



[2013] JMCC Comm. 15

JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. 2012 CD-00090

BETWEEN	LESLIE AUGUSTUS WATTS	CLAIMANT
	(By Lloyd Barnett, his next friend and Guardian Ad Litem)	
AND	LELIETH WATTS	1ST DEFENDANT
AND	WATTS INVESTMENTS LIMITED	2ND DEFENDANT

IN OPEN COURT

**Mr. Hugh Small Q.C. and Mr. Weiden Daley, instructed by Hart, Muirhead Fatta,
Attorneys-at-Law for the Claimant.**

**Mr. Barrington Frankson and Miss Jodian Hammitt, instructed by Lynden
Wellesley & Associates, Attorneys-at-Law for the 1st Defendant.**

**Mr. Lynden Wellesley and Miss Tonelle Beecher, instructed by Lynden Wellesley
& Associates, Attorneys-at-Law for the 2nd Defendant.**

HEARD: 22, 23, 24 July, 31st October 2013.

**CONTRACT LAW - MENTAL CAPACITY OF ELDERLY FATHER, SUFFERING
FROM COGNITIVE DEFICIENCY - UNDUE INFLUENCE - PRESUMPTION -
UNCONSCIONABILITY OF TRANSACTIONS - COMPANY LAW - VALIDITY OF
ALTERATIONS OF SHARE CAPITAL, SHAREHOLDERS AND OFFICERS**

Mangatal J:

[1] This claim arises out of a very unfortunate situation. It involves allegations that certain transactions were procured by undue influence by a daughter over her elderly father and /or that these transactions were intrinsically inequitable and unconscionable.

THE PARTIES

[2] The Claimant Leslie Augustus Watts (“Mr. Watts”) is a retired person, who resides at 1 Shortwood Close, Kingston 8, Saint Andrew. At the time of filing this claim he was 88 years of age.

[3] Mr. Watts brings these proceedings by his guardian and next friend, Dr. Lloyd Barnett, attorney-at-law. Dr. Barnett was on the 20th of February 2012, by virtue of a consent order made by Haynes J. in Claim No. 2011 HCV 00469, appointed Mr. Watts’ Guardian Ad Litem, with power of attorney to conduct Mr. Watts’ personal or business affairs. This included the power to manage and conduct the financial and legal affairs of Mr. Watts.

[4] The First Defendant Lelieth Watts (“Ms. Watts”) also lives at 1 Shortwood Close. She is the daughter and only child of Mr. Watts. Ms. Watts was a party to the proceedings in Claim No. 2011 HCV 00469 and had the same legal representation that she has in the instant proceedings.

[5] The Second Defendant Watts Investments Limited (“ the Company”) is a limited liability company duly incorporated under the laws of Jamaica, with registered office located at 1 Shortwood Close.

THE BACKGROUND

[6] In the 1970s Mr. Watts acquired the apartment complex at 1 Shortwood Close, using most of his personal resources. Since his retirement, these premises have

provided him with his main source of income and livelihood, specifically from rental of the apartments.

[7] In March 2010 Mr. Watts suffered a stroke, and was admitted to the Medical Associates Hospital under the care of Dr. John Hall, Neurologist. Having suffered brain damage, Mr. Watts remained in hospital for a number of weeks and was discharged in early April 2010.

THE CLAIM

[8] In the Amended Particulars of Claim it is alleged that whilst Mr. Watts was in hospital, and up to in or about May or June 2010, although he recognised persons, he did not always respond rationally or comprehend simple statements but would frequently repeat the same few words. In or about May or June 2011 Mr. Watts recovered some of his cognitive skills.

[9] Ms. Watts has produced:

- (1) A Power of Attorney purportedly executed by Mr. Watts on 10th September 2010 in her favour; and
- (2) A Power of Attorney purportedly executed by Mr. Watts on January 17, 2011 in her favour.

[10] Mr. Watts' Statement of Case continues that, pursuant to these Powers of Attorney Ms. Watts has purported to have done the following acts and things for and on behalf of Mr. Watts:

- (1) Executing instruments of transfer between March 2010 and January 2011 of the majority shareholding of the Company to herself;
- (2) Transferring Mr. Watts' 2002 Toyota Corona motor car to herself; and
- (3) Called and participated in an Annual General Meeting of the Company at which Ms. Watts was purportedly made a director of the Company.

[11] At the time that the acts and transactions referred to in paragraphs 9 and 10 were purportedly carried out, it is averred that Mr. Watts was not functioning in his normal manner and was not in a position to make such decisions with a full understanding of their implication.

[12] Further, or in the alternative, it is pleaded on behalf of Mr. Watts that even if he signed either of the Powers of Attorney, any such signing was procured by undue influence by Ms. Watts over Mr. Watts , and that Ms. Watts knew of this influence. Further, or in the further alternative, the transactions were and are intrinsically inequitable and unconscionable.

[13] In paragraph 14 of the Amended Particulars of Claim, Particulars of “Undue Influence and Unconscionable Transaction” are set out as follows:

“(1) The 1st Defendant was Mr. Watts’ daughter, and in the circumstances, Mr. Watts and the 1st Defendant were therefore in a relationship of mutual trust and confidence.

(2) Any such transfer/allotment of shares of the Company in excess to the 1st Defendant would have been a gift or alternatively not for full value.

(3) Any such transactions..... would be manifestly unfair to Mr. Watts,who received no independent advice prior to embarking on any such transaction.

(4) Any such transactions would have taken place when Mr. Watts was ill over a long period of which the 1st Defendant was well aware at all material times.

(5) Any such transactions ...would be intrinsically inequitable and unconscionable and ought to be set aside in equity.”

[14] As a further alternative, the Claimant avers that the shares of the Company which Ms. Watts purportedly holds belong beneficially to Mr. Watts, given that Ms. Watts has been unjustly enriched at the expense of Mr. Watts by her holding of those shares.

[15] Further, or in the alternative, it is pleaded that any such transfer of shares in the Company by Mr. Watts to Ms. Watts was made without consideration given by Ms. Watts to Mr. Watts and is therefore void for want of consideration.

[16] The Claimant also alleges a number of serious irregularities and suspicious circumstances in which there were attempts, or acts carried out to alter the capital structure, shareholding and officers of the Company. These are set out in great detail in paragraphs 20-32 of the Amended Particulars of Claim.

[17] It is alleged that on the 10th of March 2012 Mr. Watts' next friend Dr. Barnett discussed Mr. Watts' personal and business affairs with him. The next friend advised Mr. Watts that although the Court had made the Order appointing him as next friend on Mr. Watts' own statement that he wished the next friend to manage his affairs, there was very little the next friend could do because 51% of the shares in his property owning company, the Company, had been transferred in January 2011 to his daughter, Ms. Watts. Mr. Watts responded immediately and emphatically that he had not made any such transfer, and there would be trouble for anyone who took over his business or interfered with his assets.

[18] Amongst the principal types of relief claimed by the Claimant against the Defendants and each of them are orders pursuant to section 115 and subsections (2)(a) and (b) and (3)(k) of section 213A of the Companies Act, 2004, including orders for rectification of the Register of Members by striking out all of the shares purportedly held by Ms. Watts and the filing of Returns with the Registrar of Companies reflecting the rectification. A number of Declarations are also being sought, including declarations that the purported Powers of Attorney are null and void and of no legal effect.

THE DEFENCE

[19] The Defendants admit that Mr. Watts did suffer a stroke in March 2010. However, they say that Mr. Watts suffered mild cognitive insufficiency as set out in the medical report of Dr. John Hall dated January 31, 2011. It is also put forward that whilst

Mr. Watts was in hospital, and up to May and/ or June 2011, Mr. Watts was able to recognize persons and to respond rationally and comprehend simple statements.

[20] It is admitted that Ms. Watts did produce the Powers of Attorney referred to by the Claimant and it is the Defendants' position that these documents were executed by Mr. Watts.

[21] It is pleaded that pursuant to the Powers of Attorney, and on the instructions of Mr. Watts, Ms. Watts executed an Instrument of Transfer on the 7th of January 2011 transferring the majority shareholding of the Company to herself. The car was also transferred pursuant to Mr. Watts' instructions.

