STATE OF MAINE CUMBERLAND, ss.	BUSINESS & COUNSUMER DOCKET DOCKET NO. BCD-CV-17-56
REBECCA WILLIAMS BELANGER, Plaintiff, v. LISA M. YORKE, Defendant.	COMBINED ORDER ON CROSS-MOTIONS FOR PARTIAL SUMMARY JUDGMENT

Before the Court is Plaintiff Rebecca Williams Belanger's motion for partial summary judgment and Defendant Lisa M. Yorke's (as Counterclaim-Plaintiff) motion for partial summary judgment. The Court heard oral argument on the motion on August 31, 2018. Christopher Pazar, Esq. appeared for Ms. Belanger and Ms. Yorke was represented by William Childs, Esq.

FACTS

This is a case about a piece of real property that a man inherited from his parents and seems to have conveyed to both his wife and his daughter (his wife's stepdaughter) at different times during his life. That man has since passed away. Both women now claim exclusive title to the property, and have sued each other for, inter alia, a declaratory judgment to that effect.

On October 9, 1976, Bradford P. Belanger, Sr. and Dorothy C. Belanger conveyed property located in West Bath, Maine to Bradford P. Belanger, Jr. ("Brad") by virtue of a warranty deed recorded at the Sagadahoc County Registry of Deeds (the "Registry") at Book 446, Page 182. (Pl's Supp'g S.M.F. ¶ 1; Def's Supp'g S.M.F. ¶ 3.) The Property is located at 22 Bruce Byway and contains a cottage (the "Cottage"). (Pl's Supp'g S.M.F. ¶ 3.) Brad passed away on August 21, 2016 at the age of eighty-two following a kidney cancer diagnosis seven years prior in 2009. (Pl's Supp'g S.M.F. ¶¶

4-5; Def's Supp'g S.M.F. ¶ 90.) Brad was survived by his wife of thirty-nine years, Rebecca Williams Belanger ("Ms. Belanger") as well as his three adult children. (Pl's Supp'g S.M.F. ¶¶ 6-8, Def's Supp'g S.M.F. ¶ 4.) One of those children is Defendant Lisa M. Yorke, a child from his first marriage. (Pl's Supp'g S.M.F. ¶ 8, Def's Supp'g S.M.F. ¶ 5.) The other two adult children are the children of Brad and Ms. Belanger. (Pl's Supp'g S.M.F. ¶ 7.)

Before 2016, Brad had executed two wills, one in 1985 and one in 1999, neither of which made any provision for Ms. Yorke; the former having alluded to "having otherwise provided for her." (Def's Supp'g S.M.F. ¶¶ 8-11.) In the spring of 2016, Ms. Belanger called John Voorhees, Esq. and subsequently she and Brad retained Mr. Voorhees to update their wills and obtain a financial power of attorney for Ms. Belanger over Brad. (Pl's Supp'g S.M.F. ¶¶ 22-23.) Thereafter, the two met with Mr. Voorhees on two occasions jointly, and Brad met with Mr. Voorhees alone on at least one occasion thereafter to sign the financial power of attorney. (Pl's Supp'g S.M.F. ¶¶ 24-25.)

Pursuant to an online title search performed in the course of his work for Brad and Ms. Belanger, Mr. Voorhees discovered that although Ms. Belanger had indicated in a questionnaire that the Property was held jointly by her and Brad, it was in fact held by Brad alone. (Pl's Supp'g S.M.F. ¶¶ 26-29.) The upshot of this discovery, and a subsequent meeting between Mr. Voorhees and both clients on June 27, 2016, was that Brad executed a warranty deed that purportedly grants the Property to himself and Ms. Belanger as joint tenants (the "Ms. Belanger Deed").[1] (Pl's Supp'g S.M.F. ¶ 21; *see* Pl's Supp'g S.M.F. ¶¶ 30, 32-33, 35-40.) The Ms. Belanger Deed was recorded on June 29, 2016. (Pl's Supp'g S.M.F. ¶ 40.) Ms. Yorke does not dispute this. However, she does dispute Ms. Belanger's assertion that Brad was mentally clear during the meeting when the deed was executed. (Pl's Supp'g

[1] Ms. Yorke does not necessarily dispute that the Ms. Belanger Deed was executed, but challenges the legal effect of that deed. (Def's Opp'g S.M.F. ¶ 21.)

S.M.F. ¶¶ 41-42; Def's Opp'g S.M.F. ¶¶ 41-42.) Mr. Voorhees and Ms. Belanger both testified at their depositions that Brad never said anything to them about a prior conveyance of the Property to Ms. Yorke. (Pl's Supp'g S.M.F. ¶¶ 46, 48.)

