STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER COURT
DOCKET NO. BCD-CV-2017-00056

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| REBECCA BELANGER,<br><br>Plaintiff,<br><br>v.<br><br>LISA YORKE,<br><br>Defendant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | **ORDER FOLLOWING BENCH TRIAL** |

## INTRODUCTION

This case centers on the ownership of a family camp located on the shore of Brigham's Cove in West Bath, Maine. On remand, the Court must determine whether Plaintiff is a bona fide purchaser of the camp, a question which hinges on whether a 1977 agreement between spouses to exchange real estate was supported by consideration. The case was tried to the Bench on October 6 and 7, 2021. Rebecca Belanger, née Williams ("Becky"), and Lisa Yorke ("Lisa") each testified, as did witnesses Michael Yorke, Matthew Belanger, John Voorhees, and Hillary Belanger Ware. The parties submitted post-trial briefs on October 20, 2021. For the reasons discussed below, the Court determines that the 1977 agreement was not supported by consideration; that Becky is not a bona fide purchaser of the camp; and that Lisa owns the camp. Accordingly, the Court grants judgment in favor of Lisa.

## FINDINGS OF FACT

The Court has carefully weighed the credibility of the parties and witnesses, who often provided conflicting testimony, and has thoroughly considered their ability to recall events. The Court observed and assessed the demeanor of the parties and witnesses at all points of the trial, including both during testimony and in reaction to the testimony of others. Based on the evidence

adduced at trial and all reasonable inferences drawn therefrom, and resolving all inconsistencies and conflicts, the Court makes the following findings of fact by a preponderance of the evidence.

In 1977, Bradford P. Belanger, Jr. ("Brad") married Plaintiff, then Rebecca Williams. It was the second marriage of both, and both had a child from their previous marriages. The Defendant, Lisa, is Brad's daughter by his first wife, Louise. Hillary Belanger Ware, who testified on behalf of Becky, is Becky's adopted daughter. Matthew Belanger, who also testified on behalf of Becky, was adopted by both Becky and Brad after they had married.

In 1976, before his marriage to Becky, Brad received from his parents the deed to the Belanger family camp, located on the shore of Brigham's Cove at 22 Bruce Byway in West Bath, Maine (the "Camp"). The Camp is a small, cove-side parcel with a red cottage, wooden dock, and wooden wharf. Brad's parents had bought the Camp in the early 1950s and the family used the property extensively for recreational purposes when the season permitted. Becky owned property on Prospect Street in Bath, Maine (the "Prospect Street Property"). In 1977, shortly after their marriage, Becky and Brad made an informal, unwritten agreement to put each other's names on these two separately owned properties as joint tenants (the "1977 Agreement").

The 1977 Agreement was exclusively entered into as a ceremonial exchange of gifts, not a quid pro quo for mutual promises. For her part, Becky intended the 1977 Agreement to represent the fact that she and Brad were now a married couple sharing a life together. For Becky, the 1977 Agreement served a similar purpose as did adopting a child with Brad—it symbolized their new life together. In essence it had nothing to do with real estate, or a bargained for exchange of reciprocal promises regarding property interests, but rather signifying the start of a shared life.

For his part, Brad entered the 1977 Agreement purely out of marital obligation and social propriety, and to appease his new wife. In fact, Brad never intended to make Becky a joint tenant

on the deed for the Camp, in 1977 or thereafter. Brad had received the Camp as a gift from his parents, and he was concerned that his parents would be upset if he added Becky to the deed. Brad always intended to give the Camp to Lisa. Having his name added to Becky's Prospect Street Property was unimportant to him, and not worth bargaining for in exchange for joint tenancy of the Camp.

In 1978, Becky conveyed her Prospect Street Property to herself and Brad as joint tenants. Becky and Brad signed and filed, under penalties for false declaration of value, a Real Estate Transfer Tax Declaration ("RETTD") for the Prospect Street Property. The RETTD was prepared by an attorney representing both Becky and Brad. Section 8 of the RETTD is entitled "Consideration" and requires the parties to disclose the amount of the consideration provided for the transfer. The instructions for Section 8 are shown on the RETTD form and state, in relevant part, as follows: "Consideration meaning the total amount or price paid, or required to be paid, for real property valued in money, whether received in money or otherwise. . . ." Becky and Brad entered $0.00 in Section 8 as the consideration provided for the transfer.