[22] It is the Defendants' case that on the 31st of January 2011, Mr. Watts called an Annual General Meeting of the Company and, pursuant to his instructions Ms. Watts was made a Director of the Company.

[23] The Defendants deny paragraph 10 of the Particulars of Claim (referred to in paragraph 11 above), and they state that in executing the acts and transactions there referred to, Mr. Watts acted freely and fully of his own volition and in the free exercise of his own independent will, with full knowledge and due consideration of what he was doing and intending to give full force and effect to them.

[24] The defendants expressly deny that the signing of the documents referred to in the Particulars of Claim was procured by undue influence and/or unconscionable transaction of Ms. Watts over Mr. Watts.

[25] The Defendants go further and plead that quite apart from the close relationship as father and daughter, there was a relationship of mutual trust and confidence with Mr. Watts but, it is averred that the presumption of undue influence and unconscionable transaction is rebutted by the fact that the transfers and documents were initiated by Mr. Watts in circumstances set out in great detail in paragraph 11 of the Defence. I will

examine these considerations more closely when I come to examine the evidence on this issue.

[26] The Defendants deny that there were any irregularities or falsely prepared documents in relation to the Company.

[27] Ms. Watts denies that she has been unjustly enriched and states that she is the only child of Mr. Watts and was utilizing Mr. Watts' resources totally for his benefit.

[28] Ms. Watts also avers that the transfer of the shares was done by way of natural love and affection.

[29] Ms. Watts in addition claimed that the Company's assets which are under her control have been used exclusively for the welfare and benefit of Mr. Watts and the Company.

THE ISSUES

[30] There are a number of subsidiary issues in this case. However, the main issues can conveniently be dealt with under the following four main headings:

(A) What was Mr. Watts' mental capacity at the material times?

(B) What is the nature of the relationship between Mr. Watts and Ms. Watts and does it give rise to a presumption of undue influence? If so, is that presumption irrebutable or rebuttable?

(C) Is there anything unconscionable or inequitable in Ms. Watts' assumption of ownership of the major shareholding in the Company?

(D) Were there irregularities and suspicious circumstances surrounding the attempts or acts altering the capital structure, shareholding or officers of the Company or was everything done regularly and in accordance with Mr. Watts' wishes and proper procedures? If there were irregularities, what are the appropriate remedies?

APPLICATION FOR ADJOURNMENT REFUSED

[31] From as far back as the 7th of January 2013, this matter was fixed for trial for two days, i.e. the 22nd and 23rd of July 2013. However, the matter ended up lasting an additional portion of the day on the 24th July 2013. This was in part due to an extremely late application filed by the Defendants on the very morning of trial, i.e. 22nd July, seeking, amongst other things, that the trial be adjourned pending the determination of the mental capacity of Mr. Watts from and since March 2010 to the present time. The application sought an order that the Court appoint a Consultant Psychiatrist pursuant to Part 32 to give evidence on the mental capacity of Mr. Watts based on an examination of Mr. Watts' medical records from the time when he had the stroke, as well as on a psychological evaluation of him. The application was supported by the Affidavit of Ms. Watts. Amongst many other matters stated by Ms. Watts in her Affidavit, filed on the same 22nd July 2013, were the following:

....

10. That there is no medical evidence before the court that speaks to my father's cognitive skills at the time when Dr. Barnett was appointed guardian ad litem and at the time when this conversation purportedly took place.

11. That I am reliably informed by my Attorneys-at-Law, Messrs. Lynden Wellesley & Associates that at the time when Mrs. Justice Sinclair Haynes merely concluded that the Claimant could determine who should manage his affairs without medical evidence being adduced in support thereof.

12. That I was not present when Dr. Barnett was so appointed.

13. That I am further informed by my said Attorneys-at-Law that the medical reports of Dr. John Hall and Dr. Goldson are not in the form prescribed by Part 32 of the Civil Procedure Rules and accordingly the court ought not to accept such evidence as expert evidence.

.....

16. That I also intend to withdraw my consent to the appointment of Dr. Barnett as guardian ad litem having regard to the position being taken by

Dr. Barnett in advancing the interest of Farida Sanguinetti in this case and in seeking to reverse the conduct of my father prior to his illness in 2010 in circumstances where his primary concern should be that of my father, Leslie Watts.”

[32] It fell to learned Counsel Mr. Barrington Frankson, lead Counsel for Ms. Watts to make the application. Mr. Frankson argued that absent such a report by a psychiatrist, the Court would not be able to resolve the real issues in controversy between the parties. Counsel also indicated that the medical report of Dr. Hall “leaves things in the air”. He indicated that these considerations only came up when his side was in the last stages of preparation for the trial. He urged the Court that notwithstanding the lateness of the application, an adjournment be granted for the purposes outlined.

[33] Not surprisingly, this application was vigorously opposed by learned Queen’s Counsel Mr. Hugh Small, who appeared as lead Counsel for the Claimant. Mr. Small submitted amongst other matters, that in this case, the Court does not have to consider whether Mr. Watts was suffering from a mental illness, such as would require a psychiatrist’s opinion. The Court was more concerned with looking at the factual matrix, in order to decide whether Mr. Watts had the capacity necessary for managing his own business or taking decisions. This matrix would include the fact that Mr. Watts had had a stroke, the medical report of Dr. Hall, a neurologist, which speaks about brain attack and Mr. Watts’ cognitive decline, and the medical report of Dr. Goldson, taken with all of the other evidence, including the evidence of non-expert witnesses who are well-acquainted with Mr. Watts.

[34] I refused the application for an adjournment. I took into account the age of Mr. Watts and his witness Mrs. Farida Sanguinetti and the fact that this matter has come up before the Court for Case Management and pre-trial review upon a number of occasions, including the 7th January and 17th June 2013. The matter also came before the Court when applications for interlocutory injunction arose for consideration. This was the first time that Ms. Watts was raising any issue to do with needing a Consultant

psychiatrist in order for the issues in the matter to be resolved. This occurred even though the question of the medical evidence was specifically addressed at the pre-trial review in June 2013. At the pre-trial review it was ordered that the medical reports of Dr. John A. S. Hall dated January 31st 2011, and of Dr. Lloyd A. Goldson, dated 21st February 2011, be admitted into evidence at trial, subject to the right of the Defendants' Attorneys-at-Law to notify the Claimant's Attorneys-at-Law by the 28th June 2013, of their wish to have the doctors attend for cross-examination. The Defendants chose not to exercise that right. I should add for good measure, that the point raised at paragraph 13 of Ms. Watts' Affidavit about the form and admissibility of the two medical reports has no merit or substance in light of our Court of Appeal's decision in **Cherry-Dixon-Hall v. Jamaica Grande Ltd.** 2008 11 JJC delivered November 21, 2008.

[35] In my judgment, based upon the material and evidence placed before me on the application, the matter did not require the opinion of a Consultant psychiatrist in order to resolve the real issues in controversy. I indicated that even if that was the view of Ms. Watts' Counsel, I had to weigh that against the lateness of the application, the age of the Claimants' witnesses Mr. Watts and Mrs. Sanguinetti, as well as the fact that the case was fixed for trial in the Commercial Court for two days. The Commercial Court was set up to resolve commercial disputes with a sense of urgency and expedition. The company law matters having to do with the Company are intricately interwoven amongst the issues between father and daughter and thus the matter was suitable for adjudication and expeditious resolution in the Commercial Court. In addition, I took into account the fact that Ms. Watts was now, on the very morning of trial, seeking to look behind the Consent Order made on the 20th February 2012, after many days of hearing before Haynes J., and to try to withdraw her consent to the appointment of Dr. Barnett as guardian ad litem. This application would not at all be the appropriate procedure for achieving that object, and in any event, it being a consent order, Ms. Watts would have had a very uphill task in all the circumstances. It was on those multiple bases that I refused the application for an adjournment.

