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Chief Judge resigned on 7 Feb 00, this decision handed down 8 Feb 00

Ruby Mills was 84 years old at the time of trial --- the judge reports her 6 years younger. Her son died a year before the petition was filed --- the judge was able to report on what he would have said to Firstline's conveyancing lawyer. Martin Wirick --- Canada's foremost mortgage fraudster --- did the conveyance and was the only witness for the plaintiff. The judge invoked his name 65 times in this judgment. He continued on to do 200 more mortgage frauds after successfully concluding this case.

Citation: Firstline Trust v Mills Date: 20000208

2000 BCSC 0226

Docket No.: H980509
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FIRSTLINE TRUST COMPANY

PETITIONER

Meet the infamous mortgage fraudster Martin Wirick

AND:

RUBY MILLS AND WILLIAM EDWIN MILLS

RESPONDENTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE BAKER

Counsel for the Plaintiff:

Shane P. Strukoff

Counsel for the Defendants:

604-669-5855 Kenneth B. Oliver

Date and Place of Hearing/Trial:

Vancouver, B.C.

October 5, 6, 7, 8, and 25, 1999

Tour some of the highlights of this case:
One of the core paragraphs[27]
Wirick on his documents[38]
The chief judge resigns 7 Feb 00.....[3]
Destruction of credibility to cover up.....[70]
Judge Baker over reaches on credibility [83] []
Judge Baker transfers through time.....[14] []
Summary of case.....[100] [101]

[1] In 1992, Mrs. Mills mortgaged her home as security for a loan from Firstline to Mr. Mills' son, William Edwin Mills. Mr. Mills entered into the mortgage as convenantor. The mortgage was renewed in 1997. From 1992, until his death in 1998, Mr. Mills paid all of the mortgage payments. No payments were made after January 1, 1998. Firstline filed this petition for foreclosure on May 14, 1998. Mrs. Mills admits she signed the mortgage and the renewal, but relies on defences of non est factum, undue influence, and unconscionability.


Identity theft by Martin Wirick
It is unlikely that Ruby Mills signed the Firstline Mortgage. No one witnessed her signature. Martin Wirick, who at the time of trial had done more than 100 fraudulent mortgages and defrauded people of about \$15 million, and registered the Firstline mortgage against her title, said he could not recall her coming into his office. With her evidence, probably at E/D Ms. Mills had checkmated him --- Wirick then in effect invoked the classic 'okay, then I can't recall.'

FACTS

[1] Some facts are admitted by Mrs. Mills and I set them out here:


1. Ruby Mills is the registered owner of the property at 616 East 53rd Avenue, Vancouver, B.C., which has a legal description as follows:


City of Vancouver
Parcel Identifier: 014-411-083
Amended Lot 11 (See 224216L)
Block 1
District Lot 654
Plan 1696
(the "Lands")

2. By a mortgage (the "Mortgage") registered in the Lower Mainland Land Title Office on February 5, 1992 under number BF39813, Ruby Mills executed a mortgage of the Lands to the Petitioner. 


3. By a covenant in writing forming part of the Mortgage, William Edwin Mills agreed with the Petitioner to pay the principal and interest and all other money secured by the Mortgage and adopted every covenant in the Mortgage.

4. The agreed terms of the Mortgage were as set out in the copy of the Mortgage attached to the Notice to Admit (the terms are not in dispute).

5. The Petitioner has advanced the principal amount of \$140,000 under the Mortgage. 

6. The Mortgage has been in default since January 1, 1998. 

7. As of April 7, 1998, there was due and owing pursuant to the Mortgage the sum of \$122,281.15 plus interest at the rate of 6.64% per annum, compounded half-yearly, being a daily rate of \$21.29. (Although the respondent does not dispute this balance, the parties agreed that in the event the petitioner is successful, there be a reference to the registrar for an accounting of the current balance due and owing under the Mortgage.)

[2] The authenticity of the following documents is also admitted: 

1. Mortgage Commitment Letter dated January 17, 1992, signed January 27, 1992.

2. Order to Pay dated January 27, 1992.

3. Application for Insurance dated January 27, 1992.

4. Acknowledgement of Receipt of Standard Mortgage Terms by Mortgagor.

5 Mortgage dated January 27, 1992, Registration No. BF039813.

6. Mortgage Renewal Agreement dated January 30, 1997, signed March 10, 1997.

7. Letter from Wirick & Klassen dated January 27, 1992.

8. Letter from Wirick & Klassen dated February 6, 1992.

9. Statement of Account from Wirick & Klassen dated February 6, 1992.

10. Letter from Firstline Trust dated February 10, 1992.

11. Letter from Firstline Mortgages dated April 16, 1997.

To deny this would be have been for Ruby Mills lawyer to be calling the other lawyer, Martin Wirick, a fraudster, which he was. But the problem was the judge was treating Wirick like he was credible, ethical, honest, etc. none of which he was.

The son, William Mills was dead. Here again Ruby's lawyer had he challenged the truth of this, he would have been calling Martin Wirick a fraudster. The court wasn't ready to hear that.

None of these purported "admissions" are proper. All are fraudulently obtained by virtue of Martin Wirick and counsel for Firstline being "officers of the court" --- truthful until proven otherwise.

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Wirick and Klassen
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BCLS 89-97, 98-?
604-324-5115
604-324-6996; W called 79 K in 83

Wirick & Co
BCLS 1999-2003
Dale Gregory Leong
also with Wirick in 96, 97
Admitted to bar 87.
89 was with Mawhinney & Kellough

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At the time of trial in 1999 Ms Mills was was 84 years old. Chief Justice Bryan Williams would have known on reading this decision that Mrs. Mills had been badly abused by BC Supreme Court --- It is not surprising that he gave notice of resigning before this case could be entered into the record. This case will come to be known as the, "The Robbery of Ruby Mills."

12. Letter from Firstline Mortgages dated October 15, 1997.

[3] Mrs. Mills was born July 11, 1915 in Aldergrove, British Columbia. She left school one year before graduation to look after her mother, who was ill. She lived at home with her parents until she met her husband, William Mills, Sr. After her marriage she worked as a housecleaner to supplement the family income, and also worked in a restaurant. Mrs. Mills helped to manage the family finances.

[4] Mrs. Mills and her husband had four children - Marlene, born in 1938; William Mills, Jr. (the other respondent), born in 1942; Ross, born in 1959; and Julie, born in 1956.

[5] In 1957, Mrs. Mills began to operate a daycare in her home. The daycare was licensed for seven children, under applicable provincial licensing legislation, in 1958. Mrs. Mills operated the licensed daycare until her retirement in 1993.

[6] Mrs. Mills has owned three homes. She and her husband purchased their first home in 1947. They sold that house in 1950 and bought a second home. That home was sold, and Mr. and Mrs. Mills purchased the home at 616 East 53rd Avenue in 1957. All of the purchases involved some form of debt financing, either a mortgage, or an agreement for sale, or both.

[7] Mrs. Mills has lived in the home on East 53rd continuously since 1957. Her husband died in 1982. Mrs. Mills' daughter Marlene, who is a teacher, and Marlene's grandson live in the main part of the house with Mrs. Mills. Mrs. Mills' daughter Julie lives in a suite in the basement of the home.

[8] Mrs. Mills testified that both her physical and mental health were very good at the time she signed the mortgage and other loan documents in 1992. In January 1992, although she was then 71 years old, Mrs. Mills was still actively operating her daycare business. She maintained her own financial records, which were not very complicated, but some of the children's families received government daycare subsidies, so Mrs. Mills had to file reporting forms, and keep track of billings and receipts.

[9] In 1991, 1992, 1993, and even in 1994, after Mrs. Mills had ceased operating her daycare, she took several half-day and one-day community college courses related to the care of children, including courses on child development, advocacy for children, understanding families, dental and nutritional health, and building understanding across cultures.

