

The court thanks counsel for their professionalism at trial and throughout the course of this contentious and difficult case. The matter is now in order for decision.

II. Theories of Recovery

Plaintiff's primary claim is that the real estate transaction and accompanying transfer of personal property were improvident transfers of title as defined in 33 M.R.S. Ch. 20. He argues, in statutory terms, that he was elderly, dependant, had a confidential relationship with the Defendants, and lacked independent counsel when he conveyed his real estate and made a major transfer of his personal property, all for less than full consideration, to them. He therefore claims he has established a presumption of undue influence under 33 M.R.S. § 1022(1) and is entitled to avoid the transaction under that subsection. He seeks rescission or other relief as authorized by 33 M.R.S. § 1023(2).

In a second, closely related, claim, Plaintiff seeks relief for abuse of a confidential relationship. "Confidential relationship" is defined in Moulton v. Moulton, 1998 ME 31, ¶ 5, 707 A.2d 74, as "...the actual placing of trust and confidence in fact by one party in another and a great disparity of position and influence between the parties to the relation."

Finally, Plaintiff seeks recovery for unjust enrichment. His claim is that he conferred a benefit in the form of real estate equity and the value of personal property, all in excess of \$30,000, for no consideration, such that it would be inequitable for Defendants to retain the property without payment for its value. See Forrest Associates v. Passamaquoddy Tribe, 2000 ME 195, ¶ 14, 760 A.2d 1041, 1045-46.

Defendants' counterclaims seek damages for two items, the first a defective septic system on the property they say Plaintiff certified to be in operating order, the second mold and other defects in the house itself for which they have incurred expense since they bought the property. As postured in the pleadings, the former counterclaim appears

to be based on alleged fraudulent inducement, the latter on an alleged abuse of a confidential relationship.

III. Discussion, Findings, and Conclusions

All of the events about which the court heard testimony were based on relationships within an extended family. Plaintiff claims in blunt terms that Defendants maneuvered him into a ruinous transaction and that their professions of affection and sorrow, and their tears at trial, were strategic rather than sincere. The court therefore begins by outlining evidence related to the extended family and relationships and conflicts within it. The court then reviews the transactions upon which Plaintiff's claims are based and analyzes them in terms of the legal standards for relief.

Plaintiff Leol Corson and his now-deceased wife, Constance, had five sons: Leonard, Jayson, Joseph, Matthew, and John. Leonard moved to Utah years ago and had 5 children, one of whom is Defendant Jill Beck. Jill is married to Defendant Jacob Beck. Jayson is married to Kerstin. Joseph is married to Lizzie. Matthew is married to Michelle. John was married but is now divorced.

The record offers information about the nature of some intra-family relationships. Plaintiff's son John lived with him and was close to him for years; it was John's sudden departure that triggered the family emergency out of which the real estate transaction arose. Plaintiff also appears to have had a good relationship with Joseph, who was incarcerated at the time of trial. Mr. Corson now lives with Jayson and Kerstin, who were central figures in the family events precipitating his departure from his house. Matthew was in communication with Defendants as they worked their way through the family dispute that followed Plaintiff's departure.

Plaintiff's sons provided him with a number of grandchildren, stepgrandchildren, and now-former stepgrandchildren. John's former stepson, Shane, and Shane's wife

Johnica, were for some time resident at Plaintiff's house. Although Defendant Jill Beck, now age 35, lived in Utah for most of her life and only saw Plaintiff on a few occasions before she and Jacob moved to Maine in May of 2016, Plaintiff testified he thought of her as his favorite grandchild. She, in turn, professed great affection and concern for her "Gramps."

Further findings about the complexity and variable qualities of the relationships outlined above, including specific incidents and concerns relevant to the court's analysis, are addressed below.