WITNESSES AND EVIDENCE

[36] Three witnesses gave evidence for the Claimant. They were Dr. Lloyd Barnett, Attorney-at-Law, Farida Sanguinetti, retired dietician and Dorothy Pine-McLarty, Attorney-at-Law. For the Defence, Ms. Watts gave evidence and so too did Mr. Errol Mills, who in his Witness Statement stated his occupation to be “accountant”. Issue has been taken by the Claimant’s Attorneys-at-Law with Mr. Mills’ true occupation and thus I will return to that at a later stage of this judgment. The two medical reports of Drs. Hall and Goldson were admitted in evidence, and Counsel were agreed that all attachments to the Witness Statements, as well as exhibits to Affidavits filed in earlier interlocutory aspects of the proceedings, were to be treated as Exhibits at the trial.

CLOSING SUBMISSIONS

[37] After all of the evidence was completed, there was insufficient time for oral closing addresses. The parties had prior to the trial, filed skeleton arguments and a number of authorities. I ordered the parties to file and serve written closing submissions and copies of any further authorities to be relied upon by the 6th September 2013. This they have done. I wish to express my appreciation for the clarity and thoroughness of the submissions on both sides, as well as for the depth of the research conducted.

THE LAW RELATING TO THE ISSUES

CAPACITY

[38] In **Snell’s Equity**, 31st Edition, paragraph 8-44, under the heading “Unconscionable Bargains” it is stated:

“5.- Unconscionable Bargains

1. Lack of capacity.

8-44 A gift will be set aside if it is shown that the donor lacked the requisite mental capacity. For these purposes mental capacity means “in each case whether the person concerned is capable of understanding what he does by executing the deed in question when its general purport has been fully explained to him.” The doctrine applies to wills, contracts and gifts although the degree of understanding required depends on the nature

of the transaction.... Once it is demonstrated that the donor lacked capacity in this sense the burden of proof shifts to the donee to demonstrate that the donor had the necessary understanding to validate the gift. If the donee fails to discharge the burden of proof, the transaction will be set aside. It has been suggested that a transaction entered into without the requisite mental capacity is void. But it is submitted that the better view is that such a transaction is voidable and the doctrine can only be invoked where the donee is guilty of unconscionable conduct and the transaction is only liable to be set aside where the donee has knowledge of the incapacity.”

[39] The decision of Martin Nourse, Q.C., sitting as a deputy judge of the Chancery Division, **In re Beaney, decd** [1978] 1 W.L.R. 770, referred to in the Snell’s, and by Counsel for the Claimant, is instructive. The Headnote accurately summarises the case as follows:

“On May 16, 1973, the deceased, whose mental condition began to deteriorate from 1970, executed a transfer to the defendant, her eldest daughter, of a house which represented her only asset of value. The plaintiffs, her two younger children, had married and left home. The defendant had lived largely away from home until just before her father’s death in 1971, when she had returned home in order to look after her mother.

The transfer was executed while the deceased was in hospital for a short period and it was executed in the presence of the defendant, a solicitor and an old friend of the deceased’s husband. The deceased was told that if she executed the transfer it would have the effect of giving the house to the defendant absolutely. She was twice asked whether she understood what would happen and whether that was what she wanted, and she answered affirmatively. She apparently signed her name quite easily and all three persons present said they thought that she understood what she was doing. Medical evidence was adduced that she was suffering from an advanced state of senile dementia and her mental state was such that she

could not have understood that she was making an absolute gift of the property to the defendant. The deceased died intestate in 1974.

On the plaintiffs' action for a declaration that the transfer was void on the ground that the deceased was unable to understand that she was giving away her only asset of value and depriving her two children of any real share in her estate-

Held, granting the declaration, (1) that the degree or extent of understanding required in respect of the execution of any instrument was relative to the particular transaction which it was to effect; that for a will the degree of understanding required was always high but that for a contract made for consideration or a gift inter vivos, whether by deed or otherwise, the degree required varied according to the circumstances from a low degree where the subject matter and value of the gift were trivial to as high a degree as was required for a will, where the effect of the gift was to dispose of the donor's only asset of value, thus pre-empting its devolution as part of the donor's estate under his will or on intestacy; and that, accordingly, since the claims of the plaintiffs and the extent of the property to be disposed of were not explained to the deceased, the transfer was void even if she did understand that she was making an absolute gift of the house to the defendant...

(2) That, on the evidence, the deceased was not capable of understanding and did not understand that she was making an absolute gift to the defendant, and therefore the transfer was also void on that ground."

[40] Reference was also made by learned Queen's Counsel Mr. Small to **Cross on Evidence** (7th edition) pp. 490-491, 498-499.

At page 498-499, it is stated:

"There is nothing in the nature of a closed list of cases in which non-expert opinion evidence is admissible. Typical instances are provided by questions concerning age, speed, weather, handwriting and identity in general. ...

In some cases, a non-expert witness has been allowed to give evidence of opinion on a subject on which expert testimony would have been admissible. Acquaintances of a person whose sanity is in issue may be asked whether they consider him sane, but this is not so much a demand for an opinion as a 'compendious mode of ascertaining the result of the actual observations of the witness.' Did the witness observe any action by the accused characteristically associated with persons of dubious sanity? Similarly, in *R v. Davies*, the Courts Martial Appeal Court held that on a charge of drunken driving, a non-medical witness might state that he formed the impression that the accused had been drinking but it was said that he must state the facts on which that impression was based, and it was also held that the witness ought not to have been allowed to add that he believed the accused to be unfit to drive, although an expert could have testified to this effect. In an interesting decision in South Africa it has been held that lay eye witness evidence of a collision between motor vehicles was to be preferred to expert evidence reconstructing the collision from physical traces alone, unless it were completely incredible."

(B) UNDUE INFLUENCE

[41] It was submitted by learned Queen's Counsel Mr. Small in the Claimant's written closing submissions that, the relationship between Mr. Watts and Ms. Watts being that of parent and child, in which the child is taking care of a parent of advanced age is one in which there is presumed undue influence. Reference was made to **Treitel's Law of Contract**, (12th Edition) paragraph 10-008-10-018, and the recent decision of **Hart v. Burbidge** [2013] EWHC 1628, (Ch.) Queen's Counsel further submitted that in the circumstances of this relationship the law presumes **irrebutably** that Ms. Watts had influence over Mr. Watts. Further, that this presumption cannot be displaced by evidence because it is irrebutable. It follows therefore that the transactions demand an explanation and since there was an absence of independent advice or rational justification, as a matter of law the impugned transactions must be set aside. Reference was made to **Allcard v. Skinner** (1887) 37 Ch. D. 145 , **Mc Creamy v. Mc Creamy**

[2003] 2 P. & C. R.D.G. 12, **Royal Bank of Scotland v. Etridge (No. 2)** [2002] 2 A.C. 773, and **Avon Finance Co. Ltd. v. Bridger** [1985] 2 All E.R. 281. In the alternative, Counsel argued that there was a rebuttable presumption of undue influence which on the evidence had not been displaced.

[42] The Defendants, on the other hand, argue that whilst there was a relationship of mutual trust and confidence between the parties as father and daughter, the presumption of undue influence is rebutted by a number of factors and circumstances. Reference was made by learned Counsel for the Defendants to the local decision of the Judicial Committee of the Privy Council in **National Commercial Bank (Jamaica) Ltd. v. Hew** [2003] U.K.P.C. 51.

UNCONSCIONABILITY

[43] **Snell's Equity**, paragraphs 8-45-8-50, are instructive. At paragraphs 8-45-8-48, it is stated:

“2. Unconscionable bargains

8-45. Although attempts have been made to subsume undue influence, abuse of confidence and unconscionable bargains under the umbrella of a single doctrine of inequality of bargaining power, the House of Lords has rejected the need to unify them under this single principle. It remains the case that there is no general jurisdiction to set aside transactions either because of inequality of bargaining power between the parties, or because the transaction was improvident. In order to obtain relief, therefore, a complainant must bring himself or herself within one of the discrete doctrines of “constructive fraud”...

8-46. But the intervention of equity does not stop short at want of mental capacity. There is a well-established equitable jurisdiction to set aside a purchase from “a poor and ignorant man” at a considerable undervalue unless the purchaser satisfies the court that the transaction was fair, just and reasonable. The doctrine is distinct from undue influence because it does not require a pre-existing relationship between the parties and may

arise between parties that are completely unknown to each other. However, “a bargain cannot be unconscionable unless one of the parties has imposed the objectionable terms in a morally reprehensible manner; that is to say, in a manner which affects his conscience. All of the leading authorities stress the importance of a finding not only that there is an imbalance in the relationship between the parties and the terms agreed, but also that the party who imposed them was guilty of morally culpable or reprehensible terms.