In fact, Brad had executed a deed releasing certain "land in West Bath, County of Sagadahoc, State of Maine" to Ms. Yorke over a decade prior on June 20, 2005 (the "Yorke Deed"). (Pl's Supp'g S.M.F. ¶¶ 49, 52-53.) The only real estate owned by Brad meeting that description at that time was the Property. (Def's Supp'g S.M.F. ¶ 14.) The Yorke Deed was accompanied by a letter from Brad to Ms. Yorke stating that he "always wanted you [Ms. Yorke] to have this property and look forward to seeing you enjoy this property" and that he "always intended for [the Property] to go to you for you and your family." (Def's Supp'g S.M.F. ¶¶ 18-20.) The Yorke Deed was recorded on July 15, 2016, over ten years after it was executed and sixteen days after the Ms. Belanger Deed was recorded. The Yorke Deed states that the property to be conveyed is "more particularly described as follows: See Exhibit A Hereto Attached"; however, there is no document identified as Exhibit A attached to the Yorke Deed as recorded. (Pl's Supp'g S.M.F. ¶¶ 50, 53-54.) Exhibit A has since been identified and there is no dispute that the Yorke Deed attached Exhibit A when it was executed in 2005. (Def's Supp'g S.M.F. ¶ 17.) There is no dispute that the Yorke Deed was a gift to Ms. Yorke exchanged for one dollar nominal consideration. (Pl's Supp'g S.M.F. ¶¶ 58-59.)

Ms. Yorke's decision to record the Yorke Deed was precipitated by an uncomfortable encounter on July 2, 2016, when Ms. Belanger and two of her cousins came to the Property, looked around the Cottage, and asked Ms. Yorke when she was leaving. (Pl's Supp'g S.M.F. ¶¶ 83-84; Def's Supp'g S.M.F. ¶ 54.) This was unusual because Ms. Belanger did not generally visit the Property and her behavior seemed strange to Ms. Yorke. (Pl's Supp'g S.M.F. ¶ 85; Def's Supp'g S.M.F. ¶ 55.) When

Ms. Yorke related this visit to her husband, he conducted an online title search and found the Ms. Belanger Deed recorded for the Property. (Pl's Supp'g S.M.F. ¶ 87; Def's Supp'g S.M.F. ¶ 56.)

After learning about the Ms. Belanger Deed, Ms. Yorke asked Brad about it in person in July 2016. (Pl's Supp'g S.M.F. ¶¶ 92, 94; Def's Supp'g S.M.F. ¶ 75.) Ms. Yorke testified that Brad told her he thought he was just signing a will and had no idea that he had signed the Ms. Belanger Deed. (Pl's Supp'g S.M.F. ¶ 92; Def's Supp'g S.M.F. ¶ 77.) Ms. Yorke further testified that Brad told her to go to a lawyer to get the Ms. Belanger Deed rescinded; instead, Ms. Yorke's husband decided to conduct his own online legal research in order to determine whether he and Ms. Yorke could rescind the Ms. Belanger Deed themselves without involving an attorney. (Pl's Supp'g S.M.F. ¶ 96; Def's Supp'g S.M.F. ¶ 78.) Based on Mr. Yorke's research, Ms. Yorke handwrote the following statement (the "Statement"), putatively on Brad's behalf:

> I Bradford P Belanger Jr wish to rescind[] Deed 2016R-04333 signed on 06/27/2016 and recorded on 06/29/2016. This deed was signed by me under undue influence as it was presented to me as part of my revised will and was not explained to me exactly as to what I was signing.
>
> The only valid deed pertaining to this property in West Bath is that signed by me on 06/20/2005 transferring ownership to my daughter Lisa Yorke. This is my only inten[t]ion ever. I wish this letter to be recorded and enforced as an instrument to correct a fraudulent conveyance and my final act pertaining to my West Bath property.
>
> This letter is written by me of my own free will and sound mind.

