NMLJ

IN THE SUPREME COURT OF JUDICATURE
IN EQUITY
CLAIM NO. E476/2001 AND HCV 1445/2003

SUIT NO. E 476/2001

BETWEEN	**LLOYD HAUGHTON AND HENRY HAUGHTON (EXECUTORS OF ESTATE OF ALEXANDER HAUGHTON, Deceased)**	**CLAIMANTS**
AND	**YVONNE HAUGHTON**	**DEFENDANT**

HCV 1445/2003

BETWEEN	**YVONNE HAUGHTON (By her duly appointed Attorney Dennis Forsythe)**	**CLAIMANT**
AND	**LLOYD HAUGHTON AND HENRY HAUGHTON (EXECUTORS OF THE ESTATE OF ALEXANDER HAUGHTON, Deceased)**	**FIRST AND SECOND DEFENDANTS**
AND	**CYNTHIA RAINFORD**	**THIRD DEFENDANT**

IN CHAMBERS

Mr. Nelton Forsythe instructed by Forsythe and Forsythe for Yvonne Haughton in both claims

Miss Sandra Johnson instructed by Robinson, Phillips, Whitehorne for Lloyd Haughton and Henry Haughton, executors of the estate of Alexander Haughton, deceased, in both claims

September 28, October 18, 19, November 5, and November 17, 2004

Sykes J (Ag)

UNDUE INFLUENCE AND SECTION 161 OF THE REGISTRATION OF TITLES ACT

1. The Haughton brothers fear that their sister, Miss Yvonne Haughton, by undue influence procured a transfer of land to her by their father, Mr. Alexander Haughton. They have filed Claim No E 476/2001 making this allegation. They wish to have the transaction set aside. Miss Haughton, who has failed to comply with orders of Sinclair-Haynes J (Ag) made at a case management conference on December 11, 2003, has applied to have this matter struck out on the basis that section 161 of the Registration of Titles Act bars this action unless fraud can be proven and on the basis that the claimants' statement of case do not disclose any case of fraud. She also seeks judgment in Suit No. HCV 1445/2003 in which she is claiming recovery of possession from her brothers and mesne profits from Cynthia Rainford, the third defendant in Claim No. HCV 1445/2003. The basis of her claim is that she is the registered proprietor of the property in question that is registered at Volume 1104 Folio 838 of the Register Book of Titles. The land is also known as Lot 50 Gibraltar Estate, Annotto Bay, St. Mary. The brothers are in possession of the land and Miss Rainford lives on the property.

2. Among the orders made by Her Ladyship was an order for disclosure of documents including the agreement for sale, transfer document, receipt(s) or other evidence of payment. The deadline for this was March 31, 2004. Her Ladyship also ordered that witness statements or affidavits be filed and served on or before May 14, 2004. Only the Haughton brothers have complied with the orders. There has been no explanation for Miss

Haughton's failure to comply with the case management order and neither is there an application for relief from sanctions. I should point out that I have before me the witness statements of the claimants in Claim No E 476/2001, the claim alleging that the deceased made the transfer while the deceased was subject to the undue influence of Miss Haughton.

3. Both suits were consolidated during the same case management conference to which reference has already been made.

The Facts

4. Mr. Alexander Haughton was the registered proprietor of land mentioned in paragraph one. He had a wife and a number of children including Lloyd Haughton, Henry Haughton and Yvonne Haughton.

5. Miss Haughton has been living in the United States of America for sometime. She visits Jamaica from time to time. It appears that Mr. Alexander Haughton reposed great trust and confidence in her.

6. An examination of the title shows that on January 21, 1997, Miss Yvonne Haughton was registered as the new proprietor. The endorsement shows that she paid $750,000 for the land. Mr. Haughton died on March 11, 2000.

7. Mr. Haughton had made a will in July 1999. In that will, he left the property to all his children including Miss Haughton and her brothers after giving his wife a life interest. The brothers only knew about the transfer when they were administering his estate and made enquiries about the title. It was at that time they discovered that the land was disposed of to their sister.

8. The other important facts are:

(a) Mr. Haughton had the land valued in July 1996.

(b) The land was valued at $1,200,000.

(c) Mr. Haughton was illiterate.

(d) In 1983, the deceased wrote a will that he was about to post to Miss Haughton who was living overseas. She arrived shortly after it was completed. The will was retrieved from the mail by the deceased and destroyed.

(e) The deceased at some point gave the land title to one Aunt Elsada.

