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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

CHRISTINA CAMACHO DORAME,)	Civil Action No. 92-1572
as Conservator for)	
the Estate of)	
FRANCISCO AGUON CAMACHO,)	
)	DECISION AND ORDER ON
Plaintiff,)	PLAINTIFF'S MOTION FOR
)	PARTIAL SUMMARY JUDGMENT
v.)	
)	
JOSE TERLAJE,)	
)	
Defendant.)	

This matter came before the Court on October 6, 1993, on Plaintiff's motion for partial summary judgment and Defendant's motion to dismiss. At the hearing, the Court denied Defendant's motion to dismiss Plaintiff's First and Second Causes of Action, but granted the motion to dismiss Plaintiff's Third Cause of Action. Plaintiff's motion for partial summary judgment was taken under advisement.

I. FACTS

Plaintiff Christina Dorame has brought this suit as conservator of the estate of Francisco Camacho, an allegedly incompetent 38-year-old adult. Both Ms. Dorame and Mr. Camacho

1 live in California. Dorame has obtained letters of limited
2 conservatorship over Camacho's person and estate in California,
3 see *Plaintiff's Exhibit B*, and at the October 6, 1993 this Court
4 recognized Dorame's conservatorship for the limited purposes of
5 this suit. Plaintiff's evidence describes Mr. Camacho as "a
6 gentleman functioning at the upper end of the mild range of mental
7 retardation." *Plaintiff's Exhibit A*. He has lived with Ms.
8 Dorame, his sister, since 1989.

9 Prior to 1989, Mr. Camacho lived in the household of
10 Defendant Jose Terlaje, who is a resident of Saipan. Camacho
11 lived with Terlaje and his family from the time Camacho was ten
12 years old. According to deposition testimony, Mr. Camacho called
13 Mr. Terlaje "father." *Deposition of Jose Terlaje*, at 49:20-25.
14 Mr. Terlaje likewise considered Mr. Camacho as "my son." *Id.*
15 According to Mr. Terlaje, Mr. Camacho's schooling ended before the
16 age of ten. Mr. Terlaje described Mr. Camacho as "a good kid
17 [who] follows," *Id.* at 47:5, and who believed that "anything Mr.
18 Terlaje would do on his behalf would be in his best interest."
19 *Id.* at 62:5-7.

20 On March 11, 1986, Mr. Camacho executed a warranty deed
21 conveying a parcel of property located in Papago, Saipan, to Mr.
22 Terlaje. The complaint alleges that this conveyance was the
23 result of undue influence and fraud. Plaintiff seeks to void the
24 1986 deed and quiet title in Plaintiff, alleging that Mr. Camacho
25 was afraid his sister Antonia would take the land, and that Mr.
26 Terlaje told him the deed would protect the land from his sister.
27 According to Plaintiff, Camacho still believes he has a full
28 ownership interest in the land.

1 Defendant disputes this contention, alleging that Mr. Camacho
2 announced one night after dinner that he wished to give the
3 property to Mr. Terlaje, and that the attorney who drafted the
4 deed fully explained the transaction to Mr. Camacho before he
5 signed the deed, and that Mr. Camacho fully and freely assented to
6 the transaction. *Id.*, 54:21-60:15.

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II. ISSUE

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Two issues are presented for review:

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1. As a matter of law, was the March 11, 1986 deed executed
11 through Jose Terlaje's undue influence over Francisco Camacho?

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2. As a matter of law, did a confidential relationship
13 exist between Mr. Camacho and Mr. Terlaje at the time of the March
14 11, 1986 conveyance?

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III. ANALYSIS

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A. SUMMARY JUDGMENT STANDARD

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Summary judgment is entered against a party if, viewing the
19 undisputed facts in the light most favorable to the non-moving
20 party, the Court finds as a matter of law that the moving party is
21 entitled to the relief requested. *Cabrera v. Heirs of De Castro*,
22 1 N.M.I. 172, 176 (1990). For the purposes of this motion, the
23 Court must view the evidence in the light most favorable to Mr.
24 Terlaje, accepting his version of any disputed fact.

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B. UNDUE INFLUENCE

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The *Restatement (Second) of Contracts*, § 177, defines "undue
28 influence" as "unfair persuasion of a party who is under the

1 domination of the person exercising the persuasion or who by
2 virtue of the relation between them is justified in assuming that
3 that person will not act in a manner inconsistent with his
4 welfare." Any contract shown to be the product of such undue
5 influence is voidable at the option of the party so influenced.
6 *Id.* Demonstration of undue influence is a question of fact in
7 each case. *Id.*, cmt. a.

