IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAMELA F. GLASS, individually and as agent under a durable power of attorney for STEPHEN FRANGIA,	)	
Petitioner,	)	
v.	)	C.A. No. 2020-0381-SEM
STEPHANIE BAKER,	)	
Respondent.	)	

Issued Publicly: February 20, 2024[1]
Final Report: February 9, 2024
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FINAL POST-TRIAL REPORT

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MOLINA, M.

[1] This report was originally issued under seal and the parties were given an opportunity to request redactions within five (5) days. On February 16, 2024, the Petitioner (as defined herein) filed a motion for continued confidential treatment of certain trial exhibits confirming the "Petitioner does not seek confidential treatment of the Report itself[.]" Docket Item ("D.I.") 173, p.3. To date, the Respondent (as defined herein) has not moved for continued confidential treatment of any information in this report. Thus, this report is being reissued publicly, with the same findings and recommendations.

As Delaware's probate court, this Court knows well that the loss of a family member often breeds (or intensifies prior) familial conflict. Time and again this Court is called upon to resolve that conflict and direct the disposition of a Delawarean's estate. Here, the call comes early.

Through this action I am asked to decide whether certain assets (real property and liquid assets) were validly transferred from an aging father to his adult daughter. The challenge comes from a non-transferee daughter, who brought this action as agent under her father's power of attorney. After first confirming the agent's standing to bring this action, I find the father was unduly influenced to transfer his interests in the real property at issue. But I find the agent failed to meet her burden to prove the liquid assets were improperly withdrawn and should be returned.

Finding the complainant partially successful, I find the counterclaims for abuse of process and malicious prosecution must fail. I further recommend that costs be shifted in favor of the agent as the prevailing party. This is a final report.

I. BACKGROUND[2]

This action revolves around Stephen Frangia, the beloved 95-year-old patriarch of his family.[3] Mr. Frangia has four daughters: P. Sandra Ford ("Sandy"), Suzanne Frangia ("Suzanne"), Pamela Frangia Glass (the "Petitioner"), and Stephanie Baker (the "Respondent").[4] The Petitioner challenges (1) Mr. Frangia's transfer of real property to the Respondent and (2) the Respondent's withdrawal of funds from an account jointly titled in the names of Mr. Frangia and the Respondent. The Petitioner's primary concern: Mr. Frangia's capacity at the time of the transactions. The Respondent denies any impropriety and argues that the Petitioner initiated and has maintained this action as a personal vendetta. Before I address these competing claims, I start with some background.

A. The Early Years

Mr. Frangia grew up in Delaware and married his wife, Diane, in 1954.[5] Mr. Frangia was a professional dancer and teacher until he and his wife had children.[6]

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[2] The facts in this report reflect my findings based on the record developed at trial on May 10–11, 2023. *See* D.I. 154. I grant the evidence the weight and credibility I find it deserves. Citations to the trial transcript are in the form "Tr. #." The parties' jointly submitted exhibits are cited as "JX__." The lodged depositions are cited as LAST NAME Dep.

[3] D.I. 152 ¶ 26. Mr. Frangia was 94 years old at the time of trial, but he turned 95 on July 21, 2023. *See* JX73 at GLASS0000618 (reflecting Mr. Frangia's birthdate).

[4] D.I. 152 ¶ 27. I use first names for Sandy and Suzanne to avoid any confusion; I intend no disrespect or familiarity.

[5] *See* JX73 at GLASS0000642.

[6] *Id.*

To provide for his family, Mr. Frangia worked as a licensed electrician, doing residential lighting, and had a window cleaning business and Greek food store on the side.[7] At the age of 63, Mr. Frangia went back to school and obtained his GED.[8] Mr. Frangia's children describe him in glowing terms: he is "very kind, giving, . . . polite, [and] happy. His number-one priority in his life [is] his family[.]"[9] He is, in short, "an extraordinary man."[10]

In the late 1990s, Mr. Frangia and his wife purchased Unit 509 at 1100 Lore Avenue, Wilmington, Delaware (the "Unit").[11] The Unit is part of the River Park Cooperative; Mr. Frangia and his wife thus "owned" the Unit through a proprietary lease and stock in River Park Cooperative, Inc.[12] Mr. and Mrs. Frangia also jointly owned a checking and a savings account at Wilmington Trust (the "Wilmington Trust Accounts").[13]

Around September 2004, while Mr. and Mrs. Frangia were in California, Mrs. Frangia was diagnosed with ovarian cancer.[14] They returned to Delaware and the

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[7] *Id.*

[8] *Id.*

[9] Tr. 265:19–21.

[10] Tr. 521:21.

[11] D.I. 152 ¶ 28; Tr. 198:9–11, 287:5–6 ("my parents took possession in roughly . . . 1998").

[12] *See* JX78.

[13] Tr. 132:24–133:3; JX1.

[14] Tr. 276:7–10.

Respondent stepped up to help.[15] The Respondent moved from Allentown, Pennsylvania and spent the next two years assisting and caring for her parents.[16]

Mrs. Frangia succumbed to her illness on September 1, 2006.[17] With his wife's passing, Mr. Frangia became the sole owner of the Unit and began living alone. Mr. Frangia also became the sole owner of the Wilmington Trust Accounts. But "very shortly after" Mrs. Frangia passed, the Petitioner was added to the titles of the Wilmington Trust Accounts.[18] The Petitioner was added as a joint owner for the savings account but added with special instructions as "power of attorney" for the checking account.[19] Sometime thereafter, the Petitioner's name was removed.[20]

Mr. Frangia, then as sole owner of the Wilmington Trust Accounts, added the Respondent as a joint owner.[21] The signature card for the checking account reflects that the Respondent was added on August 31, 2007, and the account was thereby

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[15] Tr. 276:10–18.

[16] *See* Tr. 277:9–21. The parties dispute who paid for a second unit used by the Respondent. *Compare* Tr. 336:12–337:3, *with* Tr. 569:17–21.

[17] Tr. 278:23–24; D.I. 152 ¶ 27. Exhausted and grieving, the Respondent told her sisters the next day that she "would not be able to take care of [their] dad if he ever needed help." Tr. 279:6–9.

[18] Tr. 111:21–24. *See* JX6 (reflecting that the Petitioner was added to the savings account on September 12, 2006); *see also* JX13 (reflecting her addition to the checking account on October 2, 2006).

[19] JX6 at 13.

[20] Tr. 112:10–24.

[21] JX15, 17.

"Made Joint."[22] But it separated the sisters. They dispute why the Respondent was added to the title. Sandy testified that the Respondent was added "because she lived in Delaware, in Wilmington, [and Mr. Frangia] wanted her on it so she could handle funeral expenses."[23] The Respondent disagreed; she testified that Mr. Frangia wanted her "to have full access."[24]

B. Early Signs of Mr. Frangia's Decline

Mr. Frangia's mental faculties began to decline after a car accident on September 22, 2006.[25] After the crash, he was admitted to Christiana Care's emergency department where he presented as "still disoriented," and complained of pain in his neck and right knee.[26] Upon assessment, Mr. Frangia was found to have a neck fracture, although his CT scan was negative and medical providers believed certain medication "may explain his disorientation."[27] He was discharged five days

[22] JX15. The Respondent was later added to the savings account on June 21, 2008. JX17.

[23] Tr. 36:3–7.

[24] Tr. 324:15–16. But, the Respondent, later in her testimony, seemed to confirm that the money was not simply hers to take. *See, e.g.*, Tr. 325:4–6 (testifying that she took funds as a loan that she then returned).

[25] JX5 at GLASS0000701; JX8.

[26] *Id.*

[27] JX5 at GLASS0000702.

later.[28] In the discharge summary, Mr. Frangia was found medically stable for release to "self-care at home and observation with additional family members."[29]

Thereafter, Mr. Frangia's children began noticing signs of decline. The earliest indication in the evidence admitted at trial came from the Respondent, who shared her concerns with her sisters through an email dated June 11, 2007.[30] The Respondent explained that Mr. Frangia was "forgetting a lot and showing signs of age."[31] Because of her concerns, the Respondent asked the Petitioner to take responsibility for a lawsuit involving Mr. Frangia, because Mr. Frangia "is not able to handle th[e] responsibility and [the Respondent was] just getting back to normal after" caring for her parents during Mrs. Frangia's illness.[32]

[28] *See id.*

[29] JX12 at GLASS0000717.

[30] JX14.

[31] *Id.* She even shared two recent examples of him forgetting things that others had told him: (1) he forgot the Respondent would be driving him to a family member's service and (2) he forgot where a family member was going to school, even though "he has been told a lot [he] is not remembering." *Id.*

[32] *Id.* The Respondent tried to backtrack on her email through her testimony, averring that she had "no concern[,]" "just wanted [her] sister to put [their] father in front of a doctor[,]" and she thought medication was the cause of his memory problems. Tr. 338:15–22. I find her change of tune lacks credibility because it directly contradicts her own written words.

C. The 2010 Moves

To make matters worse, Mr. Frangia was involved in a second car accident in 2010, when he rear-ended a parked ambulance.[33] He lost his license shortly thereafter.[34] With two cars "totaled," Mr. Frangia's children decided that "he was no longer able to stay at his residence" and "he would need to [then] rely on his daughters to take care of him."[35]

Mr. Frangia initially went to the Petitioner's home in California.[36] But, per the Respondent, the Petitioner unilaterally decreed that Mr. Frangia would be moving from California to the Respondent's home in New Jersey.[37] The Respondent recalled a tearful dinner in January 2010 where she was informed of the Petitioner's decree; then, two months later, Mr. Frangia "showed up" on the Respondent's doorstep.[38] Mr. Frangia was foist into the Respondent's new and "difficult" marriage and his residence with her was stressful and fraught.[39]

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[33] Tr. 271:4–16; Baker Dep. 23:12–17; *see also* Tr. 430:11–13.

[34] Baker Dep. 99:5–11; *see also* Tr. 430:15–16.

[35] Tr. 271:8–16; s*ee also* Tr. 10:16–21 (explaining that Mr. Frangia "was having difficulty living on his own. He was not taking medications, according to a schedule, regularly enough. He was not eating meals well three times a day. [And he] was having some medical issues").