[10] I accept Mrs. Mills' testimony that in 1992 she was in good health, both physically and mentally. However, Mrs. Mills' demeanour and her testimony at trial indicates that her memory is now quite impaired. She has entirely forgotten most of the events surrounding the execution of the various loan documents. She testified that she has no memory at all of what occurred in the lawyer's office at the time she executed the mortgage. In responding to questions at trial, she also seemed to have considerable difficulty, from time to time, organizing her thoughts and finding the words she wanted to express herself.

[11] Much of the examination in chief was conducted by the use of leading questions. This was unfortunate, because aside from the fact that it was

This case should never have gone to trial -- 5 days Judge Donald Brenner had taken charge through the may have been just one of many cases the chief just time was objecting to, as one can garner from the sta of former judge Lloyd MacKenzie --- that there was a between Williams and Brenner's Litigation Management Committee.

On 21 Jul 99, Judge Brenner invoked 13th cen Champerty law to lift the injunction on James B Down's assets of about \$150 million --- which a other things, included Blair's residence on the to floors of Wall Centre --- Vancouver's tallest buil by telemarketing fraud on millions of US seniors

Quoting from the statement of Ms. Jane Shackell o announcing his appointment on June 9 2000: "Chief Brenner co-founded this Court's Information Te Committee and in 1999, he became Chair of the Supreme Court's Litigation Management Comm BC Supreme Court was on a roll --- albeit ove North America wide.

False Ruby was 77 years old. At trial she was 84 years old.

1992-1915=77 Here Judge Wendy Baker makes Ruby Mills appear younger by knocking 6 years off her age.

In 1992 Ruby was 77; At trial she was 84. Judge Wendy Baker has positioned 71 years of age in the readers mind, but Ruby is 84 and had already been subjected to examination for discovery before the trial, all of which would have made her malleable to being led to admit things she would never have admitted to outside of the courtroom.

more difficult to assess what Mrs. Mills actually recalls, and what she has reconstructed, she also had a tendency to agree readily with suggestions made to her by her counsel, and she frequently gave responses which were contradicted later in evidence in chief, or during her cross-examination; or which contradicted answers she had given at an examination for discovery conducted only two weeks prior to trial.



[12] Mrs. Mills' son, the respondent Williams Mills, was 50 years old in 1992. He worked as a marine engineer on a British Columbia government ferry. On April 2, 1991 he had acquired a property at 12386 Dewdney Trunk Road, in Mission, B.C. Mr. Mills borrowed \$75,000 from Edelweiss Credit Union, who registered a first mortgage on the property. Before acquiring the Dewdney Trunk Road property, Mr. Mills lived in a basement suite in Maple Ridge.



[13] Mrs. Mills testified that she was approached by her son not long - some days or weeks - before she actually signed the mortgage. She could not recall exactly when he first approached her, or how much time passed between his request to her, and the execution of the loan documents on January 27, 1992. Mrs. Mills testified, in chief, that her son came to her house and "he wanted me to --- to sign for him to get the mortgage". When asked by her lawyer "Do you know why he needed you to sign?", Mrs. Mills said "no", but that Mr. Mills "...said that he was going to -- he wanted to buy it, and -- and he would -- oh, I --I don't know how to say it, just that he wanted to buy this property and he needed me to sign, to -- to guarantee that he would pay his -- the payments."



[14] Mrs. Mills testified that she did not know, in January 1992, that her son already owned the Dewdney Trunk Road property. She testified that she believed that he was about to purchase the Dewdney Trunk Road property and needed her help to get a loan. She says he told her about the property and took her to see it.



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[15] I believe that Mrs. Mills' present memory of what her son told her in January 1992, and what she knew about his plans at the time, is inaccurate.



See [19], also [60] and [81] - [83]

[16] Mrs. Mills recalls that when her son purchased the Dewdney Trunk Road property there was a an old residence on the property, that he moved onto the property and lived in the "shack" for some time, making some improvements to it, and that he then moved a trailer onto the property. She recalls that the trailer was moved onto the property after the mortgage loan was obtained, because she recalls that Mr. Mills injured his foot during the installation of the trailer, and that while he was hospitalized he missed one or more mortgage payments, which he subsequently made up,



[17] Other evidence indicates that by January 1992, Mr. Mills had already been living at the Dewdney Trunk Road property, and that Mrs. Mills knew that, because she and her daughter Marlene visited Mr. Mills at his home weekly. At trial, Mrs. Mills identified the telephone number that Mr. Mills gave to the lawyer who prepared the mortgage documents as Mr. Mills' Dewdney Trunk Road telephone number, indicating that he was already living at that address at the time he asked Mrs. Mills to assist him to obtain financing from Firstline. Mr. Mills also gave the lawyer the Dewdney Trunk Road address as his address, and that address appears on some of the documents Mrs. Mills signed at the time that the mortgage loan from Firstline was obtained.



Judge Baker skips through this very important evidence.

This is probably what caused 3M Wirick to say he cannot recall Ms. Mills coming into his office --- He knows he can be caught here.

If the lawyer for Firstline was to able show payments were missed at Firstline soon after the mortgage was taken out, then he could verify that the extra \$65,000 Wirick alleges was disbursed to Ruby's son was spent in part to buy the trailer. But there were no mortgage payments missed at Firstline as a result of Ruby's son's injury and his absence from work. Probably no mortgage payments were ever made to Firstline --- not by the Mills and possibly not by Martin Wirick either.

In addition to breaching the "know your client rule", Shane P. Strukoff failed to disclose there were no missed payments at Firstline. The burden would shift to 3M Wirick to prove that Ms Mills signature were not forged by Wirick. Had Mr. Wirick been an agent rather than a trusted officer of the court the case would have stopped right there. None of the parties defrauding Ms. Mills would have dared to continue.

[18] None of the evidence suggests that Mr. Mills had any motive to misrepresent to his mother the status of his ownership of the Dewdney Trunk Road property, that he had lied to her in the past, or that he was the sort of person who would lie.

[19] I conclude that Mrs. Mills is mistaken in her recollection that Mr. Mills told her, ~~in January 1992~~, that he was about to purchase the Dewdney Trunk Road property. I believe she knew that he had purchased the property the previous year, that he was already living on the property, and that he was seeking financing to pay out the mortgage on the property, to retire some other debts, and, possibly, to purchase the trailer which he subsequently moved onto the property.

[20] Mr. Mills told Mrs. Mills that the amount of the loan was about \$140,000, that the lender was Firstline, and that he would be receiving all of the money and she agreed in cross-examination that she knew that she would not be receiving any money from the loan.

[21] Although during some of her testimony, Mrs. Mills appeared to deny even knowing that the transaction entered into was a mortgage, and during cross-examination at trial on October 7, 1999, Mrs. Mills said she could not say whether her son had used the word "mortgage" when he asked her to assist him, on examination for discovery on September 24, 1999, she said "... he wanted me to sign for the mortgage". She agreed at trial that answer was true. She also agreed that her son told her that what he wanted was for her to sign a mortgage.

[22] After her conversation with her son about the mortgage loan, Mrs. Mills told her daughter Marlene about his request. Mrs. Mills told Marlene that Bill wanted her to sign a mortgage. Marlene told her that she thought Mrs. Mills should help Bill out. After consulting with Marlene, Mrs. Mills decided she would do as her son had asked.

[23] At trial, Mrs. Mills testified that she thought that the mortgage under discussion was going to be a mortgage on Mr. Mills' Dewdney Trunk Road property. She gave various versions of why she thought she was going to be involved in the transaction.

[24] On examination for discovery she said she did know why she was going to the lawyer's office and that it was "To sign for Bill to get the money". She also testified on examination for discovery that, before she went to the lawyer's office, she told Marlene that she was going to sign a mortgage.

