

His house is located at Bodden Town (registered as Block 44B Parcel 212, “the house”).

4. The bank accounts comprised certificates of deposit and a savings account at Scotia Bank and at First Caribbean International Bank. At the time of his death the accounts together contained approximately CI\$207,000.00.
5. The Plaintiff denies that there was the asserted close relationship between MET and ANS.
6. She avers in her statement of claim that all funds held in the bank accounts were placed in them by MET and that ANS was added to the accounts as joint signatory only in order to assist with the financial affairs of MET and that accordingly, the bank funds are held by ANS on resulting trust for the estate of MET.
7. She also avers that the house is held by the Defendant on resulting trust for MET’s estate, it having been transferred for no consideration but for “a peppercorn” to ANS¹. She seeks rectification of the land register of title to the house.
8. Further and in the alternative, she alleges that the transfer of the house and the placing of the bank funds into the joint names of MET and ANS were procured by the undue influence of ANS and should be declared to have been invalid and of no effect and accordingly, set aside.
9. In his defence and his evidence supported by several witnesses, ANS denies the allegations of undue influence and avers that all transactions between himself and MET took place with the full knowledge and understanding of MET, including with the benefit of legal advice in the case of the transfer of the house. That the

¹ The stamp duty assessed for the purposes of the transfer by the Land Registry at 7% or \$3,000, would ascribe a notional market value of \$42,857 to the house.



relationship and dealings between them was based upon an implicit trust and understanding between them that ANS would take care of MET by seeing to MET's welfare and expenses for as long as MET lived and any surplus remaining from MET's assets when he passed, would belong to ANS. That MET never once mentioned to him that he had any children and during their lifelong relationship, he never observed any such relationship himself and never met anyone claiming to be a child of MET until literally days before MET died. Then it was that he was confronted by the Plaintiff and her brother Shelby Watler for the first time, both claiming to be MET's children and guardians.

10. These diametrically opposed accounts of the relational framework of MET's life set the context for the factual inquiry that this trial involves. But improbable and starkly opposed though the accounts might seem in the context of a small and closely knit community in which the protagonists lived for many years, a clear picture of the truth nonetheless emerged by the time the testimony of the witnesses was completed.
11. It is necessary that I set out the narrative of the important witnesses.
12. Joan Watler the Plaintiff describes herself as being 57 years old and the 2nd eldest of four children from a relationship between her mother Adeline Watler and MET. Admitting that MET is not registered on her birth certificate as her father, she explained that he was never married to her mother and because of his absences at sea at the time of her birth (and those of her siblings) the opportunity did not present itself to have him acknowledge paternity and give the required consent for registration. Nonetheless, she testified, "*my father accepted us as his children and supported us*".
13. She states that she was born in 1954, her brother Shelby in 1951, sisters Ella Kay and Cynthia Valene in 1968 and 1966 respectively.



“We grew up in my grandmother’s house on Cumber Avenue in Bodden Town”, she stated. “Our home was a few hundred yards away from my father’s home. My father was a seaman and when we were growing up he was off at sea for long periods of time. Generally he was away for twelve months at a time and then would come home for three months before leaving again. This continued until the early 1980’s when he stopped going to sea and took a job with the government as a garbage truck driver.”

14. Her narrative continued:

“My father was a very quiet man and due to his travelling we did not see him for long periods but we all got on well with him and I would have considered that we all had a good relationship with him.

Shelby would have been the closest to him of his children as he went to sea with him in the 1970’s and from the 1970’s to shortly before his death they would have regularly gone fishing together. He was close to my mother as we were growing up but once we were all adults I would say that they grew apart although there was never any ill feeling between them as far as I am aware. My recollection of my father was that he was not particularly sociable and wouldn’t go to bars or public events, preferring to stay at his house. He had a number of close friends (excluding Shelby) over the years as follows:

*Albert (Freddie) Watler
Daniel Minzett
Adrian Watler
Lauren Minzett*

I started working in 1973 and I built my own house on the site of my grandmother’s house in 1977. I continued to live in Bodden Town from 1977 to 1991 when I moved away from Bodden Town to Savannah. I saw a lot of my father from the 1970’s to 1991 in particular when my first daughter was young as she was cared for in my father’s house by Lilly (a sister of MET). I would drop her off there every day and collect her at the end of the day.

After I moved to Savannah, I did not see as much of him as before but there was never any suggestion of any falling out and when we did see each other we got on well.”



15. She continued that she had never heard of her father speak of ANS and “*did not know that he had any relationship with my father whatsoever until shortly before his death*”.
16. In support of the evidence of her relationship with MET, she produced a copy of a marriage certificate of her youngest sister Cynthia Velene on which his name appears as her father. Photographs of the wedding show him walking the bride down the aisle and otherwise in pride of place, as a prominent member of the wedding party.
17. There is other evidence in the case that inferentially supports her claim to this father/daughter relationship with MET, including a hospital record in which he is recorded as having declared during a hospital visit in February 2007 that he had four (4) children.
18. While the Plaintiff’s claim does not meet the formal requirements for proof of paternity recognized by the Status of Children Law 2003², I am prepared to accept from the circumstances described above and on the balance of probabilities, that MET was the Plaintiff’s father, as well as the father of her sister Cynthia Velene. Although the latter has asserted no such claim herself in this case, inferentially, as a beneficiary of the estate, she may be taken as supporting the Plaintiff’s claim.
19. The finding of the existence of the relationship between the Plaintiff and MET is, however, only a first step towards the resolution of this case. The real issues to be resolved require answers to the questions: what was MET’s state of mind at the relevant times and what did he effectively do by way of disposition of his assets?



² Section 7 of which sets out the circumstances under which paternity may be established, including by way of written voluntary declaration at any time.

20. The relationship between MET and those claiming under his estate is said by them to be important to the resolution of these questions. They assert that not only are they his children, but that he was also close to them and wished and intended to benefit them. The evidence was, however, far from consistently supportive of their claim. This includes in telling ways, the evidence given by the Plaintiff herself under cross-examination about her contact with MET at crucial times as shown in the following exchanges:

“Q: Did you know much about (MET’s) illness?”

A: I know that my father was a diabetic and that he was on medication. I think I knew about this when my mother visited the clinic at Bodden Town. She met him there. She reported that she had seen my father and we were talking about his illness. On one occasion I met him at the hospital and we discussed his being a diabetic. I do not recall what year that was.”

21. Further exchanges also suggest that she had had very little contact with MET. She was referred to her witness statement where she had written: *“My father became ill in early 2009. I did not know much about his illness until around 1st March 2009 when he went to Tampa, Florida for treatment. He was accompanied on the journey by Newton Solomon (ANS), who is not a relation of my father”*.
22. She said that there she was referring to MET going for treatment *“for his cancer”*. She had learnt of this not from any contact with MET himself, but from being told by her brother Shelby that MET had gone for treatment for his diabetes and cancer and as *“far as (she) was aware”*, MET had known of the diagnosis of cancer before going on that trip.
23. But she was then referred to the medical records which show that MET’s diagnosis for cancer was not suspected until after his return from that trip to Tampa and the



diagnosis not confirmed until after a subsequent visit to the Mount Sinai Hospital in Miami, Florida on 23 March 2009.

24. She then admitted under cross-examination, that she did not definitely know of MET's condition until she saw a copy of his medical records some months later in July 2009, although "*we had suspected because of his weight loss*".
25. While she sought to explain this lack of knowledge of MET's condition as being due to ANS's instructions to the doctors not to disclose any information to her, she acknowledged that she had made no contact with MET nor assisted with any of the arrangements for his care and treatment and that ANS it was who had arranged and accompanied MET on his various trips overseas for medical treatment. When pressed under cross-examination, she accepted that ANS was responsible throughout the time of MET's illness for seeing to his treatment and care.
26. Despite this history and the further history from the evidence that shows ANS having been made a joint account holder with MET on one of MET's accounts as long ago as 1993, it remained the Plaintiff's story throughout that she knew of no prior relationship whatsoever between MET and ANS and that it was not until around the time of MET's illness in early 2009 that ANS first became a notable presence in MET's life. In this context, the following further passage appears in her witness statement:

"I became aware about the relationship between my father and Newton Solomon and I caused a search to be performed on the registration of my father's home, Block 44B parcel 212. The search showed that a transfer of land certificate for my father's home was made into the name of Alfred Newton Solomon for 'a peppercorn' on the 31 March 2009."