[36] *See* Tr. 271:21–22.

[37] Tr. 271:21–272:17.

[38] *Id.*

[39] Tr. 273:2–4.

By August 2010, the Respondent had had enough. Mr. Frangia experienced a medical episode and, feeling overwhelmed, the Respondent "had an emotional meltdown. [She] called Sandy immediately to come pick up" Mr. Frangia.[40] Sandy, who lives in northern New Jersey,[41] drove to the Respondent's home in southern New Jersey, "picked him up, and he started living with [Sandy] full-time. It was unplanned."[42]

After Mr. Frangia's unexpected move, the family worked out a new arrangement to jointly support Mr. Frangia—he would live half of the year with Sandy in New Jersey and the other half with the Petitioner in California.[43] The Petitioner explained that this arrangement was reached by Mr. Frangia and all four of his daughters as one, then-cohesive, family unit.[44]

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[40] Tr. 274:3–8.

[41] As someone who grew up in the local tri-state area, I am cognizant of the long-standing debate over the existence of a "Central Jersey," and feel compelled to note that Sandy's home in Westfield appears to fall right on that disputed line. By characterizing Sandy as living "in northern New Jersey," I take no side in this, presumably ongoing, debate. *But see Governor Murphy Settles Central Jersey Debate*, OFFICIAL SITE OF THE STATE OF N.J., https://www.nj.gov/governor/news/news/562023/20230824a.shtml (Aug. 24, 2023).

[42] Tr. 10:11–13.

[43] Tr. 12:20–13:3. Mr. Frangia also contributed financially to the Petitioner and Sandy to defray the cost of his residence, care, and supervision. *See, e.g.*, Tr. 51:10–21.

[44] Tr. 94:8–11.

When Sandy took her father in, she began "immediately" helping him with his finances[45] She opened an account for Mr. Frangia at PNC and redirected Mr. Frangia's social security—his only income after his retirement—to that account (the "PNC Account").[46] But Sandy did not close Mr. Frangia's prior accounts, which included a mutual fund with Vanguard (the "Vanguard Account") and the Wilmington Trust Accounts, to which the Vanguard account was linked.[47] Sometime on or around October 2010, around the same time the PNC Account was opened, the Wilmington Trust Accounts were converted to M&T Bank accounts (the checking account is herein referred to as the "M&T Account").[48]

Shortly after Mr. Frangia's move into Sandy's home, the Respondent moved into the Unit.[49] The Respondent explained that the stress of having Mr. Frangia in her marital home "got too much for [her new] husband [who] asked [her] to leave the house."[50] The Respondent called Mr. Frangia, who was settling into Sandy's

[45] Tr. 26:12–15.

[46] Tr. 26:17–27:1; *see also* Tr. 31:11–13.

[47] *See* Tr. 29:16–20.

[48] Tr. 33:22–34:1.

[49] Tr. 333:18–20.

[50] Tr. 274:18–20.

home, and "asked him if [she] could stay at the [Unit]."[51] He agreed without hesitation.[52]

D. Mr. Frangia's Decline Continues

Despite the support of his daughters, Mr. Frangia continued to decline. In early June 2011, while Mr. Frangia was staying with the Petitioner in California, the Petitioner noticed an expanding hematoma in Mr. Frangia's eye and, on June 5, 2011, took him to urgent care.[53] There, Mr. Frangia's blood pressure indicated hypertension; he was then redirected and admitted to Torrance Memorial Medical Center ("Torrance")'s emergency department.[54] Admission records show a history of "recurrent UTIs and some dementia."[55] The parties have been unable to locate when, and by whom, Mr. Frangia was first diagnosed with dementia.[56] But the

[51] Tr. 274:23–275:2.

[52] Tr. 275:3–5.

[53] *See* JX20 at GLASS0000543–46.

[54] *Id.*

[55] *Id.*

[56] The Petitioner's expert witness, Dr. Tavani "tried very hard to get an actual time or note of diagnosis, like who diagnosed it and what were the symptoms at the time of diagnosis, and . . . really couldn't find any." Tr. 427:10-13. Her "suspicion is that he was being treated by a primary care doctor," and "[t]hat was probably, as is often the case, where it came up." Tr. 427:14-17.

Torrance records reflect that Mr. Frangia was prescribed Zoloft to treat the symptoms therefrom.[57]

At Torrance, Mr. Frangia received a CT brain/head scan.[58] The preliminary results reflected white matter but "[n]o acute intracranial abnormality."[59] By June 6, 2011, just one day after his admission, Mr. Frangia was deemed medically stable for discharge.[60]

E. The 2013 Power of Attorney

On August 19, 2013, Mr. Frangia executed a durable power of attorney appointing the Petitioner and Sandy as his agents (the "POA").[61] Therein, Mr. Frangia authorized the Petitioner and Sandy to conduct business on his behalf, including by executing contracts; investing, selling, and transferring property; and instituting and defending against actions.[62] Generally, Mr. Frangia appointed the Petitioner and Sandy "to transact all [his] business, and to manage all [his] property,

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[57] JX20 at GLASS0000545 (reflecting a recommendation to continue treating Mr. Frangia's dementia with Zoloft).

[58] JX21.

[59] *Id.*

[60] *See id.*

[61] Tr. 10:22–11:11; *see* JX111. The Petitioner and Sandy did not, however, sign agent certifications until April 19, 2023. *See id.* Mr. Frangia also signed a durable health care power of attorney on August 19, 2013, appointing Sandy as his agent. JX73 at GLASS0000682-687. He also executed a will. JX64.

[62] JX111 at 1–4.

affairs and interests, as fully and completely as [he] himself might do if personally present and competent[.]"[63]

Over a year after he executed the POA, on September 6, 2014, Mr. Frangia suffered a medical incident while with Sandy in New Jersey that left him with "disrupted speech and weakness."[64] He was admitted from the emergency room and diagnosed with a transient ischemic attack (mini-stroke).[65] Luckily, Mr. Frangia's symptoms cleared within 24 hours.[66] His records from this admission likewise reflect a diagnosis of "mild dementia."[67]

F. The 2018 Financial Moves

Despite Mr. Frangia's diagnosis and the authority granted to her under the POA, Sandy gave Mr. Frangia some autonomy over his financial accounts. After the

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[63] JX111 ¶ 30. On April 19, 2023, the Petitioner and Sandy signed ratifications purporting to ratify the actions they took before they signed the agent certifications. JX112.

[64] JX29 at GLASS0000379.

[65] *Id.*; *see also* Tr. 431:22–24.

[66] JX29 at GLASS0000379.

[67] *Id.*; JX30 at GLASS0000382. Through 2015, medical examiners reported that Mr. Frangia was oriented and easily engaged, but mildly confused about certain things. JX31 at GLASS0000375; *see also* Tr. 432:9–14. He would also often forget talks with his daughters about safety issues—Sandy had to start putting signs up around the house in 2017. Tr. 19:1–6. The signs worked momentarily, but he would stop noticing the signs, so Sandy tried to relocate them. Tr. 19:5–9. "It became a struggle." Tr. 19:9. The Petitioner testified that "by 2015, 2017, [she] also started to utilize notes around the house." Tr. 103:7–9. "It just seemed like a way to remind him." Tr. 103:9. Despite these signs of confusion, Mr. Frangia executed an addendum to his will in 2016. *See* JX64. Therein he expressed his intent that the Respondent be able to live in the Unit for one year after his death. *Id.* at 4.

PNC Account was opened, Sandy merely supervised and monitored Mr. Frangia's transactions; "he had primary responsibility for writing checks."[68] Per Sandy, Mr. Frangia enjoyed having control over the PNC Account, writing checks, and balancing his checkbook.[69] But he often made mistakes. Sandy testified that she only has checkbooks going back to 2015 but, even then, there were numerous mistakes: "Some of the errors are a few dollars. Some of the errors could be a few hundred dollars."[70]

In September 2018, Sandy recalls the biggest "mistake" in Mr. Frangia's management of his own finances.[71] Sandy explained that she came home one day to find Mr. Frangia pouring over the Vanguard Account statements.[72] Mr. Frangia believed Vanguard was "stealing" from him because the most recent account reflected a loss on investments.[73] Despite Sandy's attempts to explain that the account was a mutual fund, which fluctuates, Mr. Frangia remained adamant that something improper happened and he wanted the Vanguard Account to be closed.[74]

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[68] Tr. 27:4–9.

[69] Tr. 27:9–11.

[70] Tr. 27:20–22.

[71] Tr. 28:1–2. Sandy testified that the event occurred in 2019 but corrected her testimony when presented with a check dated September 2018. Tr. 29:9–12; JX117.

[72] Tr. 28:2–4.

[73] Tr. 28:5–10.

[74] Tr. 28:10–15.

To address her father's concerns, and avoid unnecessary fees, Sandy worked with Mr. Frangia to transfer the funds in the Vanguard Account to a new account with Charles Schwab (the "Charles Schwab Account").[75] To fund the Charles Schwab Account Mr. Frangia executed a check on September 19, 2018 sending $66,000.00 from the M&T Account to the Charles Schwab Account.[76]

That check did not fully deplete the M&T Account. Sandy testified that Mr. Frangia wanted to keep some funds in the M&T Account to cover his funeral costs.[77] Per Sandy, Mr. Frangia believed that "to pay for a funeral in Wilmington, he had to have money in Wilmington."[78] Although Sandy and the Petitioner "tried to explain that the funeral home will take a credit card . . . it wasn't worth arguing."[79] The M&T Account thus remained open.

Mr. Frangia had one additional request for the Charles Schwab Account—that it list all four of his daughters as equal beneficiaries upon his death.[80] Sandy testified

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[75] Tr. 29:21–30:8.

[76] JX117 at SBaker000403. Sandy testified that Mr. Frangia wrote and signed the check, but she "was there making sure there were no errors[.]" Tr. 30:14–16; *see also* JX41. The Respondent testified that Mr. Frangia told her that the transfer was Sandy's idea and that he felt forced to move the money into Sandy's name. Tr. 290:11–24. But Mr. Frangia's money was never transferred to Sandy's name. *See* JX117.