The critical events in this case began when Plaintiff asked John Corson to leave the residence. John, who is now 49 years old, had lived in the house his entire life. He provided personal care for his father, who in the fall of 2016 was 83 years old and suffered multiple challenges to his health and self care. These challenges included compromised hearing, blindness in one eye, insulin dependent diabetes, a history of surgical interventions with diabetes-related complications, and limited facility with cooking, all of which in combination would endanger him were he to live alone. John's care for his father included tasks made necessary by a surgical procedure, including bathing and wound care. John also helped with upkeep at the house, including painting; siding the north exterior wall; arranging for new floors, a ramp, and an entry door; and attempting to keep mold in the basement under control with bleach and moisture absorbing bags. When the events of this case arose, John was divorced and had been joined in the house by his brother Joseph and Joseph's wife. Plaintiff eventually became upset with John and asked him to leave and to take the others with him.

Earlier in the year, in May, 2016, Defendants had moved to Maine from their home in Utah. They stayed at a campground in Freeport and visited Plaintiff almost every weekend. After Plaintiff expelled John, Joseph, and Lizzie, he called Jill Beck to say he

was unable to pay his bills and he wanted Defendants to move in with him. Jill noted that Plaintiff was upset when he called, so she followed up by speaking with John. John reported he could not take any more, that living with Plaintiff was "too hard," and that Plaintiff was "a mean SOB like his father." Joe and Lizzie, listening in on speaker phone, confirmed John's report.

This upheaval in Plaintiff's life precipitated a family meeting about two weeks later. Jayson and Kerstin Corson and their children, Matthew Corson, and Defendants all went to Plaintiff's house to discuss ensuring his care. Plaintiff was visibly stressed. He insisted he could not pay his bills. Defendants offered to come stay with him on weekends. The possibility of a reverse mortgage was discussed.

Following this meeting, Plaintiff went to see Attorney James W. Gallagher, Jr., who had provided legal services to him for more than 40 years. Jacob attended the meeting. Afterwards, Jacob and Jill discussed strategies for intervening, including buying Plaintiff's house and assuming the mortgage debt. They presented this idea at another family meeting that was attended by Jayson and Kerstin; further, they consulted with Matthew and with Jill's father Leonard. No one had a better idea for leveraging Plaintiff's assets to care for him.

At this point, the parties began a complicated and murky transaction. After Plaintiff consulted with him, Mr. Gallagher communicated with Defendants about their potential purchase of the property. Notwithstanding Attorney Gallagher's involvement, Jacob downloaded a Purchase and Sale agreement from the internet and filled it in, by hand, in the presence of Plaintiff and Jayson. (Pl. Ex. 1.) The agreement called for Defendants to purchase the real estate for \$105,000, the exact amount Plaintiff owed on his mortgage. It also conveyed the "garage, all outbuildings, all content [*sic*] within home and on the property." (*Id.*) Leaving aside the value of the personal property (addressed

below), the purchase price was substantially less than the value of the real estate. Jill testified that Defendants wanted to pay more for the property, to assist with credit card and utility debt, but did not do so in order to move quickly and diminish closing costs. She also testified that the provision conveying personal property was to prevent others, primarily Jayson and Kerstin, from taking it. As with every element in the transaction, this decision was discussed with others—in this instance with Matthew, Leonard, John, and Joseph.

Defendants intended to move in with Plaintiff but their plan changed after the closing, when Jayson and Kerstin said they wanted to move to Plaintiff's home in Bristol from their current residence in Howland so they could be nearer to their child and grandchild. Jayson and Kerstin were adamant and Plaintiff approved of their plan. Defendants acquiesced in this change in arrangements and assisted Jayson and Kerstin in their move. The plan as it developed was for Jayson and Kerstin to move out of Plaintiff's residence in November of 2017 and for Defendants then to move in with Plaintiff. (The timing of the foregoing negotiations calls into question Defendants' claim that they included Plaintiff's personal property in the purchase and sale agreement to avoid Jayson and Kerstin taking it, because Jayson and Kerstin's desire to join Plaintiff in his house did not surface until after the closing.)

The closing took place on December 19, 2016. At the closing, the remaining critical documents in the transaction were signed: a warranty deed (Pl. Ex. 2.) and a "Living Arrangement Agreement." (Pl. Ex. 3.) The latter document, prepared by Attorney Gallagher, loosely required Defendants to care for Plaintiff and assigned Mr. Corson a continuing responsibility for his personal expenses. In the body of the document, the agreement is described as "the equivalent of a 'support mortgage.'" It included a

provision that the Living Arrangement Agreement not be recorded, so as not to interfere with Defendants' financing of their purchase.