27. She testified that she had made this search of the Land Register in April 2009, her “concerns” over the newly formed relationship between ANS and her father having been aroused. However, when confronted in Court with the transfer document, which although dated 31 March 2009, showed that registration of the transfer did not take place until 15th May 2009, her response was that she was no longer sure that it was in April 2009 that she had checked the land register and could no longer say what had caused her in the first place to check the register.
28. In her witness statement, she also cites the transfer of her father’s house to ANS as her reason for approaching one of MET’s doctor’s – Dr. Ebanks of the Chrissie Tomlinson Memorial Hospital (“CTMH”) – about her concerns over MET’s state of mind. This she said was on or about the 7th July 2009. Dr. Ebanks having refused on ANS’s instructions to impart any information – instead recommending that she invite the psychiatrist Dr. Lockhart to examine MET – she explained that she and her brother Shelby then applied to this court and obtained an order of guardianship over MET and his affairs.
29. However, in cross examination, she was reminded that she had in fact spoken to Dr. Ebanks on the 2nd or 3rd July 2009 after she had already obtained the Guardianship Order on the 2nd July. And, despite this Court in paragraph 2 of the Guardianship Order, requiring that she “*shall forthwith have [MET] medically examined to determine the soundness of his mind*”, she took no steps to comply with that aspect of the Order. Nor had she sought to serve a copy of the Order on ANS despite having obtained it without giving him notice of her application to the Court and despite being fully aware that he had taken full responsibility for MET’s care and medical treatment for at least five months until then.



30. Against this background and so without having acquired from his doctors any knowledge of the real nature of MET's illness, the Plaintiff resolved to have him removed from his home and taken, not to CTMH where she was aware he had been receiving treatment, but to the George Town Hospital (GTH). This she did with the help of the Emergency Medical Team (EMT) and with the intervention of the police (who were required by her to respond to the Guardianship Order) on the 10th July 2009. MET had been at his home in the care of Marlene White who testified that she had been hired by ANS and MET to care for MET, after he had returned home from treatment at the Mount Sinai Hospital in Miami.
31. While the Plaintiff's explanation for this drastic action was that she was concerned that her father was not being properly cared for, she was compelled to admit in cross-examination that the nurse and paramedics who accompanied her, found MET to have been well cared for and but for her insistence, were prepared to leave him at home. As much appears from the written report of the EMT (at Tab 3 page 149 of the Plaintiff's Discovery Bundle). They report that the patient was found at home in bed without any obvious signs of distress. His vital signs were stable and he responded appropriately to their questions and followed commands. Although he responded affectionately to Miss White and appeared to be appropriately looked after, the decision to remove him to the GTH was taken upon the insistence of the Plaintiff. In this regard the report states: "*Officer on scene made decision based on power of attorney documents to transport patient to GTH for evaluation, per daughter's request*".



32. MET did not return to his home but remained at the GTH where he died 10 days later. It is a sad circumstance of this case that this appears to have taken place against his wishes.
33. Evidence in support of the Plaintiff's case was given by Mary Lou Dixon who claims to be a second cousin of the Plaintiff and a first cousin of MET. Ms. Dixon claims to have enjoyed a very close relationship with MET. She testified to having seen him in person or to having spoken to him by telephone "*just about every day*". She said that she attended to all of his household chores for him, seeing to his personal affairs as well, including on several occasions doing his banking for him. Specifically, she claimed to have arranged with "*the bank*" for the renewal of his fixed deposits and not only had she never seen any sign of ANS being involved with MET's bank accounts or other affairs, she also knew that MET did not know him well and neither liked nor trusted ANS. He had told her so himself. Prior to March 2009, the only connection between MET and ANS of which she was aware, was that MET had a relationship with ANS's aunt Ansfrith Solomon ("*Lee Lee*") and MET would occasionally come across ANS at Lee Lee's house. That the relationship between ANS and MET was "*far from close*".
34. By contrast, she spoke in glowing terms of a loving relationship between the Plaintiff and MET, and was especially supportive of the Plaintiff's recollection of a very close relationship with MET during the childhood years growing up in Bodden Town. She was adamant that only in the latter months of MET's life, "*from around March 2009*", did she observe ANS become actively involved in MET's life or in his affairs. Most noticeably, she had observed that MET had been taken in to live at ANS's home, while significant construction work was done by ANS at MET's house. She



had formed the impression that this was ANS already improving the house (presumably with MET's money) for his own benefit. She also came to understand that ANS had been taking MET for treatment overseas but did not know how this came about.

35. Having been present with the Plaintiff and Shelby Watler on the 7th July 2009 when MET was removed from his home to the GTH, Ms. Dixon supported the Plaintiff's account of the reason for this, testifying that they had been denied access to MET by "the helper" and were very concerned that he was not being properly cared for. This she said was a result of ANS having prevented them from getting information from the doctors at CTMH about MET's condition.

36. In cross-examination this witness came to admit, that despite her own claim to a close relationship with MET, she knew nothing about the arrangements for his care either here in Cayman or overseas and that ANS had taken full responsibility for MET's care. Although willing to express her concerns about ANS taking possession of MET's house, she admitted that she was unaware that the construction work she witnessed had been undertaken by ANS to make the house more livable for MET; including by the installation of wheel chair access intended for MET's future long term benefit.

37. And when presented with the various fixed deposit records which show an established joint account relationship between ANS and MET going back many years to 1993, the witness still insisted that she it was who had transacted on MET's bank accounts for him and had seen no sign of a joint account relationship with ANS.

38. Such improbabilities and inconsistencies in her evidence left me with the firm impression that Mary Lou Dixon is not a reliable witness. I was unable to accept her



evidence as to the nature of the relationship either between herself and MET or as to that between ANS and MET.

39. Shelby Watler also testified in support of the Plaintiff's case and in so doing, spoke not only of a paternal relationship between the Plaintiff and MET but of his own such relationship with MET as well. To substantiate this, he described a very close bond with MET which developed after they had both retired from going to sea and returned to live permanently at Bodden Town. In particular, he spoke of many fishing trips in MET's boat and insisted that during not even one of those was ANS invited to go along. Most of the time he and MET fished with Daniel Minzett, he said, as "*the three of us were together on weekends*".
40. "*In all my years of knowing my father*", he said, "*I never heard him mention Newton Solomon and he never once came fishing with us. I never discussed my father's financial affairs with him. It was only in his last few months that I noticed Newton Solomon had any connection with my father. I saw my father in Newton's car on two occasions driving around Bodden Town*". He continued in his statement to express "*shock*" at learning that ANS would be taking MET to Tampa for medical treatment. This, he said, was because he had been in discussions with MET and Mary Lou Dixon for her to accompany MET, when they had become aware in January 2009 that he was ill. He said he was later told by MET that ANS had taken him to Tampa for medical treatment in early March 2009 but offered no response when it was put to him that that trip to Tampa was not for medical reasons but to visit with a friend of MET's, William Rivers. He did not know William Rivers, he admitted, and was not aware that MET's illness requiring overseas referral had not been diagnosed until later in March 2009.

