IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.B. 104 of 1979

BETWEEN	WALTER BENTLEY BROWN	PLAINTIFF
AND	RAPHAEL DILLON	1st DEFENDANT
AND	SHEBA VASSELL	2nd DEFENDANT

Mr. Rudolph Francis for Plaintiff
Mr. Roy Fairclough instructed by Thwaites,Fairclough,Watson & Co., for the First and Second Defendants.

~~February~~ March 7, 8, 9 and March 10, 1983.

Oral Judgment

DOWNER J

Mr. W. Bentley Brown, an Attorney-at-law, in these Proceedings seeks to recover J$39,000.00 from Raphael Dillon and Sheba Vassell who lived with Dillon as man and wife.

The circumstances which give rise to this claim are that Sheba Vassell allegedly retained the services of Walter Bentley Brown to defend Dillon for breaches of the Bermuda Dangerous Drugs Act. An important part of the evidence pertaining to the Agreement is the promissory note signed by Dillon in favour of Mr. Brown for US$20,000.00., or Ja.$40,000. Mr. Brown states that he was paid US$500 by Wellington Turno for the defence of Dillon.

The legal issues which arise may best be delineated by posing the following questions:-

1. Was Sheba Vassell, the Second Defendant acting as an agent to conclude a contract for the services of Mr. Brown to conduct the defence of Raphael Dillon, the First Defendant who was arraigned on criminal charges in Bermuda?
2. Was Raphael Dillon liable on the promissory note to pay Mr. Brown the equivalent of US$20,000 for legal services connected with the criminal trial which lasted for two weeks in Bermuda?

Before attempting to answer these questions I must first deal with the no case submission by Mr. Fairclough for the Defendants, that in law, Sheba Vassell ought not to be a party to these proceedings. It was

contended that as a basic principle of Agency Law, if an agent contracting as agent acted on behalf of a known party or named party, then in law the agent is not part of the contract. It was the evidence of Mr. Brown that Sheba Vassell sought to retain his services on behalf of Raphael Dillon and this was not contested seriously by the Defendants. In any event, I accept it and in accordance with the settled authority of PAQUIN v BEAUCLERK (1906) A.C. 148, my ruling is that the no case submission is sustained and she ought not to have been a party in this case.

I now turn to the question of whether she concluded a contract with Mr. Brown for the defence of Dillon. I find it odd that for so large a fee, no retainer was requested of her. Furthermore Mr. Brown's conduct in Bermuda when he first saw Dillon would be odd, if there were a prior contractual Agreement retaining his services. One would have expected to find Mr. Brown making a preliminary remark that he had been retained by Dillon's common law wife, yet we find in his evidence in chief, Mr. Brown stated that he went to the final round of the Preliminary Enquiry and instead of announcing that he had, as Senior Counsel, to take over the representation of Dillon, he merely said he associated himself with Miss Simmons who was then representing Dillon. He further stated that Dillon enquired of him whether he, Mr. Brown was prepared to represent Dillon as he, Dillon, did not want Mrs. Simmons. In continuing his narrative, Mr. Brown said he agreed to represent Dillon for US$20,000 or Jamaican $40,000 and it is at this stage that Mr. Brown reports Dillon as saying arrangements would be made for the money to be paid to Mr. Brown in Jamaica before the trial in Bermuda began.

In view of this emphatic statement, I find there was no prior agreement by Vassell to retain Mr. Brown and it means that I accept Vassell's statement that when she heard J$40,000, she regarded it as so high a figure that she was compelled to have a second interview with Mr. Brown whereby she could take her friends to hear the figure quoted. Vassell further states and I accept it that she left without any agreement having been made between herself and Mr. Brown.

Another important aspect of the case is the legal effect to be given to the promissory note put in evidence by Mr. Brown. I record it in full because of its importance: I RAPHAEL CONSTANTINE DILLON, do

hereby retain Mr. Walter Bentley Brown, Q.C. of the Jamaican Bar to conduct my Defence at my trial for conspiracy and importing cannabis into Bermuda, in the Supreme Court of Bermuda commencing 24th April, 1978 and agree to pay to Mr. W. Bentley Brown the sum of TWENTY THOUSAND U.S. DOLLARS (US$20.000) for his professional services by 30th May, 1978 in full. Dated this 24th day of April, 1978 and signed by RAPHAEL DILLON.