(f) Apparently around 1996/97, the deceased was told by Aunt Elsada that Miss Haughton had his important documents including the land title. Aunt Elsada died in 1999.

(g) The deceased did not ask for the documents until the day after Aunt Elsada's death. He asked his daughter for the title. She denied taking them from Aunt Elsada.

(h) There is no clear evidence indicating who had the title after Aunt Elsada died.

(i) The deceased drafted his second will mentioned in paragraph seven.

(j) Since at least 1996, the deceased was suffering from diabetes, hypertension, glaucoma and cataract.

(k) At the time of the transfer to Miss Haughton, the deceased was in need of money.

(l) The transfer was prepared by Pollard, Lee, Clarke & Company

9. These are the bare facts upon which the Haughton's rest their case. Mr. Forsythe says that this does not amount to fraud for the purposes of the Registration of Titles Act. This submission overlooks that point of this claim. It is a claim against Miss Haughton arising in equity. The claimants' are

really alleging that there was undue influence. As I hope to show, this type of claim has nothing to do with the indefeasibility of the title.

The law

10. It is well established that equity will intervene in transactions that are the product of undue influence. i.e. a transaction that has occurred in circumstance where the will of one party has been overwhelmed by the other to the extent that it cannot be said that the victim acted freely and voluntarily. The purpose of the intervention is to protect persons from being victimised by others in whom they repose trust and confidence. It seeks to correct abuses of confidence (see ***Billage v Southee*** 58 ER 623, 626 and ***Allcard v Skinner*** (1887) 36 Ch. 145, 182 – 183, ***National Commercial Bank (Jamaica) Ltd. v Raymond Hew and Clifton Hew*** (2003) 63 W.I.R. 183 per Lord Millett at para. 29 and 30)). The intervention is not to protect persons from their foolishness and the horrors of improvident transactions since they have the freedom to act in any way they wish - including the freedom to be foolish.

11. Ever since ***Allcard,*** the law has developed to two classes of cases of undue influence. They are (a) actual undue influence and (b) presumed undue influence. However, there is no difference between the two types of undue influence other than in the nature of the proof. Undue influence may arise "whenever one party occupies or assumes towards another a position naturally involving an ascendancy or influence over that other, or a dependence or trust on his part" (see Dixon J ***Johnson v Buttress*** [1936] 56 C.L.R. 113, 135). In cases of actual undue influence, there is evidence of how the state of mind of the victim was produced. Once there is evidence of actual undue influence, there is no need to have resort to the second

category. In the second class, there is, often times a paucity of direct evidence of how the agreement or consent of the victim was obtained. Proof of undue influence in this class is more in the nature of an inference following upon proof of certain facts. Proof of certain kinds of relationships which the law recognises, from experience, are more susceptible to abuse can be used to ground the inference. These relationships include but are not limited to solicitor/client, physician/patient, trustee/cestui que trust, parent/child. In these kinds of relationships the inference is easily drawn because the nature of the relationship is such that it can be the "source of power to practice such domination" (see Dixon J in ***Johnson***, 134). Also, when dealing with the second class of undue influence there is usually some other objective fact regarding the transaction that calls for an explanation. For example, it may be to the clear disadvantage of the victim.

12. The difficulty, in many cases in the second category, is proving that the influence generated by the relationship has been abused. This is particularly acute when one or both of the original parties to the transaction have died. To deal with this difficulty, the cases show that there are certain objective facts that assist the court in determining whether a case of undue influence has been established. I must stress that the presence of any or all of these objective facts do not lead to an automatic conclusion that there was undue influence. What they do is provide sign posts that enable the court to decide whether there was undue influence. The person relying on undue influence must establish that there was a relationship between the dominant party and victim that was of such a nature and quality that it can be said to be the source of the undue influence.

13. Some of the objective facts the courts look at are:

(a) the age of the victim;

(b) his level of literacy;

(c) his standard of intelligence;

(d) the nature of his character (excitable, intemperate or stoic etc);

(e) his general state of health;

(f) his experience in business;

(g) his financial circumstances at the time of the transaction;

(h) the nature and duration of the relationship between the parties;

(i) whether the transaction is to the manifest disadvantage of the person;

(j) the transaction does not make commercial sense;

(k) was he dependent on persons for advice and in particular the person who is alleged to have exercised undue influence over him;

(l) the absence of independent advice, legal or otherwise;

(m) did the victim appreciate the full impact of the nature of the transaction and its possible consequences.