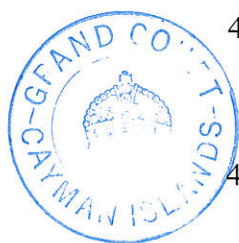


41. Indeed, Shelby Watler fared no better than did Mary Lou Dixon under cross-examination. Apart from becoming very hesitant and vague in his answers, he also contradicted himself in telling ways. For instance, while in his statement he gave the impression that he went fishing with MET on the weekly basis, as often as twice per week, in answer to the question “*when was the last time?*”; he said “*when he really got sick we could not go*” and when pressed for a more specific answer, that “*I think it was in January 2009*”.
42. He wrote in his statement of first learning of MET’s illness in January 2009 during a visit that he, Mary Lou Dixon and “*a good friend of [MET’s] one Adrian Watler (now deceased)*” paid to MET “*after he had started complaining of pains in his arms, shoulders and head and that his sugar was always high*”. This meeting was the prelude to the arrangements he said he and Mary Lou had made for MET’s overseas medical referrals. However, when it was brought to his attention by Mr. Murray producing a copy of the death certificate of Adrian Watler, that he had died some years earlier on 7th October 2006; the witness managed to respond only by saying “*I never really remember clear that Adrian died.*” His evidence from this point on became even more hesitant and vague; the witness becoming visibly and increasingly ill at ease and deliberately evasive in his answers.
43. Daniel Minzett was the fourth and final witness called in support of the Plaintiff’s case. He claimed to have been “*a very good and trusted friend*” of MET. He said that he had known MET almost his entire life as they had lived and grown up together in Bodden Town, apart from when they were away working at sea. Both having returned from sea, they used to go fishing together as often as 3 – 4 days each week and depending on the weather, 4 – 5 hours each day. He knew nothing of a relationship



between MET and ANS although he knew of the friendship between MET and ANS's Aunt Lee Lee. He was surprised to learn of MET having entrusted ANS with his assets, especially because he knew MET to have been "*a very private man who did not take readily to strangers*". He never saw MET in the company of ANS and never once did ANS go fishing with them.

44. Here too, a different picture emerged under cross-examination. Despite the close friendship avowed with MET, this witness could not remember the date nor even the year MET died. He had not paid him a single visit while he was in the hospital here in Grand Cayman and could not remember about when it was that MET had become ill. "*After (MET) became ill I saw him once or twice around Bodden Town and I attended his funeral*", he said. One of those chance meetings had taken place around Gun Square, Bodden Town, the witness said, but he could not remember what year that was. He had first learnt of MET's illness not from MET himself but, according to him, from "*his son Shelby Watler*" and "*it was a year and a half after that that I heard that he had died.... I attended his funeral*".
45. The evidence available from the medical records in this case clearly establishes that MET's illness was not suspected until late March 2009 and not diagnosed finally until April 2009, becoming fatal on 17th July 2009. The witness's testimony that to his knowledge MET's illness lingered for a year and a half is therefore discredited by the medical records.
46. By contrast, the evidence of ANS and that of the several witnesses who testified in support of his case, presented a far more consistent and persuasive picture.
47. His own testimony and particularly that of his father Alfred Henry Solomon, provide a compelling account of a special bond between ANS and an avuncular MET, a



relationship which started when ANS was a young boy growing up in Bodden Town, and one which grew and strengthened as ANS became a man and lasted until the day MET died.

48. A compelling narrative, which I accept as true and accurate, came from Alfred Henry Solomon's statement which he affirmed on oath from the witness box:

- “1. *I was born on the 15th November 1937 and am the father of the Defendant in these proceedings.*
2. *I had known the deceased, Marcus Thompson, from he was a child until he died. We grew up in the same area. He was a little older than me and his home was about one hundred and fifty feet (150') from where I lived.*
3. *Although I knew the deceased from childhood we did not become friends until we were teenagers. As friends we would go fishing together. As we became older we both went to sea. I went to sea from 1959 to 1974 but the deceased and I never sailed on the same vessels. When we came back to the Cayman Islands we would get together and exchange stories on our voyages.*
4. *Around this time the deceased had a boat and he invited me to go fishing with him on it and from that point on our friendship became even stronger and we remained friends until he died.*
5. *As friends we would not only go fishing together but we would drink together on the beach, play ludos and dominoes from in the evening hours until late at night or early the following morning with Mr. David Jervis and his wife at their residence in Bodden Town.*
6. *I got married on the 7th June 1966 and I lived with my wife in a home belonging to Caroline Donaldson with our children Alfred Newton Solomon and Caroline Elizabeth Solomon and my wife's aunt Caroline Donaldson. This house was about fifty feet (50') in front of the boundary of the home of the deceased.*



7. *My son, Alfred Newton Solomon, the Defendant in these proceedings, was born on the 7th October 1966.*
8. *The deceased's mother was named Lily Thompson and she was a friend of Caroline Donaldson. Mrs. Lily Thompson would visit Ms. Caroline Donaldson on a regular and daily basis. They would sit and chat about old times. Mrs. Lily Thompson would often play with the Defendant and he in turn became very friendly with and attached to her. Whenever Mrs. Lily Thompson came over to visit Ms. Caroline Donaldson my son, the Defendant, would chase after her as she made her way home, where the deceased lived. Marcus Thompson took a liking to my son and a strong friendship developed between them. In many ways the deceased was like a godfather to the Defendant, who, as he grew, began spending more time at the home of the deceased than he did at his home. The Defendant liked to eat fry fish and fritters and the deceased would often cook this meal for him whenever he went to the home of the deceased.*
9. *The friendship between the deceased and the Defendant continued to develop over the years and they would often go fishing together. As the Defendant became a man and as the deceased aged the deceased came to rely more and more on the Defendant. The deceased would give the Defendant funds with which to pay his bills in town and to carry out certain chores for him. The Defendant also began to rely on the deceased to do some chores for him. The deceased would rake the Defendant's yard and watch over persons who came to the Defendant's home to carry out work there. When the Defendant became a pilot and was flying overseas he would leave the key to his home with the deceased.*
10. *The deceased was an intimate friend of my sister, Ansfrith Hope Solomon who was called "Ms. Lee-Lee", for many years. She would cook for him and wash his clothes. When she lost her right leg she returned home to live at the home of our sister, Janace Opal Solomon. Marcus Thompson often assisted my sister, Janace Opal Solomon, in lifting and placing Ansfrith Hope Solomon in her wheel chair or on the sofa on many occasions after she lost the use of her right leg. He continued*



to provide this assistance up until just before he went overseas for his medical treatment.

11. *I am aware that after my sister went to live with her sister that my son and daughter had my daughter's helper assist in looking after the deceased and that as the deceased became more ill my son, the Defendant, employed another person to live in with the deceased and look after him.*
12. *Throughout the years I have known the deceased he never told me that the Plaintiffs were his children or that he had children.*
13. *That it is to my knowledge that when the deceased became ill that it was the Defendant who took him to see the doctors and who took him overseas when he needed medical attention.*
14. *I would visit the deceased at the home of my son or at his home during his period of illness and I was also present at his home when persons from the Hospital and the Police removed him.*
15. *On that day, 10th July 2009, my son Alfred Newton Solomon telephoned me and asked me to go to his home where Marcus Thompson was. He wanted me to see what was happening there. He told me that the helper had telephoned him and informed him that the Police and others were at the home and that they were banging on the windows and doors and she was frightened. On my arrival at the home I saw the Police, the EMT's and the Plaintiff's (sic) there. The medical team told me that they had instructions to check on Marcus Thompson. They checked on him and afterwards I asked them how he was and they told me that all the checks that they had done indicated that he was good. They also told me that they saw no reason why he should be taken to the George Town Hospital as his surroundings were clean and well kept.*
16. *I was present when the EMT's asked the Plaintiffs for Marcus Thompson's personal details, like his age, date of birth, full name and the medications he was on and they could provide no answers to these questions. It was the helper, Marlene White, who then provided them with the answers they sought.*



17. *It was the Plaintiffs and the Police who forced the EMT's to take Marcus Thompson from the home to the Hospital. Marcus Thompson resisted the attempt to remove him from the home and they had to forcefully lift him off the bed in the sheet that he was laying on and take him away.*

18. *I visited my friend, Marcus Thompson at the George Town Hospital and talked with him before he died."*

49. The picture of the close and lasting relationship between ANS and MET emerging from that narrative of ANS's father was confirmed by the evidence of Nellie Solomon, ANS's wife and that of her sister Joyce Seymour. Both women had come to know MET as a constant figure in ANS's life and from their respective relationships as wife and sister-in-law of ANS, had come to know and regard MET as "family" as well.

