property and owes such rent to the Defendant.

¹ In their Pre-Trial Memorandum, both parties asked this Court to opine on whether title may also have been obtained by fraud, mistake, or misrepresentation. However, the parties' submissions only address undue influence. Contrary to the Defendant's submissions, undue influence is not only raised in the Claimant's Reply. It is clearly raised in the Statement of Claim. This Court will therefore only consider the issue of undue influence.

Legal Framework

14. Undue influence is an equitable doctrine developed by the courts to ensure that the influence of one person over another is not abused.² Contrary to the doctrine of duress, undue influence does not require pressure, coercion, or threats. Undue influence “arises out of a relationship between two persons where one has acquired over another a measure of influence, or ascendancy, of which the ascendant person then take unfair advantage”.³
15. Some circumstances raise a presumption of undue influence. While the burden of proving an allegation of undue influence rests upon the person who claims to have been wronged, “proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant’s financial affairs, coupled with a transaction which calls for an explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof”.⁴ Proof of these two facts constitutes *prima facie* evidence that the defendant abused the influence acquired in the relationship. The burden thereafter shifts to the defendant to produce evidence to rebut the presumption.
16. While the existence of undue influence is a question of facts, equity has recognized that persons standing in certain relationships with one another are presumed to be in relationships of influence, unless the contrary is shown. This includes the relationship between parent and child.⁵ However, this presumption only applies to the relationship of influence by a parent over their child. There is no deemed relationship of influence by an adult child over an elderly parent. That relationship of influence must be established on the facts.⁶
17. In *Thorsteinson*, the court identified some relevant considerations in establishing whether a relationship of influence existed. These include: “the relationship between the donor and the donee, the donor’s personal circumstances, including things such as age, education, business acumen, mental capacity, physical infirmity, living arrangements and dependency on the donee (emotional, physical or financial), as well as the circumstances surrounding the transaction itself, such as the donor’s expressed intention at the time, whether the donor had independent advice and how the transaction arose and was carried out”.
18. The second component of the undue influence inquiry is to consider whether the transaction that took place between the parties can be explained by their relationship. Of course, not every gift raises the prospect that undue influence may have been at play. But as explained by Lindley LJ in *Allcard v Skinner*,⁷ “if the gift is so large as not to be reasonably accounted for

² *Royal Bank of Scotland v Etridge (No 2) and other appeals*, [2001] UKHL 44 (“*Etridge*”) at para. 6.

³ *Etridge* at para. 8.

⁴ *Etridge* at para. 14.

⁵ *Geffen v Goodman Estate*, [1991] 2 SCR 353 at 370 (“*Geffen*”), citing *Lancashire Loans, Ltd. v Black*, [1934] 1 K.B. 380; *Etridge* at para. 18.

⁶ *Snell’s Equity*, Thompson Reuters, London, 2015 at 216; *Thorsteinson Estate v Olson*, 2016 SKCA 134 (“*Thorsteinson*”).

⁷ (1887) 36 Ch D 145 at 185, [1886-90] All ER Rep 90.

on the ground of friendship, relationship, charity, or other ordinary motives on which ordinary men act, the burden is upon the donee to support the gift". The magnitude of the gift is proportional to the proof necessary to rebut the presumption of undue influence; "the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebutted".⁸

19. A finding that a transaction was effected as a result of undue influence is not contingent on the establishment of any wrongdoing on the part of the defendant. Indeed, the equitable doctrine of undue influence is grounded on public policy imperatives:

Although undue influence is sometimes described as an "equitable wrong" or even as a species of equitable fraud, the basis of the court's intervention is not the commission of a dishonest or wrongful act by the defendant, but that, as a matter of public policy, the presumed influence arising from the relationship of trust and confidence should not operate to the disadvantage of the victim, if the transaction is not satisfactorily explained by ordinary motives: *Allcard v. Skinner* (1887) 36 Ch D 145 at 171. The court scrutinises the circumstances in which the transaction, under which benefits were conferred on the recipient, took place and the nature of the continuing relationship between the parties, rather than any specific act or conduct on the part of the recipient [emphasis added].⁹