(Pl's Supp'g S.M.F. ¶¶ 97, 99; Def's Supp'g S.M.F. ¶ 87.) Rather than have this statement reviewed by an attorney, Ms. Yorke again relied on her husband's online legal research, which this time concluded that the Statement was not necessary at all. (Def's Supp'g S.M.F. ¶¶ 79-80.) Brad purportedly asked Ms. Yorke about the Statement when she was driving him to a doctor's appointment sometime thereafter. (Def's Supp'g S.M.F. ¶ 81.) Ms. Yorke explained to Brad that based on her husband's online

legal research no statement was necessary but Brad apparently[2] insisted that he be allowed to sign the Statement and that they have it notarized. (Def's Supp'g S.M.F. ¶¶ 82-84.) Brad signed the Statement and they had the Statement stamped by a notary public on the way to Brad's doctor's appointment on August 15, 2016. (Def's Supp'g S.M.F. ¶¶ 84-86.) Ms. Yorke recorded the Statement in the Registry on August 22, 2016. (Pl's Supp'g S.M.F. ¶¶ 107-109; Def's Supp'g S.M.F. ¶ 88.)

The parties dispute when and how Ms. Belanger became aware of Ms. Yorke's claimed interest in the Property. (Pl's Supp'g S.M.F. ¶ 60; Def's Opp'g S.M.F. ¶ 60.) However, it is undisputed that Ms. Yorke never told Ms. Belanger about the Yorke Deed, her recording of that deed, the Statement, her recording of the Statement, or any of her conversations with Brad about the two deeds or the Statement out of a desire to avoid confrontation and to protect her father from an uncomfortable situation with his wife. (Pl's Supp'g S.M.F. ¶¶ 88-90, 110-111.) Nonetheless, ultimately, she thought her father should be the one to tell Ms. Belanger about the Yorke Deed in his own way and in his own time. (Pl's Supp'g S.M.F. ¶¶ 62, 64; Def's Supp'g S.M.F. ¶¶ 26-28.) Ms. Yorke did not previously record the Yorke Deed for the same reasons and was waiting for him to tell her to record the deed. (Pl's Supp'g S.M.F. ¶¶ 63-66.) Toward the end of his life, Ms. Yorke believed that Brad was afraid of Ms. Belanger and that there was a power imbalance between them as Brad was sick with cancer and Ms. Belanger was his caregiver and medical decisionmaker. (Def's Supp'g S.M.F. ¶¶ 67-73.) Ms. Belanger says that had she found out about the Yorke Deed between 2005 and her husband's passing, her relationship with Brad would have been very different. (Pl's Supp'g S.M.F. ¶ 91.) She would have at least ensured that she was not contributing financially to the Property, and she would have modified the mutual estate plan she had established with Brad. (Pl's Supp'g S.M.F. ¶ 91.)

[2] Ms. Belanger disputes that this conversation actually took place. (Def's Opp'g S.M.F. ¶¶ 82, 84.)

There is no genuine dispute that Ms. Yorke and her family have used the Property more than Ms. Belanger or Brad, especially since Brad's father passed away in 1984. (Def's Opp'g S.M.F. ¶¶ 124-125.) Brad and Ms. Belanger rarely ever slept overnight at the Cottage, and never after 1984. (Pl's Supp'g S.M.F. ¶¶ 112-114, 126.) Their only use of the Property thereafter was occasional summer use of a boat that was stored there, and this use ended six or seven years ago. (Pl's Supp'g S.M.F. ¶¶ 119-121.) Ms. Belanger's children's use of the Property is disputed. (Pl's Supp'g S.M.F. ¶ 122; Def's Opp'g S.M.F. ¶ 122.) Ms. Yorke testified that after 2005, her father twice called her to ask permission for her stepsister to stay at the Cottage and that her stepbrother lived at the Cottage for a couple months in the fall one year. (Pl's Supp'g S.M.F. ¶¶ 127-128; Def's Supp'g S.M.F. ¶ 42.) On the other hand, Ms. Yorke and her family have used the Property as consistently as they could since the mid 1980s. (Pl's Supp'g S.M.F. ¶¶ 124-125.)

However, the parties do dispute whether and to what extent there has been a change in the extent or character of Ms. Yorke's use of the Property over the years, particularly since 2005. Ms. Belanger claims that she has maintained the Property by paying taxes, insurance, and the electricity bill; Ms. Yorke claims that she has paid taxes on the Property since 2006 and the electric bill since 2005 by making cash payments to Brad. (Pl's Supp'g S.M.F. ¶ 69-71, 74-75; Def's Opp'g S.M.F. ¶ 69; Def's Supp'g S.M.F. ¶¶ 45-47; Pl's Opp'g S.M.F. ¶¶ 45-47.) There is no dispute that Ms. Yorke has not paid for any insurance on the Property until very recently, never took a deduction for the real estate taxes she paid on the Property (through cash payments to Brad), and cannot recall ever having paid a road association bill for the Property. (Pl's Supp'g S.M.F. ¶¶ 76-78, 80, 82.) Ms. Yorke claims that to her knowledge no one has used the Property without her permission since 2005; Ms. Belanger responds that this is news to her. (Def's Supp'g S.M.F. ¶ 35; Pl's Opp'g S.M.F. ¶ 35.) Ms. Yorke and Mr. Yorke have lived at the Property over the summer since 2005 and Mr. Yorke has lived there year-round since