50. Nellie Solomon spoke of a boat owned and shared by MET and ANS in which they often went fishing together. She said that MET fondly referred to ANS by the nickname "Figgie", which he had coined for him. She confirmed that MET possessed a key to their house and would spend as much time as he pleased there. In the latter months of his life, before she went to work in the mornings, she took him from his house in nearby Bodden Town to spend the days at their home and when she returned home from work, she took him to spend the nights at his house in care of the helper, Marlene White. She described the relationship between her husband and MET "as very close, in many ways like father and son". And that this was so although ANS was also very close to his own father as well.

51. As to MET's financial affairs, she said she knew nothing and "*it was when my husband took him overseas and we needed to have funds to continue payment of MET's bills here that I came to realize that my husband had been added as a joint*



account holder (with MET)". This, she explained, came about (as confirmed by ANS in his testimony) when she was asked by ANS to collect money from the bank to make the payments. As to the transfer of MET's house to ANS, she testified that she was unaware that it had happened until informed by ANS that MET had transferred the property to him and that he was going to register it.

52. Over the course of the 14 years or so that she had known MET, she had never heard him speak of having any children. Although she may have come across the Plaintiff in and around Bodden Town, she did not know of any relationship between her and MET and could recall meeting Shelby Watler only once and this was at the GTH when MET was admitted there.

53. Joyce Seymour for her part expressed equal surprise at hearing of the relationship with MET claimed by the Plaintiff, and by Shelby Watler. She remarked that this was all the more so because she had once asked MET whether he had any children and his retort was that "*Figgie was his "children".*"

54. Mitzi Walton Jervis also testified. She had been in an earlier relationship with ANS which began in 1987. They had met as colleagues at the Government Customs Department where she has since risen to become the Finance Manager. Their relationship ended around 1990-1991 but has continued on good terms, especially because of her daughter by ANS, Kimberley. She had come to know MET through her relationship with ANS. She stated that "*I would visit Newton Solomon in Bodden Town and would find him invariably at the home of his aunts, Ms. Josie and Ms. Lee Lee and it was at the said home that I met and came to know Marcus Thompson. From my observations and from what I heard, it became clear to me that Marcus Thompson and Ms. Lee Lee had an intimate common law relationship....My visits*

became more frequent immediately following the birth of Kimberley as both Ms. Josie and Ms. Lee Lee were quite fond of her and she in turn became quite fond of them. During my visits to the home of Ms. Josie and Ms. Lee Lee, I also observed that there was a closely knit bond between Newton Solomon and Marcus Thompson. Both Ms. Lee Lee and Marcus Thompson treated Newton Solomon as though he was their child". Having herself become married in 1997, her visits to Ms. Lee Lee's home, she said, became less frequent, although she kept in touch regularly by telephone. Kimberley, she said, who remains close to her father, graduated from high school and went to college in Tampa and through her it was that she heard of MET's trips to Tampa with ANS: "Kimberley was at the University of South Florida in Tampa and she would often comment on her Dad being with Marcus for medical care and she would often do things there in Tampa to assist with their visits."

55. Elizabeth Clarke and Marlene White also testified to their respective relationships with MET as domestic helper and care giver at different times.
56. Elizabeth Clarke who had been primarily employed as housekeeper to ANS' sister Caroline Solomon since 2004, came to know MET from his many visits to Caroline's home with ANS. She came to know MET well enough to know of his relationship with Miss Lee Lee and after Miss Lee Lee became incapacitated from loss of her leg and could no longer look after MET, she said she was asked by ANS to go to MET's home to clean and cook for him. She continued to do this until MET's illness required of a live-in helper, a role she herself could not undertake because she was already a live-in helper for Caroline and her family.
57. This witness also saw the relationship between MET and ANS as that like father and son, so much so she said, that when she first realized that Mr. Alfred Solomon is



ANS's father according to her: *"I was very surprised and remarked to Caroline that I had thought that MET was his father"*. As an example of the closeness of the relationship between ANS and MET she described how ANS, who is a commercial pilot, *"...would always come by (MET's) house on the mornings that he was flying to check on (him) to ensure that he was alright and to inform him that he was leaving and when he would be back. Sometimes (ANS) would stay overnight when he worked and he would always telephone to check on (MET) at such times. (MET) referred to (ANS) as "Figgie" and he was the only person I heard refer to him by that name."*

58. This witness had also become involved as the attesting witness to the execution of the documents by MET in respect of a power of attorney given to ANS and in respect of the transfer of his house to ANS.
59. For this purpose, she said she was driven by ANS at around 6pm on the 31 March 2009 from Caroline Solomon's home to go with him to his home. There she met the attorney, Mr. Morris Garcia, who was introduced to her by MET as his attorney. MET was seated around the dinner table and she saw him sign the documents. She had not been told beforehand of the event but having been told why she was there, she watched him carefully as he signed.
60. She was shown the documents in court and confirmed that the power of attorney was that which she witnessed and that it bore the signature she saw MET sign. She agreed that the signature appeared erratic, somewhat *"all over the place"* as if written by a failing hand as suggested by counsel, but insisted that it was MET's signature and that she saw him write it: *"I was right there witnessing it"*, she said *"It (the signature) just ended up that way."*

61. She said she remained there awhile that evening talking with MET as she usually did before returning to Caroline's home, and that MET, although she was aware that he had been ill, appeared quite well and was fully aware of what he was doing. In fact, he continued to appear to be in good health, she said, "*until around sometime in April when he got really ill.*" At no time during her earlier dealings with MET or on the occasion of the execution of the documents, did she hear or observe anything about him that caused her to think that anything was wrong with him mentally: "*He had a good power of recall and apart from the ill-health with his blood sugar levels he appeared quite healthy to me and had a great power of recall of things he had done, places he had been and people he had met.*"
62. Marlene White for her part testified to having become quite attached to and fond of MET as the live-in helper hired to take care of him during what turned out to be his final months of life. She first met MET in March 2009 when she was interviewed both by him and ANS before being hired. She was then made aware that MET had been at CTMH for quite a long period of time but she was unaware that he was suffering from cancer. It was only after she started working for him that she became aware that he was taking any kind of medication. In fact, she started to think that MET was seriously ill she said, only after he had returned from his treatment in the USA in April 2009.
63. On the day MET was taken from his home to GTH, she had been with him as usual when she heard a loud banging on the door. She looked outside and saw Mary Lou Dixon, Shelby Watler (whom she recognized as someone who had come to the home once earlier but left before she confirmed with MET to admit him) and another woman (now known to be the Plaintiff). They were in the company of two police



officers. She was frightened and surprised by the presence of the police and could see that MET was upset by the continuous pounding on the door. She telephoned ANS who was away for work, explained what was happening and he said he would ask his father to “*come and sort things out*”. Alfred Solomon arrived shortly after and while he was speaking with the persons outside, the ambulance arrived.

64. On the basis of the “*court order*” presented by the Plaintiff, the witness said she allowed the EMT staff to examine MET and they spoke to her about his care. They remarked according to the witness, that “*apart from his elevated blood-sugar level he was fine*”. She showed them the log she kept of her administering his medication three times each day. One of the medications had the effect of temporarily spiking his blood sugar levels; explaining according to her, why it appeared elevated at the time.

65. During all of this she said, MET was “*quite upset and I was trying to calm him down and give him his glucerna, which he was refusing to take*”.

66. The witness continued that despite the EMT staff telling the Plaintiff, Mary Lou Dixon and the Police that MET was not being neglected and was well taken care of, the Plaintiff insisted that she had a court order giving her responsibility for MET and she wanted him taken to the GTH.