20. As with any tort, a causal link between the undue influence and the claimant's consent to the transaction must be established. The authors of *Snell's Equity*¹⁰ note that it is not entirely clear which causal test the courts have settled for, whether it is the standard "but for" test, or a lower standard such as a "substantial cause", a "contributing cause", or a "factor". In the authors' view, the less demanding "a factor" is, by convention, the causation test generally applied in cases of undue influence.¹¹
21. What, then, is required of a defendant to rebut the presumption of undue influence? It is not sufficient to show that the claimant understood what he was doing and intended to do it. As noted in *Snell's Equity*, "undue influence consists not of a lack of understanding or an absence of consent but a lack of sufficient independence in relation to the transaction".¹² The presumption of undue influence may be rebutted by proving that the claimant entered into the transaction independently as a result of their "full, free and informed thought".¹³ The claimant must have been fully informed not only of the nature of the gift, but also of its effect.¹⁴ Rebutting the presumption can be done in a number of ways, such as proving that no actual

⁸ *Etridge* at para. 24. See also *Geffen* at 379.

⁹ *Niersmans v Pestuccio* [2004] EWCA Civ 372 at para. 20.

¹⁰ *Snell's Equity*, *supra* at 211.

¹¹ *Snell's Equity*, *supra* at 212, citing *UCB Group Ltd. v Hedworth* [2003] EWCA Civ 1717.

¹² *Snell's Equity*, *supra* at 223.

¹³ *Geffen* at 379, citing *Zamet v Hyman*, [1961] 3 All E.R. 933 at 938.

¹⁴ *Hammond v Osborn & Anor*, [2002] EWCA Civ 885 at para. 26.

influence was exerted in a particular case, or that the plaintiff benefited from independent advice. In *Inche Noriah v Omar*,¹⁵ the Privy Council emphasized the importance of independent advice, stating that:

The most obvious way to prove this [that the gift was the result of the free exercise of independent will] is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the donee and with full appreciation of what he was doing.

Analysis

22. The Court heard from several witnesses in this matter. In addition to the Claimant, Edmond Tiabo, the Court heard from his sister Glenda Tiabo Thatcher and his brother Glenford Tiabo on behalf of the Claimant. The Defendant testified in defence of this Claim, along with his wife Alecia Tiabo, his brother Michael Tiabo, and Ms. Joy Arana.

Whether the Defendant obtained title to the King's Park property and/or the Ebony Street property by undue influence

Does the presumption of undue influence arise in this case?

23. The first question is whether the presumption of undue influence arises in this case. As previously noted, to establish a presumption of undue influence, the Claimant must show that the Deceased and the Defendant were in a relationship of influence, and that they entered into a transaction which calls for an explanation.
24. The evidence shows that the Deceased and the Defendant were in a relationship of influence during the relevant period. While there is no deemed relationship of influence by an adult child over an elderly parent, it is clear that the Deceased placed trust and confidence in the Defendant, including in relation to the management of her financial affairs, around the time of the transfers of the properties.
25. The transfers occurred in 2014-2015. At the time, the Deceased was elderly and frail, having suffered from a second bout of cancer in 2013. All of the siblings confirmed that her mental capacity was intact. Although she did not have a high school or college education, the Deceased could read and write. She worked as a home health aide for many years in New York. The Defendant, by contrast, is highly educated; he holds a bachelor's degree in electrical engineering.

¹⁵ 1929 AC 127.