2015. (Def's Supp'g S.M.F. ¶¶ 36, 40.) The parties dispute how much time and money Ms. Yorke has invested in the Property; however, there is no genuine dispute that Ms. Yorke has been responsible for the maintenance of and improvements to the Property since 2005. (Def's Supp'g S.M.F. ¶¶ 48-52; Pl's Opp'g S.M.F. ¶¶ 48-51.) The extent of Ms. Belanger's knowledge of any of the above facts relevant to Ms. Yorke's exercise of dominion over the Property is disputed. (Pl's Opp'g S.M.F. ¶¶ 35, 37-39, 41.)

Ms. Belanger's motion requests summary judgment in her favor on Count I (declaratory judgment) and Count II (slander of title) of her Complaint and Count I (declaratory judgment) and Count II (undue influence/ abuse of a confidential relationship) of Ms. Yorke's Counterclaim. Ms. Yorke opposes Ms. Belanger's motion, and moves for summary judgment in her favor on Ms. Belanger's affirmative defenses—33 M.R.S. § 489, equitable estoppel, and latches—to Ms. Yorke's Counterclaim.

STANDARD OF REVIEW

Summary judgment is granted to a moving party where "there is no genuine issue as to any material fact" and the moving party "is entitled to judgment as a matter of law." M.R. Civ. P. 56(c). "A material fact is one that can affect the outcome of the case, and there is a genuine issue when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Lougee Conservancy v. CityMortgage, Inc.*, 2012 ME 103, ¶ 11, 48 A.3d 774 (quotation omitted). A genuine issue exists where the jury would be required to "choose between competing versions of the truth." *MP Assocs. v. Liberty*, 2001 ME 22, ¶ 12, 771 A.2d 1040.

ANALYSIS

I. The Yorke Deed Has An Adequate Description of the Property Being Conveyed

At the outset, Ms. Belanger challenges the sufficiency of the Yorke Deed itself, arguing that it lacks an adequate description of the property it purports to convey and therefore had no effect on the Property or any interest therein. Ms. Yorke responds that the property description in the Yorke Deed is adequate.

The Yorke Deed purports to convey certain "land in West Bath, County of Sagadahoc, State of Maine" to Ms. Yorke from Brad. The only real estate owned by Brad meeting that description at that time was the Property. The Yorke Deed states that the property to be conveyed is "more particularly described as follows: See Exhibit A Hereto Attached"; however, there was no document identified as Exhibit A attached to the Yorke Deed when it was recorded in the Registry. Exhibit A has since been identified and there is no dispute that Exhibit A was attached to the Yorke Deed when it was executed in 2005.

The Court concludes that the property description in the Yorke Deed is adequate. There is no dispute that the Yorke Deed at the time of its execution attached Exhibit A and that Exhibit A included an adequate description of the Property. Thus, Ms. Belanger's challenge is not to the property description in the Yorke Deed *per se*; it is in the Yorke Deed as recorded in July 2016. In other words, the Yorke Deed could not have failed to pass title to the Property to Ms. Yorke in 2005 on the grounds that the property description therein was not adequate.

Ms. Belanger's challenge to the property description of the Yorke Deed that was recorded in the Registry does not require much discussion. Ms. Belanger points out that had the Yorke Deed been recorded earlier in time than the Ms. Belanger Deed without attaching Exhibit A, it is doubtful that the Yorke Deed would have been sufficient to provide actual notice of the conveyance under Maine's recording statutes. *See* 33 M.R.S. § 201-A(2). Here, however, it is undisputed that the Ms. Belanger Deed was recorded before the Yorke Deed; Ms. Yorke must therefore rely on a different theory to

establish Ms. Belanger's actual notice of the prior conveyance in order to prevail under Maine's race-notice statute regardless of the adequacy of the property description in the Yorke Deed as recorded.

II. There Is a Genuine Factual Dispute as to Whether Ms. Belanger Had Implied Actual Notice of the Yorke Deed

Ms. Belanger claims superior title pursuant to Maine's race-notice recording statute, 33 M.R.S. § 201:

> No conveyance of an estate in fee simple . . . is effectual against any person except the grantor, his heirs and devises, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds within the county where the land lies . . . . Conveyances 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. All recorded deeds, leases or other written instruments regarding real estate take precedence over unrecorded attachments and seizures.