[77] Tr. 35:2–8.

[78] Tr. 35:3–6.

[79] Tr. 35:6–8.

[80] *See* Tr. 35:15–18.

this was typical of her father; he "has always split everything four ways when it involved his children."[81] That request was met, and the Charles Schwab Account was set up with Mr. Frangia's daughters as transfer-on-death beneficiaries.[82]

G. The 2019 Placement & Transfer

In early 2019, the Petitioner and Sandy began to discuss finding Mr. Frangia additional care.[83] Sandy investigated which facilities might be appropriate and located an adult care facility in Summit, New Jersey, called Sage Eldercare ("Sage").[84] Sandy testified that she took Mr. Frangia to visit Sage in July 2019 and, finding the spend-a-day program acceptable for Mr. Frangia, they began the intake process in August 2019.[85] Per Sandy, Mr. Frangia began attending the facility in September 2019.[86]

Records from Sage provide a slightly different timeline. Mr. Frangia was admitted on August 6, 2019 and discharged January 13, 2020.[87] Mr. Frangia's

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[81] Tr. 37:24–38:2. The Petitioner agreed, testifying that Mr. Frangia "was very clear and communicative that his wishes were that his assets be divided among his four daughters, 25 percent each." Tr. 117:21–23. But Sandy and the Petitioner admitted on cross-examination that an addendum to Mr. Frangia's will does not treat his children equally. Tr. 74:23–75:1, 213:5–11.

[82] JX40.

[83] Tr. 19:13–19.

[84] Tr. 19:16–19.

[85] Tr. 19:23–20:2.

[86] Tr. 20:2–3.

[87] JX73 at GLASS0000615.

admitting diagnoses include transient ischemic attack, atrial fibrillation, and mild dementia.[88] On the intake paperwork, Mr. Frangia purportedly offered that he enjoys taking walks, doing jigsaw puzzles, making art, and listening to music.[89] Mr. Frangia reported that he felt "lucky" and "most satisfied" with his life (ranking his satisfaction 10/10).[90]

The Sage paperwork reflects that, on admission, Mr. Frangia did not need any assistance with daily activities.[91] But he did need assistance with five instrumental activities: shopping, cooking, managing medications, laundry, and driving.[92] He also needed some assistance with housework and managing finances.[93] The chief complaint on admission: Mr. Frangia's forgetfulness.[94]

As part of the onboarding, Mr. Frangia was asked to participate in an abbreviated mental test to gauge his mental acuity.[95] The test was administered by a medical provider at Sage on August 1, 2019.[96] Mr. Frangia scored a 9/10, losing

[88] *Id.*

[89] *Id.* at GLASS0000642.

[90] *Id.* at GLASS0000631.

[91] *Id.*

[92] *Id.*

[93] *Id.*

[94] *Id.* at GLASS0000636.

[95] *Id.* at GLASS0000639–41.

[96] *Id.* at GLASS0000639.

one point for being unable to recall the president before then-President Trump.[97] Mr. Frangia was thus marked within the "normal" category, with no noticeable impairment.[98] Further supporting this "passing" score, Mr. Frangia signed his own admission paperwork.[99] The former director of Sage testified that "there wasn't any question that [Mr. Frangia] shouldn't be able to -- couldn't or shouldn't be able to sign" for himself when he was admitted.[100]

Mr. Frangia's admission to Sage was not fulltime; he began by attending just one day per week.[101] Sage kept detailed notes of Mr. Frangia's weekly visits. He was frequently commended for being social, "greeting everyone and smiling," and reported as being pleasant, cooperative, and "very happy."[102] But a September 4, 2019 quarterly summary reports that Mr. Frangia continued to have "periods of forgetfulness" and "require[d] occasional reminders to lower his voice."[103] One practitioner summed up Mr. Frangia's first month as follows: "He is a very friendly [and] outgoing gentleman with high enthusiasm. [Mr. Frangia] sometimes needs to

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[97] *Id.*

[98] *Id.* The test sheet reflects that a score of zero to three reflects severe impairment, four to six reflects moderate impairment, and above six is normal. *Id.*

[99] JX73 at GLASS0000621–22.

[100] Tr. 159:19–21.

[101] JX73 at GLASS0000691–93; *see id.* at GLASS0000649–51.

[102] *Id.* at GLASS0000653–58.

[103] Tr. 438:9–15; JX 73 at GLASS0000654.

be redirected for speaking extremely loud which is usually fueled by his enthusiasm."[104]

While Mr. Frangia was settling into his routine at Sage, efforts to change title to the Unit began. The parties dispute who initiated those efforts and why; ultimately, I find the testimony from the disinterested cooperative members most telling and credible.

The president of the cooperative's board, Gail Rodger, testified by deposition that it was the Respondent who first contacted her in August or September of 2019 to discuss a transfer.[105] Through text, the Respondent told Ms. Rodger that Mr. Frangia decided to transfer the Unit and Ms. Rodger, in response, explained the

[104] JX73 at GLASS0000655.

[105] Rodger Dep. 23:7–8. This timing could support the Respondent's testimony that Mr. Frangia contacted her first in May or June 2019 with the idea to transfer ownership. Tr. 290:6–9. Per the Respondent, Mr. Frangia wanted to transfer the Unit to her because he lost trust in the Petitioner and Sandy. Tr. 290:11–24. The Respondent further testified that Mr. Frangia "[t]old her to keep it a secret from [the Petitioner] and Sandy because they would not approve." Tr. 291:15–18. But I find the Respondent's attempt to place all impetus for the transfer on Mr. Frangia falls flat; even accepting that Mr. Frangia was concerned for his daughter's well-being, the evidence supports a more reasonable inference that those concerns were heightened and exacerbated by the Respondent's complaints to Mr. Frangia. *See* Tr. 101:1–10, 302:19–304:9, 307:6–10; *see also* Tr. 457:17–460:19. *But see* Tr. 528:12–15, 529:1–3 (Suzanne testifying as to her belief that Mr. Frangia wanted to gift the Unit to the Respondent, based on conversations she had with Mr. Frangia and the Respondent after the transfer). The testimony of Mr. Sibert also demonstrated that Mr. Frangia knew how to reach Mr. Sibert about the Unit, had done so numerous times before, and yet never did so to expressly start the transfer process. Tr. 508:17–509:12, 512:4–7, 517:12–22.

process.[106] Ms. Rodger further assisted by leaving the necessary forms in a central location where the Respondent could pick them up and then, once executed, drop them back off.[107] Per Ms. Rodger, the Respondent "ask[ed] the paperwork be expedited."[108]

The Respondent testified that she did pick up the documentation left by Ms. Rodger.[109] The Respondent then went to visit Mr. Frangia at Sandy's house.[110] Per the Respondent, Mr. Frangia then "instructed [her] how to get to the bank downtown" where he had arranged for the signing, then "handled all the paperwork, and then [went] out to lunch."[111] The Respondent then, presumably, returned home to the Unit, with the completed paperwork, and left it in the central location for Ms.

[106] Rodger Dep. 23:9–17.

[107] *Id.* at 24:1–7.

[108] JX104.

[109] Tr. 305:18–20. This was a change from the Respondent's deposition testimony where she testified that her father already had the documents before she drove him to the bank. Baker Dep. 68:21–69:9. It also conflicts with the Respondent's interrogatory responses where she explained: "My father handled the transfer of the [Unit] on his own and got together all the paperwork and set up the appointment at a notary for [her] to sign the paperwork." JX93 at 4–5. The Respondent insisted she did not "know who he contacted in regards to any work that was needed" to accomplish the transfer. *Id.* at p.5.

[110] *See* Tr. 306:7–16.

[111] Tr. 305:21–22, 306:14–16.

Rodger.[112] Ms. Rodger never spoke to, or met with, Mr. Frangia before the Unit was transferred.[113]

But David L. Sibert, from Gable Brothers, Inc., the property manager for the cooperative, did speak with Mr. Frangia numerous times. Mr. Sibert testified that he has known Mr. Frangia for as long as Mr. Sibert has been involved with the cooperative—over 20 years.[114] Mr. Sibert met Mr. Frangia because Mr. Frangia "was on the board of directors at one point and . . . [was] very active in the community."[115]

After Mr. Frangia moved out, he would often call Mr. Sibert to discuss the coop fees and ask how things were going with the Unit.[116] Mr. Frangia also asked

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[112] Completing the transfer paperwork was not the only step in the cooperative's process. Rodger Dep. 26:1–12; *see* JX49; *see also* JX50. Once the transfer paperwork is signed and notarized, an applicant must be interviewed by an admissions committee and more paperwork—prepared by the cooperative's attorney—would need to be signed and stamped. Rodger Dep. 33:3–8. The cooperative also administers credit and criminal background checks. *Id.* at 35:13–20. Then the cooperative gives documents including bylaws, house rules, and financials to the transferee. *Id.* at 35:1–12. Ms. Rodger does not remember those documents being given to the Respondent. *Id.* at 35:1–4. After the initial transfer paperwork was returned, Ms. Rodger does recall an admission phone interview with the Respondent (as is standard), but she did not speak with Mr. Frangia until after the transfer was complete. *Id.* at 26:5–21. Her post-transfer conversation with Mr. Frangia consisted of a phone call where he asked about transferring payment to the Respondent. *Id.* at 26:13–21. Ms. Rodger does not recall an attorney or real estate agent representing the Respondent or Mr. Frangia. *Id.* at 39:6–16.

[113] Rodger Dep. 32:4–5.

[114] Tr. 507:18–20.

[115] Tr. 507:9–11.

[116] Tr. 508:17–509:12.