8-47. The doctrine applies where (1) C was suffering from certain kinds of disability or disadvantage; (2) the bargain was oppressive to the complainant (C); and (3) the counter-party (D) acted unconscionably in that he or she knowingly took advantage of C. It is not clear whether the absence of independent legal advice is a substantive requirement of the doctrine (although the known absence of independent legal advice is likely to be a powerful reason for the court to reach the conclusion that D’s conduct was unconscionable). Where these three requirements are met the burden then passes to D to satisfy the court that the transaction was “fair, just and reasonable”.....

8-48. a) *Disability*. A serious disability is one which affects significantly the ability of the weaker party to make a judgment as to his or her best interests. Categories of disability which are well-established are illiteracy or lack of education, age and poverty. The expression “poor and ignorant” (taken from *Fry v. Lane*) is understood today as meaning “member of the lower income group” and “less highly educated”. The question of disability needs to be judged in the light of the transaction in question and of the documentation which it involves.”

EVIDENCE OF MR. WATTS’ MENTAL CAPACITY

The Medical Reports

[44] Dr. Hall’s medical report dated January 31 2011, states the following:

“Mr. Leslie Watts, 86 years of 1 Shortwood Close, Kingston 8 was first seen by me in neurological consultation on 23/03/10 and admitted to Medical Associates Hospital. His left sided hemiplegia due to damage to the right hemisphere of the brain was confirmed by MRI as guide to his treatment programme. Associated conditions namely hypertension and diabetes mellitus were identified and managed appropriately. He was discharged from hospital on 04/04/10.

There have been several follow up visits during which his rehabilitation was noted and therapy supervised. In this condition of brain attack, as often happens, cognitive decline has been noted. The current syndrome MCI (mild cognitive insufficiency) is a recognised precursor of Vascular Dementia consequent on the brain damage of 23/03/10.”

[45] In his report dated February 21, 2011, Dr. Goldson states as follows:

“I have known Mr. Leslie Watts for over thirty years. I am aware that he suffered a stroke in March 2010, and that under the care of Dr. John Hall, had been admitted to the Medical Associates Hospital. I have read the medical report of Dr. Hall dated January 31, 2011 and concur with his assessment and observations in the penultimate and final sentences of the second paragraph of his report.

I have also been providing medical assistance to Mr. Watts since his discharge from hospital in April 2010 to present. I visit Mr. Watts on an average of twice monthly. From my observations of Mr. Watts, his medical condition has impaired his behaviour, judgment, capacity to consistently recognize reality and ability to meet the demands of daily living. As a result of his condition it is my opinion that he is unable to manage and administer his property and affairs without assistance.”

[46] It is to be noted that in the Amended Defence, Ms. Watts states, at paragraph 9, that “Dr. Goldson is a Gynaecologist and is not qualified so as to speak to Mr. Watts’ cognitive state”. I disagree with and reject that view, which is really in any event more in

the nature of an argument. The fact that Dr. Goldson, a medical doctor, has specialized in the field of Gynaecology does not disable him from exercising non-specialist medical skills, which would include expressing an opinion on Mr. Watts' cognitive state. Indeed, the learning extracted from the **Cross** above, suggests that evidence can be received from lay persons who have not had the benefit of any medical training whatsoever, but who know Mr. Watts well. As a matter of fact, such evidence has been led and admitted in this case, on both sides, without objection.

The Claimant's Witnesses

[47] Dr. Barnett, Mr. Watts' next friend, stated that he has held, amongst others, the following positions:

- (1) President of the Jamaican Bar Association;
- (2) President of the Commonwealth Bar Associations;
- (3) Chairman of the Council of Legal Education;
- (4) Chairman of the General Legal Council; and
- (5) Chairman of the University College of Jamaica.

[48] He indicated that he now holds the position of Deputy Chairman of the Regional Judicial and Legal Services Commission. Dr. Barnett stated that he has been a close friend of Mr. Watts for upwards of fifty years, over which period he and a small number of Mr. Watts' friends have been meeting with him socially once each week. Over the last twenty five years, these meetings have been held at Mr. Watts' apartment at 1 Shortwood Close.

[49] Dr. Barnett indicates that on February 20, 2012, by Order made by Mrs. Justice Sinclair-Haynes in Claim No. 2011 HCV 00469, he was appointed the guardian ad litem of Mr. Watts, with power of attorney to conduct his affairs whether personal or business as well as his financial and legal affairs. This Order, Dr. Barnett's Witness Statement continues, was made after Mr. Watts, in the presence of Ms. Watts and her legal representatives indicated three times to the learned Judge that he wished him to take care of his affairs.

[50] Dr. Barnett indicates that on March 10 2012, he visited Mr. Watts to discuss his personal and business affairs with him. He advised Mr. Watts that although the Court had made the Order on the basis of Mr. Watts' own statement that he wished him to manage his affairs, there was very little that he Dr. Barnett could do because 51% of the shares in Mr. Watts' property- owning Company had been transferred to his daughter Ms. Watts. Mr. Watts responded immediately and emphatically that he had not made any such transfer and that there would be trouble for anyone who took over his business or interfered with his assets.

[51] Dr. Barnett spoke of visiting Mr. Watts in March 2010 in hospital at least twice during the approximately three weeks that Mr. Watts remained in hospital after suffering a stroke. He also visited him several times at his home after his discharge from the hospital.

[52] It was Dr. Barnett's evidence that during these visits, he tried to engage Mr. Watts in conversation. It was clear to him that although Mr. Watts recognised him, he did not always respond rationally or comprehend simple statements but would frequently repeat the same words.

[53] In relation to the Company, Dr Barnett stated that the shareholding of the Company had prior to Mr. Watts' illness been held by Mr. Watts (10 shares) and Ms. Farida Sanguinetti (5 shares).

[54] It was Dr. Barnett's evidence that at the times Mr. Watts is represented as:

- (1) Agreeing to allot 49% of the shares in the Company to Ms. Watts on April 1, 2010;
- (2) Agreeing in April 2010 to transfer 4,000 shares in the Company thus making Ms Watts the majority shareholder in his Company;
- (3) Executing a Power of Attorney on September 10, 2010 in favour of Ms. Watts;
- (4) Executing a Power of Attorney on January 17, 2011 in favour of Ms. Watts;

- (5) Transferring his 2002 Toyota Corona motor car to Ms. Watts; and
- (6) Participating on January 31, 2011 in an Annual General Meeting of the Company at which Ms. Watts was made its chairman,

it is his opinion that Mr. Watts was not functioning in his normal manner and in a position to make such decisions with a full understanding of their implications.

[55] Dr. Barnett also indicated that he was fortified in this view because over the decades that he has been a friend of Mr. Watts, whenever Mr. Watts has had to take any decision respecting his affairs which have legal implications, he has always consulted, either Mr. Justice Clarence Walker, retired Judge of Appeal, Mrs. Dorothy Pine-McLarty, attorney-at-law and/or himself prior to making any decision. Mr. Watts never consulted him on these matters referred to in the above paragraph and Dr. Barnett stated that he has been informed by Mr. Justice Walker and Mrs. McLarty and verily believes that Mr. Watts did not consult them either.

[56] In addition, Dr. Barnett drew the Court's attention to the Affidavit which Ms. Watts filed in support of her application on the 1st February 2011, under the **Mental Health Act** applying to assume management of Mr. Watts' affairs. In that Affidavit, Ms. Watts stated, amongst other matters, the following:

"5. That Leslie Watts has for many years suffered and still suffers from.....[an unspecified ailment] and is unable to manage his personal affairs.

6. That as a result of Leslie Augustus Watts' condition, it is not prudent that he should attempt to transact any business on his own behalf as [his] appreciation of time, place, persons and circumstances is inconsistent and often unreliable.

7. That based on the unpredictable nature of Leslie Augustus Watts' health, I am fearful that without an order such as the one being sought, Leslie Augustus Watts may enter into an improvident transaction and cause his health and future security great harm and prejudice."