26. The Defendant testified that he had a “wonderful relationship” with the Deceased until 2017. There was a relationship of confidence; he knew how the Deceased felt about all of her children, and he kept her secrets. He called her “mommy” and gave her hugs and kisses when she needed them. He picked her up from church every Sunday for a quarter of a century. While they both resided in New York, the Deceased and the Defendant would regularly travel to Belize together. When visiting Belize, the Defendant and his family would stay at the Ebony Street property with the Deceased. The Defendant’s wife, Alecia Tiabo, testified that the Deceased and the Defendant “were always together”, and that shortly after she met the Defendant, they became a trio.
27. In the years prior to her death, the Deceased suffered from three bouts of cancer. The Defendant and his wife Alecia testified that between October and December 2013, they took care of the Deceased. The Deceased lived with the both of them, and they acted as her caregivers. In his witness statement, the Defendant stated that during her stay with him and his wife, the Deceased was “eager to get back home to try to get the properties in [his] name”. The Deceased returned to Belize in March 2014, and in April 2014, she transferred the King’s Park Property to the Defendant.
28. That the Deceased had a special relationship with the Defendant prior to 2017 is evidenced by two wills appended to the Defendant’s witness statement. In a will dated May 26th, 2011 made in Belize (the “2011 Will”), the Deceased appointed the Defendant as the Executor of the 2011 Will and gave both of the properties to the Defendant. The 2011 Will makes no mention of anyone else. In a will dated May 3rd, 2016 made in the United States (the “2016 Will”), the Deceased similarly appointed the Defendant as the Executor of the 2016 Will and gave both properties to the Defendant. The Deceased’s other children are named in the 2016 Will for the specific purpose of disinheriting them.
29. The evidence further shows that the Deceased trusted the Defendant in matters related to her financial affairs. Glenda Tiabo Thatcher testified that the Defendant “was the one that managed to handle mom’s funds”.¹⁶ In June 2009, the Deceased signed a declaration in the United States stating that she gave the Defendant “permission [to] represent me on all my affair at (8) west 119 street (*sic*), 12 APT. New York, N.Y. 10026”.¹⁷ From 2009 until 2017, the Deceased and the Defendant had a joint account with Scotiabank, which was used to pay bills such as property taxes, insurance for the buildings, and other expenses. In his witness statement, the Defendant stated that the Deceased and the Defendant made the “joint decision to make a loan to build on the property” and that since he was not a member of the Holy Redeemer Credit Union they both decided that she would secure the loan in her own name for the sum of BZ\$200,000.¹⁸ The Defendant further testified that the Deceased was “scared of the

¹⁶ Witness statement of Glenda Tiabo Thatcher at para. 14.

¹⁷ Witness statement of Englebert Lincoln Tiabo, Exhibit ELT-23.

¹⁸ Witness statement of Englebert Lincoln Tiabo at para. 33.

loan amount”, but that he “assured her that [he] would ensure that it is paid back”.¹⁹ Evidently, the Deceased trusted the Defendant with her properties, and agreed to take on the loan as a result of his assurances.

30. The Defendant controlled the King’s Park property even before it was transferred to him. According to the Defendant’s evidence, he managed the property from the time it was built, concluding agreements with tenants. For example, the Defendant introduced into evidence a Lease Agreement dated November 1st, 2008 between the Defendant and one Nandlal Nandwani for the leasing of the King’s Park property’s lower flat. The King’s Park property was not transferred to the Defendant until 2014.
31. In *Hackett v Crown Prosecution Service & Anor*,²⁰ the court accepted that physical care of a sick and elderly parent, coupled with a reliance on the defendant to manage her affairs, created a relationship of influence between the parties. Similarly, the Court is satisfied that the Deceased’s reliance on the Defendant for her physical care while traveling to and in Belize, as well as during her second bout of cancer, coupled with the Deceased’s reliance on the Defendant to manage her financial affairs, is evidence of the relationship of influence that existed between the Deceased and the Defendant prior to 2017.
32. The relationship between the Deceased and the Defendant appears to have soured around 2017. All of the witnesses testified to a conflict that arose between the Deceased and the Defendant in the summer of 2017, although the explanations for the conflict vary. On August 4th, 2017, the Magistrate’s Court granted the Deceased a protection order against the Defendant, valid for a period of two years. The Magistrate’s Court also granted the Deceased an Occupation Order of her residence (the Ebony Street property). The Defendant was ordered to vacate the premises on the same day. In 2018, the Deceased filed Claim No. 123 of 2018 with the Supreme Court of Belize to recover title ownership of the two properties. She passed away before the final resolution of that matter. The Defendant is expressly excluded from the Deceased’s last will, which was signed and witnessed on June 25th, 2018.
33. Whether the relationship between the Deceased and the Defendant changed in the years after the properties were transferred bears little weight to the question at issue in this matter. The transfer of both properties occurred in 2014–2015. The issue is whether the Deceased was, *at that time*, unduly influenced to transfer the properties to the Defendant.
34. The transfer of the properties to the Defendant calls for an explanation. The Deceased had ten living children. She transferred title to her two properties in Belize to one child, the Defendant. The transfers of the properties were gifts to the Defendant. The Defendant admitted to not having paid \$20,000 as consideration for the transfer of either property, as stated in the transfer