After Jayson and Kerstin moved into Plaintiff's house, they provided him with assistance while Defendants paid the mortgage. For reasons no party could articulate, Defendants' relations with Jayson and Kerstin deteriorated in the late summer of 2017. This caused Defendants to make two moves that escalated tension and resulted in this civil action. First, fearing Jayson and Kerstin would not vacate as agreed, Defendants had them served with a notice to quit. Second, they informed Plaintiff that in accordance with the Living Arrangement Agreement he would have to pay his expenses. Plaintiff apparently had not understood this provision of the contract at the outset or had later forgotten its inclusion. His testimony suggests he did not distinguish among the expenses assigned to him in the agreement (primarily utilities), those Defendants retained (their mortgage), and those unaddressed in the agreement (e.g. groceries for all the parties). Plaintiff mistakenly concluded he was being told to pay every household expense. He became upset, decided he had been betrayed, and moved out with Jayson and Kerstin. Plaintiff bought a mobile home in which the three of them continue to live.

The fairly straightforward narrative above does not include the many complicating factors, unnecessary to list completely, that bear on the parties' motivations and credibility. One factor that must be mentioned is the agreement to convey Plaintiff's personal property. As noted above, Defendants' rationale for including that provision in the uncounselled purchase and sale agreement did not make sense; when the document was signed, Jayson and Kerstin had not stated their desire to move into the house and Defendants had no reason to be suspicious of them. Another factor to note is Defendants' surrender to Plaintiff, notwithstanding the terms of the agreement, of every item of personal property he wished to take with him; another their tenacious negotiations to

keep other personal property; another their Ebay sales of magazines and LP's that were worth more to Plaintiff in sentiment than to anyone else in money; yet another their acknowledgement at trial that the purchase and sale agreement had effected no actual conveyance of Plaintiff's personal property; further, and most startlingly, Jill Beck's possession of a handgun at the time Jayson and Kerstin moved out. All of these are indicative of tangled motivations and deep family conflicts that were not fully explored at trial notwithstanding the extensive evidence actually presented.

A. Improvident Transfers of Title Act (Count I)

In evaluating the legal consequences of these events, the court begins with the statute, 33 M.R.S. § 1022(1), which states the following . . .

In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024.

Id. The evidence establishes Plaintiff was elderly and the court concludes he was dependent (albeit not helpless). The court also concludes that the conveyance was to persons with whom he had a confidential or fiduciary relationship. See 33 M.R.S. § 1022(2)(A). The less obvious question is whether the conveyance was for less than full consideration. The purchase of the real estate for the amount remaining on the mortgage rather than the appraised value was by itself not for full consideration. Had it actually been conveyed, the inclusion of personal property would have aggravated the imbalance. The critical question is whether the transaction as a whole offered Plaintiff full consideration for what he actually conveyed.

That inquiry must focus on the Living Arrangement Agreement (LAA), which according to the text of the document was intended to be the equivalent of a support mortgage. Support mortgages are recognized in the law. *See e.g. Thompson v. Glidden*, 445 A.2d 676, 678 (Me. 1982). A “support mortgage” is an arrangement in which an elderly infirm person conveys property to a caregiver in exchange for the caregiver’s promises to provide support and care for the elderly infirm person. *See Id.* The court concludes this contract, though inartfully phrased, clearly required valuable services of Defendants in return for their realization of equity in the real estate beyond the mortgage debt they assumed. It thus constituted a support mortgage. Further confirming that the LAA was integral to the transaction, it was explicitly included in the real estate closing in order to provide Plaintiff with peace of mind. After the transaction was complete, Defendants’ ability to provide the required services was frustrated by Plaintiff’s decision to leave the house rather than by their expulsion of him.

Whether the value of the services called for in the LAA was adequate to provide full consideration requires determination of both the equity in the real estate (value in excess of the mortgage balance) and of the services to be provided. As to the former, there was conflicting testimony from appraisers. The average of the opinions admitted into evidence was \$137,000, the highest \$145,000. As to the latter, there was no direct testimony. Valuation is further complicated by testimony that fulfillment of the LAA might have resulted in a penalty imposed by DHHS.