[57] Dr. Barnett gave evidence that he was very concerned about the management of the Company and the care-giving arrangements for Mr. Watts. He has personally provided Mr. Watts with an appropriate exercise machine.

[58] Mrs. Dorothy Pine-McLarty also gave evidence. She stated that, among others, she holds the following positions:

- (1) Commissioner of the Electoral Commission of Jamaica;
- (2) Chairman of the Access to Information Tribunal of Jamaica;
- (3) Board Member, Jamaica National Building Society; and
- (4) Board Member, St. Andrew's High School for girls.

[59] Mrs. Pine-McLarty stated that she has been a close friend of Mr. Watts for upwards of 50 years, during which time she along with her family, attends all of Mr. Watts' birthday and annual Christmas functions. Mr. Watts is the godfather of Mrs. Pine McLarty's only daughter and is fondly referred to as 'Uncle Les'. Mrs. Pine-McLarty like Dr. Barnett, has participated in the weekly social event held at Mr. Watts' apartment with a small number of his close friends for the last twenty five years.

[60] Mrs. Pine-McLarty stated that she acted for Mr. Watts some 40 years ago when he purchased the property at 1 Shortwood Close, which property consists of nine apartments and one double apartment occupied by Mr. Watts.

[61] Mrs. Pine McLarty visited Mr. Watts in hospital when he suffered the stroke in March 2010 and visited him at his home too after he was discharged. During these visits she formed the impression that although Mr. Watts recognized her, he did not always understand what she was saying to him. She also observed that he often repeated statements he made to her and questions that he asked her.

[62] Mrs. Pine-McLarty said that she has been made aware of the same purported transactions which have already been set out above. She opines, that, based on her observations of Mr. Watts after he suffered the stroke, he was not functioning in the

manner that he did before the stroke. As a lay person on medical matters it did not appear to her that Mr. Watts was in a position to make the decisions on his affairs that Ms. Watts alleges that he made, with a full understanding of their implications.

[63] Mrs. Pine-McLarty also indicated that she was fortified in her view because prior to the stroke Mr. Watts invariably consulted either with Justice Clarence Walker, Dr. Barnett and/or herself whenever he had to take a decision as to his affairs which could have legal implications and that he had not done so on these alleged transactions.

[64] The witness stated that when she discovered that physiotherapy for Mr. Watts had been terminated, she engaged the services of Miss Cecile Ho Sang, a registered physiotherapist in June 2012 to resume sessions with Mr. Watts, which services were paid for by Mrs. Pine-McLarty and certain other friends of Mr. Watts.

The Defendants' Witnesses

[65] Ms. Watts gave evidence that she resides at 1 Shortwood Close, which she regards as her home. However, she temporarily resides in the United States where she works as a paramedic. Ms. Watts states that she was born in 1961, and is the only child of Mr. Watts and the mother of his two grandsons, Daniel Evering and Edward Cappola. Her mother was Fay Thelwell. At the time of her birth, both of her parents Ms. Thelwell and Mr. Watts were single.

[66] Ms. Watts lived with her mother, first in Saint Elizabeth, and then in Portmore, Saint Catherine. Ms. Watts states that her father was actively involved in her life and both parents paid for her educational and living expenses. On some Tuesday afternoons her father would pick her up from Preparatory school, and later High School, so they could have lunch together at Kiwanis Club or at Mr. Watts' home in Saint Andrew. Ms. Watts states that her father would introduce her to his friends and colleagues as his daughter and she always felt loved by him. She continued to live with her mother in Portmore and visited her father most weekends and some holidays throughout her childhood and teenage years.

[67] When Ms. Watts was 17 years old, 3 months after she had graduated, her mother died. She was devastated by the loss of her mother, and Ms. Watts gave evidence in paragraph 17 of her Witness Statement, that her “mother’s sister Audrey Thelwell, thought it would be best if she went to live with her in the United States rather than residing with my father who was still single at the time and would not have been able to provide me with adequate supervision and emotional support due to the nature of his lifestyle as a single man and socialite in upper St. Andrew.” With her father’s approval, Ms. Watts went to live with her aunt in the United States in 1979.

[68] Ms. Watts goes on to state that, on or about the 10th of March 2010, she received a phone call from one of the tenants at the apartment complex and discovered that her father was sick. At the time when her father suffered the stroke, Ms. Watts was in the United States of America where she was working as a Paramedic with the New York City Fire Department. However, after speaking with Dr. John Hall, she decided to come home to Jamaica for the purpose of attending to the care of her father.

[69] Ms. Watts states that she arrived in Jamaica in March 2010, shortly after her father got the stroke and she went directly from the airport to Medical Associates Hospital. Her evidence is that whilst her father was in hospital and up to May or June 2011, he was able to recognize persons and to respond rationally. She said she was able to see Mr. Watts and observed that he had slurred speech and was unable to speak clearly but could understand what she was saying by gesturing to her.

[70] Ms. Watts claims that in or about April 2010, she was informed by Errol Mills that a meeting was held at 1 Shortwood Close with her father, Mr. Mills, and Mr. Karl Chantrielle who Ms. Watts states that she knew to be her father’s friend from she herself was an infant. At paragraph 65 of her Witness Statement, Ms Watts stated that she was informed that Mr. Mills and Mr. Chantrielle were instructed by her father to transfer 49% of the shareholding in the Company to her and that the transfer to her was effected pursuant to those instructions.

[71] Ms. Watts also states that she left Jamaica in April 2010, after making adequate arrangements for her father's welfare. She came back and forth from the United States. In September 2010 when she returned to Jamaica, Ms. Watts avers that her father gave her a Power of Attorney dated the 10th of September 2010.

[72] At paragraphs 80 and 81 Ms. Watts evidence is as follows:

“80. I am reliably informed by Mr. Mills and do verily believe that he suggested to my father that due to his physical health, it was wise for dad to transfer the majority shareholding of the Company for it to operate effectively whilst he was ill and that my father agreed with the suggestion.

81. My dad told me that he agreed with Errol's suggestion and after receiving instructions from my father, the Power of Attorney dated the 10th day of September 2010 was used to lodge a transfer of majority shareholding of Watts Investment Limited at the Companies Office from my father to me on the 7th day of January 2011.”

[73] Mr. Errol Mills also gave evidence on behalf of the Defendants. Mr. Mills stated that he was an accountant and the accountant for Leslie Watts and the Company for the past twenty years. Mr. Mills says that while Mr. Watts was in the hospital, he visited him. Ms. Watts came to see him and told him that her father was being discharged and that he had told her that she should consult with him Mr. Mills for information pertaining to the Company. He made arrangements with Ms. Watts to meet with Mr. Watts at Mr. Watts' home. Mr. Mills states that pursuant to Mr. Watts' instructions, Karl Chantrielle, Mr. Watts and himself met at Mr. Watts' home and discussed the question of the allotment of the shares that were held by him.

[74] In terms of Mr. Watts' capacity, Mr. Mills had this to say at paragraphs 42, 43 49, and 50:

“42. Leslie was still signing cheques and other documents in conducting his business. I took the weeks' payroll breakdown to him, discussed it with

him and he responded logically with understanding of what he was doing and would then sign the cheques to be encashed for money.

43. From and since I have been involved with the Company, Leslie was the only signing officer of Watts Investments Limited signing cheques and all other correspondences to do with the said Company until Lelieth was authorised to sign.

49. ... At the time (September 2010) Leslie was the only signatory to the account and was not physically able to perform his function as Managing Director of Watts Investment.

50. It is against this background that sometime after Leslie got ill, I suggested to Leslie that since his physical health was deteriorating, he should give Lelieth management control of the company and he agreed.”