Mr. Sibert to ensure the Respondent was "taken care of"—Mr. Sibert understood that to mean Mr. Frangia wanted the Respondent to "receive the stock shares at some point[.]"[117] To Mr. Sibert, it was clear that Mr. Frangia wanted the Respondent to own the Unit.[118] But Mr. Frangia did not speak with Mr. Sibert about transferring the Unit at any time, let alone at or around the time the documentation was provided by Ms. Rodger and brought to Mr. Frangia by the Respondent to execute.[119]

After the Respondent returned the signed forms, William Brady, Esquire, who represents the River Park Cooperative, wrote to Mr. Frangia. In his October 21, 2019 letter, Mr. Brady explained he was responding to Mr. Frangia's request that Mr. Brady represent him "in connection with transferring ownership" of the Unit to the Respondent.[120] It is unclear if, when, or how Mr. Frangia made such communication. But Mr. Frangia countersigned the letter confirming that he wanted Mr. Brady to assist him.[121] Then,"[o]n or around October 24, 2019, the proprietary

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[117] Tr. 509:13–23.

[118] Tr. 510:5–6; *see also* JX103 at RIVERPARK0000003. Mr. Frangia's cousin-in-law, Joanne Govatos-Webb, testified similarly, explaining she and Mr. Frangia had often discussed Mr. Frangia's intention to provide for the Respondent. Tr. 550:6–23. She believed Mr. Frangia would be leaving the Respondent the Unit and did not want his other children to know she may be favored in his will. Tr. 551:3–11, 552:11–14. Ms. Govatos-Webb testified that Mr. Frangia also told her about the transfer of the Unit. Tr. 553:6–8.

[119] *See* Tr. 517:2–15.

[120] JX78 at 4.

[121] *Id.* Presumably, this document was executed the same way as the first set—by the Respondent bringing Mr. Frangia a copy. *See* Tr. 306:7–16 (explaining the Respondent's "standard operating procedure").

lease for the Unit was assigned to [the] Respondent."[122] This was accomplished through Mr. Frangia executing realty transfer tax returns, a stock power, and assignment of lease; the Respondent further executed an acceptance and assumption of the lease and the cooperative president approved the assignment.[123] Presumably, the same process for signing these documents was followed—the Respondent picked Mr. Frangia up from Sandy's house, documents in hand, and took him to the bank to execute where indicated.[124]

Thereafter, starting in November 2019, Mr. Frangia's participation with Sage increased to two days per week.[125] In the December 4, 2019 quarterly report, Sage employees reported that Mr. Frangia "presents with poor memory" but is overall "friendly and complimentary to staff" even though he continued to require "reminders to speak in a lower voice."[126] Although prior reports of Mr. Frangia's speaking volume were explained as enthusiastic, in December, staff reported that

[122] D.I. 152 ¶ 30. The Petitioner testified that she learned of the transfer on February 13, 2020. Tr. 121:6–9. When she asked her father about it, he told her that a long-deceased attorney assisted him with the transaction. Tr. 122:10–19. The Petitioner further explained that Mr. Frangia has had difficulty understanding the reason for this action and her drive to rescind the title transfer. Tr. 125:3–16. The Respondent recalls Mr. Frangia calling her to tell her that the Petitioner found out about the transfer and "was planning on causing a lot of trouble." Tr. 282:17–21.

[123] JX78 at 5–14.

[124] *See* Tr. 306:7–16 (explaining the Respondent's "standard operating procedure").

[125] *See* JX73 at GLASS0000690.

[126] *Id.* at GLASS0000655.

Mr. Frangia "can be very nice but is very easily annoyed by the behaviors of other clients and will loudly yell at them to shut up."[127]

Thereafter, Mr. Frangia's mood worsened. On December 27, 2019, Mr. Frangia reported to a program assistant that he did "not want to keep going back and forth between NJ and CA."[128] In a moment of frustration, he stated: "I wish God would take me so I don't have to live like this anymore."[129] When later asked about his statements, however, Mr. Frangia reverted and explained he enjoyed going to Sage and "every day is a blessing."[130]

But his spirits dipped again in January 2020. After meeting with Mr. Frangia on or around January 9, 2020, the Respondent reported through text message to the Petitioner that Mr. Frangia's "memory [was] especially weak" that day and that he was stressed with the impending move to California.[131] She went on to suggest that Mr. Frangia be placed in a facility, if the Petitioner could not deal with his care, because Mr. Frangia "doesn't need the stress of others reactions & impatience in his

[127] *Id.* at GLASS0000657.

[128] *Id.*

[129] *Id.*

[130] *Id.*

[131] JX52.

life."[132] The Respondent concluded by offering to assist with the transition by coming to California for "a week or so."[133]

The next day, January 10, 2020, Mr. Frangia presented to Sage "tearful and upset."[134] Mr. Frangia "reported that his daughters ha[d] been fighting and [were] putting him in the middle of it."[135] He further explained that he would be moving to California fulltime.[136]

H. The 2020 Move & Withdrawal

Mr. Frangia was discharged from Sage on January 13, 2020, and soon after went to stay with the Petitioner in California.[137] While in California, Mr. Frangia continued receiving medical care and treatment. At a doctor's appointment on February 10, 2020, Mr. Frangia discussed managing his irregular heartbeat with his doctor.[138] At that time, he showed moments of lucidity; the medical records reflect that Mr. Frangia "fully understood and agreed with" the plan in his "complex case requiring a high level of decision-making."[139]

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[132] *Id.*

[133] *Id.*

[134] JX73 at GLASS0000658.

[135] *Id.*

[136] *Id.*

[137] *Id.*; *id.* at GLASS0000615.

[138] JX73 at GLASS0000658

[139] JX114 at GLASS0000330.

Shortly thereafter, back in Delaware, the Respondent nearly drained the M&T Account. On March 20, 2020, the Respondent wrote a check from the M&T Account to cash for $16,030.00 (the "Withdrawal").[140] In the check's memo line, the Respondent wrote: "Good Luck!"[141] When the check was posted, the M&T Account retained a balance of $21.40; that amount was quickly depleted by the recurring safe deposit fee and banking service charge.[142]

Per the Petitioner, Mr. Frangia was shocked and upset by the Withdrawal. The Petitioner testified that when Mr. Frangia received his monthly statement and saw the check posted, he "immediately came downstairs and was calling for [her] . . . and was questioning [her] repeatedly. He was confused. He did not understand what was documented on the statement."[143] Per the Petitioner, Mr. Frangia asked: "why is there a check for $16,030? I don't understand what's going on. What happened to my money?"[144] When they located a printout of the check in the monthly statement, the Petitioner testified that she encouraged Mr. Frangia to call the Respondent and

[140] JX117 at SBaker000405. The parties dispute how the Respondent used the M&T Account before the Withdrawal. Although the Respondent admitted that she did not regularly review the M&T Account statements (Baker Dep. 89:11–90:6) she testified to some sporadic use and contribution. *See, e.g.*, Tr. 350:23–351:1.

[141] JX117 at SBaker000405.

[142] JX116 at SBaker000102.

[143] Tr. 114:1–6.

[144] Tr. 114:10–11.

he did, asking her to return the money.[145] The Respondent, conversely, testified the Withdrawal was Mr. Frangia's idea.[146]

Seven days later, on March 27, 2020, the Respondent called Mr. Frangia and recorded their discussion.[147] Notably absent from their conversation—any discussion of the Withdrawal. Ever present, however, was the Respondent's interest in the Unit. Without attempting to summarize the entire recording, I note that, thereon, (1) Mr. Frangia explained, nonchalantly and unprompted, that the Respondent owns the Unit; (2) upon the Respondent's prodding, Mr. Frangia explained that he gave the Unit to the Respondent because his other children have nice homes;[148] (3) Mr. Frangia stated multiple times that the day is Friday, sometimes in a declarative way, sometimes questioning;[149] and (4) the Respondent ended the call by telling her father how he should react and interact with the Petitioner.[150]

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[145] Tr. 115:16–116:5.

[146] Tr. 326:8–9.

[147] JX58.

[148] This explanation conflicts with the Respondent's testimony that in 2019 Mr. Frangia wanted to transfer the Unit because "he had lost trust in Sandy and [the Petitioner]." Tr. 290:4–291:14.

[149] Dr. Tavani testified that repetition can be a sign of a neurocognitive disorder. Tr. 447:17–23.

[150] JX58.

Within just a few months of learning of the Withdrawal, the Petitioner initiated this action.[151] The procedural posture of this action, which overlaps with the additional factual predicate adduced regarding Mr. Frangia's capacity, is addressed below.

Shortly after the Petitioner initiated this lawsuit, the Respondent recorded several more of her conversations with Mr. Frangia:[152]

- The Respondent produced two recordings from a July 8, 2020 conversation.[153] The first recording begins in the middle of an ongoing discussion. Both the Respondent and Suzanne are on the phone with Mr. Frangia questioning him about his access to his phone. When he answers, the Respondent and Suzanne challenge and attempt to change his response. The Respondent chastises her father to always answer her calls and tells him to "cement [his phone] to his hand." Mr. Frangia assents, telling the Respondent what she wants to hear. This pattern continues. The Respondent asks Mr. Frangia questions and when she does not get the answer she wants, she raises her voice and pressures him to change his response. Both daughters also cut off Mr. Frangia's answers, stifling his responses to their questions and pressuring him for a "yes" or "no." The call is essentially an interrogation. Under questioning and pressure, Mr. Frangia provides the same explanation for why he transferred the Unit as he did on the earlier recorded call.[154]

- The first recording is cut off and a new recording picks up sometime later during the same July 8, 2020 interrogation.[155] At his daughters' insistence, Mr. Frangia can be heard confronting the Petitioner about this lawsuit. As he does so, he explains the Unit is "[his] apartment."

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[151] D.I. 1; JX61; Tr. 120:4–9.

[152] JX65, 66, 67, 68.

[153] JX65, 66.

[154] JX65.

[155] JX66.