13. Lord Millett in ***National Commercial Bank*** reminds us that the doctrine has two elements: (a) a relationship capable of giving rise to the necessary influence and (b) the influence generated by the relationship must have been abused (see para. 31).

14. It must be borne in mind that it is all a matter of evidence and burden and standard of proof (see Lord Clyde in ***Royal Bank of Scotland v Etridge*** (No. 2) [2001] 3 W.L.R. 1021, para 93). Where the claimant, in the first category, adduces evidence of actual undue influence that remains intact at the end of his case, an evidential burden is placed on the defendant to show otherwise. If he fails, the claimant succeeds. Similarly, in the second category, if the claimant proves the existence of a relationship of the kind referred to in paragraph 11 as well as a transaction that is to the

disadvantage of the alleged victim, the courts may draw the inference that an answerable case of undue influence has been made out. If the court says that a case of undue influence has been established, much depends upon the explanation given by the defendant. If he does not advance a satisfactory explanation, the claimant's case becomes conclusive. This is how I understand the cases that speak of calling on the defendant for an explanation. It is not the legal burden that shifts since that is always on the claimant; it is the evidential burden that shifts to the defendant.

15. However, this does not necessarily mean that a claimant will fail where (a) he fails to prove a case of actual undue influence and (b) he fails to bring his case within any of the usual type of relationships referred to in paragraph 11 that give rise to a presumption of undue influence. He can succeed if he establishes that there was (a) an antecedent relationship between the parties, that was of such a nature that it could be inferred that the victim trusted or relied on the that person and (b) a transaction that was so detrimental to the victim that in the absence of affirmative evidence, from the defendant, that the transaction was free and voluntary a conclusion that there was undue influence will be inevitable. I did not understand Lord Millett in ***National Commercial Bank*** to be saying only certain kinds of relationships could give rise to the inference made in the second category of undue influence cases. I understood both Lord Millett and the body of law to be saying that if the claimant proves one of the more usual types of relationships as well as the other objective facts to which I have referred, then so much the better for the claimant. The key point always is (a) the nature, not the name, of the relationship and (b) a transaction flowing out of the relationship that is explainable on the basis of undue influence arising from the antecedent relationship. This seems to be

the explanation for ***Johnson's*** case where the High Court of Australia set aside a gift of land made to Mrs. Johnson even though there was no positive proof of actual undue influence and she was not within the kind of confidential relationships that the law has recognised can give rise to a ready inference of undue influence.

16. No two cases are alike. The facts in each must be carefully scrutinised to see if the claim is established. In the present case, the objective facts are:

(a) Mr. Alexander did not enjoy the best of health. At the time of the transaction he was known to be suffering from the ailments mentioned already;

(b) Mr. Alexander was illiterate;

(c) The deceased reposed much trust and confidence in his daughter.

(d) Assuming Mr. Haughton produced the title to his attorney there is nothing showing how, when and in what circumstances he recovered physical custody of the title;

(e) There is no evidence of his experience in business matters;

(f) Miss Haughton, through her attorney, admits that at the time of the transaction Mr. Haughton was in urgent need of money.

(g) It is known that he sold the property to Miss Haughton for $450,000 less than he could have fetched according to the valuation done six months before the sale;

(h) There is no evidence that he had independent advice although he had an attorney acting for him when the transaction was done;

(i) The defendant has not put before this court any material as she was ordered to do by Sinclair-Haynes J (Ag) in December 2003.

17. The presence of an attorney does not necessarily mean that the deceased was told the full impact of the transaction. The pleadings to date do not show whether the attorney was retained to conduct the transfer or whether the attorney was his advisor. There is no evidence showing whether the attorney knew that the land was valued far more than the price paid by Miss Haughton.

18. The evidence of the prior relationship between Miss Haughton and the deceased that tends to show that the deceased reposed full trust and confidence in Miss Haughton is not very strong. Despite this weakness, there is sufficient to indicate that he did. This is supported by the fact that when Aunt Elsada told him in 1997 that his daughter had his important documents he did not seek to retrieve them from her until after Aunt Elsada's death two years later. If a person is told that his important documents are with someone whom he does not trust or have much trust in, the expected reaction is to retrieve them from such a person. The point here is not whether his daughter in fact had them but rather whether this evidence is can show that he had trust and confidence in her. There is also evidence that the deceased had made a will in 1983 that he was sending to his daughter. She arrived in Jamaica before he sent it. He retrieved it and destroyed it.