THE EVIDENCE AS TO THE RELATIONSHIP

[75] The relationship between Mr. Watts and Ms. Watts is one of parent and child in which Mr. Watts had suffered a stroke and is at an advanced age. In her Affidavit filed 1st February 2011 Ms. Watts stated that Mr. Watts “is cared for on a day-to-day basis by me and his personal nurse”. Ms. Watts had also assumed control of Mr. Watts’ personal and business affairs. In their Written Closing Submissions, Counsel for the Defendants maintain that whilst there was a relationship of mutual trust and confidence between the parties as father and daughter, the presumption of undue influence is rebutted by the following:

- (i) After Mr. Watts suffered a stroke in March 2010, in April 2010, Mr. Watts called a meeting at his home with Mr. Errol Mills and Karl Chantrielle to discuss important aspects of the operation of the Company due to his ill health.
- (ii) Errol Mills and Karl Chantrielle were instructed by Mr. Watts to transfer 49% of the Company’s shareholding to Ms. Watts and a transfer was effected by Mr. Watts on the 9th April, 2010 pursuant to Mr. Watts’ directive.
- (iii) On the 10th day of September 2010, Mr. Watts executed a Power of Attorney in favour of Ms. Watts. Ms. Watts was not present at the material time and

had no input, knowledge and/or influence over Mr. Watts at the time when the Power of Attorney was executed in the presence of Mr. Derrick Dyer, Mr. Watts' close friend and confidante, a Justice of the Peace for the Parish of Saint Andrew who witnessed the transfer.

- (iv) Ms. Watts says that to properly manage the Company it was necessary for Ms. Watts to become majority shareholder of the Company in light of Mr. Watts' physical condition and on his instructions, she utilized the Power of Attorney to effect a transfer of the majority shareholding to herself.
- (v) Subsequent to the lodging of the transfer, Mr. Watts purportedly executed a Power of Attorney in favour of Sydnia Matheson on the 10th day of January, 2011. Ms. Watts stated that this Power was delivered to Mr. Errol Mills by the Honourable Mr. Justice Clarence Walker, Retired Judge of the Court of Appeal and was also delivered to Ms. Watts by Mr. Clinton Davis.
- (vi) Ms. Watts further states that she was informed by Mr. Watts that he had signed a Power of Attorney in favour of Sydnia Matheson because he was informed by his sister Marjorie Catalena Watts that Ms. Watts left the jurisdiction and would not be returning, whereupon Mr. Watts took steps to initiate a new Power of Attorney dated the 19th day of January, 2011, in favour of his daughter, Ms. Watts.
- (vii) Ms. Watts says that she was hindered from completing the transfer of majority shareholding due to the filing of an injunction by Sydnia Matheson and Marjorie Catalena Watts. However, after the injunction was discharged, Ms. Watts completed the transfer as per Mr. Watts instructions and on the 31st day of January, 2011 an Annual General Meeting was called appointing Ms. Watts Managing Director.

In those circumstances, Counsel for Ms. Watts argue that in executing the Powers of Attorney dated the 10th day of September 2010 and 19th January, 2011, Mr. Watts acted freely and fully of his own volition and in the free exercise of his own independent will, with full knowledge and due consideration of what he was doing and intending to give full force and effect to these transactions.

EVIDENCE AS TO UNCONSCIONABILITY

[76] The Claimants say that there is evidence of unconscionability in so far as Ms. Watts took over a majority share in the Company at a time when Mr. Watts was ill and even more in need of the income from his property-owning Company. The Defendants counter and say that everything was done in accordance with Mr. Watts' will and own volition.

EVIDENCE AS TO IRREGULARITY AND INVALIDITY OF ALTERATION OF SHARE CAPITAL AND SHAREHOLDERS

[77] Mrs. Farida Sanguinetti gave evidence that the Company was incorporated on the 21st of August 1979. She, along with Mr. Watts, who is her brother, were the subscribers to the Memorandum of Association. On the 10th of July 1984, the Company gave notice to the Registrar of Companies that the directors of the Company were Mr. Watts, Mrs. Sanguinetti and Warren Watts. Mrs. Sanguinetti was named as Company Secretary.

[78] By Return of Allotment dated the 12th day of July 1984 and filed on behalf of the Company at the Companies Office of Jamaica on the 16th day of May 1985, the Company allotted 10 shares to Mr. Watts and 5 shares to her.

By Notice of Appointment / Change of Company Secretary dated the 4th day of March 2005 and purportedly filed on behalf of the Company at the Companies Office of Jamaica on the 25th day of March 2005 Mrs. Sanguinetti was appointed Company Secretary as at the 17th day of February 2005.

[79]] On the 4th day of February 2011 there was filed on behalf of the Company at the Companies Office of Jamaica a copy of an Ordinary Resolution dated the 7th day of November 2006 purportedly passed to increase the Company's Share Capital. The Resolution stated that at an extraordinary general meeting of the Company it was resolved that the Company's authorised share capital be increased from two hundred dollars (\$200.00) to Two Hundred Thousand (\$200,000.00) by the creation of 199,800 ordinary shares of One Dollar (\$1.00) each.

[80] It is Mrs. Sanguinetti's evidence that she did not receive any notice regarding the holding of an extraordinary general meeting held on November 7, 2006. As far as she is aware or can recall, there was no meeting of the shareholders and/or directors.

[81] By Notice of Appointment /Change of Directors dated the 9th day of April 2010 and purportedly filed on behalf of the Company at the Companies Office of Jamaica on the 9th day of November 2010, Ms. Watts was appointed as a Director of the Company. Mrs. Sanguinetti also stated that as far as she is aware or can recall there were no discussions or agreements among the shareholders and/or directors that Ms. Watts should be appointed a Director.

[82] Further, by Notice of Appointment/Change of Directors dated the 1st day of February 2010 and purportedly filed at the Companies Office of Jamaica on the 14th day of February 2011, the Registrar of Companies was notified that Mrs. Sanguinetti had ceased to hold office as a Director of the Company as at the 1st of February 2010 due to her resignation from that position. Mrs. Sanguinetti states that her services as a Director were never terminated by the other Directors or shareholders and nor did she tender her resignation as a Director of the Company.

[83] By Notice of Appointment / Change of Company Secretary dated the 11th of March 2011 and purportedly filed on behalf of the Company at the Companies Office of Jamaica on the 21st December 2011, the Registrar was notified that Mrs. Sanguinetti had resigned as Company Secretary on the 31st of December 2010 and that Joan Walters of 45 Duke Street, Kingston was appointed Company Secretary on the 31st December 2010.

[84] Mrs. Sanguinetti states that her services as Company Secretary were never terminated by the Directors or Shareholders nor did she tender her resignation as Company Secretary.

[85] Further, by Return of Allotment dated the 1st of April 2010 and purportedly filed on behalf of the Company on the 14th day of February 2011 at the Companies Office of Jamaica the Company allotted One Hundred and One Thousand, Nine Hundred and Eighty-Five (101,985) shares to Mr. Watts and Ninety-Eight thousand (98,000) to Ms. Watts.

[86] Mrs. Sanguinetti states that as far as she is aware there were no meetings of the Directors or Shareholders regarding the allotment of any shares to Ms. Watts. She received no notice of any meetings regarding the allotment of the shares nor did she attend such meetings.

[87] Importantly, Mrs. Sanguinetti states that she has not signed any document transferring any of her shares in the Company. When Mrs. Sanguinetti was shown the Transfer document she stated emphatically that that was not her signature.

[88] Mr. Mills claims that in 2006 Mr. Watts came to his office and told him that he had decided to increase the share capital from 200 to 200,000 shares. Mr. Mills says that this was done in accordance with Mr. Watts instructions. In 2007, Mr. Mills says that Mr. Watts came and said that he wanted to transfer the shares from Farida Sanguinetti back to himself because he did not want his daughter to have any problems with the Company. Ms. Gordon prepared the documents and Mr. Mills says that he received instructions from Mr. Watts as to how to locate Mrs. Sanguinetti. Mr. Mills says that when he went to Mrs. Sanguinetti's home in Hughenden he was met at the gate by someone who appeared to be her caregiver and he was invited in. When he saw Mrs. Sanguinetti and told her who he was, Mr. Mills indicates that she was aware of his reason for being there because she asked him where are the documents that he had brought for her to sign. Mrs. Sanguinetti, according to Mr. Mills, was in a wheelchair at the time. Mr. Mills says that she signed the document.

[89] Mr. Mills stated that it was at the meeting in April 2010 that Mr. Watts instructed him to prepare the allotment for Ms. Watts to be given 200,000 shares (49%) and he would have 101,985 in addition to his 15 shares thereby giving him a total of 102,000 shares which amounted to 51% of the Company. The Return of Allotment is dated 9th April 2010 and Mr. Mills states that this document was completed by his secretary Ms. Gordon and submitted to the Companies office.