Section 10 of the same RETTD form is entitled "Special Circumstances." It asks the parties: "Were there special circumstances in the transfer which suggest that the sale price of the property was either more or less than its fair market value (Such as the fact that the transfer was a forced sale, interfamily sale, intercorporate sale, gift, exchange, etc.)." Becky and Brad checked the box for "Yes." For Becky, the transfer demonstrated that they were a couple; she didn't gain anything out of it.

Despite the 1977 Agreement and despite Becky having added Brad to the Prospect Street Property as a joint tenant, Brad did not convey the camp to Becky and himself as joint tenants in 1978. Brad suggested, and Becky readily agreed, that transfer of the Camp into joint tenancy would

be delayed until the death of both of Brad's parents. Brad's father died in 1984 and his mother died in 1989. Even after their deaths, however, Brad still did not transfer the Camp into joint tenancy with Becky and himself and Becky did not pressure or ask him to do so.

Brad's daughter Lisa married her husband Michael Yorke in the early 1980s and they began having children in 1984. Lisa's Aunt Annette owned the cottage to the south of the Camp (the "Grey Camp"), which now belongs to Lisa and Michael, and they also bought the plot to the north of the Camp in 2011 (the "Yorke Camp"). Lisa and Michael, along with family including Brad and Becky, Brad's parents, and Lisa's siblings, frequently visited the Camp during the spring, summer, and fall. Lisa feels a strong personal connection to the Camp. She spent her childhood weekends at the Camp and throughout the mid-1980s and onward she and Michael were the Camp's primary users. They brought their children and often stayed overnight. There was no need for anyone to "ask permission" to use the Camp; rather, Lisa called her father only to check if he or someone else was already planning on using it at a given time, as it is too small to accommodate multiple families. After Brad's mother died in 1989, he and Becky began visiting the Camp less often and no longer spent the night there. Lisa's siblings Hillary and Matthew continued to visit regularly until they were grown and moved away from the area. Hillary lived at the camp for a summer before moving away for a number of years, and Matthew spent approximately two months living there in the fall one year.

Years later, by deed dated June 5, 2005, Brad gave a deed to the Camp to Lisa (the "2005 Deed"). The 2005 Deed was Brad's idea, and he took the initiative to contact a lawyer and make it happen. In a letter accompanying the 2005 Deed, Brad wrote:

> I have always wanted you to have this property and look forward to seeing you enjoy this property during my lifetime. I do acknowledge that I have mentioned this property in the latest version of my Will and left it to my dear wife, Rebecca, but I have always intended it to go to you for you and your family. I intend for this to be

> an immediate transfer of this property, whether you decide to record it or not. I hope that you will enjoy this property as you always have and will have peace of mind that it is now yours.

The Court finds the sentiments expressed in the letter are authentic and reflect Brad's real desires.

Brad did not tell Becky about giving the 2005 Deed to Lisa. Becky was a domineering person, and Brad did not like to confront her. At times Brad was unhappy in the marriage. Lisa did not contemporaneously record the 2005 Deed because Brad did not want Becky to know about it at the time. Lisa also did not directly tell Becky about the 2005 Deed because she did not believe it was her place to do so. Further, Lisa was intimidated by and a little frightened of Becky.