19. It is true that Miss Haughton has spent a substantial time in the United States and is still there. However, that does not mean that he could not have trust and confidence in her. What we have is a transaction between an old, illiterate and sickly man who was in need of money and his daughter bought property from him at nearly half the assessed value. It is true that there may be a satisfactory explanation for the transaction but I adopt the words of Dixon J in ***Johnson*** at page 133. I understand him to be saying

that while the facts may be consistent with a transfer done with full understanding of the consequences, the absence of affirmative evidence of this where the evidence has established that the victim trusted and confided in the other party to the transaction, in the context where the victim entered a disadvantageous transaction, is enough to call upon that party to explain the transaction.

20. As I have already stated, the instant case is not one where the witness statements have provided evidence of actual undue influence and neither is it a case that would fall within the category of relationships that is usually viewed as giving rise to an inference of the presence and exercise of undue influence. However, it does fit within the analytical framework of Dixon J in ***Johnson***. Had Miss Haughton complied with the orders, it may well be that she could have provided a satisfactory explanation for the transaction.

21. To dismiss this case at this stage when it is possible for the Haughton brothers to improve their case by seeking further information would not be advancing the purpose of justice.

22. The next stage is to see if section 161 of the Registration of Titles Act has the effect attributed to it by Mr. Forsythe.

The Registration of Titles Act

23. Mr. Forsythe contends that under this legislation once someone is registered as the proprietor that is the end of the matter. He says that the claimants have to bring themselves within section 161 of the Act. They must allege fraud. Fraud, Mr. Forsythe submits, means actual fraud and not equitable fraud such as undue influence. He relies on the Judicial Committee of the Privy Council's definition of fraud in the context of statutes concerning the registration of lands given by in ***Assets Company***

Limited v Mere Roihi [1905] A.C. 176, 210. This definition was adopted by the Court of Appeal of Jamaica in ***Enid Timoll-Uylett v George Timoll*** (1980) 17 J.L.R. 257, 261D. The only part of Mr. Forsythe's submission that I accept is that fraud has the meaning given to it by the courts. I do not accept his other arguments in the context of this case because it has failed to recognise that under the Registration of Titles Act a person or his estate is not immune from personal liability in respect of transactions concerning land under this Act.

24. I begin by saying that a court does not lightly conclude that ordinary principles of law and equity are excluded from the operation of a statute unless this is made clear by the express words of the statute or by necessary implication. I would add this is even more so when one is dealing with a principle of law that has as its cardinal objective the prevention of abuse of confidence and trust by one party over another.

25. The Registration of Titles Act became law in Jamaica on May 23, 1888. The preamble of the Act states "***[w]hereas it is expedient to give certainty to the title of Estates in Land, and to facilitate the proof thereof, and also to render dealings with Land more simple and less expensive***" (my emphasis). There is nothing in the preamble or the Act that suggests that it was intended to alter any rule of law or equity concerning how interest in land are created, transferred or conferred. That is, the Act did not purport to alter the law of contract or trust or any other body of law that facilitates the creation of rights in or over registered land. What the Act did was to introduce a system of registration of estates and interests in land regardless of how they were created. Generally, under the Act, any estate or interest created in registered land does not take effect unless and until it is registered. The registration of an estate or interest says

nothing about what took place behind the scenes that led to the registration of the estate or interest.

26. Having regard to the preamble to the Act and the historical development and evolution of an action of ejectment from Medieval times into the nineteenth century, it made perfect and complete logical sense to prevent an action of ejectment against a registered proprietor except in the instances specified in section 161 of the Act. The action of ejectment was developed to protect a tenant for a term of years who could not benefit from what was called, in the language of the day, real actions. Real actions, protected, inter alia, interests in land. Of the various interests in land that real actions protected, the most important was that a claimant could assert his freehold interest. The freeholder by a real action could not only eject the person who actually dispossessed him but also any one who got possession by any means. Over time, for a number of reasons, the benefit and value of the real action by the freeholder was reduced. He was now looking for a better, faster and cheaper way to enforce his right. Real actions had fallen in such disfavour that they were abolished by legislation in the United Kingdom in 1833.

27. While the freeholder was looking for a better way to protect his interest the tenant for a term of years was seeing a gradual improvement in his ability to assert his interest. Historically, a tenant for a term of years was not regarded as having any estate in land. He had what was thought of in the times as a chattel. He could not bring a real action in the King's Courts for recovery of his holding if he was dispossessed. Any action of his for recovery was only available against his landlord, but if and only if he held under a covenant. If it were otherwise, he would receive damages. This situation was gradually redressed. Special remedies were devised for him.