[90] In September 2010 Ms. Watts returned to Jamaica and presented Mr. Mills with a Power of Attorney given to her by her father. After being informed of the Power of Attorney, Mr. Mills says that he “was now taking instructions from her”. It was at this point that Mr. Mills claims to have told Ms. Watts that in a previous conversation with her father he had agreed that she should have control of the Company after he had advised him of the need to do so due to his declining physical health.

[91] At paragraphs 53, 56, and 61, Mr. Mills had this to say:

“53. It is against this background, that pursuant to Leslie’s expressed wishes and in keeping with his instructions, that the Power of Attorney dated September 10, 2010 was used to transfer 4000 shares to Lelieth which amounted to 51% majority shareholding in the Company.....

...

56. Leslie instructed me to prepare the relevant documents relating to the increase in the authorised share capital of Watts Investment Limited for filing at the Companies Office. Thus, on the 4th day of February, 2011, a copy of an Ordinary Resolution dated the 7th day of November 2006 increasing the authorised share capital of Watts Investment from ...\$200.00 to \$200,000.00 was lodged at the Companies Office pursuant to Leslie’s instructions.....

.....

61. To the best of my knowledge, information and belief, all business and financial decisions made by Leslie on behalf of Watts Investment Limited have come through my office and Leslie never mentioned that he has sought advice from any other person or source throughout the course of our friendship and business relationship.”

RESOLUTION OF THE ISSUES

MR. WATTS' CAPACITY AT THE MATERIAL TIME

[92] The date of the return of the alleged allotment of 98,000 shares to Lelieth Watts, the Powers of Attorney, the alleged annual general meeting of the company, the Notice of Appointment of and Change of Company Secretary all post-date Mr. Watts' suffering from a stroke and his "cognitive decline" as noted by Dr. Hall, neurologist. Dr. Goldson, a trained medical doctor who in addition says that he has known Mr. Watts for over thirty years, visited Mr. Watts on an average of twice monthly. To my mind his observations are quite telling. He stated "From my observation of Mr. Watts, his medical condition has impaired his behaviour, judgment, capacity to consistently recognize reality and ability to meet the demands of daily living. As a result of his condition it is my opinion that he is unable to manage and administer his property and affairs without assistance" The Defendants elected not to cross-examine these Doctors.

[93] In addition, I found Dr. Barnett and Mrs. Pine-McLarty quite convincing and straight-forward in saying, based on their long friendship with Mr. Watts, and their observations of him while a patient at the hospital and after his discharge, that the transactions took place at a time when Mr. Watts was not functioning in his normal manner and when he was not in a position to make such decisions with a full understanding of their implications. I also note that the witnesses were not challenged on this aspect of their evidence.

[94] By contrast, the evidence of Ms. Watts and Mr. Mills to the effect that in the period immediately after Mr. Watts suffered from the stroke, he was able to give

instructions and discuss this major topic of altering share ownership, is not credible and is inconsistent with the totality of the evidence. Indeed, even in her own Affidavit filed February 1, 2011, Ms. Watts stated that Mr. Watts was unable to manage his affairs “for many years”. Whilst I accept that “many years” may have been an exaggeration, it certainly does imply that the particular condition had existed for a considerable period. I therefore find that Mr. Watts did not at the material times have the mental capacity to evaluate and make rational important decisions relating to his affairs.

THE RELATIONSHIP BETWEEN THE PARTIES AND PRESUMPTION OF UNDUE INFLUENCE

[95] In my judgment, the relationship between Mr. Watts and Ms. Watts was one where Mr. Watts did repose trust and confidence in Ms. Watts. However, although Ms. Watts is Mr. Watts’ child, she is an adult child. In the present scenario it is Ms. Watts, the child, having influence over the parent Mr. Watts. Thus, the learning in the passage from **Treitel’s Law of Contract** 10-016, about irrefutable presumption does not apply here. In that paragraph, the learned author states:

“...”the law presumes, irrefutably, that [A] had influence over [B]”. This presumption has been held to apply where the relationship between A and B is that of parent and child, guardian and ward, religious adviser and disciple, doctor and patient, solicitor and client, trustee and cestui que trust and fiancé and fiancée. The present presumption does not apply between husband and wife, or between employer and employee. Nor does it apply to all relationships which are fiduciary in the sense that they give rise to a duty of disclosure; thus it does not apply between agent and principal. The presumption may apply even after the relationship has ceased if the influence continues, for example, between solicitor and ex-client; and between parent and child for a “short” time after the child has come of age, but not once the child is “emancipated” from parental control. Even the marriage of a child does not invariably have this effect.

(My emphasis)

[96] In my judgment, the transactions here do call for explanation and the rebuttable presumption of undue influence arises, because Mr. Watts suffers from cognitive deficiency and his daughter Ms. Watts is a paramedic who assists with his care, and also assumed control over his personal and business affairs. This evidential presumption is rebuttable, for example, by evidence that the donor was independently advised. However, in this case, the evidence is that Mr. Watts did not receive any independent legal advice. Although in his Witness Statement Mr. Mills claimed that Mr. Watts never told him about seeking advice from any other person or source, in cross-examination, Mr. Mills admitted that he knew of the practice of Mr. Watts consulting with Dr. Barnett, Mrs. Pine-Mc Larty, or retired Justice of Appeal Justice Clarence Walker when he had decisions to make in relation to his affairs that might have legal implications. There is therefore nothing on this basis to rebut the presumption.

[97] Ms. Watts on September 10 2010 obtained a Power of Attorney and that placed her in charge of his assets and in a fiduciary position. Yet she used this Power of Attorney to transfer the majority shareholding in the Company to herself. I agree with learned Queen's Counsel Mr. Small's submission that the explanations given for the increase of share capital and the transfer of shares are spurious and, given the Power of Attorney that Ms. Watts had, were not necessary for the purposes of ensuring the continued management of the Company. Indeed, it was also not necessary in order to ensure that Mr. Watts' legacy would be directed to the persons he intended, because in point of fact, that would be a matter for testamentary disposition. This point is not one to be lightly overlooked and should not be dismissed on the basis that Mr. Watts is over 88 years of age.

UNCONSCIONABILITY

[98] The question of whether the transactions are unconscionable is distinct from the issue of whether Ms. Watts exerted or had undue influence over Mr. Watts. Mr. Watts' main assets were his shares in his property- owning company. His inability to continue his management of the Company did not require the transfer of

his majority ownership or of any of his shares. The Power of Attorney first executed on September 10, 2010 would itself have given Ms. Watts ample control over the management of the Company. Also, the method which was initiated on February 1st 2011 of obtaining an order under the Mental Health Act would also have sufficed.

[99] It is indeed significant that Ms. Watts admitted in cross-examination that she was neither a shareholder nor a director in the Company before Mr. Watts suffered the stroke. Consequently, I agree with the Claimant's submission that "Thus, Leslie's net worth was substantially diminished at a time when he was ill and suffering from cognitive decline".

[100] The transactions, especially the transferring of the shares to Ms. Watts are tainted by unfairness and inequitable. Importantly, (and at one point I thought this would be a turning point in this case, leaving room for amicable resolution), in the face of focused, penetrating cross-examination, Ms Watts stated that she would be prepared to transfer the shares back to her father so long as they and Mr. Watts could be protected. She claimed that when she transferred the majority of the shares to herself it was out of care and concern for her father and as such, she is not claiming a beneficial interest in the shares

THE ISSUE OF WHETHER THERE WERE IRREGULARITIES IN THE ALTERATION OF SHARE CAPITAL, SHAREHOLDERS AND OFFICERS

[101] It is under this particular head that the role of Mr. Mills was critical. I have had to examine his credibility and conduct very closely. I must say that I did not form a favourable impression of Mr. Mills. He appeared evasive, furtive and under cross-examination appeared to be looking for a spot to scurry into. Authenticity of the relevant documents is very important to this aspect of the case. Throughout his Witness Statement, and under cross-examination, he sought refuge in the constant refrain that what he did was "on Mr. Watts instructions". At another point he seemed to want to blame any alleged wrongdoings on his company. I noted that in cross-examination Mr. Mills was asked if he had seen Farida Sanguinetti outside of the

Court room and if that was the lady he spoke to in Hughenden in 2007. However, Mr. Mills was not called into the Courtroom whilst Mrs. Sanguinetti was being cross-examined and asked whether she had ever seen him before. That is a pity, because Mrs. Sanguinetti was adamant, and to mind, very convincing, when she stated that it was not her signature that appeared on the alleged Transfer of Shares as Transferor. Whilst it is clear from Mrs. Sanguinetti's evidence that she does not remember everything that transpired over the years to do with the Company, I certainly accept her evidence on a balance of probability that that was not her signature. I therefore do not accept as credible Mr. Mills' evidence that Mrs. Sanguinetti signed the Transfer.