He continues with "there's only one owner of that apartment, it's me." Suzanne then corrects him that he no longer owns the apartment. Mr. Frangia initially agrees but then continues to call himself the owner of the Unit throughout the call. The Respondent then tells her father what she wants him to do, in a tone and volume that is appropriately characterized as berating. Beat down, Mr. Frangia apologizes to his daughters and tries to diffuse the situation explaining "I don't like this drama," "I'm sorry, this has gone too far," and "if you want to blame me, you can blame me." The Respondent then demands that Mr. Frangia call the police to come to the house and to call 911 if he is not feeling well.[156]

- The next recording is from a call on July 10, 2020.[157] During the call, the Respondent tries to pressure Mr. Frangia to turn on the Petitioner, insisting that he is being abused and that his own view of the situation is incorrect. He refuses to relent throughout and ensures the Respondent that he is "very happy."[158]

- Finally, I was able to hear another recording from July 10, 2020.[159] The recording starts in the middle of a conversation between Mr. Frangia and the Respondent. Mr. Frangia is addressing his frustration with the family strife. He explains his view that the Unit is legally the Respondent's because he gave it to her, and he encourages the Respondent to stop worrying about it. The Respondent ends the call by telling Mr. Frangia why he transferred the Unit and congratulating him on his smart decision; he takes the compliment well.[160]

Sometime thereafter, the Respondent changed the mailing address for the M&T Account. By letter dated September 19, 2020, Mr. Frangia received notice

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[156] *Id.*

[157] JX67.

[158] *Id.*

[159] JX68. It is unclear whether this call was before or after or a part of the prior call; the date, however, is the same.

[160] *Id.*

that the mailing address was changed from his address in California to the address of the Unit, where the Respondent continues to reside.[161] The Respondent explained she changed the address because she "saw no reason why it should be going to" the Petitioner's house.[162]

I. Post-COVID

"[W]hen COVID hit, [Mr. Frangia] was in California," staying with the Petitioner.[163] The pandemic threw a wrench into Mr. Frangia's routine of spending about half of the year on each coast. Thereafter, he only visited Sandy's home once in the summer of 2021.[164]

Before that visit, the Petitioner warned Sandy that Mr. Frangia "could really not be left alone."[165] Sandy, fortuitously, was not working that summer and was able to provide 24/7 support for Mr. Frangia.[166] During that time, Sandy realized Mr. Frangia "needed much more care than he had the last time [she] had seen him[.]"[167]

While Mr. Frangia was at Sandy's, the Respondent came to visit him. On August 19, 2021, the Respondent met with Mr. Frangia and brought him a typed

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[161] JX74.

[162] Tr. 349:9–10.

[163] Tr. 12:22–23.

[164] Tr. 13:1–3.

[165] Tr. 25:24–26:1.

[166] Tr. 26:1–2. Sandy is a high school math teacher. Tr. 8:15–21.

[167] Tr. 26:2–4.

affidavit to sign.[168] Per the affidavit, in pertinent part, Mr. Frangia purportedly avers that he willingly gave the Unit to the Respondent and he had the transfer paperwork notarized before the Respondent picked him up—a declaration now proven false by the Respondent's trial testimony.[169] The Respondent admitted that she drafted the affidavit, but she testified that Mr. Frangia "voiced what he wanted in the document."[170] Further, the Respondent testified that she reviewed the affidavit with Mr. Frangia word-by-word before he signed it at the bank.[171] The Respondent then filed that affidavit, along with a letter (that she also drafted) signed by Mr. Frangia, in this action for my consideration.[172]

After two months with Sandy in the summer of 2021, Mr. Frangia returned to California, and he has been residing fulltime with the Petitioner ever since.[173] With his return, the Petitioner noticed a significant decline in her father's mental faculties.[174] Per the Petitioner, he has exhibited even greater short-term memory

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[168] *See* JX85. This was not the first time that the Respondent tried to have Mr. Frangia sign an affidavit; the first time, in 2020, her sister Suzanne tried to help but was rebuffed. Tr. 309:8–16.

[169] JX85 at SBaker000005–06. *Compare* Baker Dep. 69:7–9, *with* Tr. 365:10–13.

[170] Tr. 309:19–22.

[171] Tr. 311:2–12. This testimony tracks with the Respondent's affidavit of August 14, 2021. JX86.

[172] *See* D.I. 53–56.

[173] Tr. 9:11–21, 93:7–9, 343:8–11, 561:2–8. Sandy remains active in Mr. Frangia's care, communicating regularly with the Petitioner. *See* Tr. 13:9–16.

[174] Tr. 106:10–16.

loss.[175] To fully understand the situation, the Petitioner contacted Mr. Frangia's primary care physician who referred her to a neurologist, Dr. Nazila Rad.[176]

In August 2021, Mr. Frangia met with Dr. Rad for a memory evaluation.[177] An MRI showed white matter but was consistent with the CT scan conducted in 2011; Dr. Rad found the MRI did "not show significant changes over [the] past 10 years."[178] Mr. Frangia also performed well on the mini-mental status examination, scoring 24/30 on the test for which on its face reflects that "[a] score below 20 usually indicates cognitive impairment."[179] Dr. Rad then referred Mr. Frangia to a neuropsychologist, Dr. John Wen.[180]

Around October 2021, the Petitioner started taking her father to appointments with Dr. Wen.[181] Dr. Wen issued a report on November 3, 2021 summarizing his findings.[182] As background, Dr. Wen noted that Mr. Frangia needed a cane to walk and he was not a reliable historian.[183] Mr. Frangia "was able to provide some info

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[175] Tr. 106:24–107:4.

[176] Tr. 108:1–3.

[177] *See* JX88.

[178] *Id.* at GLASS0000432.

[179] *Id.* at GLASS0000434–37. The Petitioner's expert witness, Dr. Tavani, testified that the score of 24 "generally indicate[s] a dementia in the mild category." Tr. 444:7–12.

[180] Tr. 107:19–109:2.

[181] Tr. 109:3–19.

[182] *See* JX89.

[183] *Id.* at GLASS0000583; *see also* Tr. 446:8–14.

and history, but his daughter often provided the history, the details, and he himself was frequently turning to his daughter dependent on her for the responses."[184] As one example of Mr. Frangia's confusion, Mr. Frangia reported to Dr. Wen that he had been widowed since 1964 (his wife passed in 2006).[185]

"From an intellectual perspective," Dr. Wen found that Mr. Frangia "perform[ed] in the average range overall."[186] His "sustained/simple attention" was found "borderline impaired" and his "[v]isual [s]patial functions were impaired to average."[187] Dr. Wen found Mr. Frangia did "have confusion and source recall issues."[188] Dr. Wen concluded that Mr. Frangia needed the Petitioner's "assistance to help manage his needs and his circumstances."[189] Dr. Wen recommended that Mr. Frangia "discuss all important decision making needs" with the Petitioner.[190] Dr. Wen's ultimate diagnoses included moderate dementia (Alzheimer's type).[191]

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[184] JX89 at GLASS0000584; *see also* Tr. 446:14–17.

[185] JX89 at GLASS0000584.

[186] *Id.* at GLASS0000589.

[187] *Id.* The Petitioner's expert witness, Dr. Tavani, explained that sustained attention means "you not only pay attention, but can you keep your attention focused on something[.]" Tr. 451:16–18.

[188] JX89 at GLASS0000589.

[189] *Id.*

[190] *Id.*

[191] *Id.* at GLASS0000590.

In October 2022, the Petitioner moved, with Mr. Frangia, to Dublin, California; he remains there to date.[192] Sandy and the Petitioner talk regularly (up to five times a week), ensuring they are on the same page about Mr. Frangia's care.[193] Sandy also continues to manage Mr. Frangia's finances.[194] In 2022, the Petitioner and Sandy worked together to close the M&T Account and attached safe deposit box.[195]

J. The Expert Report

In addition to the numerous fact witnesses that testified at our two-day trial, the Petitioner called an expert witness, Dr. Carol A. Tavani, a medical expert in psychiatry and neurology.[196] The Petitioner retained Dr. Tavani to give an opinion of Mr. Frangia's capacity around fall 2019, when the Unit was transferred to the Respondent.[197] Dr. Tavani reviewed medical records and filings in this action, interviewed the Petitioner and Sandy, and listened to four recordings of Mr.

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[192] Tr. 9:14–21, 93:1–9.

[193] Tr. 13:9–16.

[194] *See* Tr. 26:5–11, 96:20–24.

[195] *See* Tr. 113:1-10. The parties also adduced testimony and introduced documentary evidence regarding wellness checks on Mr. Frangia while in California. *See, e.g.*, Tr. 126:20–127:19, 129:1–130:11. I decline to address this line of inquiry as irrelevant to the issues pending before me.

[196] *See* Tr. 419:7–14.

[197] *See* Tr. 419:18–23.

Frangia.[198] Dr. Tavani opined "with a high degree of medical probability, that Mr. Frangia was susceptible to undue influence by virtue of a weakened intellect and also other factors . . . rendering him highly vulnerable at the time of the documents in question."[199]

K. Procedural Posture

On May 19, 2020, the Petitioner, individually and as agent under the POA, brought this petition against the Respondent.[200] The Petitioner pled seven counts for: (I) accounting; (II) surcharge for breach of fiduciary duty; (III) invalidation of transfers of property and/or retitling of assets; (IV) constructive trust; (V) unjust enrichment; (VI) lack of capacity; and (VII) undue influence.[201]

On September 3, 2020, the Respondent moved to dismiss.[202] After the motion was fully briefed and argued, I issued a final report on April 13, 2021.[203] In my final report, I recommended that Counts I, II, and IV be dismissed, Count III be dismissed

[198] Tr. 420:9–19.

[199] JX108 ¶ 88.

[200] D.I. 1.

[201] *Id.*

[202] D.I. 11.

[203] *See* D.I. 17, 19, 21, 26.

in part and survive in part, under the undue influence lens, and Counts V–VII survive in full.[204] Chancellor Bouchard adopted such recommendations on April 27, 2021.[205]

On May 17, 2021, the Respondent filed a cross-petition, seeking revocation of the POA, to invalidate certain of the Petitioner's actions, for an accounting from the Petitioner, and for other related relief (the "Cross-Petition").[206] The Petitioner answered the Cross-Petition on May 26, 2021.[207]

After some motion practice, trial was originally scheduled for May 16, 2022.[208] But, the Respondent, then acting as a self-represented litigant, unreasonably delayed and frustrated these proceedings, resulting in an order granting judgment in the Petitioner's favor by default.[209] After the Respondent secured counsel, I granted relief from that judgment and set a new schedule, teeing this action up for trial in May 2023.[210]

Pre-trial proceedings were marred by motion practice, which I do not endeavor to summarize here.[211] In pertinent part, on April 11, 2023, the Respondent

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[204] D.I. 26 at 10–11.