After a period of doubt, in which it was thought that he could only get damages, it was eventually established that the tenant for a term of years could bring an action for possession against those who wrongfully deprived him of possession. The law developed to the point there the tenant for a term of years knew what he had to prove to succeed. He needed to prove four things: (a) the lease under which he claimed; (b) his entry under the lease; (c) he was ousted by the defendant and (d) the title of his lessor to grant the lease. The fourth requirement inevitably raised the question of title to the freehold which the tenant held under a term of years. From these roots, the action of ejectment developed so that by the early 1800s, after some vacillation, it was established that a claimant in an action of ejectment had to show an absolute good right to possession and not just a better right to possession than the defendant's right to possession. Obviously one of the best ways of doing this, if the claimant was a tenant was by showing that his lessor had an absolute better right to possession that the defendant. Clearly, title issues were implicated. The benefit of this action was not lost on those who were freeholders who were regarded as having an actual estate in land.

28. Freeholders and eventually copyholders also began to use the action. The action of ejectment became a prisoner of its historical roots. Since it was designed for tenant for a term of years, the challenge was to turn a freeholder into a tenant for a term of years. The solution was a fiction. For the purposes of an action of ejectment by freeholders the freeholder was regarded a tenant. He was thought of having entered under a term of years and he was dispossessed. Not surprisingly, the rule developed that the defendant (i.e. the person who was accused of dispossessing the fictitious tenant (the freeholder)) could not dispute the "existence" of this fictitious

lease. It is not hard to see how litigation could be spawned by this situation. The effect of all this meant that no purchaser could buy land, safe in the knowledge that he got a good title. Buying land was indeed hazardous business.

29. The copyholder was excluded from an action for ejectment for a long time. He eventually got there by, yes, another fiction. His fiction, like the freeholder, was also founded upon the idea of a lease, save that his lease was for a year, a term long enough to satisfy the demands of the common law so that he could also bring his action of ejectment.

30. During the time of the decline of real actions until they were abolished in 1833 and the development of the action of ejectment, it will be recalled that title to land was implicated in actions of ejectment. In the United Kingdom after 1833, the position was that the only action left for recovering interests in land was an action of ejectment. The practical effect of these developments was that by the time of the Registration of Title Act of 1888 the main action, if not the only action in Jamaica, by which one could claim title, if the claimant was out of possession, was the action of ejectment. With the abolishing of the forms of actions by the Judicature Act of 1873 in the United Kingdom, the action became known as an action for the recovery of land and under that action both legal and equitable interests could be protected.

31. When Sir Robert Richard Torrens introduced his system of title by registration in the state of South Australia in 1858, he is reputed to have said that he wanted to establish certainty of transactions and rid the practice of land law of all the elaborate fictions that had developed. It was a similar policy that came to Jamaica in 1888.

32. It should therefore not be surprising that on the introduction of the Act in 1888, under section 161, a registered proprietor was protected from actions of ejectment or such similar actions except in cases specifically provided for in the Act, since actions for ejectment by the time of the Act could decide who had title for the land. The policy of the Act was that once a person was registered as proprietor then all that went before was, generally speaking, irrelevant. This is why some have said that the Act does not register titles but rather gives title by registration. So under this Act the state of the register was what was important. All this still left untouched the personal liability of persons who were parties to an agreement that created, transferred or conferred any estate or interest in registered land. An unregistered interest only meant that the world did not have notice but it said nothing about the personal liability of those involved.

33. It is therefore a small wonder that the preamble to the 1888 Act mentioned "*certainty of title of estates in land, facilitate the proof thereof, and also to render dealings with Land more simple and less expensive*". From this, of necessity, very brief historical survey it is not hard to grasp the real significance of section 161 of the Registration of Title Act. This provision was necessary in order to buttress the philosophy of the Act which was that, generally, interests and estates in land are protected by registration.

34. It should also come as no surprise that the Act has sought to restrict the application of the common law doctrines of notice, actual and constructive, as well as certain principles of equity as far as the equitable right or interest attaches to the land. If these doctrines were imported wholesale into the Act, the benefits of registration could not be realised.