¹⁹ Witness statement of Englebert Lincoln Tiabo at para. 35.

²⁰ [2011] EWHC 1170.

documents for both properties.²¹ The properties were gifted to him, and the \$20,000 value was submitted for the purpose of the Lands Department determining what, if any, stamp duty must be paid since the properties were not sold.

35. As noted by the court in *Niersmans v Pesticcio*, the transfer of a house is a substantial transaction that calls for added scrutiny:

The transfer of a house is a substantial transaction. A house is the most valuable asset that most people own. If a transfer is made by one person on the dependant side of a relationship of trust and confidence to a person in whom trust has been placed, it must be shown by the trusted party that the disposition was made in the independent exercise of free will after full and informed consideration. The court may grant relief to the transferor, even though the transfer was not made as the result of any specific reprehensible conduct on the part of the trusted transferee.²²

36. The Court is satisfied that the presumption of undue influence arises in this matter. The Deceased and the Defendant were in a relationship of influence at the time of the transfers. The transfers of the Deceased's two properties in Belize to the Defendant call for an explanation. The burden shifts to the Defendant to rebut the presumption.

Has the presumption of undue influence been rebutted?

37. The Defendant has not discharged his burden of rebutting the presumption of undue influence with respect to the transfer of both the Ebony Street and the King's Park properties.
38. The Defendant provided no explanation for the gift of the Ebony Street property. The transfer papers were signed on February 16th, 2015. The Defendant testified that originally, the Deceased wanted to transfer the entire Ebony Street property to him, but that during a discussion he suggested to the Deceased that she place the Ebony Street property in both of their names "to protect [his] mother just in case [he] should die first and [he] should marry".²³ The Deceased agreed.
39. Apart from the fact that the Defendant resided with the Deceased at the Ebony Street property whenever he visited Belize, nothing else by way of an explanation for the gift was offered by the Defendant. On the other hand, in his witness statement the Claimant, Edmond Tiabo, testified that he and his brother Glen put in physical labour and paid for some materials to help with the construction of the Ebony Street property. This was not disputed by the Defendant, although the Defendant's position is that Edmond and Glen rarely visited the Deceased in Belize.

²¹ Witness statement of Englebert Lincoln Tiabo at paras. 30 and 49.

²² *Niersmans v Pesticcio* [2004] EWCA Civ 372 at para. 4.

²³ Witness statement of Englebert Lincoln Tiabo, Exhibit ELT-1 at para. 28.