[25] In examination in chief she said that he needed her to sign to "guarantee" that he would pay his payments. She later said she didn't know or can't remember why she went to the lawyer's office, but also said she thought she was there so that her son could get the mortgage on his property. At the close of her examination in chief she was asked "When you went with your son that day to the office, what did you think you were going there to do?". She responded "For him to get a mortgage on his property". Counsel asked "Why were you there?" and she replied "Just as his mom.", but agreed immediately after that she knew she was there to sign documents.

Judge Baker does a time transfer again "the trailer" evidence, see paragraph [16], [60] See also conclusion in paragraphs [81] - [83]

Suggest something several times, in several different ways, to someone 84 years old in a trusting environment like a courtroom, and you could them to buy into a ride on *Halley's Comet*.
Nonetheless, Ruby Mills was only agreeing to what her son had told her about the Edelweiss mortgage 2 Apr 91, and did not agree at any time to have signed the Firstline mortgage that Martin Wirick had fraudulently caused to be put on her property in Jan 92, and was unknown to her until after her son died and Wirick initiated the mortgage foreclosure proceedings, about a year later.

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[26] In cross-examination, Mrs. Mills agreed that she knew she was going to the lawyer's office to sign documents to assist her son to get a loan, and that she understood one of the documents she would be signing was a mortgage.

If only Ruby Mills had said, repeatedly, 'Yes, I remember having done those things in April 1991, when I went with my son to help him get the Edelweiss mortgage, but I cannot recall having gone to Mr. Wirick's office and done essentially the very same thing, 10 months later. I still know where I was and where I was not. And not even Mr. Wirick says I was there so why am I being harassed on this over and over again.'

[27] The mortgage and other loan documents were signed on January 27, 1992 in the law offices of Martin Wirick. Mr. Wirick testified as a witness for the petitioner. Mr. Wirick said that, like Mrs. Mills, he has no actual recollection of the meeting in his office. Unlike Mrs. Mills, however, Mr. Wirick was able to tell the court about the procedure he invariably follows when mortgagors or covenantors come into his office to sign loan and mortgage documents that he has prepared. Mr. Wirick is an experienced solicitor who had been in practise for more than 12 years at the time Mrs. Mills signed the mortgage documents in his office. The bulk of his work involves land conveyances, and mortgage transactions. He acts primarily for lenders, but also for borrowers. He has handled a few transactions for Firstline, but Firstline is not a major client.

On coming to this point in reading Judge Bakers decision chief judge Bryan Williams must have become outraged. The court was going to endorse a fraudster "officer of the court" to go on to further fraud --- which he did to extent of 200 more mortgage frauds, \$30 million more defrauded. He would also have noticed that Judge Wendy Baker had invoked Wirick's name more than 65 times in this her judgment.

[28] Mr. Wirick was a fair, careful and conscientious witness, and gave every indication of being a competent solicitor. No attack was made on his credibility and I accept his evidence without reservation.

He would have known by this time that he needed to resign --- the courthouse was going to collapse on itself from judicial **dry rot** that the courts **litigation management committee** had caused to set in.

[29] Mr. Wirick testified about the procedure he follows when he has, acting on behalf of a mortgagee, drawn mortgage documents to secure a loan transaction, and the mortgagors have elected to have him witness the execution of the documents. He testified about the steps he takes to satisfy himself that the signatories know and understand what they are signing and the legal effect of the transaction. He also explained what he does to satisfy himself that there has been no coercion or undue influence, when the transaction involves an elderly parent and the beneficiary of the transaction is an adult child.

Another characteristic of Judge Baker's strange decisions is to reverse order the logic when she writes her judgments. Consider that if Martin Wirick's testimony was put first, that he could not recall her coming into his office and there were no witnesses to testify to Ms. Ruby Mills' signature, her lawyer (Oliver) could have moved to no evidence against Ms. Mills. Today it is easy to forge documents --- and the technology for forgery has been readily available for at least since 1990 --- even software for editing tapes was available to the masses by Apple Computer company.

[30] I do not intend to attempt to reproduce Mr. Wirick's entire explanation of his procedures in these Reasons. It can fairly be summarized. He begins by explaining to the mortgagors that he is not their lawyer and is not able to provide them with legal advice. He explains that the borrowers are welcome to take the documents to their own lawyer or notary, or, if they do not have a lawyer or notary, that there are several in the immediate area, and that he would be happy to give them the documents to take with them. A letter telling the borrowers that he is acting for the lender, and not for them, is either mailed out in advance, or given to the borrowers in the office. This letter not only tells them that they may take the documents to their own lawyer, it advises them to do so.



[31] Once the borrowers have read the letter, and indicated that they do not wish to obtain legal advice, or to take the documents elsewhere for execution, Mr. Wirick explains each of the documents involved in the transaction to the borrowers, as he completes the documents, and obtains the necessary signatures.

[32] Mr. Wirick says that although the procedure he follows in each case is essentially the same, the time it takes can vary greatly. He estimated that his average meeting with borrowers who have elected to sign the documents in his office lasts 20 to 30 minutes but that he has had meetings completed in as little as 10 or 15 minutes, and it has sometimes taken as long as two



hours depending on how many questions the borrowers asked about the documents.



[33] Mr. Wirick testified that although he is not providing legal advice to the borrowers when he is acting on behalf of the lender, he has a duty to the lender to make sure that the borrowers understand what they are signing, so that the lender will get a properly executed mortgage.



[34] Where an elderly parent comes into Mr. Wirick's office to sign documents or give instructions in connection with a transaction that will benefit an adult child, or another adult who might be in a position to take advantage of the elderly person, Mr. Wirick says that he is alerted to the possibility that the older person may have been coerced into the transaction, or may not understand what it is they are about to do. While he does not have any particular set of questions that he asks, during the meeting he observes the participants and during his discussions with them he tries to make sure that the older person participates in the conversation and asks questions. He observes how the participants relate to each other. He watches for situations where the child dominates the conversation, and appears to be telling the parent what to do, and where to sign. He asks if the person understands the transaction and to ensure that there is understanding, asks the person to explain to him what the transaction is about. He said if the person seems to simply agree with whatever is asked, he asks questions that require them to say something more than "yes". If necessary, he asks to meet with the parent alone, to satisfy himself that he or she is entering into the transaction voluntarily and with a full understanding of the nature of the transaction.

[35] Mr. Wirick has, on occasion, refused to witness the signature of individuals he believed did not understand English well enough to comprehend his explanation of the transaction, or individuals he believed were being pressured into the transaction.



[36] In this case, no question of coercion or pressure arises. Mrs. Mills never met with or spoke directly to any employee or agent of Firstline. She agreed repeatedly that neither her son or Mr. Wirick did anything to pressure her into participating in the transaction, or to make her feel pressured. She agreed that her son didn't ever say there was any urgency in getting the transaction completed. She agreed that no one prevented her from reading the documents when she was at Mr. Wirick's office, and that she understood that if she wanted the opportunity to review the documents, she could have done so. Although Mrs. Mills cannot now recall what took place at Mr. Wirick's office, she agreed that neither Mr. Wirick or her son did anything that made her feel compelled to sign the documents and that neither Mr. Wirick nor her son said anything in Mr. Wirick's office that turned out to be in error.



[37] The documents signed in Mr. Wirick's office are all in evidence and Mr. Wirick testified about the explanation he invariably gives, and therefore says he did give, to Mrs. Mills and Mr. Mills, in his office. I accept Mr. Wirick's evidence and find that he did explain each of the documents to Mrs. Mills, including the mortgage documents, before she signed them. I accept Mr. Wirick's evidence that he invariably points out who is the mortgagor; the civic address of the property being mortgaged; and the fact that if the mortgage payments are not made, the lender can take the property and/or pursue the owners/mortgagors for the amount of the

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loan or any shortfall. I conclude that he explained all of these things to Mrs. Mills.