[102] I must address the matter of Mr. Mills' holding himself out as being an Accountant. In his Witness Statement Mr. Mills described himself as being an Accountant and the Accountant for Mr. Watts and the Company. He states that he had for years been responsible for reviewing Mr. Watts' accounts and giving financial advice to Mr. Watts. In the early 1990's he acquired FC Swaby & Company so thereafter Mr. Watts dealt with him personally. Mr. Mills indicated that FC Swaby died in the early 1990's but when cross-examined about his registration he stated that Mr. FC Swaby is registered as the principal. He gave financial advice relating to the Company, filed financial statements and tax returns. He also conducted the corporate secretarial work. I found it quite troubling that Mr. Mills did not disclose that he is neither a chartered accountant nor registered public accountant, had no professional status, and was only an accountant clerk, until he was cross-examined about it. As Counsel for the Claimant point out in their Closing submissions, Mr. Mills appears to have been acting in breach of section 15 of the **Public Accountancy Act** and ignoring the **Rules and Recommendations of the Public Accountancy Board**, notably paragraph 7.22(c). All of this unprofessional and irregular behaviour plainly undermines his credibility.

[103] However, there is more. The relevant company documents relating to the alteration of the share capital were all filed after Mr. Watts suffered a stroke. The

Resolution purportedly increasing the share capital was filed on 14th February 2011 at the Companies Office of Jamaica, but was signed by Lelieth Watts as a Director, and is dated 7th November, 2006, a date when Ms. Watts admittedly and incontestably had nothing to do with the Company. The Resolution states that a meeting was held at 1 Shortwood Close; it does not say that it was agreed to by using the round-robin procedure. It is Mrs. Sanguinetti's evidence that no such meeting was held. I accept Mrs. Sanguinetti's evidence. The document is clearly falsified. Then there is Mr. Mills' evidence that when he saw Mrs. Sanguinetti in 2007 she was in a wheelchair. However Mrs. Sanguinetti's evidence was that she only started to use a wheelchair about one year before she gave evidence in July 2013. I am reminded of a well-known quotation from a poem by Sir Walter Scott, "Oh what a tangled web we weave when first we practice to deceive."

[104] There are a number of other examples of concoction but I believe one more example will suffice. The Notice of Appointment of/ Change of Directors has a date typed in, which appears to me to be the 31st January 2011, but the date is struck out and an earlier date 1st February 2010, is inserted in handwriting (incidentally a date that pre-dates Mr. Watts' stroke in March 2010). Lelieth Watts' name is typed in as a Director but is struck out. Oddly, she signs the document as a Director anyway with the date "1/2/10" being represented as the effective date. However, this is before Ms. Watts was even given the first alleged Power of Attorney dated 10th September 2010. I did not need any more evidence in order to find something extremely "fishy" about these alleged documents.

DISPOSITION

[105] In my judgment, Mr. Watts did not have the requisite mental capacity to make rational important decisions and to evaluate the transactions attributed to him. Ms. Watts had undue influence over Mr. Watts, and this presumption has not been rebutted. Quite the contrary, as Mr. Watts did not receive independent legal advice, although it is obvious that his three close friends his next friend Dr. Lloyd Barnett, Mrs. Dorothy Pine-McLarty, and retired Judge of Appeal Justice Clarence Walker, or

any of them, would have been more than willing and able to so assist him, as they had done in the past. The series of transactions by which Ms. Watts assumed control and ownership of the Company were grossly inequitable and Ms. Watts and Mr. Mills have, quite frankly, in tandem and separately, behaved in a morally reprehensible manner. The business and affairs of the Company have been conducted in a manner that is oppressive and unfairly prejudicial to Mr. Watts as a shareholder and Director. The evidence is replete with instances of irregularities and fictitious transactions and suspicious circumstances that render the evidence of Mr. Mills and Ms. Watts as to Mr. Watts' agreement to the increase of the share capital, and the transfer of, or allotment of shares to Ms. Watts incapable of belief. They lend credence to Dr. Barnett's evidence that upon informing Mr. Watts about the current purported share situation on March 10, 2012, that Mr. Watts responded that he had not made any such transfer and that there would be trouble for anyone who took over his business or interfered with his assets. Well, that "trouble" is now at hand.

[106] I am of the view that the Claimant is entitled to all of the Orders sought in the Amended Particulars of Claim. There will therefore be Judgment for the Claimant against the Defendants and I make the following Orders:

"1. An order pursuant to section 115 and subsections (2)(a) and (b) and (3)(k) of section 213A of the Companies Act, 2004, that:

- (1) The Register of Members of Watts Investments Limited be rectified by striking out all Shares of the share capital of the Company purportedly held by Lelieth Angela Watts and/or any other person through her or on her behalf;**
- (2) The Claimant be authorised to effect the necessary alterations in the said Register for carrying such orders into effect;**
- (3) The Company shall, within 90 days, file with the Registrar of Companies a Return of Allotment reflecting the rectified shareholdings in (1) above;**

- (4) The Company shall, within 90 days file with the Registrar of Companies Annual Returns and all other documents as may be required or appropriate, as directed by the Court reflecting the rectified shareholdings in sub-paragraph (1) above; and**
- (5) Notice of all such rectifications be given to the Registrar of Companies.**

2. An Order that the resolution dated the 7th day of November, 2006 purporting to increase the share capital of Watts Investments Limited be cancelled.

3. An Order that the Notice of Appointment/ Change of Directors dated February 1, 2010 be cancelled and the Claimant be authorised to effect the necessary alterations to the Register of Directors and to file amended Returns or Notices as may be necessary to give effect to such Orders of the Court.

4. A Declaration that all the issued shares of the Company's share capital are owned beneficially by the Claimant.

5. A Declaration that the 1st Defendant is not and has never lawfully been a shareholder of the Company or Director, chairman, secretary or other officer of the Company.

6. A Declaration that the Power of Attorney dated the 10th day of September 2010 purportedly granted by the Claimant to the 1st Defendant is null and void and of no legal effect.

7. A Declaration that the power of Attorney dated the 19th day of January 2011 purportedly granted by the Claimant to the 1st Defendant is null and void and of no legal effect.

8. A Declaration that Farida Sanguinetti is a Director and the Secretary of Watts Investments Limited and that the Claimant be authorised to effect the necessary alterations to the Company's register and Returns as are necessary to give effect to the order of the Court.

9. A Declaration that the purported meeting of the members of the Company on the 31st January 2011 and all business, resolutions, decisions and other actions purportedly conduct(ed) thereat are null and void and of no legal effect.

10. The 1st Defendant be restrained and an injunction be granted restraining her, whether by herself or by her servants or agents or any of them or otherwise howsoever, from disposing of, transferring, pledging, charging or in any way deal(ing) with any shares in the Company.

11. The Company and its alleged director Lelieth Angela Watts and each of them be restrained and an injunction be granted restricting each of them, whether by themselves or their servants or agents or any of them or otherwise howsoever, from disposing of or transferring, charging, diminishing or in any way howsoever dealing with any assets and/or any property belonging to and/or in the name or on account of business carried on by the Company and/or acquired or held wholly or in part for, used in connection or otherwise associated with the business of the Company or otherwise, wheresoever the same may be situate.

12. Costs to the Claimant against the 1st Defendant to be taxed if not agreed.

13. Liberty to Apply.