Ms. Belanger makes the straightforward argument that she recorded the Ms. Belanger Deed before Ms. Yorke recorded the Yorke Deed and that she did not have actual notice of the Yorke Deed prior to recording the Ms. Belanger Deed. If these facts were undisputed, and were the only facts relevant to the application of the race-notice statute, then indeed there is no question that Ms. Belanger would hold title superior to that claimed by Ms. Yorke.

However, Ms. Yorke challenges the proposition that it is undisputed that Ms. Belanger lacked actual notice of the prior conveyance. Ms. Yorke points out that actual notice, as that term is used in the recording statute, is not synonymous with "actual *knowledge*," and that actual notice may be implied. *Gagner v. Kittery Water Dist.*, 385 A.2d 206, 207 (Me. 1978) (quoting *Hopkins v. McCarthy*, 121 Me. 27, 29, 115 A. 513, 515 (1921)) ("Implied actual notice is that which 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.") In *Gagner*, the Law Court elaborated by quoting nineteenth-century precedent:

> The doctrine of actual notice implied by circumstances . . . involves the rule that a purchaser before buying, should clear up the doubts which apparently hang upon the title, by making due inquiry and investigation. If a party has knowledge of such facts as would lead a fair and prudent man, using ordinary caution, to make further inquiries, and he avoids the inquiry, he is chargeable with notice of the facts which by ordinary diligence he would have ascertained . . . . It may be well concluded that he is avoiding notice of that which he in reality believes or knows. Actual notice of facts which, to the mind of a prudent man, indicate notice is proof of notice.

Id., 385 A.2d at 207-08 (quoting *Knapp v. Bailey*, 79 Me. 195, 204, 9 A. 122, 124 (1887)). Whether the facts of which the transferee has actual knowledge would lead a reasonable person to make further inquiries, and thus whether that person has implied actual notice, is a factual determination. *See id.* Where a party has actual implied notice, she has a duty to inquire further. *Id.* at 208. What level of inquiry is sufficient to satisfy that duty is likewise a question of fact. *Id.* at 209. If the party fails to inquire further, she may be charged with "actual knowledge" of the facts she could have reasonably ascertained through such inquiry. *Gagner*, 385 A.2d at 207.

It would be error for the Court to find on this record that Ms. Belanger had "no notice, actual or implied, of the existence of the [Yorke Deed]." *See id.* at 208. There is a genuine dispute on that point. The record before the Court could support the following findings: that subsequent to Ms. Yorke's receipt of the Yorke Deed in 2005 and through the present, Ms. Yorke and her family have essentially been the exclusive users of the Cottage on the Property; that they have lived at the Property all summer, every summer since 2005; that Mr. Yorke has lived at the Property year-round since February 2015 and Ms. Yorke has stayed there with him three or four nights a week; that Brad asked

Ms. Yorke for permission for his other daughter to stay at the Property; and that Ms. Belanger herself felt that she needed an invitation from Ms. Yorke to visit the Property when she visited the abutting property. The record could also support the finding that Ms. Yorke and her family have been responsible for the maintenance of and improvements to the Property, including paying the bills, since 2005. Finally, the record could support the finding that Ms. Belanger had actual knowledge of some or all of these facts.

Ms. Belanger's argument is entirely factual and aimed at convincing the Court that (1) the evidence adduced by Ms. Yorke would not put a reasonable person on notice to inquire further about the ownership of the Property and (2) Ms. Belanger lacked actual knowledge of much of that evidence. These arguments may well prevail, but they must be made to the factfinder.[3]

Having concluded that the property description in the Yorke Deed was adequate to convey title, and that a genuine factual issue remains unresolved as to whether Ms. Belanger had implied actual notice of the Yorke Deed, summary judgment cannot be entered in Ms. Belanger's favor on Count I of her Complaint.

III. Genuine Issues of Fact Preclude Summary Judgment Against Ms. Yorke on Ms. Belanger's Count for Slander of Title

Ms. Belanger has also moved for summary judgment on Count II of her Complaint, which alleges slander of title. Ms. Yorke responds that there are genuine factual issue which preclude granting summary judgment on this claim.

> [T]o prove slander of title a claimant must prove (1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the

[3] Ms. Yorke's remaining arguments—that 33 M.R.S. § 201 only protects purchasers for value notwithstanding the statute's plain language and that Ms. Belanger is not protected by the statute as an "heir" notwithstanding the fact that Brad was alive when he executed the Ms. Belanger Deed—do not require further discussion; the genuine factual dispute of whether Ms. Belanger had implied actual notice of the Yorke Deed is a sufficient ground for denying summary judgment.

> statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages.

Harvey v. Furrow, 2014 ME 149, ¶ 25, 107 A.3d 604 (quoting *Colquhoun v. Webber*, 684 A.2d 405, 409 (Me. 1996)). Ms. Belanger's claim is based on the Statement, which was recorded in the Registry, and states that Brad signed the Ms. Belanger Deed "under undue influence[.]" Ms. Belanger argues that the recording of the Statement, coupled with Ms. Yorke's deposition testimony with respect to her motivations and her understanding of "undue influence," satisfy all of the elements for slander of title. Ms. Yorke replies that the factual issues of whether the "undue influence" statement was false and whether it was made with malice or reckless disregard of its falsity remain disputed.

Ms. Yorke gets the better of this argument. As explained in more detail in Part VI below, Ms. Yorke clearly misapprehended the legal definition of undue influence; whether relying on her husband's online legal research and her father's purported explanation of the Ms. Belanger Deed is enough to escape liability for "reckless disregard" of her erroneous understanding may ultimately end up before the factfinder. *Cf. Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶ 17, 175 A.3d 103 (summary judgment appropriate where "there is nothing in the summary judgment record that could induce a fact-finder to determine" that defendant acted with malice or reckless disregard of the falsity of a slanderous statement). However, if Ms. Yorke prevails on her Counterclaim count for undue influence then it will be impossible for Ms. Belanger to prevail on this count in any event because the "undue influence" comment will not be false as a factual matter, notwithstanding Ms. Yorke's misapprehension of what constitutes undue influence. In sum, unresolved factual issues preclude granting summary judgment on Count II of Ms. Belanger's Complaint.

IV. Section 480 of Title 33 of the Maine Revised Statutes Is Not A Defense to Ms. Yorke's Counterclaim Count for Declaratory Judgment

Ms. Belanger, as counterclaim-defendant, has raised 33 M.R.S. § 480 as an affirmative defense to Ms. Yorke's declaratory judgment counterclaim count; Ms. Yorke, as counterclaim-plaintiff, has moved for summary judgment on that affirmative defense. "If a plaintiff moves for summary judgment on an affirmative defense, the defendant opposing summary judgment must establish a prima facie case for each element of the affirmative defense in order to avoid summary judgment." *Sellars v. Osborne*, No. CV-14-133, 2015 Me. Super. LEXIS 149, *2-3 (Androscoggin Cty., August 25, 2015, *Kennedy, J.*) (citing *Reliance Nat'l Indemnity v. Knowles Indus. Servs*., 2005 ME 29, ¶ 9, 868 A.2d 220). "The plaintiff is entitled to a summary judgment if the evidence presented by the defendant in support of its affirmative defense would, if produced at trial, fail to establish a prima facie case and entitle the plaintiff to a judgment as a matter of law." *Id.* at *3 (citing *Addy v. Jenkins, Inc*., 2009 ME 46, ¶ 8, 969 A.2d 935).

Ms. Belanger argues that 33 M.R.S. § 480 required her signature on the Yorke Deed, and that because the Yorke Deed lacked her signature, she retains an interest in the Property as a nonowner spouse. That statute, in relevant part, provides as follows:

> An owner of real estate may convey that real estate, or any interest in it free from any claim to the real estate by his nonowner spouse . . . without signature of his nonowner spouse, unless:
>
> 1. Nonbona fide purchaser. The transfer requires signature pursuant to [18-A M.R.S. § 2-202 (1),(3)] . . . .
>
> After that conveyance, any claim of the nonowner spouse under . . . any . . . law[ ] shall be against the proceeds of that conveyance and not against the real estate.[4]

18-A M.R.S. § 2-202 (1),(3) provides, in relevant part:

[4] This selection and the ensuing discussion omit references to pending divorces, another condition requiring the signature of a nonowner spouse listed in subsection two of the statute, because that situation is irrelevant.

> 1. The value of property transferred to anyone other than a bona fide purchaser by the decedent at any time during the marriage, to or for the benefit of any person other than the surviving spouse, to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer, if the transfer is of any of the following types:
> (i). Any transfer under which the decedent retained at the time of his death the possession of enjoyment of, or right to income from, the property . . . .
> Any transfer is excluded if made with the written consent or joinder of the surviving spouse.
> 3. . . . a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim.