However, Lisa and Michael made no secret of Lisa's ownership of the Camp. They told their friends, family, and neighbors—groups which frequently overlap in their close-knit community—about Lisa's new ownership. Michael openly discussed Lisa's ownership with clients at his business, where Lisa's stepbrother Matthew worked. Matthew overheard the comments and directly questioned Becky about the Camp's ownership based on what he heard at work. Lisa and Michael no longer checked in with Brad to see if the Camp was available. Brad and Becky rarely used the Camp at this point and other family members, such as Lisa's siblings, also ceased staying at the Camp. Michael began putting in significant sweat equity on behalf of himself and Lisa. Michael built a well-house between the Camp and the neighboring Grey Camp, and renovated the wharf over the course of 2011 to 2016. Michael explicitly claimed ownership of the Camp in Lisa's name when acquiring the permits necessary for the wharf from the West Bath Code Enforcement Officer in 2014. Michael's improvements to the Camp were apparent to any visitor, including Becky. Lisa and Michael paid the taxes and insurance by writing checks to Brad in the requisite amounts, and Michael moved into the Camp full-time in 2015. As the years went on and Becky's visits became less frequent, Lisa discarded clothes, pieces of furniture, and other

items Becky had stored at the Camp. Becky did visit the Camp on occasion between 2005 and Brad's death in 2016, and she observed the substantial renovations undertaken by Lisa and Michael. Becky also noticed that Lisa and Michael had discarded items Becky had left at the Camp.

By 2015, Brad was suffering from cancer. Becky acted as his primary caregiver, making all his appointments and generally overseeing his day-to-day life as necessary. As Brad's health declined, Becky became increasingly influential, and by 2016 Brad was fully dependent on her. In May of 2016, Becky contacted attorney John Voorhees, whom she personally knew and with whom she had previously worked. She told Voorhees that Brad was having serious medical problems, and that she needed a Power of Attorney right away. Brad's mental health was also deteriorating. Becky told Voorhees that they needed to tidy up some estate documents. Shortly after the phone call, Brad stopped by to sign the POA, which he and Becky took with them to a hospital in Boston.

Becky then set up a meeting with Voorhees to execute final estate documents. Becky never told Brad that she already knew Voorhees and that she had a prior working relationship with Voorhees. Voorhees did not have any discussions with Brad about the meeting or the documents to be signed. The meeting occurred on June 27, 2016, in Voorhees' office. In advance of the meeting, one of the documents Voorhees prepared was a deed transferring the Camp to Brad and Becky as joint tenants (the "2016 Deed"). Prior to the meeting, Voorhees did not discuss the Camp with Brad, or what Brad wanted to do with the Camp. The Camp was Brad's most significant asset. Voorhees, who had a personal connection with Becky, did not advise Brad, whose health was rapidly deteriorating and with whom he had no such personal connection, to consider independent counsel before executing this substantial transfer. Voorhees took his directions from Becky. For her part, Becky never mentioned the 1977 Agreement to Voorhees.

At the meeting on June 27, 2016, Voorhees and Becky presented Brad with several documents to sign, including the 2016 Deed. Voorhees explained the documents and went over the 2016 Deed with Brad and Becky. But Voorhees did not discuss the 2016 Deed with Brad outside of Becky's presence. He did not explain the tax consequences of transferring the Camp by deed as compared to a devise in Brad's will. Voorhees pointedly did not ask Brad if Lisa was left out of his will because she already had the Camp. Brad had no notice that he was going to be asked to sign the 2016 Deed. Brad had no desire to confront Becky over the Camp at this point, as he believed it had already been successfully transferred to Lisa in any case. With Becky and Voorhees looming over him, he signed the documents.

Two days later, on June 29, 2016 Voorhees had the 2016 Deed recorded in the Registry of Deeds. Becky and Brad also signed (under penalties for false declaration of value) and filed a RETTD prepared by Voorhees. Section 6 of the RETTD is entitled "Transfer Tax" and requires the parties to disclose the purchase price for the transfer. Section 6(a) states: "Purchase Price (If the transfer is a gift, enter "0"). The purchase price listed on the RETTD in 2016, just as that in 1978, was 0.00. In Section 9, which asks whether there are "special circumstances" around the transfer, neither the "Yes" nor "No" box are checked, though the following is written: "Transfer of property to husband and wife as joint tenants."