[205] D.I. 27. Untimely exceptions were later dismissed. *See* D.I. 48.

[206] D.I. 37.

[207] D.I. 41.

[208] D.I. 65.

[209] D.I. 79.

[210] *See* D.I. 87, 97.

[211] I direct interested readers to the docket.

moved to dismiss this action for lack of standing (the "Motion").[212] The Motion was fully briefed on May 2, 2023, and on May 4, 2023, at the pretrial conference, I advised that I would defer my consideration of the Motion until after trial.[213]

The remaining claims and counterclaims were tried on May 10 and 11, 2023.[214] Following trial, the parties submitted post-trial briefs. Briefing was complete on September 20, 2023, at which time I took this case under advisement.[215]

This is my final post-trial report.

II. ANALYSIS

The threshold issue is whether the Petitioner has standing. Finding the Petitioner has standing, I then address the remaining issues, which are whether: (1) the transfer of the Unit was the result of undue influence; (2) the Withdrawal unjustly enriched the Respondent; and (3) this action is an abuse of process or the result of malicious prosecution.[216] I find Mr. Frangia was unduly influenced to transfer the

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[212] D.I. 140.

[213] *See* D.I. 145, 149, 151, 153. The Respondent moved again after the Petitioner's case in chief and I again deferred consideration until after trial. Tr. 503:20–504:7.

[214] *See* D.I. 154, 170, 171.

[215] *See* D.I. 157, 161, 165, 168.

[216] I limit my analysis to these issues as they are the only issues fully briefed. The Petitioner's request for "a constructive trust on any other property improperly obtained by [the Respondent] from Mr. Frangia" was not fairly presented in the post-trial briefing. *See* D.I. 157 at 42. Likewise, the Petitioner requests that fees be shifted but does not brief the legal bases for such request. *Id.* The Petitioner may move for fee shifting after this report becomes a final order of the Court.

Unit, the Withdrawal did not unjustly enrich the Respondent, and this action was not brought or maintained for improper purposes. I further recommend that costs be shifted in the Petitioner's favor as the prevailing party.

A. The Petitioner has standing.

The Respondent argues that the Petitioner lacks standing because the Petitioner did not execute an agent's certification before she filed suit in her capacity as agent under the POA.[217] The Petitioner concedes as much, but argues that, by executing a certification and ratification on April 19, 2023, she has mooted the issue.[218] I agree and find the Petitioner has standing because she ratified her prior unauthorized conduct after executing the agent's certification.

Standing "asks whether a particular party can assert" their claims.[219] Here, that party is not just the Petitioner, but the Petitioner in her capacity as agent for Mr. Frangia.[220] Whether an agent is authorized to act under a power of attorney depends on whether the agent executed the agent's certification, as I explained in *Maughan*

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[217] D.I. 140.

[218] *See* JX112.

[219] *Gandhi-Kapoor v. Hone Cap. LLC*, 2023 WL 8480970, at *7 (Del. Ch. Nov. 22, 2023), *as corrected* (Del. Ch. Dec. 4, 2023), *and mot. to cert. appeal granted sub nom. Gandhi-Kapoor v. Hone Cap. LLC & CSC Upshot Ventures I, L.P.*, 2023 WL 8769432 (Del. Ch. Dec. 18, 2023).

[220] The Petitioner argues that she also brought her claims individually, but other than the captioning, I see no individual claims.

v. Est. of Wilson.[221] Therein, I found the Delaware Durable Personal Power of Attorney Act (the "DPPAA") requires agents under powers of attorney to sign an agent's certification before they were authorized to act.[222] To me, the DPPAA is clear and provides that an "agent is only authorized to act after executing the required certification."[223] I then went on to find that the former agent whose conduct was at issue in *Maughan* did not sign the certification, nor substantially comply with the certification requirement, and thus lacked authority to take the challenged actions.[224] That lack of authority, I found, rendered his actions voidable at the behest of the principal.[225]

Here, I am asked to determine if an agent can ratify their unauthorized conduct by signing the agent's certification after taking unauthorized actions. I find they can.

Generally, "[v]oidable acts can be validated by equitable defenses, such as ratification and acquiescence"[226] Ratification includes both "[c]onfirmation and

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[221] 2023 WL 2728811, at *4 (Del. Ch. Mar. 31, 2023).

[222] *Id.*

[223] *Id.* at *5.

[224] *Id.* at *5–7.

[225] *Id.* at *7. After I issued *Maughan*, the parties settled their remaining disputes, and I approved the parties' mutual release and settlement agreement, closing the case. Order to the Stipulated Mot. to Approve Mut. Release and Settlement Agreement, *Maughan v. Est. of Wilson*, C.A. No. 2022-0397 (Del. Ch.), D.I. 53.

[226] *CompoSecure, LLC v. CardUX, LLC*, 2018 WL 660178, at *26 (Del. Ch. Feb. 1, 2018), *aff'd in part*, *rev'd in part on other grounds*, 206 A.3d 807 (Del. 2018). I reject the Respondent's argument that the statutory scheme expressly excludes such equitable defenses or that permitting the Petitioner to assert ratification would "seriously undermine,

acceptance of a previous act, thereby making the act valid from the moment it was done" and "[a] person's binding adoption of an act already completed but either not done in a way that originally produced a legal obligation or done by a third party having at the time no authority to act as the person's agent[.]"[227] "Ratification requires knowledge, actual or imputed, of all material facts and may be implied from conduct, as well as expressed by words."[228]

Although ratification is often done by a party or parties distinct from the actor whose conduct is being ratified,[229] that dichotomy is not required. Consider contracts with minors. "[A] contract with a minor [i]s voidable, not void, and [i]s thus subject to ratification by the minor."[230] A minor could, for example, agree to buy their first car. But, under Delaware law, because the minor does not have legal capacity to contract, the agreement is unenforceable.[231] The minor could, thus, "back

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if not eradicate, the clear and unambiguous language (and intent) of the statute that the Delaware legislature chose to adopt[.]" D.I. 149 at 4. *See, e.g.*, *Apple Comput., Inc. v. Exponential Tech., Inc.*, 1999 WL 39547, at *7 (Del. Ch. Jan. 21, 1999) (recognizing stockholder ratification of an action of a board that overlooked statutory requirements).

[227] *Ratification*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[228] *ASB Allegiance Real Est. Fund v. Scion Breckenridge Managing Member, LLC*, 2012 WL 1869416, at *16 (Del. Ch. May 16, 2012), *judgment entered*, 2012 WL 2004812 (Del. Ch. 2012), *and aff'd*, 68 A.3d 665 (Del. 2013) (cleaned up).

[229] For example, in the corporate context, where ratification "permits stockholders to extinguish a claim for breach of fiduciary duty by authorizing an act that otherwise would constitute a breach." *New Enter. Assocs. 14, L.P. v. Rich*, 295 A.3d 520, 564 (Del. Ch. 2023).

[230] *Kuehn v. Cotter*, 2013 WL 5656205, at *1 (Del. Oct. 15, 2013) (citation omitted).

[231] *See* 6 *Del. C.* § 2705.

out" of the deal they were without capacity to make. Or the minor could, once they reach the age of majority, ratify the previously unenforceable agreement, and move forward with the purchase through a binding contract.[232] Under Delaware law, "such ratification must be express, and not by mere implication; and must be made with full knowledge of the party's rights."[233]

A similar scheme should apply in the power-of-attorney context. When an agent is validly appointed through a power of attorney, the principal authorizes the agent to execute the agent's certification and begin acting on the principal's behalf. If the agent fails to execute the certification, yet purports to act as agent for the principal, those actions are voidable.[234] But, if those actions are not first voided by the principal, the agent is authorized (through the principal's initial and continued

[232] Of course, all of this could be avoided by parental/guardian consent.

[233] *Walker v. Chambers*, 5 Del. 311, 312 (Del. Super. 1850).

[234] The "voidable" label assumes that the agent's acts were within the scope of the authority granted by the principal under the power of attorney. Agent acts outside that authority would be more properly considered void and not ratifiable. *Cf. Nevins v. Bryan*, 885 A.2d 233, 245 (Del. Ch. May 4, 2005), *aff'd*, 884 A.2d 512 (Del. 2005) ("Void acts are not ratifiable because the corporation cannot, in any case, lawfully accomplish them. Void acts are illegal acts or acts beyond the authority of the corporation. In contrast, voidable acts are ratifiable because the corporation can lawfully accomplish them if it does so in the appropriate manner." (cleaned up)). Here, there is no argument that initiating and prosecuting this action was outside of the Petitioner's authority as agent. In fact, the POA expressly permits bringing and maintaining litigation. JX111 ¶ 23.

appointment)[235] to ratify their post-appointment conduct after signing the agent's certification.

Ratification of minor contracts and unauthorized agent acts is, thus, a two-step process. Step (1) requires removing the prior incapacity/lack of authorization. For the minor, that means reaching the age of majority; for the agent, it means signing the agent's certification. Step (2) is the ratification. The minor and the agent must, once validity authorized, then take steps to expressly confirm their prior actions, "with full knowledge of [their] rights."[236]

Here, there is no dispute that the Petitioner took step (1). On April 19, 2023, the Petitioner signed the agent's certification. The Respondent does not dispute that the certification tracks the DPPAA and is facially valid.

To complete step (2), the Petitioner signed, under oath, a document titled "Agent Ratification" (the "Ratification"). In the Ratification, the Petitioner outlines actions she has taken as agent under the POA, including initiating and maintaining this action, and thereby purports to: "ratify, approve, confirm and accept in all respects all of the actions [that have been taken by herself] on behalf of [Mr. Frangia] when purporting to act pursuant to [the POA]."[237] The Ratification is express and

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[235] Here, the POA also includes a ratification provision, adding additional support to the availability of ratification for the agents at issue. JX111 ¶ 31.