Ms. Belanger argues that the nonowner spouse's claim is against the real estate itself if the transfer required her signature pursuant to 18-A M.R.S. § 2-202 (1),(3) and is only against the proceeds for any "other transfer" lacking the nonowner spouse's signature.[5] The Court rejects this proffered construction and concludes that the statute cannot operate as a "defense" to a competing claim of ownership. Assuming that Ms. Belanger were able to prove each element of the statute, at most she would be entitled to the proceeds of the challenged conveyance; in this case, one dollar. In other words, if Ms. Belanger were to prevail on her section 480 claim, it would have no effect on Ms. Yorke's claimed interest in the Property under the Yorke Deed and thus is not a defense to Ms. Yorke's declaratory judgment counterclaim count.

[5] Ms. Belanger implicitly acknowledges that this reading is not supported by the plain language of the statute but argues that the Court must interpret it this way in order to avoid an illogical result. *See Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 21, 107 A.3d 621. Our Legislature's intent may not be to Ms. Belanger's liking, but it is not absurd or illogical because it does not leave the nonowner spouse "without a remedy" when transfers are not for value. *See* 18-A M.R.S. § 2-207(c) (providing that in a proceeding for an elective share those who have received property that must be included in calculating the augmented state are subject to contribution orders by the Probate Court "to make up the elective share of the surviving spouse," thereby allowing the estate to "claw back" the value of such transferred property). Ms. Belanger was by no means required to choose her elective share rather than what she took under Brad's will, but her choice does not transmute section 480 into a mechanism by which conveyances can be invalidated for want of a signature of a nonowner spouse.

Section 480 requires the signature of a nonowner spouse on conveyances of real property by that person's spouse under certain circumstances, including where such signature would be required under 18-A M.R.S. § 2-202 (1),(3). It then plainly and unambiguously describes the nonowner spouse's recourse if that requirement is violated: her claim "shall be against the proceeds of that conveyance and *not against the real estate*." 33 M.R.S. § 480 (emphasis added). Simply put, section 480 by its own terms cannot support a competing claim of ownership to real property as against the transferee of a conveyance that violates the statute, let alone operate as an affirmative defense against the transferee's ownership claim. It can only support an independent claim by the nonowner spouse for the proceeds of the transfer.

Furthermore, even entertaining Ms. Belanger's construction for the sake of argument, she fails to satisfy the requirement that her signature was required under 18-A M.R.S. § 2-202(1) because there is no evidence that Brad "retained at the time of his death the possession of enjoyment of, or right to income from, the property." *See id.* There is a factual dispute regarding whether Brad retained some of the burdens of ownership of the Property, i.e. by paying taxes, insurance, and other bills; but there is no dispute that his use of the Property had effectively ended by 2005, and certainly by the time of his passing, and that he never derived any income from the Property.

The Court therefore concludes as a matter of law that 33 M.R.S. § 480 is not an affirmative defense to Ms. Yorke's ownership claim based on the Yorke Deed. Even if Ms. Belanger were to prove her signature was required on that deed pursuant to the statute, her claim would be against the proceeds of the conveyance and not the real estate. It would not invalidate the Yorke Deed or be a defense to Ms. Yorke's ownership claim based on the Yorke Deed. Ms. Yorke's request for partial summary judgment on Ms. Belanger's affirmative defense based on 33 M.R.S. § 480 is thus granted.

V. Unresolved Factual Disputes Preclude Summary Judgment on Ms. Belanger's Other Affirmative Defenses

Ms. Yorke also moves for summary judgment on two of Ms. Belanger's other affirmative defenses to Ms. Yorke's Counterclaim—laches and equitable estoppel. "Laches is negligence or omission to seasonably assert a right. It exists when the omission to assert the right has continued for an unreasonable and unexplained lapse of time, and under circumstances where the delay has been prejudicial to an adverse party, and where it would be inequitable to enforce the right." *Brochu v. Macleod*, 2016 ME 146, ¶ 13, 148 A.3d 1220. "The doctrine of equitable estoppel bars the assertion of truth by one whose misleading conduct has induced another to act to his detriment in reliance on what is untrue." *Stickney v. City of Saco*, 2001 ME 69, ¶ 44, 770 A.2d 592.

At oral argument, the parties made clear what is implicit in the statements of material facts and responses thereto, and in each parties' written arguments on this aspect of the summary judgment motion: there are multiple, reasonable, and mutually exclusive explanations for Ms. Yorke's decision not to tell Ms. Belanger about the Yorke Deed; just as there are multiple, reasonable, and mutually exclusive explanations for why Brad seems to have transferred an interest in the Property to both his wife and his daughter at different times during his lifetime. Ms. Yorke's motivations must be determined by the factfinder at trial. The applicability of these defenses cannot be resolved on summary judgment.