67. The witness said she again called ANS who said “*if they had a court order he could not stop them from taking (MET) but he would get a lawyer.*”

68. She recalled that one of the EMT staff said that they had no choice but to take MET in light of the court order. But when they tried to remove MET “*he resisted and they had to lift him off the bed, in the sheet in was laying on, and go with him.*”

69. Later on she went to the GTH with MET’s medication and was the only person able to tell hospital staff about his medication and care. She observed “*those claiming to*



be his children interacting very little with him” and “apart from two occasions when answering questions posed by the nursing staff, she never heard them refer to MET as their father”. The witness continued that she observed that MET became increasingly withdrawn while at the hospital and refused to eat the meals provided for him there. She went to the hospital each day and stayed with him during visiting hours until he died. ANS visited MET throughout she said, and she observed that “at such times (MET) was at his happiest during his stay at the Hospital leading up to his death.”

70. Mr. Morris Garcia, attorney-at-law, testified. He said he first became acquainted with MET when he arrived at his offices in George Town on 5th March 2009, accompanied by ANS. When MET said that he wished to engage his services and needed advice, he ushered him into his inner private chambers, leaving ANS in the outer office. At no time, he explained, was ANS present during his consultations with MET.

71. According to Mr. Garcia there in his inner office, *“(MET) told me that he needed legal advice in relation to Newton Solomon dealing with his business affairs for him and also in relation to giving Newton Solomon his assets.”*

72. Mr. Garcia continued that *“when I pressed him what he meant by “assets”, he told me “his property”. I proceeded to advise him of a number of different options available to him other than an outright giving of his assets to Mr. Solomon. I spoke to him about making a last will and testament. I spoke to him about joint ownership of the property with Mr. Solomon. I spoke to him about proprietorship in common. I also mentioned to him the possibility of doing another [kind of] power of attorney pursuant to the Registered Land Law. Mr. Thompson would have none of those. He was adamant that what he wanted to do was to have Mr. Solomon have the property.*



I requested that he provide these instructions in writing. He did so. I received them on or about the 13th March 2009.”

73. Mr. Garcia then presented from his file the original hand written note of those instructions, which, although mentioned in his witness statement of 12th October 2011, was being produced for the first time in Court. No one disputes the authenticity of the note and I am satisfied that it is written in MET’s handwriting and reads:

“Dear Mr. Morris Garcia;

I, Marcus Edgar Thompson wish to have Newton Solomon conduct all transactions on my behalf as of date. It is also my desire to give to Newton my assets. Please prepare the documents to allow this. Thank you.

*(Signed) Marcus Edgar Thompson
13 March 2009”*

74. Mr. Garcia testified that on the basis of his consultations and these written instructions, he proceeded to draft a power of attorney and prepare Transfer of Land forms. Copies of these were exhibited in the disclosure documentation and identified by Mr. Garcia in Court. He testified that on 31 March 2009, having received ANS’s telephone number from MET and having called ahead to arrange and was told that MET would be at ANS’s home, he attended on MET there to see to the execution of the documents. There he went over the documents with MET and explained to him what the effects and consequences of his actions would be in law and MET confirmed that he was aware of the same. Mr. Garcia presented to the Court the file notes he had made immediately following his attendance on MET for the execution of the documents and in which he recorded having explained the documents and secured MET’s understanding of them.



75. He confirmed that MET executed the documents in his presence and that of the witness Elizabeth Clarke.
76. According to Mr. Garcia, during his conversations with MET, he had no reason to doubt that he understood what he wanted to do and was in fact doing. At one point in cross-examination, he explained that he had further sought to explain the implications to MET during his first consultation with him on 5th March 2009, by relating the experience he had had of another person who had transferred his home to a person whom he trusted only to find himself ejected from his home and destitute as the result. This was narrated to MET in the context of advising him on the other options open to him other than an outright transfer to ANS. MET's response, said Mr. Garcia, was "*He would not do that to me.*" Mr. Garcia concluded, in relation to the power of attorney and transfer of the house:

"I also had no reason to doubt that what he wanted to do and was in fact doing was of his own free will and at all times he appeared perfectly lucid and coherent to me and seemed compos mentis".

77. On the face of it, the foregoing evidence – coming as it does from an experienced, well regarded attorney-at-law and one who is in good standing as an officer of the court – should be conclusive of the central issues in this case.
78. Nonetheless, questions were raised in cross-examination which sought to challenge the probity of Mr. Garcia's conclusions, especially about MET's state of mind during his dealings with him.
79. For instance, Mr. Garcia had acknowledged in his evidence in court that it appeared in his fee note which he had rendered to MET, that he had visited MET at the CTMH on or about 6th to 12th March 2009. He was asked whether the state of MET's health



and apparent physical frailty had not given him concern about MET's ability to understand the implications of his instructions, as of that point in time.

80. He answered that no such concerns had arisen. He explained that a matter of some days after their first meeting on the 5th March 2009 and not having yet received the written instructions, he had enquired after MET with ANS and was told that MET was then in hospital. ANS also said that MET had expressed a wish to see him and so he paid him a visit at CTMH. This, he said, was simply out of compassion and so he discussed no business on that occasion. In fact he felt that he had not yet been formally retained, having not yet been given the written instructions which he had requested. Although hospitalized, MET appeared to be in complete command of his faculties. So much so he said, that while there he observed MET receive a number of other visitors and was able to engage with them without any difficulty.

81. He next saw MET when he arrived at his office alone on the 13th March 2009 and handed over the written instructions. In order to do so – like on the previous occasion – MET had to have taken the stairs to get to his second story office. MET appeared to have taken the stairs without difficulty, seemed in good health and again to be fully in command of his faculties.

82. Mr. Garcia was also questioned about the circumstances surrounding the execution of the documents on 31 March 2009 for the transfer of the house and power of attorney for dealing with MET's affairs. He was asked why this happened not at his offices as might have been expected, but at ANS's home. He explained that he offered to attend there simply as a courtesy. He happens to live in the Savannah area, at only a short distance from ANS's home and it seemed convenient to get the documents executed by MET at home, rather than have him return again to his office in George Town.



While in no doubt that MET understood fully the implications of what he was doing, he was mindful that he was, after all, an elderly man. He simply wished to spare him the inconvenience of having to attend again at his offices.

83. ANS in his testimony earlier in court and Mr. Garcia himself in his witness statement, both stated that Elizabeth Clarke was asked by ANS to witness the execution of the power of attorney document only after Mr. Garcia had arrived at ANS' home and when it had become apparent that an independent witness was required. Mr. Garcia was therefore also challenged in cross-examination to explain how then did it come about that Elizabeth Clarke's name had already been typed into the document as witness when it was presented by him to MET at ANS's home, as indeed is apparent on the face of the document itself. Mr. Garcia's response was that he must have been mistaken as to the sequence of events and is now convinced that he must have been told that Elizabeth Clarke would be the witness and so typed in her name, before setting off from his office where he had prepared the documents.

84. This cross-examination was aimed at supporting Mr. Kennedy's later submissions in which he invited me to reject Mr. Garcia's evidence (and that of ANS and Elizabeth Clarke). He invited me to find instead that the execution of the documents by MET at ANS's home was arranged so as to conceal the fact that MET was not only seriously ill but had also become frail, incompetent and prone to undue influence. And moreover, that this is all borne out by the erratic state of MET's signature as it appears on the power of attorney document.

85. This is an alarmingly serious conclusion to invite a court to reach on mere surmise and I reject it unhesitatingly. I accept the evidence of Mr. Garcia, Elizabeth Clarke and ANS, in relation to MET's physical appearance and mental ability when he



executed the transfer of land and power of attorney documents. Not only did each of them impress me as an honest and reliable witness, significant aspects of the independent evidence in the case also support their accounts. Not least among these is the circumstance revealed from the extensive medical records in the case, that MET, throughout the ensuing months of April, May and June, was able to consult with his doctors, understand and accept their advice and diagnoses and travel (at different times in April and May) under his own steam, although accompanied by ANS, to and from the United States for medical treatment.