THE DOCUMENTS



[38] In evidence is a letter on Mr. Wirick's letterhead, addressed to both Mrs. Mills at her address, and to Mr. Mills at his Dewdney Trunk Road address, which Mr. Wirick testified he believes was given to Mr. Mills and Mrs. Mills to read, on January 27, 1992, in his office. The "re:" line of the letter, which appears just below the salutation to Mrs. Mills and Mr. Mills, reads:

Mr. Wirick knows that he can be caught because of the injury of Ruby's son, and the mortgage payments that were missed --- not on Firstline but on Edelweiss. In all likelihood Martin Wirick was sending the payments to Firstline while waiting for the right time to move to foreclosure. It would be interesting to see what Mr. Wirick is alleged in the statement of claim.

Re: Mortgage between Firstline Trust Company and Ruby Mills and William Edwin Mills

[39] The letter explains, in summary, that Mr. Wirick represents Firstline for the purpose of registering the abovenoted mortgage and that Mr. Wirick does not represent the Mills, and advises them to retain their own independent solicitor.

[40] In Mr. Wirick's office, Mrs. Mills signed a Firstline Trust "Mortgage Commitment Letter". The "Applicants" are stated to be "William and Ruby Mills", although the applicants' address shown for both is Mr. Mills' Dewdney Trunk Road address. The "Property to be Mortgaged" is stated to be "616 East 53rd Avenue", which is Mrs. Mills address. Mrs. Mills and her son signed this document under the following words:

What this suggests is the Wirick scanned this phrase from the Edelweiss mortgage documents into the documents he created for defrauding Mrs. Ruby Mills.

I/We accept the terms and conditions contained herein including the terms and conditions set forth on the reverse hereof, all of which terms and conditions I/we acknowledge having read.

[41] Mrs. Mills agreed at trial that she reads and understands written English without difficulty.

[42] Mrs. Mills signed an "Order to Pay" setting out the uses to which the loan funds would be put. Near the top of this two-page document, on the "re" line, it reads:

RE: Mortgage of \$140,000.00 charging property located at 616 East 53rd Avenue, Vancouver, B.C. Ruby Mills and William Edwin Mills

[43] Mr. Wirick testified he goes through this document with the borrowers, pointing out where the money will go and verifying the amounts. The fourth item on the order to pay indicates that \$77,493 would go to "Payout Mortgage of 12386 Dewdney Trunk Road, Mission, B.C."

[44] Mrs. Mills signed an acknowledgement of receipt of standard mortgage terms. Mr. Wirick testified that he summarizes this document for the borrowers, with particular emphasis on what will occur if there is a "default" under the mortgage, and that the usual method of default is failing to make the payments under the mortgage.

[45] Mrs. Mills signed the mortgage itself. This document contains the legal, rather than civic, description of the property being mortgaged.

However, Mr. Wirick testified that he would have pointed out to Mrs. Mills that it was her property that was being mortgaged. Mrs. Mills is clearly stated to be a borrower and mortgagor on the document, and she signed on the first line immediately below the words "Borrower(s) signature(s)". Mr. Mills signed on a line below her signature.

[46] Mr. Wirick testified that Mr. Mills was signing the mortgage as a covenantor and that his usual practice is to explain to the covenantor that even though it is not the covenantor's property that is being mortgaged, the lender can sue the covenantor for the amount of the loan if the payments are not made. This explanation is given at the time that the mortgagor and covenantor sign the mortgage.

[47] Mr. Wirick discussed mortgage insurance with Mrs. Mills and her son, and the insurance coverage was declined. Mrs. Mills signed a form of waiver of right to insurance on which her name, as well as that of her son, appears as "Borrower".

[48] Mrs. Mills testified that she has no recollection of anything that happened in Mr. Wirick's office. She recalled that Mr. Mills picked her up and drove her to an office and she recalled going up some stairs to the office, but said she cannot recall anything else that happened. Certainly she did not contradict any of Mr. Wirick's testimony.

[49] I conclude that Mr. Wirick did explain to Mrs. Mills that she was mortgaging her home as security for a loan being made by Firstline to Mr. Mills. I conclude that Mr. Wirick explained to Mrs. Mills that she would not be receiving any of the money, and that all of the money would be used to pay off Mr. Mill's debts, including a mortgage on his Dewdney Trunk Road property, and that the balance of the money would be deposited into Mr. Mills' bank account. I conclude that Mr. Wirick explained to Mrs. Mills that if the payments owing under the mortgage were not made, Firstline could take her property, or sue her for the money owing, or take the property and sue her for any shortfall. I conclude that Mrs. Mills was present when Mr. Wirick explained to Mr. Mills that he was the covenantor under the mortgage, and that even though it was Mrs. Mills' property that was being mortgaged, and not his, he would also be liable if the mortgage payments were not made.

[50] One of Firstline's requirements in making the loan was that insurance be placed on Mrs. Mills' property in a specified amount, and that Firstline be added as a "loss payee" under the policy. Mrs. Mills testified that she had used the same insurance agency for many years, and that she handled her own insurance transactions.

[51] Mr. Mills provided Mr. Wirick's office with the name of Mrs. Mills' insurance agent on January 23, 1992. This indicates either that Mr. Mills already knew who his mother's insurance agent was, or that he asked her and she told him. The first confirmation of insurance provided was inadequate, and Mrs. Mills' policy had to be increased to provide for additional coverage, and modified to add Firstline as a loss payee. Mrs. Mills' insurance agent sent a bill for the increased premium, and it was paid.

[52] Mrs. Mills signed the mortgage documents in Mr. Wirick's office on January 27, 1992. However, the mortgage was not submitted for registration and the loan was not disbursed until February 5, 1992. One of the

conditions Firstline had placed on the loan was a requirement that a survey be obtained of the property to be mortgaged. Mr. Wirick testified that he or his legal assistant would probably have asked Mr. Mills by telephone, or Mr. and Mrs. Mills, at the meeting on January 27, 1992, if they had a survey of the property. Mr. Wirick's office requested a survey from a survey company on January 28, 1992, indicating on the requisition that it was required by February 4, 1992.

[53] Mrs. Mills testified that after she had been to Mr. Wirick's office to sign the documents, someone that she understood was associated with Firstline came to her home. She understood this person to be a surveyor, and that he was there to measure her property. She testified that at this stage she knew that her property was involved in the transaction and that she had done something that jeopardized her property. Mrs. Mills agreed that even though she realized this, she did not contact Mr. Wirick, Firstline, or her son to obtain clarification, or to say that she did not want her property to be involved in the transaction.



[54] The survey certificate is dated January 30, 1992, indicating that the surveyor visited Mrs. Mills' property after she signed the mortgage documents, but six days before the mortgage was submitted for registration and the mortgage funds were disbursed.



[55] Mr. Wirick sent a letter dated February 6, 1992 to Mrs. Mills at her home, and to Mr. Mills at his home, reporting that the mortgage had been submitted for registration and the funds disbursed. A copy of the mortgage was enclosed, together with Mr. Wirick's statement of account. The "re" line of the letter states:

RE: Mortgage between Ruby Mills and Williams Edwin Mills and
Firstline Trust Company - \$140,000

[56] Mrs. Mills testified that any correspondence she received about the mortgage was passed on to her son. However, there can be no doubt that Mrs. Mills read at least some of the correspondence about the mortgage that came to her home. Firstline Trust sent to Mrs. Mills' home a letter addressed to herself and Mr. Mills, dated February 10, 1992. The "re" line states:

Re: Mortgage No. 9300925
Property Address: 616 East 53 Avenue, Vancouver, B.C.

[57] The letter stated the amount due for each bi-weekly payment, and enclosed an amortization schedule. The amortization schedule listed the property as 616 East 53rd Avenue. The Firstline Trust letter instructed that fire insurance coverage for the full replacement value of the premises must be maintained and must show Firstline as first loss payee. The letter also informed Mrs. Mills that Firstline would be paying her property taxes. After she received this letter, Mrs. Mills herself wrote to Firstline Trust informing them that she would pay her own property taxes.