On July 15, 2016, having learned of the 2016 Deed, Lisa recorded the 2005 Deed in the Registry of Deeds along with the letter from Brad indicating he had always intended the Camp to be hers. On August 15, 2016, Brad signed an affidavit, developed by Lisa and Michael based on independent legal research, stating that he wished to rescind the 2016 Deed as he had been subjected to "undue influence" in its signing. Brad affirmed that "the only valid deed" to the Camp

was the 2005 Deed to Lisa and that that transfer was the only one he ever intended. The Court finds the affidavit expresses Brad's authentic sentiments and desires.

A week later, on August 21, 2016, Brad died. At the time of his death, he was 82 years old, and Becky was 67 years old. Lisa had no notice or knowledge of the 1977 Agreement until after Brad's death. After Brad died, Becky dropped the name Belanger, changed her surname back to Williams, and wouldn't let Lisa know where she lived. Becky wanted nothing to do with the family.

## CONCLUSIONS OF LAW

Becky and Lisa each seek a declaratory judgment under 14 M.R.S. §§ 5951 et seq. that each respectively holds a valid fee title interest in the Camp and that the other holds no title interest in the Camp.[1] Since Becky recorded her deed first, the question presented is whether Becky is a bona fide purchaser for purposes of Maine's Recording Act.

### Bona Fide Purchaser Status

Under the Maine Recording Act, 33 M.R.S. § 201, "[c]onveyances of the right, title or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title." However, the protection of the Recording Act is limited to bona fide purchasers. *Haden v. Russell*, 119 Me. 38, 39-40, 109 A. 485, 485-86 (1920); *Veneziano v. Spickler*, SAG-RE-07-006 (Me. Sup. Ct. Jan. 6, 2009) (J. Horton), *aff'd on other grounds, Spickler v. Ginn*, 2012 ME 46, 40 A.3d 999; *see also Eastwood v. Shedd*, 166 Colo. 136, 138-39, 442 P.2d 423, 425 (1968) (summarizing the "bona fide purchaser" rule followed by a

[1] Becky also asserts claims for trespass and slander of title, and seeks a permanent injunction preventing further trespass on the Camp. These claims are all dependent on a finding for Becky on her first claim, that the Camp belongs to her. This Court finds that Becky does not hold any title to the Camp and as such Becky's other claims necessarily fail because she has no legal right to assert them. Lisa also asserts other claims, which will be addressed in due course.

majority of states). In order for Becky to qualify as a bona fide purchaser, (i) the 1977 Agreement must have been supported by consideration, and (ii) Becky must have lacked notice of the 2005 Deed to Lisa. *See Hanscom v. Bourne*, 133 Me. 304, 312, 177 A. 187, 190-91 (1935); 18-A M.R.S. § 2-203(3). Here, Becky is unable to satisfy either prong of the bona fide purchaser test.

*i. Consideration*

On remand the Law Court has provided explicit guidance on how to evaluate the presence or absence of consideration in this case. First, the relevant time period is 1977. *Belanger v. Yorke*, 2020 ME 24, ¶ 21, 226 A.3d 215 (citing Restatement (Second) of Contracts §§ 71, 86 & cmt. a (Am. Law Inst. 1981)).

> In other words, if in 1977 both [Becky] and Brad considered that [Becky's] transfer of the Prospect Street Property was "in exchange for" Brad's transfer of the Camp – whenever those transfers might take place – then Brad's 2016 deed to [Becky] was supported by consideration for purposes of the bona fide purchaser protections; [Becky] was not required to provide any additional consideration in 2016. Brad's intention in 2016 is therefore irrelevant except to the extent that it sheds any light on what his understanding was in 1977 . . . ."