[236] *Walker v. Chambers*, 5. Del. at 311–12.

[237] JX112.

unequivocal.[238] Further, the Petitioner has continued to maintain this action and assert her authority as Mr. Frangia's agent to do so. Thus, I find the Petitioner performed both steps required to ratify her unauthorized conduct and, as such, has standing to maintain this action.

B. The Respondent unduly influenced Mr. Frangia, causing him to transfer the Unit.

Finding the Petitioner has standing to prosecute this action as agent of Mr. Frangia, I now turn to whether the Respondent unduly influenced Mr. Frangia to transfer the Unit. The Petitioner bore the burden of proving, by a preponderance of the evidence that (1) Mr. Frangia was susceptible at the time the Unit was transferred, (2) the Respondent had the opportunity to exert influence over Mr. Frangia, (3) the Respondent had a disposition to exert influence for an improper purpose, (4) the Respondent actually exerted such influence, and (5) the transfer of the Unit is a result demonstrating the effect of that exerted undue influence.[239] The

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[238] The Respondent challenges certain averments in the Ratification as being "refuted by [the Petitioner's] own statements in her deposition and Mr. Frangia's statements in his affidavit." D.I. 149 at 6. But I need not wade into the truthfulness of those statements; the question before me is whether the Ratification expressly confirms the Petitioner's initiation and maintenance of this action. It does. Further, even if the Ratification were excluded from consideration, the Petitioner's continued maintenance of this action is alone sufficient to support her ratification of her prior unauthorized initiation of this action. *See Genger v. TR Invs., LLC*, 26 A.3d 180, 195 (Del. 2011) ("Ratification may be either express or implied through a party's conduct, but it is always a voluntary and positive act.") (cleaned up).

[239] *McGee v. Est. of Hopkins*, 2022 WL 17492353, at *8 (Del. Ch. Nov. 22, 2022), *adopted sub nom. Mcgee v. Hopkins*, 2022 WL 17633575 (Del. Ch. Dec. 9, 2022). "Proof by a preponderance of the evidence means proof that something is more likely than not. It means

final element (the result) is undisputed; I find the Petitioner met her burden to prove the rest.

1. Mr. Frangia was susceptible to undue influence.

There is no reasonable dispute that Mr. Frangia was susceptible to undue influence at the time the Unit was transferred—September 25, 2019.[240] Although "[t]here is no precise definition or defining feature of susceptibility, . . . the analysis is informed by the subject's capacity[.]"[241] This fact-intensive inquiry includes determining "whether objective evidence indicates that the individual could comprehend, understand, and make decisions himself."[242]

This Court has found an individual susceptible to undue influence where he had "a debilitating mental condition[,] . . . diminished capacity to take care of basic

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that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not." *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002) (citations and quotation marks omitted).

[240] *See* JX78. The Respondent's argument against susceptibility consists primarily of a challenge to Dr. Tavani's expert report and opinion. D.I. 161 at 26–34. Per the Respondent, Dr. Tavani placed significant emphasis on medical records two years after the transfer of the Unit and failed to acknowledge the irrelevance of those records. Although I have summarized those records in my factual recitation, I find the medical records and familial recollections pre-dating the transfer of the Unit adequately support a finding, by a preponderance of the evidence, that Mr. Frangia was susceptible at the time the Unit was transferred. I thus distinguish this case from *In re Kittila*, 2015 WL 688868, at *11–12 (Del. Ch. Feb. 18, 2015) and *Minieri v. Bennett*, 2013 WL 6113911, at *13 (Del. Ch. Nov. 13, 2013).

[241] *In re Dougherty*, 2016 WL 4130812, at *10 (Del. Ch. July 22, 2016) (citations omitted).

[242] *Ray v. Williams*, 2020 WL 1542028, at *30 (Del. Ch. Mar. 31, 2020) (citations omitted).

daily tasks, and [a] need to rely on the help of family members."[243] Such is present here. Mr. Frangia has gradually declined since his wife passed in 2006. After two car accidents, Mr. Frangia's family determined he could no longer live alone, and he moved in with the Petitioner and then the Respondent. The Respondent found the support and care required for Mr. Frangia overwhelming and he was then moved to Sandy's home and ultimately started splitting his time between Sandy and the Petitioner. The family's communications during this time reflect a general understanding and belief that Mr. Frangia needed support and assistance.

That understanding and belief is supported by Mr. Frangia's medical records which reflect a dementia diagnosis consistently since 2011—eight years before the incident in question. I find most relevant the records from immediately preceding and succeeding the transfer. Sage records from August and September 2019 demonstrate Mr. Frangia's susceptibility: he showed signs of forgetfulness and cortical disinhibition.[244] And, shortly after the Unit was transferred, Mr. Frangia's involvement in Sage increased from one day to two—reflecting an increased need

[243] *In re Boyd*, 2003 WL 21003272, at *6 (Del. Ch. Apr. 24, 2003).

[244] The Respondent asks me to rely more heavily on the Sage admission paperwork and process, which reflect Mr. Frangia was actively engaged and able to sign for his own admission. Although relevant to understand the full picture of Mr. Frangia's capacity, the moments of lucidity and understanding upon admission do not support a finding that Mr. Frangia lacked susceptibility; he was susceptible, as supported by the larger record.

for care. I find Mr. Frangia had diminished capacity when the Unit was transferred, and he was susceptible to undue influence.[245]

2. The Respondent had the opportunity to exert undue influence over Mr. Frangia.

The Respondent appears to argue that "opportunity" requires a level of control or closeness that the Respondent did not have with Mr. Frangia. I disagree. Although Mr. Frangia did not live with the Respondent, nor was he dependent on her for his daily needs, I nevertheless find the Respondent had sufficient opportunity under the circumstances presented.

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[245] Because Mr. Frangia is not within the Respondent's custody or care, I judge his susceptibility under a slightly different lens than the Court did in *In re Dougherty*. *See* 2016 WL 4130812, at *10. There, then-Judge LeGrow explained that susceptibility can be found where the person is dependent on or has a particular disposition to accede to the demands of, the alleged influencer given the nature of their relationship. *Id.* at *10–11. Here, I find Mr. Frangia's mental decline rendered him susceptible at the time the Respondent worked with him to transfer the Unit. Given his medical history, I find it unnecessary to determine if Mr. Frangia was particularly dependent on or disposed toward the Respondent. The record does, however, support as much. Although Mr. Frangia was living with Sandy when the Unit was transferred, Mr. Frangia did rely on the Respondent for care and support while his wife was battling cancer. He also stayed with the Respondent from January 2010 to August 2010 during which time she provided care and support to him. And there is no dispute that, until recently, Mr. Frangia continued to enjoy a relationship with the Respondent, speaking to her often over the phone and seeing her while he was on the East Coast. The recordings of Mr. Frangia's conversations with the Respondent also reflect Mr. Frangia's tendency to accede to the Respondent's demands. Even crediting the Respondent's argument that those conversations were during a highly fraught time and are not reflective on how she historically spoke to Mr. Frangia, there is no dispute that they accurately reflect how Mr. Frangia dealt with the Respondent: he was agreeable, apologetic, and largely acquiescent.

The opportunity factor looks at the totality of the circumstances. Although this Court has found clear "opportunity" with live-in, highly dependent relationships,[246] such is not required. For example, in *In re Boyd*, Vice Chancellor Jacobs found the opportunity factor met without shared residence.[247] There, the alleged influencer met an elderly man and inserted himself into his life—calling and visiting him frequently. The Court explained that, even though the elderly man had a niece who cared for him, the alleged influencer had "ample opportunity to exert undue influence" because the elderly man was not constantly supervised, they enjoyed frequent visits, and most directly, the alleged influencer was alone with the elderly man when the challenged actions took place.[248] Similarly, in *In re Cauffiel*, Vice Chancellor Noble found opportunity where one of the alleged influencers "saw the Decedent once a week for Sunday brunch with his family, and would sometimes go to the Decedent's home if she asked him for assistance."[249]

Here, the Respondent likewise had ample opportunity. Before the Unit was transferred, the Respondent had unsupervised telephone calls and in-person visitation with Mr. Frangia. To effectuate the transfer of the Unit, the Respondent communicated with Ms. Rodger, picked up the required paperwork, and brought the

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[246] *See, e.g.*, *In re Dougherty*, 2016 WL 4130812, at *9–10.

[247] *In re Boyd*, 2003 WL 21003272, at *6.

[248] *Id.*

[249] *In re Cauffiel*, 2009 WL 5247495, at *8.

paperwork to Mr. Frangia. The Respondent than drove Mr. Frangia to the bank where the paperwork was signed. These unsupervised encounters, like those in *In re Boyd*, provided the Respondent with multiple opportunities to exert influence over Mr. Frangia in connection with the transfer.

3. The Respondent had the disposition to exert influence for an improper purpose.

The Respondent was also disposed to exert influence for an improper purpose. The disposition element is flexible and requires this Court to take a holistic view of the alleged influencer, their circumstances, relationships, and motivations as relevant to the challenged conduct.[250] The disposition factor "may be satisfied where the alleged influencer stood to benefit financially from such action under circumstances in which the alleged influencer's continued ability to support himself was dependent on the challenged transaction."[251] But disposition does not require a finding of financial insecurity or need.

For example, in *In re Boyd*, this Court found disposition based solely on the influencer's unusual and intense interest in the elderly man's finances, without any inquiry into the influencer's personal financial situation.[252] Likewise, in *In re Henry*, I found the alleged influencer disposed to unduly influence a will change where "she

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[250] *See, e.g.*, *In re Boyd*, 2003 WL 21003272, at *6.

[251] *Ray v. Williams*, 2020 WL 1542028, at *32 (internal quotations omitted).