[58] In each year after she signed the mortgage, Mrs. Mills agreed, she received confirmation of insurance coverage from her insurance agent, and she noted that Firstline was listed on her policy as a loss payee.

[59] At no time between January 27, 1992 and Mr. Mills' death in 1998, did Mrs. Mills contact Firstline to advise that she had not intended to charge

her property to secure the loan to Mr. Mills.

[60] Mr. Mills made all of the payments due under the mortgage until his death. Mrs. Mills testified that he missed a payment or more than one payment when he was injured moving the trailer onto the property, and briefly hospitalized. She said he told her this. However, Mr. Mills made up the missed payments.



Judge Baker on "the trailer" evidence again, see [16] and [19]. Judge Baker takes the evidence in at [16] shifts it from 1991 to 1992 at paragraph [19] and makes it part of her evidence against Mrs. Mills at paragraph [60]. Note how she concludes on this matter [81] - [83]

[61] The maturity date under the mortgage was March 28, 1997. On March 10, 1997, Mrs. Mills and her son both accepted Firstline's offer to renew the mortgage. The offer to renew is dated January 30, 1997. The offer states that "Mills, Ruby" is the mortgagor, and the "Property Address" is shown as 616 53rd Avenue, Vancouver, B.C. V5K 1J5. Mrs. Mills signed above the words "Registered Owner" and under a paragraph acknowledging that she had read the offer to renew and accepted it by signing.

[62] Mrs. Mills' best recollection is that the offer to renew came to her address and that she and Marlene took it with them to Mr. Mills' home and that she signed it there. She testified that she had the opportunity to review the document, that neither Marlene nor her son suggested she had to sign it, that she signed it voluntarily, that she understood that if she signed it it would have some legal effect, that she was aware it would be returned to Firstline, and that she was aware that after the document was signed and returned to Firstline, the mortgage had been renewed. Mrs. Mills testified, however, that she does not recall reading the document, that she probably did not read it because it was quite dark at Mr. Mills' home, and that she thought it was a renewal of a mortgage on Mr. Mills' property. This testimony is not persuasive, and, at best, indicates that Mrs. Mills was careless.

[63] Mr. Mills continued to make the payments due under the mortgage until his death in 1998. Julie Mills, Mrs. Mills' youngest daughter, testified that after her brother's death, she found some documents relating to the mortgage while she was going through some of Williams' papers. Julie Mills testified that although her mother had never told her about the mortgage, and seemed shocked and upset when Julie explained to her the significance of the documents in 1998, Julie had suspected, from a comment her mother had made some years earlier, that her mother may have become involved in Mr. Mills' financial affairs.



ADVERSE INFERENCE



[64] Mrs. Mills' daughter Marlene did not testify at trial, although Julie Mills, who had far less involvement with the transactions, did testify. Counsel for the petitioner submits that Marlene Mills could provide relevant evidence about matters in issue in this lawsuit. Marlene Mills is a 60 year old, university-educated woman, who works as a substitute teacher, and has also worked in a laboratory. She and her grandson live in the main part of the home with Mrs. Mills.

[65] Mrs. Mills testified that after William Mills asked her to sign a mortgage, and before she executed the documents in Mr. Wirick's office, she discussed her son's request with Marlene. Mrs. Mills testified that it was Marlene Mills who regularly drove her out to the Fraser Valley to visit William Mills. Mrs. Mills testified that Marlene was present at William Mills' home, although she may have been "in and out", when Mrs. Mills

signed the offer to renew. Mrs. Mills' counsel gave no explanation for the failure to call Marlene Mills as a witness as trial.

[66] Where a party fails, without explanation, to call a witness who may be expected to have relevant information about a matter in issue, the court may draw an adverse inference against that party. In the circumstances of this case, it is fair to infer that Marlene Mills would not have supported Mrs. Mills' assertion that she did not understand that the transaction she had entered into was a mortgage of her own property. As well, it is fair to infer that Marlene Mills would not have supported Mrs. Mills' assertion that she did not know that Mr. Mills already owned the Dewdney Trunk Road property, or that William Mills lied to Mrs. Mills about why he needed a loan. It is fair to infer that Marlene Mills would not have supported Mrs. Mills' assertion that she thought the document she signed on March 10, 1997 was a renewal of a mortgage on her son's property.

ANALYSIS AND THE LAW

[67] Although I shall briefly discuss each of the defences raised by Mrs. Mills, all of the defences raised must fail based on my findings of fact. I have already said that although Mrs. Mills maintains now that she did not know, in 1992, that she was signing a mortgage of her property, in order to secure a loan for William Mills, she has very little actual recollection of the relevant events. Having heard and considered all of the evidence, but in particular, Mr. Wirick's evidence and the actual documents that were executed in his office on January 27, 1992, I am convinced that William Mills did not misrepresent the nature of the transaction to his mother, that Mrs. Mills was told by Mr. Wirick, and did understand that she was mortgaging her property as security for a loan to be made by the petitioner to Mr. Mills, and that she knew that if the payments due were not made, the petitioner could look to her, and to her property, for repayment of the loan. I am convinced that Mrs. Mills entered into the transaction voluntarily, and not as the result of any undue influence, or misrepresentation, because she wanted to assist her son, and because she trusted her son to make the payments under the mortgage, as he did until his death. I conclude that the transaction was not unconscionable, that it was not brought about by virtue of any inequality of bargaining power between Mrs. Mills and the petitioner, or by any trick, or by virtue of the fact that the petitioner did not require Mrs. Mills to obtain independent legal advice before entering into the transaction.

NON EST FACTUM

[68] To succeed in avoiding liability under the mortgage by reason of the doctrine of non est factum, Mrs. Mills must establish that the document she signed - the mortgage of her property - was fundamentally different from the obligation she believed she was undertaking. Before she can prevail in this defence against an innocent third party - a party who did not induce the mistake and was unaware of it - she must also establish that the mistake was not due to her own negligence. *Marvco Color Research Ltd. v. Harris*, [1982] 2 S.C.R. 774.

[69] Mrs. Mills doesn't recall signing any documents in Mr. Wirick's office, although she acknowledges that it is her signature on the documents. She did not testify that she thought she was signing a guarantee, or even that she thought she signed a mortgage of her son's

Judge Baker draws an adverse inference on Ruby Mills but not on Martin Wirick:

Martin Wirick/Firstine/Shane Strukoff never called a witness from the plaintiff. Wirick must have been on the stand for days. Judge Baker should have asked Wirick to show that mortgage payments were missed after the trailer was purchased with the proceeds of the alleged Firstline mortgage.

An adverse inference could be drawn that there were no payments ever made by Bill or Ruby Mills. Wirick never raised the matter of a mortgage until after about a year after Bill Mills was dead. It has the appearance Strukoff and Wirick chose not to lead any evidence that would shift responsibility onto the plaintiff and off Mrs. Mills. Her solicitor should have raised it.

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property, although she did say, when asked why she thought she was going to Mr. Wirick's office, that she thought she was guaranteeing that Mr. Mills would make his payments.

[70] I don't believe Mrs. Mills' testimony in this regard. I believe that she has little or no present recollection of what happened in 1992, and that her testimony at trial is an inaccurate reconstruction of events at that time. I find that she understood, in 1992, that she was mortgaging her own home as security for a loan, the proceeds of which would assist her son in retiring his own mortgage and paying off some debts, and, probably, assist him in acquiring a mobile home. I believe that she considered there to be little risk in the transaction, because William Mills had a secure, unionized job with the British Columbia government, and she trusted him to make the payments, as he had promised, and as he did, until his untimely death.