*Id*. Mutual promises to convey property interests to one another may constitute sufficient consideration for purposes of determining whether someone is a bona fide purchaser. *Id.* ¶ 25 (quoting Restatement (Second) of Contracts § 75, cmt. a ("In modern times the enforcement of bargains is not limited to those partly completed, but is extended to the wholly executory exchange for promise.")). A performance or return promise must be bargained for to constitute consideration. *Id.* (citing Restatement (Second) of Contracts § 71(1)). A return promise is bargained for "if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise." Restatement (Second) of Contracts § 71(2). Both parties' intentions, as objectively manifested, are relevant to the bargain. *Id.* § 71 cmt. b; *Laflamme v. Hoffman*, 148 Me. 444, 450-51, 95 A.2d 802 (1953). "Inducing the other person's promise need not be the primary or

substantial motive for the action constituting consideration (whether promise or performance); likewise, a promise induced by the promise constituting consideration need not be primarily motivated by it." *Belanger*, 2020 ME 24, ¶ 26 (internal citations omitted). "[L]ove and affection" can be the primary motivation for an agreement, e.g. to convey property, and the promises to convey that property will still constitute consideration so long as the promise was meant in some capacity, even secondary or tertiary, to induce a return promise. *Id.*

However, the parties' use of the word "agreement" does not resolve the question. *Id.* ¶ 31. The word "agreement" does not imply, by itself, that both promises are supported by consideration. *Id.* The question remains whether Brad and Becky's "mutual promises were either a quid pro quo (and thus consideration for each other) or a matter of marital obligation or perceived social propriety (and thus not consideration)."

> Thus, two facts must be found to be true in order for Brad's 2016 deed to [Becky] to have been supported by consideration: (1) [Becky] must have made her 1977 promise or her 1978 conveyance in exchange for Brad's promise to convey his property, and (2) Brad must have intended for his reciprocal 1977 promise to convey his property to induce [Becky]'s promise to convey hers." Brad's intent at that time may be discerned by evidence of his statements and actions in 1977 as well as his actions related to that alleged promise thereafter. If either Brad or [Becky] viewed the 1977 agreement exclusively as a mutual exchange of gifts, rather than as "bargained-for" exchange (at least in part), then neither [Becky's] promise to convey her property nor her performance of that promise in 1978 can constitute consideration for purposes of rendering her a bona fide purchaser of Brad's property.

*Id.* ¶ 27. There is no *per se* rule for establishing a presumption of a bargained-for exchange, as opposed to a gift, in reciprocal property transfers in the context of marriage, family relationships, and friendships, where "the motives behind a mutual exchange are more complex and more difficult to determine" than in an arms-length business transaction. *Id.* ¶ 28.

Here, neither Becky's 1977 promise nor her 1978 deed was in exchange for Brad's promise to convey the Camp to her. The exclusive purpose behind Becky's actions in 1977 and 1978 was

to provide a gift to her new husband and to help solidify their marital relations, and this is not consideration. She testified in her deposition that her 1978 transfer of the Prospect Street Property "made a couple" and that she "didn't gain anything . . . when [she] put his name on [her] house, and he didn't gain anything when he put [her] name on his cottage" in 2016. Ultimately, her promise and deed were not connected to Brad's deeding of the Camp. There was no trace of quid pro quo whatsoever. This is amply demonstrated by the total lack of action on the point by Becky in the many years following her transfer to Brad. She did not insist he reciprocate when they made the original 1977 Agreement, she did not insist he reciprocate when she actually transferred the Prospect Street Property in 1978, and she did not insist he reciprocate when his parents died in 1984 and in 1989. Becky let the matter drop entirely—it simply was of no concern to her.

Likewise, Brad did not make his promise to Becky in 1977 in exchange for her return promise. He entered the original 1977 Agreement, such as it was, to placate his new wife, knowing he had no intention and was under no obligation to follow through. His promise was inherently empty; his actions over the subsequent forty years prove that at no point—including in 1977—did he ever plan to transfer ownership of the Camp to Becky in any capacity, either in exchange for joint ownership of the Prospect Street Property or even simply out of love and affection. Over the course of four decades of marriage and up until the very day of his death, Brad never took any initiative to transfer the Camp to Becky. His 1978 assuagement that he would wait until after his mother and father's deaths to transfer the property was just that—assuagement. The pressure from his parents to keep the Camp in the family prevented him from entering a joint tenancy with Becky both during and after his parents' lifetimes. Even after signing the 2005 Deed into Lisa, thereby keeping the Camp in the family as he had always intended, Brad declined to confront Becky, preferring to avoid conflict over the matter.