86. Further evidence by Mr. Garcia given under cross-examination and which I accept is also worth noting on this aspect for the sake of completeness. When asked by Mr. Kennedy whether he had made any enquiry of MET why he wished to transfer his assets to ANS, he gave the following responses:

“At one point I asked him in the interview (on 5th March 2009) if he had any family and he said to me as accurately as I can recall: “They don’t care nothing ‘bout me”. I also asked him whether Mr. Solomon was his family, he said “he is like family, I trust him to take care of me”.... I took that as a reason why he wanted to transfer his property to Newton Solomon – or as an explanation as to why”.

87. The foregoing conclusions as to the reliability of these three important witnesses, bolstered by my acceptance of the evidence given generally in support of the Defence, will serve to premise the legal conclusions at which I arrive. But before turning to the necessary discussion of the legal principles, I am obliged to comment a bit more on the evidence given by ANS himself in relation to the other vexed issue in this case; the beneficial ownership of the bank accounts.

88. As mentioned earlier, at the relevant times, there were five (5) accounts held at two banks: First Caribbean International Bank (“FCIB” - a savings account and three



certificates of fixed deposits) and Scotiabank (a certificate of deposit). ANS admitted in court to having obtained a net benefit from all the accounts after payment by him of MET's medical and other expenses, of something in the order of CI\$160,000. Bank documents (at Tab 24 page 62 of the Defence discovery bundle) show that he withdrew all the proceeds of the FCIB accounts totaling CI\$200,704, on 2nd September 2009.

89. His evidence in relation to this transaction was that on the basis of his legal and contractual right as joint account holder and on the basis of his understanding reached with MET over the years, he regarded this as his money. In his own words: *“The reason for the joint accounts was love and affection and trust- he knew that I would take care of him. And anything left would be passed on to me – his words.”*
90. The documentary evidence in the case supports this view of MET's intentions as well. It begins with a certificate of deposit dated 25 October 1993 with FCIB (then named CIBC Bank and Trust Company (Cayman) Limited in the joint names of Newton Solomon and/or Marcus Thompson in the amount of KYD 23,438.35. While this FCIB deposit appears from the records to have been rolled over and accumulated over the years, a letter of 11 January 2012 from FCIB discloses that there had been four (4) different accounts at FCIB in the joint names at the time of MET's death.
91. The single deposit at Scotiabank had been held in the joint names of MET and ANS from inception on 9th December 1994.
92. A letter written to FCIB dated 26th February 2009 and signed jointly by MET and ANS (with both signatures stamped and signed as later verified by an officer of the bank on 10.3.09) reads:



“Please accept this letter as your authorization to add Newton Solomon to all accounts in my name. Therefore effective from the date of this letter either Mr. Newton Solomon or I will have full signing authority for any transaction(s) on all my accounts. Below are the two authorized signatories for all accounts:

Marcus Edgar Thompson (signed)

Or,

Newton Solomon (signed)

Also, please update your records to show the below contact details for all correspondence for all accounts:

Mr. MARCUS EDGAR THOMPSON or NEWTON SOLOMON

P.O. Box 205 SAV

Grand Cayman, KY1-1501

Cayman Islands

Ph: (345)926-0364/927-5845 (cell)

(345) 947-0143 (Home)

I look forward to receipt of your confirmation on these changes in due course.

Sincerely,

Signed: Marcus E Thompson.”

93. It is worth noting in passing that the postal address given for MET is that of ANS and so were the telephone numbers, the first of the two cell phone numbers being the same as that given to Mr. Garcia in order to contact MET.
94. A further standard form mandate required by the FCIB which ANS testified was signed by himself and MET also on the 26th February 2009 (although dated by the bank 10th March 2009) contains the following declaration (among others):

“JOINT TENANCY; Unless otherwise agreed in writing, all money which is now or may later be credited to the Account (including all interest) is our joint property with the right of survivorship. That means that if one of us dies, all money in the Account automatically becomes the property of the other account holder(s). In order to make this legally effective, we each assign such money to the other account holder (or the others jointly if there is more than one account holder).”

95. The signature of MET on this document, although obviously not as steady as others shown in some other documents, is indisputably his. The signature of the bank



officer who signed as attesting witness to MET's signature (as well as to that of ANS on the document) is not challenged either. It was however, suggested to ANS in cross-examination, that the dating by the bank on 10th March 2009 shows that the document was executed by MET on that date at a time when he was admitted at CTMH and not, as ANS testified, on the 26th February 2009, along with the letter of that date. On this basis, it was also suggested that although the signature appearing on the document is MET's, he signed when in a very frail state and was unduly influenced by ANS to do so. ANS rejected this, insisting that both documents were submitted to the bank together on the 26th February having been signed by MET and himself and that MET signed being fully cognizant of what he was doing and without any pressure from him. Further, that a bank officer must have inserted the date of 10th March 2009 on both when the documents were later processed internally at the bank. Other documents in the evidence (at Defendant's Bundle Tab 24 pages 47, 63 and 77) show that MET and ANS had indeed submitted copies of their drivers' licenses on the 26th February 2009 to the Bank and these were signed as received on that date by the bank officer. The documents also show that MET signed for and received a withdrawal of cash from an account in the amount of \$3,360 on the 26th February 2009 as well. These dealings tend to support ANS's explanation that the documents were indeed signed and presented to the Bank by himself and MET on the 26th February 2009.

96. Indeed, if these explanations were not to be accepted, the bank officer(s) should have been called by the Plaintiff to refute them but no such testimony was adduced. I accept the evidence of ANS that MET was quite aware of what he was doing when he



signed these documents and this is plainly borne out by the terms of the letter of the 26th February 2009, even if taken by itself.

97. Thus, fully a month before MET became aware that he might have been terminally ill, he is shown to have acted to ensure that ANS would have joint signing authority (including the right of survivorship) over any account of his held with FCIB over which ANS had not yet held such authority. This was a turn of events which was quite consistent with MET's visit to attorney Mr. Garcia only a week later, seeking to vest his only other significant asset – his house – in ANS, explaining to Mr. Garcia that he reposed his trust in ANS to take care of him.
98. This, I am satisfied, was not the behavior of a man who did not understand his actions. It was rather the behavior of a man seeking to regularize his affairs, in anticipation of failing health and perhaps even sensing his own imminent mortality.

The applicable law

99. Not having been privy to any discussions or understandings reached between ANS and MET – rather insisting that there had been no close relationship between them – the Plaintiff cannot claim that ANS exercised express undue influence over MET to procure the disposition of MET's assets to him.
100. Instead, the Plaintiff's claim of undue influence is based on the allegation that the relationship between MET and ANS was pursued and cultivated by the latter only around the time MET became ill and became such as to raise a presumption that in gifting or transferring his assets to him, MET must have been acting under the undue influence of ANS.



101. This is the assertion of circumstances of undue influence falling within the second category of circumstances recognized by the old case law and later restated and refined by the judges, as justifying intervention by the Court to set aside a gift.
102. As explained by Cotton LJ in *Allcard v Skinner*³:

“These decisions may be divided into two classes. First, where the Court has been satisfied that the gift was the result of influence expressly used by the donee for the purpose; second, where the relations between the donor and donee have, at or shortly before the execution of the gift, been such as to raise a presumption that the donee had influence over the donor. In such a case, the Court sets aside the voluntary gift, unless it is proved that in fact the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justifies the court in holding that the gift was the result of a free exercise of the donor’s will. The first class of cases may be considered as depending on the principle that no one shall be allowed to retain any benefit arising from his own fraud or wrongful act. In the second class of cases the court interferes, not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relations which existed between the parties and the influences arising therefrom from being abused.”



103. On the facts of *Allcard v Skinner* itself, although Miss Allcard had voluntarily and while she had independent advice, entered the sisterhood with the intention of

³ [1886] All E.R. 90

devoting her fortune to it, because at the time when she made very substantial gifts she was subject to the influence of lady superior Skinner, she would have been entitled on leaving the sisterhood to claim the restitution of such amounts of her gifts as were still in the hands of the sisterhood. She was however found to be barred by laches and her acquiescence from doing so.