[71] Mrs. Mills, despite her present difficulties with memory, gave the impression of being an intelligent, independent and resourceful woman. It is clear from her testimony that she and her husband were equal financial partners, and that throughout their marriage, she helped to manage the household finances, including arrangements to ensure that loans obtained to purchase the three family homes were maintained in good standing. Mrs. Mills understands what a mortgage is. Although it appears that Mr. and Mrs. Mills may have financed the acquisition of one or more of their homes through an agreement for sale, rather than a mortgage, she understood that a mortgage and an agreement for sale are not different in their fundamentals - that if you don't make the payments, you will lose your property.

[72] Mrs. Mills is clearly a careful person when it comes to finances. Her counsel emphasized this in support of his submission that Mrs. Mills did not understand what a mortgage was, or would not have agreed to risk her property in order to benefit her son. Counsel for Mrs. Mills emphasized the fact that other than loans to purchase the family homes and cars, Mrs. Mills prefers to handle her day-to-day financial transactions on a cash basis. Mrs. Mills' only dealings with lawyers have been in connection with land transactions, and the preparation of wills. However, the very prudence emphasized by this evidence makes it highly improbable, in my view, that Mrs. Mills would ever have signed documents in a lawyer's office, even at her son's request, without fully understanding the nature of the transaction and her obligations. She is not the sort of person who would simply sign whatever she was asked to sign without understanding and agreeing to the transaction.

[73] Although the magnitude of the assistance provided to Mr. Mills is unusual, Mrs. Mills has demonstrated that, despite her financial prudence, she is generous with her children. She testified that her daughters, who live in her home, along with Marlene Mills' grandson, do not pay rent, although there appears to be no reason why either Marlene or Julie Mills could not afford to do so. I have already said that Marlene Mills teaches school and has worked in a laboratory. Julie Mills testified that she works at a bank.

[74] Despite the fact that she is retired and has limited income, Mrs. Mills pays all of the property taxes and insurance on the house, buys all of the groceries, pays the hydro and telephone bills. She testified that

Judge Wendy Baker probably could never have been any crueller to any person than she was to 84 year old Ruby Mills, who appeared to have lived an honest life, worked hard, cared for her own children and for many others, in the long years since her husband died, what appears to have been early in their marriage. To have a Supreme Court judge say these cruel things to her so late in her life, would have been a near fatal, if not fatal, blow --- coming close after the death of her son.

This doctrine of *infallibility of a Supreme Court judge on matters of the veracity of witness* may have given pause to the chief judge at the time and took his resignation as the way out for him.

Judge Wendy Baker moves to Stage II --- how to seal her decisions so they are virtually unappealable --- destroy the credibility of the victim.

This is the *loose board in the fence* that was opened up by the decision of Justice Beverley McLachlin of Supreme Court (as she was then) that a higher court cannot overturn the decision of a Supreme Court judge if the case has been decided on the basis of credibility alone. Whereas, other case law had set down that when a witness' statements are such that an ordinary person would believe them then a higher court can re-weigh the veracity of the witness.

when she recently purchased a refrigerator, she used her daughter's credit card, but then reimbursed her daughter. Mrs. Mills' financial support of her adult daughters supports the conclusion that she would have willingly assisted her son, whom she trusted, with good reason, to carry out his commitment to make the payments due under the mortgage.

[75] Even if Mr. Mills had initially misrepresented the nature of Mrs. Mills' involvement in the transaction, which I find is improbable, I am satisfied that before Mrs. Mills signed the mortgage in Mr Wirick's office, she understood that she was mortgaging her property. Even a cursory examination of the documents signed by Mrs. Mills, or presented to her and her son in Mr. Wirick's office, would have made it clear to her that she was mortgaging her own home. Even now, Mrs. Mills admits that had she read the documents, she would have understood that she was mortgaging her home.

[76] In addition, however, I am satisfied that Mr. Wirick did, as he testified he invariably does, point out that the property being mortgaged was Mrs. Mills' property, and explain the consequences to Mrs. Mills if the mortgage payments were not made.

[77] Mrs. Mills' conduct after the fact is entirely inconsistent with her present assertion that she believed, throughout 1992 to 1998, that it was William Mills' property that had been mortgaged. Her failure to contact anyone after the surveyor visited her property, the fact that she read and responded to the letter from Firstline Trust about payment of the property taxes on her property, the fact that her insurance statements, to her knowledge, referred to Firstline as a "loss payee" on her policy, and her execution of the mortgage renewal offer, all indicate that she knew, and intended, that her property be the security for the loan.

[78] If Mrs. Mills did not read the documents she signed, then she was negligent in failing to do so. She agreed that she had the opportunity to read and review the documents, and that nothing done by Mr. Wirick or Mr. Mills prevented her from doing so. She agreed that she knew that the documents she was signing would have some legal effect or significance. She agreed, looking at the documents now, that had she read the documents in 1992, she would have understood their contents and significance. The defence of non est factum cannot succeed.

UNDUE INFLUENCE

[79] In support of the defences of undue influence and unconscionability, the respondent relies upon *Turnbull & Co.* [1902] A.C. 429; *Chaplin & C. Limited v. Brammall*, [1908] 1 K.B. 233, (C.A.); *Avon Finance Co. Ltd. v. Bridger*, [1985] 2 All ER 281 (C.A.); *Barclays Bank plc v. O'Brien*, [1992] All ER 983, (C.A.), and [1993] 4 All E.R. 417 (H.L.); *Bertolo v. Bank of Montreal*, (1986) 33 D.L.R. (4th) 610 (Ont. C.A.), *E. & R. Distributors v. Atlas Drywall Ltd.*, (1980) 118 D.L.R. (3d) 339 (B.C.C.A.); *MacKay v. Bank of Nova Scotia*, (1994) 20 O.R. (3d) 698, (Ont.Gen.Div.); *May v. Dunster*, (1996) 5 R.P.R. (3d) 234 (B.C.S.C.); *Moore v. F.B.D.B.*, (1981) Nfld. & P.E.I.R. and 84 A.P.R. 92, (P.E.I.S.C.); and *Morrison v. Coast Finance Ltd.*, (1985) 54 W.W.R. 257, (B.C.C.A.).

[80] The respondent submits that Mrs. Mills entered into the transaction under undue influence from Mr. Mills, or that the transaction was unconscionable, taking into account Mrs. Mills' age; her lack of experience

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in financial matters of this magnitude; the fact that she obtained no financial benefit from the transaction; the alleged misrepresentations by Mr. Mills as to the purpose for the transaction; and the fact that the petitioner did not require Mrs. Mills to obtain independent legal advice about the transaction.



[81] The defence of undue influence has not been established. Mrs. Mills was not coerced into entering into the transaction, by Mr. Mills, or by anyone associated with the petitioner. Mrs. Mills was not dependent upon her son. He did not live with her. There is no evidence that he held any power over her, that she was afraid of him, or even feared losing his love or affection if she refused his request. She considered his request before agreeing to it, and even consulted with her eldest daughter.



[82] There is no evidence that in 1992 Mrs. Mills was ill, or physically, mentally or emotionally impaired in any way. She was still operating her daycare business and handling all of her own financial affairs.



[83] I have already said that I do not accept Mrs. Mills assertion that Mr. Mills told her he needed the money to acquire the Dewdney Trunk Road property, when in fact he already owned it; and I do not accept Mrs. Mills' assertion that she believed the mortgage she signed was a mortgage of Mr. Mills' property.



[84] The respondent has failed to establish that Mrs. Mills entered into the transaction as a result of the undue influence of Mr. Mills.



UNCONSCIONABLE TRANSACTION

[85] A plea that a bargain is unconscionable invokes relief against an unfair advantage gained by an unconscientious use of power by a stronger party against a weaker. The material ingredients are proof of inequality in the position of the parties, and proof of substantial unfairness of the bargain, which create a presumption of fraud. *Granville Savings & Mortgage Corp. v. Slevin*, (1992) 5 W.W.R. 1, (Man.C.A.).