40. The Deceased did not benefit from independent advice before placing the Ebony Street property under both her and the Defendant's names. In his witness statement, the Defendant explained that the Deceased knew what she was doing and that she was the one who elected Mr. Christie to witness the signing of the transfer papers. The Defendant testified that Mr. Christie read the transfer papers to the Deceased and the Defendant before they signed them. Mr. Christie did not testify at the trial of this Claim. There is no evidence that either Mr. Christie, or anyone else, offered any independent advice to the Deceased before she signed the transfer papers.
41. In the context of Claim No. 123 of 2018, the Deceased signed an affidavit in which she denied knowing what she was signing, both with regard to the transfer of the Ebony Street property and the King's Park property. This is consistent with the Claimant's and Glenford Tiabo's evidence. Both brothers testified that around 2017, they were with the Deceased at the Ebony Street property when they asked the Deceased to confirm whether she was aware that the two properties were in the Defendant's name. The Deceased denied having such knowledge and allegedly became distressed over hearing about this.
42. In cross-examination, the Defendant vehemently denied that the Deceased did not understand what she was signing. The Defendant believes that the Deceased lied in that affidavit. The Defendant called as a witness Ms. Joy Arana, who testified that the Deceased, who was a personal friend of hers, specifically requested the transfer papers for both properties to be prepared. Ms. Arana testified to having read the transfer papers to the Deceased, and that the Deceased confirmed that she understood and that the transfers were what she wanted.
43. As explained earlier, to rebut the presumption of undue influence, it is not sufficient for the Defendant to show that the Deceased knew what she was signing. It must be established to the satisfaction of the Court that the Deceased understood the nature and the effect of the transaction, and that she entered into the transaction independently of any influence from the Defendant and with a full appreciation of what she was doing. The fact that the Deceased signed the transfer papers, while of significance, is not in itself sufficient to prove the absence of undue influence from the Defendant. The Court has been provided with no evidence to support that the Deceased fully understood the nature and effect of the transfer papers she signed. To the contrary, the affidavit sworn by the Deceased herself before she passed away casts doubts as to whether she did have any understanding of the nature and effect of the transfer papers she signed.
44. For the same reasons, the Defendant has not discharged his burden of rebutting the presumption of undue influence with respect to the transfer of the King's Park Property. In cross-examination, the Defendant stated that the "deal" between him and the Deceased was that he would help her build the property, and the building would be his. The Court accepts that the Defendant provided some financial support to the Deceased for the building of the King's Park property. The Defendant provided evidence of a \$47,500 loan taken with the

Chase Bank in the United States on October 13th, 2007. Similarly, the Defendant provided evidence to support that he obtained a loan for US\$9,901 in 2008 and a loan for US\$20,000 in 2010 from “T. Rowe Price Retirement Plan Service, Inc.” in the United States.

45. While the evidence does not show that those loans were used to pay for the building of the King’s Park property, the Defendant provided evidence that he transferred some money to the Deceased between November 2008 and May 2017. He also provided various receipts bearing his name from contractors for the purchase of tiles, bars, and various construction tools and materials. The Defendant also provided a Letter of Agreement between the Defendant and “Graham Designs and Construction” dated May 16th, 2007 for the construction of a two-storey home. The Letter of Agreement is however not signed by either Mr. Graham or the Defendant.
46. As for the Ebony Street property, the Claimant and Glenford Tiabo both testified that they provided physical labour and funds to help pay for the building of the King’s Park property. This was not directly disputed by the Defendant. Given that the Defendant was not the only child who contributed financially to the building of the King Park’s property, the Court has not been persuaded that the Defendant’s financial contribution alone is sufficient to rebut the presumption of undue influence.
47. The Defendant testified that the transfer papers for this transaction were filled by Ms. Arana, and signed in the presence of one Ms. Grinage. However, there was an error in the original papers prepared by Ms. Arana, and the papers had to be signed again, this time before a Justice of the Peace. Just like for the Ebony Street property, there is no evidence that the Deceased obtained any independent advice about the nature and effect of the transaction before signing the transfer papers for the King’s Park property.
48. In light of the evidence presented, this Court has not been satisfied that the presumption of undue influence has been rebutted by the Defendant. The Defendant’s undue influence over the Deceased was a factor in her decision to transfer the properties to the Defendant. The transfer of the Ebony Street property and of the King’s Park property must therefore be set aside and title to both properties be recovered by the Claimant in his capacity as Executor of the estate of Kathleen Tiabo.²⁴
49. The Court wishes to clarify that it is not making a finding of fraud or misrepresentation on the part of the Defendant. The present judgment arises from the operation of a legal presumption. As a result, nothing in this judgment should be read as a finding of dishonest or wrongful act on the part of the Defendant.