8 Here, the record is inadequate for the Court to decide as a
9 matter of law that the March 11, 1986 conveyance from Mr. Camacho
10 to Mr. Terlaje was the product of undue influence. According to
11 Mr. Terlaje, the conveyance was Mr. Camacho's idea, and an
12 attorney read the deed to Mr. Camacho prior to his signing it.
13 This version of events contrasts sharply with that presented by
14 Plaintiff. Whatever relationship existed between the parties at
15 the time of the conveyance, it has not been shown as a matter of
16 law that Mr. Terlaje used that relationship to cause Mr. Camacho
17 to convey his property in 1986.

18 19 C. CONFIDENTIAL RELATIONSHIP

20 As an alternative to a finding that the conveyance is
21 voidable as a matter of law, Plaintiff moves for summary judgment
22 that a "prima facie case of undue influence" has been established,
23 shifting the burden of proof to defendant to show "by clear and
24 convincing evidence at trial that the transaction was free from
25 unfair persuasion on the part of Mr. Terlaje." *Plaintiff's*
26 *Memorandum in Support of Motion*, at 20.

27 Where a confidential or fiduciary relationship existed
28 between the parties at the time of the conveyance, the burden is

1 on the grantee to show that the transaction was free from undue
2 influence. See *Curl v. Key*, 316 S.E. 2d 272, 275 (N.C. 1984)
3 (confidential relationship existed where trusted family friend
4 advised children of decedent after his death); *Ostelag v. Donovan*,
5 331 P.2d 355, 359 (N.M. 1958) (where patient was emaciated and
6 weak, burden on physician to show that transfer of stock was free
7 of undue influence). In the words of the *Restatement* at § 177,
8 undue influence may arise between parties when one party "by
9 virtue of the relationship among them is justified in assuming
10 that the [other party] will not act in a manner inconsistent with
11 his welfare."

12 In relationships such as guardian and ward, such a
13 confidential relationship can be found as a matter of law, *Davies*
14 *v. Toms*, 63 N.W.2d 406, 410 (S.D. 1954), but no formal agreement
15 is required for a confidential relationship to exist. *Curl*,
16 *supra*, 316 S.E. 2d at 276 ("[c]onfidential relationships are not
17 limited to a purely legal setting but may be found to exist in
18 situations which are moral, social, domestic, or merely
19 personal").

20 Here, there is no material dispute between the parties that
21 Mr. Terlaje treated Mr. Camacho as a son at the time of the 1986
22 conveyance, and that Mr. Camacho in turn trusted Mr. Terlaje as a
23 father figure. While no formal guardianship, conservatorship or
24 power of attorney was ever executed between them, such formalities
25 are not required for a finding of a confidential relationship.
26 Indeed, Mr. Terlaje's admission at deposition that Mr. Camacho
27 believed that "anything Mr. Terlaje would do on his behalf would
28 be in his best interest," *Terlaje Dep.* at 62:5-7, tracks almost

1 precisely the *Restatement* formulation cited above. From the
2 undisputed facts presented on this record, the Court holds that a
3 confidential relationship existed between the parties at the time
4 the property was conveyed.

5 Plaintiff correctly asserts that this finding of a
6 confidential relationship shifts the burden of persuasion at trial
7 to Defendant to show that the 1986 conveyance was free from undue
8 influence. One case described the burden to be borne as requiring
9 the "clearest and most satisfactory evidence to be adduced.
10 *Miller v. Proctor*, 145 S.W.2d 807, 811 (Tenn. App. 1940). No
11 modern cases on point were located. The Court therefore holds
12 that Defendant shall bear the burden of producing clear and
13 convincing evidence on the issue of undue influence at trial.

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15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court ORDERS:

17 1. Plaintiff's motion for partial summary judgment that the
18 March 11, 1986 conveyance from Mr. Camacho to Defendant was
19 voidable by reason of undue influence is DENIED.

20 2. Plaintiff's motion for partial summary judgment that a
21 confidential relationship existed between Mr. Camacho and
22 Defendant is GRANTED. Defendant shall bear the burden of proof at
23 trial to show by clear and convincing evidence that the 1986
24 transaction was free from undue influence.

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26 So ORDERED this 25 day of January, 1993.

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ALEXANDRO C. CASTRO, Presiding Judge