104. As Cotton LJ also observed in his judgment, the object of the equitable principle is not to save people from their own folly – there was to be no suggestion that Miss Allcard was foolish to part with her fortune to the sisterhood. Rather, he explained, “*the doctrine of undue influence is founded upon (the principle that it is) right and expedient to save people from being victimized by other people*” and that it was in this sense that Miss Allcard was indisputably prone to being unduly influenced by the “*absolute submission required of her by the rules of the sisterhood to the will of the lady superior.*”
105. Thus, it was the nature of the relationship itself that gave rise to the rebuttable presumption of undue influence in that case.
106. In the modern restatement of the principles, the House of Lords has explained⁴ that the use of the term “*presumption of undue influence*” is really only descriptive of a shift in the evidential onus on a question of fact. It will arise where there is proof that the donor of property has placed trust and confidence in the donee in relation to the management of his financial affairs, coupled with a transaction by way of a gift which calls for explanation. On proof of these two matters “*the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have*



⁴ In its judgment in eight conjoined appeals in *Royal Bank of Scotland and others v Etridge and others* [2001] 4 All E.R. 449.

been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the Defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn" (per Lord Nicholl on behalf of the Court at p.459 paras 14 and 16).

107. Lord Nicholl went on to explain⁵ that the availability of the rebuttable evidential presumption of undue influence has led to that type of case sometimes being labeled "*presumed undue influence*". This, he said, is by way of contrast with cases involving actual pressure or the like, which are labeled "*actual undue influence*" (citing *Bank of Credit and Commerce International SA v Aboody*⁶ and *Royal Bank of Scotland plc v Etridge (No. 2)* in the court below⁷): "*This usage can be a little confusing*", he explained. "*In many cases where a Plaintiff has claimed that the Defendant abused the influence he acquired in a relationship of trust and confidence, the Plaintiff has succeeded by recourse to the rebuttable evidential presumption. But this need not be so. Such a Plaintiff may succeed even where this presumption is not available to him; for instance, where the impugned transaction was not one which called for an explanation. The evidential presumption discussed above is to be distinguished sharply from a different form of presumption which arises in some cases. The law has adopted a sternly protective attitude towards certain types of relationship in which one party acquires influence over another who is vulnerable and dependent and where moreover, substantial gifts by the influenced or vulnerable*



⁵ At paras 17-18.

⁶ [1992] 4 All E.R. 955 at 964; [1990] 1 QB 923 at 953

⁷ [1992] 4 All E.R. 705 at 711-712 (paras 5-7)

person are not normally to be expected. Examples of relationships within this special class are parent and child, guardian and ward, trustee and beneficiary, solicitor and client, and medical advisor and patient. In these cases the law presumes, irrebuttably, that one party had influence over the other. The complainant need not prove (that the donor) actually reposed trust and confidence in the other party. It is sufficient for him to prove the existence of the type of relationship (to become entitled to relief unless the donee proves otherwise) ”.

108. Here the Plaintiff obviously may not claim that the relationship between ANS and MET came within the special classes identified by Lord Nicholl. The Plaintiff says nonetheless that their relationship was one in which MET had become so frail of body and mind and so dependent upon ANS, that the very substantial gifts to ANS – gifts which are not normally to be expected in the context of a newly formed relationship like theirs – give rise to the evidential presumption of undue influence.
109. In my treatment of the claim, I note my acceptance that the doctrine of undue influence is not confined to cases of special relationships or cases of abuse of trust and confidence. As Lord Nicholl also observed⁸:

“Relationships are infinitely various. Sir Guenter Treitel QC has rightly noted that the question is whether one party has reposed sufficient trust and confidence in the other, rather than whether the relationship between the parties belongs to a particular type....

(The principle) also includes, for instance, cases where a vulnerable person has been exploited. Indeed, there is no single touchstone for determining whether the principle is applicable. Several expressions



⁸Op. cit paras 10-11

have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand and ascendancy, domination or control on the other. None of these descriptions is perfect. None is all embracing. Each has its proper place.”

110. Those being the guiding principles, it follows that my first task is to decide on what was the true nature of the relationship between MET and ANS. Was it one of vulnerability and dependence on the part of MET and ascendancy, domination and control on the part of ANS? If so, did it give rise to a rebuttable evidential presumption of undue influence? And if so, has the presumption been rebutted?
111. Before turning to answer these questions, I must examine the second limb of the Plaintiff's claim, that of a resulting trust in relation both to the proceeds of the bank accounts and to the house.
112. Here too, she relies upon a rebuttable presumption – in this sense, the creation of a rebuttable presumption of a resulting trust where, as she asserts, MET had put ANS as joint signatory to his bank account merely as a matter of convenience due to his failing health. In such circumstances, the law presumes that a relationship of trust had arisen. Citing *Sillett v Meek*⁹, Mr. Kennedy argues on behalf of the Plaintiff that the presumption of a resulting trust therefore applies where, as here, an account originally owned legally and beneficially by one person, is transferred by that person into the names of himself and another.



⁹ [2007] EWHC 1169 (Ch); as well as *Snell's Equity* 32nd Ed. para 25-012, citing in turn *Hoddinolt v Hoddinolt* [1949] 2 K.B. 406 ; *Calverley v Green* (1984) 155 C.L.R. 242 AT 250 ; *Simpson v Simpson* [1992] 1 F.L.R. 601.

113. Likewise in relation to the house, Mr. Kennedy asserts that a resulting trust has presumably arisen from the voluntary transfer by MET to ANS for no real consideration but merely “a peppercorn”.
114. In this regard, although the point was not expressly taken by Mr. Kennedy, I note that the fact that a transfer has taken place in keeping with the statutory requirements of the Registered Land Law (“RLL”) is not of itself conclusive rebuttal of a possible resulting trust. This appears from section 27 of the RLL:

“Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it and subject also to the Bankruptcy Law (1997 Revision) and to the winding up provisions of the Companies Law (2004 Revision), but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.”

115. On the face of this provision, a transfer made without valuable consideration – which, as defined in section 2 of the RLL, does not include nominal consideration such as a peppercorn – could be treated as not defeating an interest held by the transferor (here MET by his estate) by way of resulting trust.
116. A resulting trust is explained¹⁰ as arising where a transferor of property causes the legal interest to vest in another person in circumstances where it is unclear whom the transferor intends to have the beneficial interest in it. In such circumstances, by operation of the equitable principles, the transferee of the legal title will hold title on a resulting trust for the benefit of the transferor. The principle gives effect to a default



¹⁰ Snell's op. cit, p. 751 para 25-001

presumption about the intention of a person in making a gratuitous transfer of property; although he has transferred the legal interest, he would generally not intend the transferee to take the property beneficially. The name “resulting” thus describes the effect of the trust in causing the beneficial entitlement to the property to spring back to the person who transferred it and, since it arises by operation of law, it may take effect informally.¹¹ In the circumstances of this case, if undue influence is found to have operated upon the mind of MET then it would be “*unclear whom he intended to have benefitted*” and so a resulting trust would be presumed to have arisen.

117. But with all of that noted, even if a resulting trust could be presumed to have arisen, the question that nonetheless remains is whether any presumption of undue influence has been rebutted by the evidence.

118. In the case of a transfer of land as in the case of monies in joint bank accounts, if the court properly infers from the available evidence that the transferor freely and willingly intended a gift, then no question of a resulting trust, whether presumed or based on actual intention, will arise.¹²

Conclusions on the evidence

119. The picture of MET emerging from the evidence is that of a man, one of the last generation of Caymanian seafarers, whose transitory way of life sometimes denied them the fostering of secure familial bonds.



¹¹ Citing on this point: LPA 1925. S.53(2) which provides that a resulting trust of an interest in land need not be evidenced by signed writing. Section 23 (the first proviso) of the RLL, operates similarly in the case of a resulting trust. See for instance, *Ebanks v Clarke* 1992-93 CILR 33.