²⁴ See for example *Modonese v Delac Estate*, 2011 BCSC 82 (upheld 2011 BCCA 501) where the transfer of a property resulting from the exertion of undue influence was set aside.

Whether the Defendant unlawfully collected rent from the properties and owes such rent to the Estate.

Whether the Claimant unlawfully collected rent from the Ebony Street property and owes such rent to the Defendant.

50. The remaining questions must be considered together. The Defendant filed a Counterclaim alleging that the Deceased withdrew BZ\$35,000 from the joint Scotiabank account without his knowledge or consent. He also alleges that the Ebony Street tenants continue to pay rent in the joint account. The lower flat tenant, Safeway Drug Store, pays BZ\$2,000 monthly, and the upper flat tenant, one Mr. Car, pays BZ\$300 monthly. The Defendant counterclaimed that he is entitled to half of the rent paid by the tenants, or BZ\$1,150 monthly, from August 2017 to January 2019.
51. The Claimant failed to file a Defence to the Counterclaim in time. On May 20th, 2022, this Court issued an oral ruling striking out the Defence to Counterclaim and entering Judgment on the Counterclaim pursuant to Rules 18.9 and 18.12(2)(a) of the *Rules*.
52. In accordance with Rule 18.12(2)(a) of the *Rules*, the Claimant is deemed to have admitted the Counterclaim. As a result, the Defendant is entitled to the sum of BZ\$35,000 corresponding to the sum allegedly withdrawn by the Deceased from the joint Scotiabank account. The Defendant is also entitled to BZ\$19,550, representing half of the monthly rent paid by the tenants of the Ebony Street property from August 2017 to January 2019. The total owed to the Defendant is therefore BZ\$54,550.
53. As for rent on the King's Park property, no evidence has been put forward to support that the Defendant collected that rent. In cross-examination, both the Claimant and Glenford Tiabo admitted to not knowing who collects rent for the King's Park property since the Deceased passed away. As a result, this Court will make no order regarding the collection of rent on the King's Park property.

IT IS HEREBY ORDERED THAT

- (1) Judgment is granted in favour of the Claimant;
- (2) The transfer of all interests in the parcel of land located at No. 27 Corner 6th and St. Thomas Streets, Belize City, Belize, also described as Block 45, Parcel 627, King's Park Registration Section, with all structures and fixtures attached thereto, to the Defendant is set aside as having been procured by undue influence;
- (3) The transfer of all interests in the parcel of land located at No. 45 Corner Ebony Street and Central American Boulevard, Belize City, Belize, also described as Block 45, Parcel 239, Lake Independence Registration Section, with all structures and

fixtures attached thereto, to the Defendant is set aside as having been procured by undue influence;

- (4) Legal title to both properties listed in orders (2) and (3) shall be transferred to the Claimant, as Executor of the estate of Kathleen Tiabo, forthwith;
- (5) The Claimant, as Executor of the estate of Kathleen Tiabo, shall pay the sum of BZ\$54,550 to the Defendant;
- (6) Interest on all sums due at a rate of 6% per annum pursuant to section 166 of the *Supreme Court of Judicature Act*, Chapter 91;
- (7) Costs of the Claim are awarded to the Claimant on the prescribed basis;
- (8) Costs of the Counterclaim are awarded to the Defendant pursuant to this Court's ruling dated May 20th, 2022. The costs of the Counterclaim shall be agreed upon by the parties and deducted from the costs of the Claim.

Dated December 5th, 2022

Geneviève Chabot
Justice of the High Court