It is pertinent to consider the circumstances surrounding the preparation and signature of this document. On the evidence of Mr. Brown, the document was prepared on his instrudtions. Although not a Queen's Counsel, Mr. Brown is a senior member of the Jamaican Bar and I find that a representation by Mr. Brown to Dillon that he was a Queen's Counsel was meant to give Mr. Brown or put Mr. Brown in an even greater position of confidence than he would have had if he truly represented himself as a mere junior Counsel.

The uncontested evidence is that Dillon was in custody and that Mr. Brown was to represent another prisoner, Williams at joint trial with Dillon. Again, the document was read to the prisoner by Mr. Brown and he also appended the date in ink. The document has none of the usual heading about the name of the Attorney which one expects from a Lawyer's document, nor was the instructing Solicitor, Mr. Mello, present to advise Dillon.

The question therefore arises whether the equitable doctrine of undue influence is applicable to the circumstances of this case, to enable the document to be set aside as being unconscionable.

There can be no doubt there was a special relationship as explained in the leading case of ALLCARD V. SKINNER (1887) 36 Ch. D. 145 and there is the settled authority of WRIGHT v. CARTER (1903) 1 Ch. 27, that the Lawyer/client relationship presumes undue influence.

There are further factors in this case which made the Lawyer/client relationship even more important than in the cases cited by Mr. Francis pertaining to gifts and ordinary business transactions. In this case, Dillon was a prisoner in a foreign country. He was relying on a well known Jamaican Lawyer who held himself out as a Leading Counsel.

I find that he was induced to dismiss his Bermudian Lawyer and no efforts were made to indicate that in his desperate position it was necessary to have independent advice as to whether he should retain Mr. Brown in the particular circumstances of this case and at the particular circumstances of this case and at the fee stipulated.

No effort was made to even have Mr. Mello as Brown's instructing Solicitor to whom Dillon might have posed a question. If ever there was a case where independent advice was necessary, this was it. Because quite apart from the fees stipulated it was well known at the Criminal Bar that it is seldom prudent for an accused man to share his representation with another co-accused as this may inhibit a projection of conflicting defences.

It is to be noted that under the Doctrine of undue influence where a special relationship exists, the presumption of undue influence arises and it is for the Plaintiff to rebut the presumption. Nowhere has any attempt been made to rebut the presumption in this case.

The main thrust of Mr. Francis' submission was that undue influence was not pleaded and he raised this both during the course of the trial and in his final address to the Court. It is true to say that paragraph 4 of the Defence is clumsily drafted and it would seem on one interpretation to be relying on non est factum rather than undue influence. Mr. Fairclough's Reply was that once it was conceded that the Plaintiff was an Attorney-at-Law and that he had paid his fees to the General Legal Council as evidenced by Exhibit 3 coupled with the fact that it was stated in the Pleadings that Dillon was in custody and that he was induced to sign a representation, which representation is referred to in the Plaintiff's Reply or the promissory note, then these facts are sufficient to permit the First Defendant to rely on the Doctrine of undue influence and the further infelicities in paragraph 4 of the Defence can be regarded as surplusage. I accept that submission and permitted evidence of undue influence which arose on the Plaintiff's case to be taken into account in giving my decision. Having said this, one must point out that the case was perhaps prolonged for a day for Mr. Fairclough did not take this point and did not make a no case Submission at the end of the Plaintiff's case but elected to give

evidence on behalf of the First Defendant.

The Doctrine of undue influence is intended to help the weak, the aged, those with incapacities - mental or otherwise and those in custody. I do not wish to be understood or construed that I am making any criticism of Mr. Brown for his conduct in this case. In appearing for the defence in Bermuda he probably had to act with great haste and with not enough time to deliberate on the finer points of equity. Nonetheless, he has brought forth this claim and on the evidence, and the legal principles I have adverted to, I am compelled to dismiss his claim set ~~under~~ aside the contract and order that Judgment be entered for the First and Second Defendants with costs to be agreed or taxed.

It only remains for me to say I appreciate the arguments of both Counsel in this interesting case.

DOWNER J.