35. In my view, Mr. Forsythe is giving the principle of indefeasibility a meaning it cannot have. What is meant is that the government by establishing the system of title and protection of interests by registration is warranting that no interest burdens the title other than those that are registered. The government is saying that the title is not void because of past error, omissions or event in the title. We must not confuse the effect of a remedy that may result in a transaction being set aside with an attack on indefeasibility. What has served to distort Mr. Forsythe's understanding is the fact that this current action by the brothers involves the estate of their father and Miss Haughton. But for the death of Mr. Haughton, we would still have the original parties to the transaction. Had Miss Haughton transferred the land, the subsequent purchaser would have taken good title. The Act allows this. The brothers could not recover the land from the purchaser unless they could prove actual fraud on the part of the new registered proprietor but they could still pursue their action against Miss Haughton. The impact of any transfer made by her would only affect the remedy but not the cause of action. They would only be entitled to damages. When looked at in this way, the action by the brothers is not an attack on the principle of indefeasibility but rather an action in equity which if successful may result in the transfer being set aside, not because the principle of indefeasibility has been or is being breached but because it is the appropriate remedy. There are no third parties who have acquired any interest in the property since the transfer to Miss Haughton.

36. When section 161 of the Act states that in all other cases the production of the certificate of title is an absolute bar to actions against persons named in the certificate as the proprietor of the land, any rule of law or equity to the contrary notwithstanding, it was directed at actions for

possession in which title may be challenged. It had nothing to do with personal liability arising out of contract. Therefore, just by an analysis of the purpose of section 161 Mr. Forsythe's submissions could not be accepted.

37. I am fortified in my doubts about the submission of Mr. Forsythe by the cases of ***Barry v Heider*** (1914) 19 C.L.R. 97, ***Frazer v Walker*** [1967] 1 All ER 649, ***Bahr v Nicolay*** (No. 2) (1988) 164 C.L.R. 604, ***Bruekner v The Satellite Group (Ultimo) Pty Ltd*** [2002] NSWSC 378. These cases show that the personal liability of a registered proprietor is not excluded by the statutes dealing with title by registration. Thus to say that because a person is a registered proprietor does not, without more, mean that he is immune from the equitable jurisdiction of the court.

38. In addition to these cases there is the case of ***Everad Crooks and another v Charles Brown and another*** (1986) 23 J.L.R. 475 where the parties intended that only one parcel of land should be transferred to the purchaser but because of an error two parcels were transferred. The purchaser refused to retransfer the land on the basis that once his name was on the title that was the end of the matter. His title was absolute and indefeasible. The Court of Appeal rejected this submission and confirmed the order of the judge who had ordered that the land be retransferred to the vendor. If Mr. Forsythe is correct then this decision is wrong but he has not submitted that it is and even if he did, I would have to give effect to it. The effect is this: the fact that someone's name appears on the title as the registered proprietor does not preclude the court from granting a remedy that deprives the registered proprietor of his estate in land. This was not a case of fraud within the meaning of the Act. To express it another way the registration of the proprietor did not preclude a personal remedy against him that required him to retransfer the land to the vendor.

39. Finally, there is the Privy Council in ***Gardener v Lewis*** (1998) 53 WIR 236. This was an appeal from Jamaica. In that case, the registered proprietors, unwisely, decided not to explain how they came to be registered as the proprietors in the obviously suspicious circumstances of that case. They relied on the assertion that since they were the registered proprietors that made them both legal and equitable owners of the whole land. Lord Browne-Wilkinson made the point that although the land certificate is conclusive as to the legal interests in the land that did not mean that personal claims cannot be enforced against the registered proprietor.

40. In case before me, this means that although Miss Haughton is now the registered proprietor of the land she is not outside of the jurisdiction of the courts of equity. She is not immunized from any equitable claim that can be made against her personally. The nature of the claim against her is that she has committed an inequitable act for which she is being called to account. The fact that the remedy may have the effect of causing the register to be altered to reflect the remedy granted by the court cannot change the picture.

Conclusion

41. Although on the evidence presented the Haughton brothers have not presented a very strong case of undue influence there are enough of the factors present that would precipitate further enquiry into whether the deceased's agreement to sell was free and voluntary. The defendant's continued disobedience of the order made nearly a year ago to produce the documents relevant to the transaction have not served to allay concerns about the transfer.

42. Section 161 of the Registration of Titles Act does not affect the personal liability of a registered proprietor.

43. Application to strike out claim no E476/2001 is dismissed. Costs of $16,000 to the claimants. Costs to be paid on or before November 30, 2004.