[86] The evidence in this case does not establish that there was an inequality in the bargaining positions of Firstline and Mrs. Mills; or in the bargaining positions of Mrs. Mills and her son.

[87] There was no attempt on the part of Firstline to persuade Mrs. Mills to enter into the transaction; no one associated with Firstline misrepresented the nature of her obligation or her risk, and no false assurances were given to her concerning her exposure. No employee of Firstline had any dealings with Mrs. Mills until after the mortgage documents were signed, and that later contact consisted of a letter to Mrs. Mills enclosing a payment schedule and advising about insurance and property taxes. *Canadian Imperial Bank of Commerce v. Ohlson*, (1996) Carswell Alta 170, 180 A.R. 248, (1996), Rooke, J., Alberta Court of Queen's Bench, Doc. Calgary 9201-05608.

[88] I do not believe that Mr. Mills misrepresented the transaction to Mrs. Mills, but even if I had concluded that William Mills misled Mrs. Mills about the purpose of the loan, or about whose property would be subject to the mortgage charge, there is no evidence that anyone employed by Firstline, or Mr. Wirick, had any knowledge of what Mr. Mills had said to

This was a classic courtroom fraud --- by temporal transfer. Here a senior person, who has done a mortgage and has that in her mind, is led through another situation similar to the first one, and her evidence on the first is then transferred through time to that second situation --- which she is then asked to agree to, and which she does.
A younger person, more mentally agile, and less trusting, would not so easily be misled. The younger person would be more likely to say, *Now which situation are you talking about, the first one or the second one*, before answering.

Judge Wendy Baker over reaches to try to destroy Mrs Mills credibility by denying the evidence of the Edelweiss mortgage, the first situation. And in doing so destroys her own credibility. See trailer on [16],[19],[60]

his mother; or that she believed the transaction to be something other than what it was. I have already said that I am satisfied that Mr. Wirick explained the transaction fully to Mrs. Mills and that she understood the transaction and voluntarily, and without undue influence, assumed the risk by mortgaging her home to secure the loan to her son.

[89] The petitioner did know, since Mr. Wirick knew, that all of the loan proceeds were to go to Mr. Mills. Respondent's counsel points out that the petitioner made no inquiries as to Mrs. Mills' financial situation or her ability to make the payments on the loan if Mr. Mills failed to do so. However, this was not unreasonable. Mr. Mills entered into the mortgage as covenantor, making himself jointly and severally liable, with Mrs. Mills, for the repayment of the debt secured by the mortgage. Mr. Mills had agreed to make the payments due under the mortgage, and he did.

[90] Many parents, even elderly parents without substantial assets, choose to assist their adult children financially. Parents lend adult children money to assist them with a home purchase, or in the acquisition or expansion of a business enterprise. The mere fact that the parent receives no financial benefit from the transaction is not sufficient to render the transaction unconscionable.

[91] The court was not told why Mr. Mills was retiring the mortgage on his own property or why he did not use his own property as security for the loan. The court was not given any information about Mr. Mills' financial circumstances other than the information that emerges from the "direction to pay", which is that he used the proceeds of the loan to pay off some debts, and the balance was deposited to his bank account. He had stable employment, and, so far as the evidence at trial indicates, met his financial obligations, including the payments under this mortgage, until his untimely death.

[92] In this case, new funds were advanced. There was nothing unusual about the amount loaned, or the interest rate, or the loan terms. This was not a case where further security was sought to shore up the lender's position on a bad security risk, or a situation where the recipient of the funds had already defaulted on a previous obligation, or was, to the knowledge of the lender, an undischarged bankrupt, in financial difficulty, unreliable or dishonest. Mr. Mills was none of those things.



[93] In the authorities relied upon by the respondent there are authorities that suggest that a lender may, in certain circumstances, owe a fiduciary duty to ensure that a guarantor, or mortgagor who is not receiving any financial benefit from a transaction receives independent legal advice, and that a breach of that duty may make the contract unenforceable. In other authorities, the lack of independent legal advice is treated as a factor that may support a finding of undue influence, or unconscionability.

[94] Having carefully read the authorities cited, I find it difficult to reconcile the various approaches taken. However, whether the failure to require independent legal advice is merely a factor that can be taken into account in determining whether a transaction is unconscionable, or whether there is an independent legal duty on a lender to ensure that legal advice is obtained, the authorities do establish that in certain circumstances, the failure by a lender to require a contracting party to obtain independent legal advice may render the transaction unenforceable. Each



case must be decided on its own pleadings and its own facts.

[95] Mrs. Mills did not receive independent legal advice. The respondent did not plead negligence on the part of the petitioner, or breach of fiduciary duty, arising out of Firstline's failure to ensure that she did get independent legal advice. The only issue is whether the failure to do so, together with the other circumstances in this case, makes the contract unconscionable and unenforceable.

[96] Most of the cases in which courts have found a transaction to be unenforceable due to a failure to ensure receipt of independent legal advice have been cases where the loan documents have been signed by the defendant in the presence of the person obtaining the benefit of the transaction; or in the presence of an employee of the lender, or there was a misrepresentation about some element of the transaction.



[97] In this case, Mrs. Mills did not receive independent legal advice, but I am satisfied that she received the same explanation of her obligations and the ramifications and potential consequences of entering into the transaction that she would have received from an independent legal adviser. I am satisfied that Mr. Wirick told Mrs. Mills that he was not her lawyer, and was not acting on her behalf, and that he told her that she could take the documents to another lawyer, and that he told her that there were other lawyers available in the immediate vicinity of his office. I am satisfied that he did give her an opportunity to read a letter containing the same information. The letter advises Mrs. Mills to get independent legal advice.



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[98] I am also satisfied that even if Mrs. Mills had received independent legal advice, she would still have entered into the transaction. *Toronto Dominion Bank v. Wong*, (1985) 65 B.C.L.R. 243 (C.A.).



[99] I am satisfied she knew what she was doing, she knew the risk and she chose to proceed. She knew she would not be receiving any financial benefit. She entered into the transaction to help her son. She knew he had the ability to make the payments and she trusted him to do so. Her trust was not unwarranted. Her son lived up to his obligations until his death. Mrs. Mills knew that if Mr. Mills did not repay the loan, she could lose her property; she just never expected it to happen.



SUMMARY

[100] The respondent has failed to establish that she was mistaken about the nature of the transaction she entered into; that it was an unconscionable transaction; that she entered into it as a result of the exercise of undue influence; or that the mortgage is unenforceable because the petitioner did not ensure that Mrs. Mills receive independent legal advice. The petitioner is entitled to the relief sought in the petition, including a declaration that the mortgage is a charge on the lands and premises described in the petition, a declaration that the mortgage is in default, and an order that if the lands are not redeemed, the petitioner shall be at liberty to apply for order absolute. As agreed, there shall be a reference to the registrar for an accounting of the amount of money due and owing under the mortgage. The petitioner shall have judgment against Mrs. Mills in the amount found due on the accounting. If counsel cannot agree on any of the terms of the order, including the length of the redemption period, they may make further submissions to me, orally or in

This was an unmistakeable case of lawyer fraud done in a courtroom of the Supreme Court of British Columbia that went on for 5 days in Oct 99. It was an elder abuse of an 84 year old caring and honest woman who had lost her son about 2 years earlier. It was the *Robbery of Ruby Mills*. The decision came down on Tuesday 8 Feb 00. The chief justice had let it be known on Friday 4 Feb that he was announcing his resignation on Monday 7 Feb 00.

It can be reasonably concluded that Chief Justice Bryan Williams resigned when he came to realize that cases like this were going to become the norm as a result of Judge Donald Brenner having co-founded the Litigation Management Committee and was its chairman.

It would have been difficult to stop this case from going out. Judge Bouck was said publicly in three major articles in the Vancouver Sun starting in June 1997 that Chief Judge Williams was interfering with judges rights to pick their own cases.