It is Plaintiff’s burden to prove that the value of the LAA was less than the equity in the house. *See* 33 M.R.S. § 1022 (the elderly dependent person bears the burden of establishing a presumption of undue influence by a preponderance of the evidence). The inequality in value that Plaintiff argues is not self evident; depending on how long he was able to live in his house with assistance (more than two years have passed since the

transaction), and on the monetary value of the services, the transaction might have proved financially advantageous to Plaintiff. The court cannot conclude otherwise in the absence of a professional estimate or some type of market analysis of the value of the services Plaintiff was to receive. Based on the foregoing, Plaintiff has not proved he is entitled to avoid his conveyance of his property under 33 M.R.S. § 1022(1) and the relief set forth in the statute.

An alternative basis for the court's conclusion is found in its analysis of Count II below. Although Plaintiff was not represented by independent counsel, the circumstances of the transaction, taken as a whole, rebut a possible finding of undue influence.

B. Abuse of Confidential Relationship (Count II)

Plaintiff's second theory of recovery is that Defendants abused their confidential relationship with Plaintiff and thus breached their fiduciary duty to him. When parties in a confidential relationship engage in a transaction that creates a benefit to the superior party, a presumption of undue influence arises and the burden shifts to the superior party (i.e. the benefitted party) to demonstrate affirmatively that the transaction was "entirely fair and that it was not affected by undue influence." Albert v. Albert, 2015 ME 5, ¶¶ 8-9, 108 A.3d 388; Ruebsamen v. Maddocks, 340 A.2d 31, 35 (Me. 1975). If the Court determines that Defendants abused this confidential relationship the court will impose a constructive trust on the property to prevent unjust enrichment. Estate of Campbell, 704 A.2d 329, 330-331 (Me. 1997). The court's finding that a confidential relationship existed between Defendants and Plaintiff in the context of Plaintiff's statutory claim is equally valid with respect to Count II. Defendants having received a benefit from this relationship, the burden shifts to them to demonstrate that the transaction was entirely fair and free of undue influence. *Id.*

Because the court found the transaction was not an improvident transfer under the statute, it did not analyze whether Plaintiff had independent counsel. (Had Plaintiff succeeded in establishing the presumption of undue influence under 33 M.R.S. § 1022, he would have been entitled to avoid the transfer under that statute. *Id.* (if the defendant does not rebut the presumption of undue influence by showing that the elderly dependent person was represented by independent counsel the elderly person may avoid the transfer.)) Attorney Gallagher's involvement is nonetheless critical to the court's evaluation of this common law claim. Although the parties' arguments concerning Mr. Gallagher's involvement were framed in terms of the statutory claim, their factual arguments are easily transferable to Count II.

Mr. Corson contends Mr. Gallagher did not act as his "independent counsel." The record includes evidence in support—primarily Mr. Gallagher's direct denial of having done so. Attorney Gallagher testified instead that he had represented all parties in the real estate transaction and, afterwards, had tried to assist all of them in working out the complications that arose. No party signed a representation letter related to the transaction, and Mr. Gallagher never spelled out in writing what he was doing and for whom. A further complicating factor is that the initial critical transaction, the purchase and sale agreement for the real estate, was pulled off the internet by Jacob Beck and signed by all parties before it was presented to Mr. Gallagher for his assistance in closing.

Other evidence in the record, however, would support the opposite finding. Mr. Gallagher and Mr. Corson had enjoyed a long professional relationship, while the Becks had never hired Mr. Gallagher for any professional service. Mr. Gallagher was involved in negotiations before the purchase and sale agreement was signed and, in a series of communications, appeared unambiguously to be acting on Mr. Corson's behalf. *See* (Pl. Ex. 21.) Once the closing was complete and the relations between the parties had

fractured, Mr. Gallagher acted once again as Mr. Corson's advocate. All of this suggests, in the absence of a dual representation letter, that Mr. Gallagher was acting as Mr. Corson's lawyer.