Significantly, the 2005 Deed was drawn up and signed of Brad's own initiative, indicating it was the fulfillment of his intent. In contrast, the 2016 Deed was Becky's doing without any input from Brad. He had no pre-meeting with Voorhees about the transfer and never had the chance to consult independent counsel. Becky hired the lawyer, Becky arranged the meetings, and Becky placed a stack of finalized estate planning documents in front of Brad to sign. He was unaware of the existence of the 2016 Deed until it was on the table before him and a pen had been placed in his hand. At that moment, weeks away from his death, Brad again chose to avoid confrontation and signed the futile deed.

As discussed, that their mutual promises in 1977 are now termed an agreement "does not resolve the question." *Belanger*, 2020 ME 24, ¶ 31. "In this context . . . the word 'agreement' does not imply, by itself, that both promises are supported by consideration . . . . [T]here exist some 'agreements which are not contracts, such as transactions where one party makes a promise and the other gives something in exchange which is not consideration.'" *Id.* (quoting Restatement (Second) of Contracts § 3 cmts. a, c). In many exchanges of presents or favors between spouses or friends, even where there is an "agreement" to make the exchange, "there is no element, even minor, of quid pro quo or bargain." *Id.* Such is the case here. At no point did Becky mention the 1977 Agreement to anyone, including her own lawyer, before or during estate planning. Only after Becky had commenced litigation forty years later did Brad and Becky's casual pact, founded on social propriety and domestic relations, begin to be referred to as a capitalized "Agreement." Brad and Becky's arrangement in 1977 was not a bargained-for exchange, has no more legal significance than a couple's practice of exchanging anniversary gifts, and does not constitute consideration for purposes of Maine's Recording Act.

*ii. Notice*

Becky also fails the Recording Act's requirement that she not have actual notice of the prior transfer into Lisa. 33 M.R.S. § 201 ("No conveyance of an estate in fee simple. . . is effectual against any person except the grantor, his heirs and devisees, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds.") Actual notice is not synonymous with actual knowledge; actual notice may be implied when "one who is put on a trail is in duty bound to seek to know, even though the track or scent lead to knowledge of unpleasant and unwelcome facts." *Gagner v. Kittery Water Dist.*, 383 A.2d 206, 207 (Me. 1978) (quoting *Hopkins v. McCarthy*, 121 Me. 27, 29, 115 A. 513, 515 (1921)). Though Lisa did not record the 2005 Deed, she and Michael did not keep their ownership secret. They made extensive use of the Camp and made substantial, visible repairs to the property. Becky saw their work and knew of their control over the Camp. They told essentially everyone except Becky (directly) about the transfer. However, Becky's son Matthew conveyed to Becky the comments Michael made about Lisa owning the Camp. Given the evident nature of Lisa and Michael's use of the Camp, the widespread knowledge that Lisa held title from 2005, and her son's questioning, Becky was on implied actual notice that the Camp's title had been transferred to Lisa.

For both of these reasons—lack of consideration and notice—Becky is not a bona fide purchaser of the Camp, and the recording of the 2016 Deed is not entitled to the protection of the Recording Act. Lisa has the right, title and interest in the Camp. Declaratory judgment for ownership of the Camp is entered in favor of Lisa and against Becky.

Undue Influence

The Improvident Transfers of Title Act, 33 M.R.S. § 1021 et seq., provides a rebuttable presumption of undue influence in any transfer of real estate for less than full consideration by an elderly person who is dependent on others to a person with whom the elderly person has a

confidential or fiduciary relationship unless said elderly person was represented by independent counsel. "Dependent" means wholly or partially and emotionally or physically dependent on another for care or support and "elderly" means 60 years of age or older. 33 M.R.S. § 1021. Only the elderly dependent person, his or her legal representative, or the personal representative of a decedent's estate has standing to bring a claim under this Act. *Id.* § 1023(1); *Estate of Anne C. Conman v. Straus*, No. CV-97-637, 1999 Me. Super. LEXIS 232 at *2 (Me. Super. Ct. August 18, 1999) (holding that relatives and prospective heirs of elderly person have no standing to sue under Improvident Transfer Act); *cf. Estate of Miller*, 2008 ME 176, ¶ 25 n.5, 960 A.2d 1140 (noting that Maine Legislature in 2003 expanded standing to personal representative of decedent's estate).