Here we are in October 2003 with a dysfunctional justice system in a major province of Canada.

writing.

COSTS

[101] The petitioner is entitled to its costs of and in connection with this proceeding. The costs will be payable as provided for in the mortgage. If there is any dispute about that, counsel may make further submissions to me, orally or in writing.

"W. G. Baker, J."

THE HONOURABLE MADAM JUSTICE BAKER

February 16, 2000 -- Corrigendum issued by Madam Justice Baker in which on Page 17, Paragraph [38], the phrase that appears as:

"... the saluation to Mrs. Mills and Mrs. Mills..." and should read, "... the saluation to Mrs. Mills and Mr. Mills..."

and on Page 27, Paragraph [61], the fourth line should read:

"...January 30, 1997" and not "....January 30, 197.".

Justice Wendy Baker wrote that she believed Martin Wirick was the evidence of Ruby Mills.

Martin Wirick was an in-the-closet major mortgage fraudster having committed more than 100 mortgage frauds and having about \$15 million at the time he testified before Judge Southin.

It begs the question: Did the Litigation Management Committee (chaired by Brenner J) know that Martin Wirick was a mortgage fraudster when they approved this case for funding?

This case handed down on 8 Feb 00, must be viewed in the context of events of the time:

- 1) The sudden resignation of Chief Judge Bryan Wilton on 1 Feb 00;
- 2) The decision of Judge Donald Brenner on 8 Aug 00 (which was replaced in May 00) invoking 13th century common law in lifting an injunction on \$150 million of assets of major telemarketing monster James Blair Down who defrauded 1 million US seniors of US\$200 million. In a decision handed down on 29 Jan 01, Madam Justice Southin deemed that the decision was a wrong decision and champerty was a red herring.
- 3) Other cases where seniors were targeted and defrauded and had to recover in their court actions.
- 4) Eron Mortgage fraud case C976521 Patriquin v Eron (McEwan J trial 27-29 Sep 99, decision 13 Apr 00, a decision which Brenner CJ would have been given notice of being handed down).
- 5) Justice Wendy Baker followed her mentor when she handed down her decision proceeding with 100 paragraphs to make her decision clear. Brenner J exactly 100 paragraphs also.

Return to Wirick's case with Judge Baker Case

Law Society tightens rules over real estate activities

B.C. lawyers see some positive results from a fraud that could involve \$50 million

BY WYNG CHOW
VANCOUVER SUN

THE LAW | The shenanigans of disbarred Vancouver lawyer Martin Wirick have resulted in changes to the rules governing how B.C.'s legal profession handles real-estate transactions.

Lawyers are now required to report to the Law Society of B.C. the failure of a lender to provide a registerable discharge of mortgage within 60 days of the closing date of a property transaction.

The new rules also require lawyers to report the failure of another lawyer, or a notary, to provide satisfactory evidence that he or she has filed a discharge at the B.C. Land Title Office within that 60-day period.

This whistle-blowing is due five business days after the expiration of the 60-day limit. Called the "30-30 rule," the new provisions give a financial institution 30 days after a mortgage repayment to issue a

discharge, then the vendor's lawyer (or notary) would have a further 30 days to register the discharge, allowing new mortgages to fall into their proper place and giving clear title to the new property owner.

Vancouver lawyer Kevin MacDonald said that in light of Wirick's fraudulent acts the new measures are designed to sharply reduce the chance of further damage occurring as a result of lawyers breaching their undertakings to perform certain duties.

"There is no doubt that Martin Wirick and his abuse of undertakings has significantly hurt the reputation and pocketbook of the legal profession as a whole," said MacDonald, of Clark Wilson, who writes commentary on legal issues. "B.C. lawyers will be paying for years to come. However, the legal community has responded quickly and, as a result, the damage to the public will be minimized and public confidence will

hopefully be quickly restored.

"In fact, there have been some positive results emerging from the ordeal, primarily the tightening-up of real-estate transaction timelines, the creation of an industry 'watchdog' and the increased transparency of undertakings in respect of mortgage discharges.

"The primary objective is to compile a database regarding the financial industry's response time to the processing of mortgage discharges.

"Lengthy periods of time between closing dates and the dates when mortgages are sometimes discharged contributed significantly to Wirick's ability to carry on his scam without detection for so long."

Last December the law society disbarred Wirick for professional misconduct in connection with his role in the largest such fraud in Canadian history. Wirick admitted receiving millions of dollars from people purchasing properties owned by his developer client, Tarsem Gill, or lending money to finance Gill's projects.

In some cases, Wirick provided his undertaking to use the funds

to pay out and discharge prior encumbrances, but failed to do so. In other cases, he fraudulently discharged mortgages, leading new lenders into the mistaken belief that the properties were clear title. The net result is that there are dozens of purchasers and lenders who have advanced funds but have uncertain title or charges on these properties. The law society has set up a compensation fund to pay all valid claims, expected to exceed \$50 million.

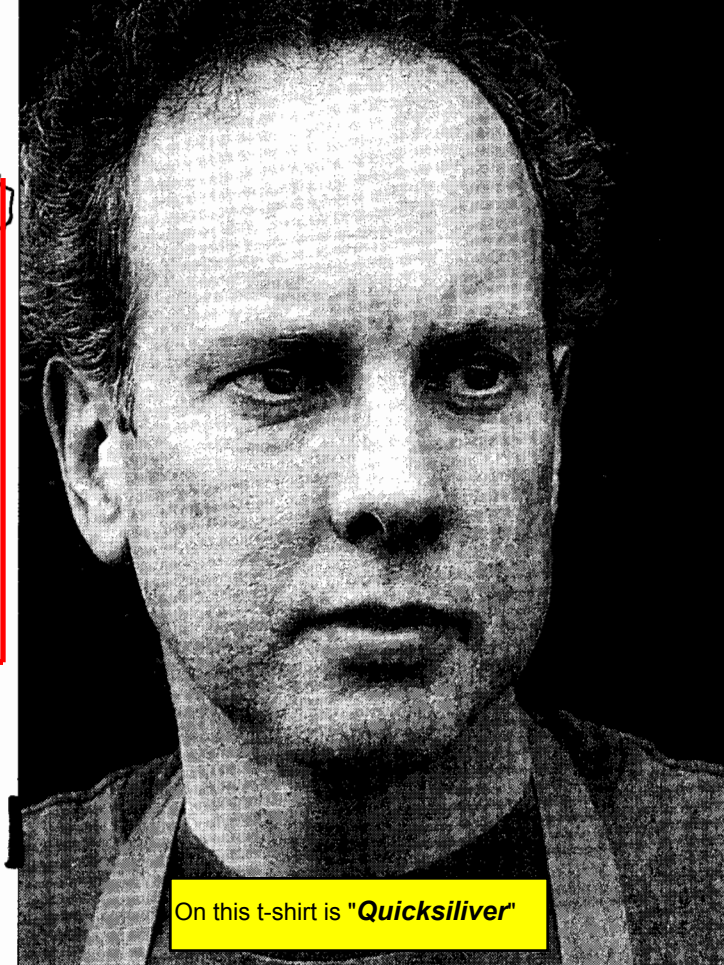
Meanwhile, Vancouver police are continuing what they say is the largest commercial crime investigation in the force's history.

The new rules adopted by the law society apply to property transactions that closed on March 1 or later. In addition to ordinary mortgages, they are applicable to debentures and trust deeds containing a fixed charge on land, or an interest in land.

Details of the changes are outlined in the law society's newsletter, The Benchers' Bulletin, and accessible through the society's Web site, www.lawsociety.bc.ca.

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Who is blocking charges against Wirick? The police, crown or judiciary? Or all three?



On this t-shirt is "Quicksilver"

GLENN BAGLO/VANCOUVER SUN FILES

Former lawyer Martin Wirick's activities sparked changes.