VI. A Genuine Issue of Material Fact Precludes Summary Judgment Against Ms. Yorke on Her Counterclaim Count for Undue Influence

Ms. Belanger has moved for summary judgment on Count II of Ms. Yorke's Counterclaim, which alleges undue influence on the part of Ms. Belanger in obtaining the Ms. Belanger Deed. Ms. Yorke responds that there are genuine issues of fact that preclude summary judgment on this count.

Undue influence is defined as the "unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relationship between them is justified in assuming that the person will not act in a manner inconsistent with his welfare." *Cote v. Cote*, 2016 ME 94, ¶ 14, 143 A.3d 117 (quotation omitted). "A presumption of undue influence arises if the plaintiff shows by a preponderance of the evidence that a confidential relationship existed between the defendant and the decedent." *Id*. (quotation omitted); *see also Estate of Gagnon*, 2016 ME 129, ¶ 10, 147 A.3d 356 ("Once the presumption is established, the burden shifts to the benefitted party to demonstrate affirmatively that he transacted with entire fairness and that the transaction was free of any undue influence affecting the other party's interests.") (quotation omitted). A confidential relationship exists where (1) "an individual place[s] trust and confidence in" another and (2) there is "great disparity of position and influence in the relationship." *Albert v. Albert*, 2015 ME 5, ¶ 8, 108 A.3d 388. The existence of a confidential relationship is a question of fact. *Cote*, 2016 ME 94, ¶ 14, 143 A.3d 117.

The parties' arguments on this count are entirely factual: Ms. Belanger claims that the "sole evidence" of undue influence is the Statement and she points out that it is undisputed that undue influence is referenced in the Statement based on Mr. Yorke's online legal research about how to rescind a deed, that Brad was competent when he executed the Ms. Belanger Deed, that Mr. Voorhees had no reason to suspect that Ms. Belanger was exerting undue influence over Brad, and that Ms. Belanger had no knowledge of the Yorke Deed—thereby obviating the necessity to exert undue influence over him in order to obtain the Ms. Belanger Deed. Ms. Yorke argues that the Statement is not the sole evidence of undue influence because there is considerable circumstantial evidence of a confidential relationship: she points out that it is undisputed that Ms. Belanger obtained a power of attorney over Brad on her initiative, and that she testified that Brad was afraid to upset Ms. Belanger

and did as Ms. Belanger told him because he depended on Ms. Belanger. It is undisputed that their relationship would have been "very different" if Brad had told Ms. Belanger about the Yorke Deed, lending credence to Ms. Yorke's description of Brad's trepidation toward Ms. Belanger.

The Court would be weighing the evidence if it rejected Ms. Yorke's circumstantial case in favor of Mr. Voorhees's recollection and Ms. Belanger's characterization of the Statement. Clearly, Ms. Yorke and Mr. Yorke misapprehended what actually constitutes undue influence when they elected to include that term in the Statement based on Mr. Yorke's online legal research, but this is not particularly relevant to whether a confidential relationship in fact existed between Ms. Belanger and Brad at the end of his life. Contrary to Ms. Belanger's argument, the Statement is not the only evidence of undue influence. The undisputed circumstances—at the very least, Brad's poor health and Ms. Belanger's holding of powers of attorney over Brad—could lead a reasonable factfinder to find that Ms. Belanger exercised a disparate amount of power and influence over Brad at the end of his life and that Brad had surrendered considerable trust and confidence to Ms. Belanger to make decisions on his behalf. Summary judgment cannot be entered when the genuine factual issue of whether a confidential relationship existed between Ms. Belanger and Brad at the time of the execution of the Ms. Belanger Deed remains unresolved.

CONCLUSION

Based on the foregoing the entry will be:

Plaintiff Ms. Belanger's motion for partial summary judgment is DENIED.

Counterclaim-Plaintiff Lisa Yorke's motion for partial summary judgment on Counterclaim-Defendant Ms. Belanger's affirmative defenses is GRANTED in part and DENIED in

part. Ms. Yorke's motion is GRANTED as to Ms. Belanger's affirmative defense of 33 M.R.S. § 480. Ms. Yorke's motion is DENIED as to Plaintiff's affirmative defenses of equitable estoppel and laches. The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: November 1, 2018

/s
Richard Mulhern
Judge, Business and Consumer Court