But for the standing issue, the circumstances of the transfer of the Camp by Brad into joint tenancy with Becky would fall under the Improvident Transfers of Title Act. Brad was 82 years old at the time he signed the 2016 Deed. He was wholly dependent on Becky due to his age and illness. He had a confidential and fiduciary relationship with Becky as his wife and caregiver. He transferred title in real estate to her for, as discussed above, zero consideration, and was categorically not represented by independent counsel. The sole reason Becky escapes the burden of proof imposed by the Act is that Lisa, as a devisee, lacks standing to press this statutory claim. *See* 33 M.R.S. § 1023(1); *Estate of Anne C. Conman*, 1999 Me. Super. LEXIS 232 at *2.

However, heirs or devisees may still bring a common law claim of undue influence. *Estate of Sylvester v. Benjamin*, 2001 ME 48, ¶ 18, 767 A.2d 297, *superseded by statute on other grounds*, 33 M.R.S. § 1023(1). Common law undue influence claims seek to avoid transfers which were the product of such influence. *Ruebsamen v. Maddocks*, 340 A.2d 31, 34-38 (Me. 1975), *superseded on other grounds*, Me. R. Evid. 301. Undue influence exists where there is "unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the

relation[ship] between them is justified in assuming that that person will not act in a manner inconsistent with his welfare." *Theriault v. Burnham*, 2010 ME 82, ¶ 6, 2 A.3d 324 (quoting *DesMarais v. Desjardins*, 664 A.2d 840, 843 (Me. 1995)). Undue influence "may be presumed if the plaintiff shows by a preponderance of the evidence that a confidential relationship existed between the defendant and the decedent." *Id.*; *Ruebsamen*, 340 A.2d at 34, 36-37. A confidential relationship exists where one individual "placed trust and confidence in the [accused party] and there was a great disparity of position and influence in the relationship." *Theriault*, 2010 ME at ¶ 6.

The evidence produced at trial supports a finding that Becky abused her confidential relationship with Brad and exerted undue influence over him, meaning that even aside from the question of Becky's bona fide purchaser status, the transfer in the 2016 Deed must be avoided. Becky, as caretaker, was in complete control of Brad in the last two years of his life. She was his wife of forty years and Brad was fully justified in believing she would act in his best interests, meaning she and Brad were in a confidential relationship. Brad had little choice but to place his trust and confidence in Becky both to manage his day-to-day affairs and to arrange his estate. Becky's influence was particularly strong in the estate-planning sphere, as she is the one who had a personal connection to their attorney, Voorhees, and she is the only one who ever spoke with him individually. In effect, she was the only spouse represented by counsel. Becky, with Voorhees' aid, made all the decisions regarding the finalizing of her and Brad's estate, including the decision to transfer Brad's family Camp to herself. This self-serving transfer was carried out by virtue of Becky's dominion over her ailing husband and is a picture of common law undue influence by abuse of a confidential relationship.

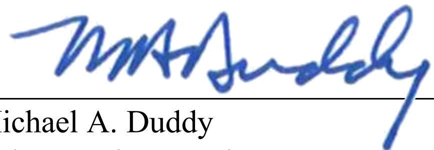
## CONCLUSION

For all the reasons stated above, judgment is granted in favor of Defendant Lisa Yorke on all Counts of the Complaint, and on Counts I and II of the Counterclaim. Count III of the Counterclaim is denied as moot. There were real disputes as to all issues, the litigation was handled responsibly by both sides, and thus the Court declines to award attorney's fees to either party. Each party is responsible for its own costs.

SO ORDERED.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this order by reference on the docket for this case.

Dated: **11/18/2021**



Michael A. Duddy
Judge, Business and Consumer Court

Entered on the docket: 11/19/2021