¹² *Lohia v Lohia* (above). *Fowkes v Pascoe* (1875) 10 Ch. App. 342; *Pearson v Cayman National Bank Ltd.* 2000 CILR 2456 (presumption rebutted in relation to creation of joint accounts) and generally, *Lewin on Trusts*, 18th Ed. Chp 9: “*Resulting Trusts on Gratuitous Lifetime Transfers*”.

120. For MET, such it seems, was the impact of his prolonged absences upon his relationships with his children. So loose were the ties that after his return from sea to live in Grand Cayman, his sense of family and affection was not with them but with ANS (“Figgie”) and his family. For her part, the Plaintiff was herself unable to lay claim to a strong father/daughter relationship which lasted beyond the early years of her childhood.
121. Rather, her evidence reveals that her contact with MET while growing up as a child, was far from constant – taking place during his three months of shore leave following his twelve-month absences away at sea. Although she asserts that MET was close to her mother while she and her siblings were growing up, she admitted that *“once we were all adults I would say that they grew apart.”* And while she claims to have continued to see a lot of her father from 1970 – 1991, *“in particular when my first daughter was young as she was cared for at (my) father’s house during the days by my Aunt Lily”* (her father’s sister); once she had moved away from Bodden Town to live in Savannah in 1991, she admitted that *“I did not see as much of him as before”*.
122. According to her, *“Shelby would have been the closest to him of his children as he went to sea with him in the 1970s and from the 1970s to shortly before his death they would have regularly gone fishing together”*.
123. Shelby Watler, for his part, attests in his written statement however to having been at sea together with MET on the same vessel for only about four months. This, he says, was his maiden voyage and *“it was this journey that brought us much closer together and formed the basis of our friendship for the rest of his life”*.



124. As already mentioned above, this acclaimed lifelong bond is however, quite inconsistent with Shelby Watler's admittedly minimal contact with MET when MET became ill and his vagueness about the "arrangements" which he claimed to have put in place (involving Mary Lou Dixon) for MET's medical treatment here and overseas. His account is equally inconsistent with his asserted ignorance of the relationship between MET and ANS, not even being aware, as he said under cross-examination, that after returning from treatments in Tampa (at the Moffitt Cancer Center) and Miami (at Mt. Sinai Hospital); MET had spent several weeks recuperating at ANS's home.
125. While his admittedly minimal contact with MET is true (if not, why admit to it?); I do not accept Shelby Watler's allegation that this was largely due to the helper (who turns out to have been Marlene White) deliberately contriving, in cahoots with ANS, to keep him and the Plaintiff away from MET.
126. Marlene White, who was a very credible witness, denied this strongly.
127. The minimal contact that there was I find was the natural, if perhaps regrettable consequence, of the Plaintiff and Shelby Watler not having been significant presences in the life of MET during his latter years, if they ever were.
128. Whether this was the consequence of MET's spurning of a relationship, a mutual drifting apart or plain indifference, it matters not for present purposes.
129. Certainly, from MET's point of view, there appears to have been a positive sense of disaffection and perhaps even antipathy, if one accepts as I do, Mr. Garcia's report of MET's response to his query about whether he had any family – *"they don't care nothing 'bout me"*



130. By contrast, MET's strong feeling of affection and affinity towards "Figgie" and his family, is abundantly clear from the evidence. The early bond between man and boy seems to have been forged around the affections they shared for Ansforth Solomon – ANS's "Aunt Lee Lee" – and MET's common law partner for many years. ANS, as a boy growing up, was favoured by their mutual affection towards him. As Mr. Alfred Solomon and Mitzie Walton Jervis explained, ANS was the apple of their eye and became "*like a son*" to them. And, as he became a successful man in his own right, ANS came to be seen by them as someone in whom they could repose their trust as well.

131. His father Mr. Alfred Solomon gave very compelling evidence about all of this and I accept it as true, as I accept as true the evidence given on behalf of the Defence in the case, generally.

132. It is very telling, that according to ANS, central to MET's reason for adding him to the bank accounts as joint holder, MET had told him this was to ensure that ANS "*would look after me and Lee Lee – the balance would be yours*".

133. This I accept came about as ANS explains at paragraph 29 of his witness statement:

"The reason why I was placed on the accounts was a result of discussion between Marcus Thompson and my Aunt Lee Lee. They felt that I was the best person to be placed on the accounts and to use the funds in the accounts to take care of them should they become ill or incapacitated and unable to access the accounts to pay medical bills or maintain them in such eventualities...."



He (MET) fully understood what a joint account meant.... Throughout his life-time Marcus always told me that he did this to ensure that on his death whatever was in the accounts would pass to me."

134. ANS went on in his testimony (and at para 31 of his witness statement) to explain that the latter transactions on 26th February 2009 by which he was added to the additional accounts as joint holder, had been arranged by MET himself and without any prompting or suggestion from him. This is evidence that I also accept.
135. Indeed, on the totality of the evidence in this case, I am satisfied that MET acted throughout in his dealings with his house and his bank accounts, entirely of his own free will, fully understanding the moral and legal implications of his actions and in no sense under the undue influence of ANS, or of anyone else, for that matter.
136. Adopting the oft-cited words of Lindley LJ¹³, I accept that the passing of MET's house and other assets to ANS were gifts that "*can...be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act.*"
137. I find that there was no undue influence exercised upon the mind of MET when he entered into the related transactions. This is a conclusion which is perhaps most conclusively proven by MET's written instructions to Mr. Garcia. In that regard, I find that MET acted independently upon independent legal advice.
138. I also find that there was no resulting trust to MET's estate of the contents of any of the bank accounts.



¹³ Allcard v Skinner (above) at p. 185

139. Notwithstanding that he made no contributions to the accounts during MET's lifetime, ANS succeeded to the entirety of the balances in those accounts as a matter of due operation of law, by survivorship; that being the clear intention of MET¹⁴.

Costs

140. Despite my rejection of her claim, it is impossible to conclude that the Plaintiff acted merely out of malice or bad faith in bringing this action. While there was never a declaration of his paternity and no such record of paternity on her registry of birth, it is clear that she genuinely regarded MET as her father and the balance of probabilities weigh heavily in her favour of the existence of that relationship. During the course of her evidence (and from her demeanour in Court) one was even able to sense that she nurtured genuine feelings of affection for the man she regarded as her father.

141. Whatever her real motives for her late and untimely intervention in MET's life, she (and her brother Shelby) were able to persuade the Court to appoint them as guardians, an appointment that ought not to have been made but for it having been found to have been in MET's best interests.

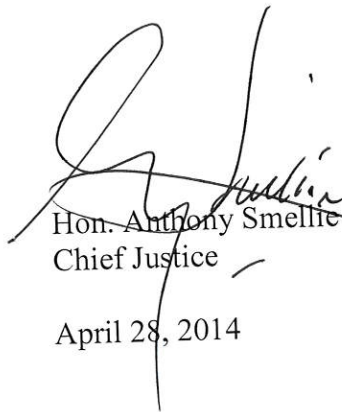
142. The present action, although regrettable, can be seen as a consequence of the circumstances of estrangement from his natural family under which MET lived during the latter half of his life.

143. In such circumstances, doubts and misgivings about his intentions were likely to arise in the minds of those finding themselves on the unfavourable side of the divide. Some kind of enquiry was likely to arise and I must note that had MET's written instructions to Mr. Garcia been earlier disclosed, these proceedings may have been shortened or possibly avoided all together.



¹⁴ See *Sillett and Another v Week* (above) and *Aroso v Coutts & Co.* [2002] 1 All E.R. (Comm) 241

144. Moreover, it would not be appropriate to make an order for costs against the Plaintiff in her personal capacity as she acts as administratrix of MET's estate which itself has no assets with which to pay costs.
145. For all these reasons, in the exercise of the discretion I have whether or not to award costs, I order that there shall be no order as to costs.


Hon. Anthony Smellie
Chief Justice
April 28, 2014