Based on all the foregoing, and viewing the record as a whole, the court concludes that Mr. Gallagher was not acting as "independent counsel" for Mr. Corson in this transaction, as that term is used in the statute, but his undefined participation in the transaction supports the conclusion that the transaction itself was fair. Even though the court believes he tried to advise all parties, testimony at trial from all interested parties and written contemporaneous communications make it clear Mr. Gallagher was looking out for Mr. Corson's interests and would have spoken up had he felt the need. Further, although the purchase and sale agreement imposed a legal obligation on Mr. Corson to follow through with the sale, it did not itself conclude the transaction. Had Mr. Gallagher concluded the overall agreement was detrimental to Mr. Corson, Plaintiff would have had recourse before legal title to his property was transferred to the Becks. 14 *Powell on Real Property* § 81.01 (2020) (after execution of a contract for sale of real estate, the purchaser acquires equitable title to the real estate but the seller retains legal title until seller is obligated under the contract to delivery the deed transferring title to the real estate); See Thompson v. Skowhegan Sav. Bank, 433 A.2d 434, 436-437 (Me. 1981) (after execution of a land sale contract the seller retains legal title while the purchaser gains equitable title). The purchase and sale agreement in this transaction provided that the parties agreed to tender performance (Plaintiff would deliver the deed and Defendants would pay the purchase price and execute all necessary papers) on December 31, 2016. (Pl.'s Ex. 1.) Before Mr. Corson's obligation to delivery legal title to the property became due, Mr. Gallagher could have sought a modification to the terms of the real estate

transaction, which in fact Mr. Gallagher did: he negotiated the addition of the Living Arrangement Agreement as part of the consideration for this real estate transaction.

Third and more generally, Mr. Gallagher's involvement belies Plaintiff's argument that the entire arrangement was a calculated swindle by Defendants. This was not a situation in which Defendants were attempting to exploit Plaintiff's vulnerable condition through their relationship with him in order to coax him into surrendering his house. This was not a secret, manipulative transaction. It took place under the scrutiny of a lawyer and multiple interested members of an extended family, all trying to solve a problem together. That everyone's efforts were eventually frustrated by family dynamics reinforces the conclusion that the transaction itself was informed, purposeful, and free of bad faith.

For the above reasons, the court concludes Defendants have rebutted the presumption of undue influence by demonstrating that the transaction was fair and free of undue influence. Defendants did not abuse their confidential relationship with Plaintiff. They entered into a fully informed, family-scrutinized transaction that did not work as planned due to decisions made after the fact.

C. Unjust Enrichment (Count III)

The decision in Count III similarly follows. Plaintiff did not confer a benefit on Defendants for no consideration. The consideration failed. Assuming for the sake of argument there was an overreach with respect to personal property, Plaintiff did not generate a record by which the court could calculate damages. Plaintiff retained most of his property, and Defendants acknowledge they never actually received legal title to any of it. Defendants' Ebay sales may in theory be legally actionable but they do not fall within the terms of unjust enrichment.

D. Defendants' Counterclaims

Turning to an evaluation of Defendants' counterclaims, the court finds the old septic system is leaking but still working, and the existence of mold was obvious to everyone who looked at the time of the transaction. These features of an old, marginally maintained house are not actionable.

IV. Conclusion and Entry of Judgment

With respect to Count I, the sale of Plaintiff's house to his granddaughter and her husband did not meet the definition of an improvident transfer under 33 M.R.S. § 1022. The court concludes that Defendants did not abuse a confidential relationship as alleged in Count II. Plaintiff failed to prove unjust enrichment in Count III. Defendants' actions after the transaction failed may support other theories of relief but do not meet the elements of this action. Finally, Defendants' counterclaims were not proved.


It is therefore ORDERED:

JUDGMENT shall enter in favor of Defendants on Counts I, II, and III of Plaintiff's Complaint; and

JUDGMENT shall enter in favor of Plaintiff on Counts I and II of Defendants' Counterclaim.

The Clerk may incorporate this Order upon the docket by reference.

Dated: March 20, 2020


The Hon. Bruce C. Mallonee
Justice, Maine Superior Court

Entered on the Docket: 3/23/2020