[252] *In re Boyd*, 2003 WL 21003272, at *2.

had been living in [the decedent]'s home since she was 11 years old and could have been forced to move" absent the contested change.[253] And in *In re Wiltbank*, Vice Chancellor Parsons found an individual disposed to exert influence for an improper purpose when they had a long-standing personal interest in retaining the real property at issue, going so far as to pay an outstanding tax bill to save the property.[254]

Here, the Respondent had been living in the Unit since 2010 and had an interest (adverse to Mr. Frangia) in securing ownership thereof. The Respondent's financial stability is irrelevant, and her self-interested motivations are alone sufficient to meet this factor.[255]

4. The Respondent actually exerted undue influence.

The actual exertion factor can prove the most challenging because so rarely is there direct evidence. But the bar is not insurmountable. For example, to prove actual exertion, I do not need to find knowingly wrongful conduct. As recognized by then-Judge LeGrow in *In re Dougherty*, an undue influencer "may well believe that she is doing the right thing and helping the [susceptible person] achieve what he

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[253] 2021 WL 5816818, at *5 (Del. Ch. Nov. 10, 2021).

[254] 2005 WL 2810725, at *8 (Del. Ch. Oct. 18, 2005).

[255] I also find the Respondent's conduct raises to the same suspicious level of that noted in *In re Konopka*, 1988 WL 62915, at *5–7 (Del. Ch. June 17, 1988). Like the influencer in *In re Konopka*, the Respondent has continued to knowingly mislead Mr. Frangia about actions and motivations of Sandy and the Petitioner and has conveniently changed her story on how the transaction took place. The circumstances make the Respondent's argument that Mr. Frangia was the impetus, driven by some level of fatherly support and care, difficult to believe and credit.

truly intends."[256] Rather, I must look to the totality of the circumstances and inquire whether "undue influence is the more probable and plausible explanation for the [challenged] acts, and conversely, [whether] any alternative explanations are improbable and implausible."[257] The Petitioner bears the burden of proving the answer to both is, more likely than not, yes. I find she succeeded.

While I find, above, the Respondent's living situation motivated her to unduly influence her father, I do not believe she exerted such influence to harm her father, mentally, emotionally, or financially. But she did exert influence to change her father's position on present ownership of the Unit. Mr. Frangia indicated to friends and family that he wanted to provide for the Respondent, in the future. He shrugged off his cousin-in-law's concerns about the Respondent and assured her the Respondent would be provided for. He also missed multiple opportunities to work with Mr. Sibert on effectuating a pre-death change of ownership for the Unit. The

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[256] *In re Dougherty*, 2016 WL 4130812, at *1.

[257] *In re Boyd*, 2003 WL 21003272, at *7. Although I apply this test here, I note that it is arguable whether I must do so, or if some lesser showing would be sufficient. This rule was adopted in the will contest context and "embodies the law's disfavor toward invalidating a will 'without strong evidence mandating such drastic action.'" *In re Cauffiel*, 2009 WL 5247495, at *8. Here, I am not asked to invalidate a will; instead, I am asked to rescind a transfer of interest in real property. Arguably the public policy supporting the application of this plausibility test is absent. *But see In re Seppi*, 2011 WL 4132374, at *13 (Del. Ch. Aug. 30, 2011) (finding this test should apply to the execution of powers of attorney because "[l]ike wills, powers of attorney can be used to make significant changes to the disposition of a person's assets, and their execution is susceptible to undue influence in much the same way that wills are").

reason is clear: he was not planning to transfer the ownership during his lifetime; he would, instead, work something out for the Respondent in his will. And he did so in 2016 through an addendum to his will protecting, to some extent, the Respondent's residence in the Unit. The transfer of the Unit in 2019 conflicts with this scheme and Mr. Frangia's consistent position.[258]

It is not plausible that Mr. Frangia, uninfluenced by the Respondent, decided to change his plans. Mr. Frangia has been frustrated and distressed by the in-fighting between his children. It is difficult to believe that he would decided to transfer the Unit to the Respondent in 2019 and further inflame the situation. The most plausible explanation is that the Respondent wished to solidify her interest in the Unit, without delay, and orchestrated a way to do that, subjugating Mr. Frangia's will to her own wishes.[259] In doing so, she may well have thought her father was "on board" and agreed with her plan; but he was, at that time, susceptible to undue influence, and

[258] Such distinguishes the facts here from cases like *Ray v. Williams*, 2020 WL 1542028, at *34 and *Sloan v. Segal*, 2010 WL 2169496, at *7 (Del. 2010). In each of those, the challenged conduct was consistent with the decedent's intent; here, Mr. Frangia had a plan in place to take care of the Respondent upon his death and the premature transfer of the Unit reflects the Respondent's preference and wishes, not Mr. Frangia's.

[259] This subjugation distinguishes this case from *In re Henry*. 2021 WL 5816818, at *6. *In re Henry* was a will contest where the decedent was actively trying to devise a plan for his estate; he had numerous discussions about different options and listened to the wishes of his family. *Id.* at *3. Ultimately, he decided to leave his house to the respondent in that action, who had lived there since she was 11 years old. *Id.* at *1. Although the respondent benefitted from that change, there was no record that she pressured the decedent to make it or was in any way involved in the memorialization. *Id.* at *2, *5–6. Here, I find the Respondent was the driving force (literally and figuratively) behind the transfer of the Unit.

only because of the Respondent's pressure did Mr. Frangia change his long-standing plan to his own detriment.[260]

The Respondent argues it is equally plausible that Mr. Frangia initiated the transfer. I disagree. I do not doubt that Mr. Frangia loves and cares for the Respondent; as much was evident through the recordings entered into evidence. The trial record also supports that Mr. Frangia indicated to various individuals that he wanted to provide for the Respondent. But those indications share one distinguishing qualifier—that Mr. Frangia wanted the Respondent provided for after his death. Mr. Frangia did not tell Mr. Sibert or Ms. Govatos-Webb that he planned to transfer the Unit before his death or at or around the specific time it occurred.[261] The only person who testified to such an interest was the Respondent, who had a self-interested reason to so testify. Such distinguishes this case from *In re West* and *In re Henry* where there were other plausible reasons for the changes in the challenged wills.[262]

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[260] And by detriment, I mean both financial and emotional. Mr. Frangia's distress in response to his children's in-fighting was obvious and difficult to hear in the recorded conversations. After the transfer, he was forced to face the brunt of the escalated fighting; something, I expect, he wished to avoid by planning to work the unequal treatment only in death (when he would no longer be on this plane of existence to see/hear the aftermath).

[261] *See also* Tr. 552:12–13 (Govatos-Webb) (recalling Mr. Frangia's statement that his daughters would "find out [about the Unit going to the Respondent] when [he] die[s]").

[262] *In re West*, 522 A.2d 1265 (Del. Mar. 23, 1987); *In re Henry*, 2021 WL 5816818, at *5–6.

Here, undue influence by the Respondent is the most plausible and likely reason that the Unit was transferred when and how it was.[263]

* * *

I find Mr. Frangia was unduly influenced by the Respondent to transfer the Unit. The transfer should, thus, be unwound and title should revert to Mr. Frangia.[264]

C. The Respondent was not unjustly enriched by the Withdrawal.

The Petitioner also challenges the Respondent's withdrawal from the M&T Account under the theory of unjust enrichment. Unjust enrichment is the "unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience."[265] To succeed on her unjust enrichment claim, the Petitioner must prove by a preponderance of the evidence: "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and impoverishment, (4) the

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[263] I find Mr. Frangia's purported affidavit and letter to the Court and his statements regarding ownership during the recording conversations do not move the needle. The affidavit and letter were admittedly drafted by the Respondent, and I find it difficult to give them any credence given Mr. Frangia's susceptibility and the Respondent's self-interested motivations. And I find Mr. Frangia's acknowledgment of the transfer and explanation for the transfer in the recorded telephone calls insufficient to demonstrate that those actions were not the product of undue influence. Rather, like in *In re Wiltbank*, those statements, and the way in which they were obtained (through interrogation and badgering) support my finding that the Respondent unduly influenced the transaction. 2005 WL 2810725, at *11.

[264] *Cf. Coleman v. Newborn*, 948 A.2d 422, 433 (Del. Ch. 2007) (rescinding a transfer of real property as required by equity "to protect the interests" of an elderly transferor).

[265] *Schock v. Nash*, 732 A.2d 217, 232 (Del. 1999).

absence of justification, and (5) the absence of a remedy provided by law."[266] "The fifth element need only be established if there is a dispute over jurisdiction[,]" which I need not reach here.[267] Truly, the only element at issue is whether the Withdrawal was justified. I find the Petitioner has failed to meet her burden to prove the absence of justification under the gifting principles described and applied below.

The Petitioner argues that the M&T Account was a convenience account and, thus, the Respondent was not authorized to make (or, under the unjust-enrichment lens, justified in making) the Withdrawal. The Respondent counters that the Petitioner is barred from such argument based on judicial estoppel. I find the convenience account argument, available or not, an imperfect fit to address the issue before me. Under the better fitting framework of gift law, I find the Petitioner failed to meet her burden to prove the Respondent was not authorized to make the Withdrawal.

In the estate context, this Court is often called upon to determine if a jointly titled bank account is held by the joint owners with the right of survivorship. As I explained in *In re Dryden*:

> Joint bank accounts allow two or more people to combine their assets and income and pay shared expenses. But sometimes a joint account is set up merely as a convenience to the primary owner of the funds, who would like some assistance or support. The party assisting may be a

[266] *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010) (citations omitted).

[267] *Garfield ex rel. ODP Corp. v. Allen*, 277 A.3d 296, 351 (Del. Ch. 2022).

> friend or relative, who assumes the role of an informal advisor or appointed fiduciary. In these arrangements, the advisor or fiduciary does not own the funds within the joint account but, instead, manages and advises the owner, or stands ready to do so upon request. Unfortunately, whether someone was named as a convenience or as a joint owner is not always clear.[268]

Joint owners may also hold property in common, which is presumed under Delaware law, or with the right of survivorship.[269] The seminal case to determining if a joint account has a right of survivorship is a 1964 decision from the Delaware Supreme Court, *Walsh v. Bailey*.[270] That decision clarifies the scope of this Court's review when asked to decide how a joint account should pass at one joint owner's death.[271] But neither *Walsh*, nor its progeny, provides guidance regarding how a joint account (whether a convenience account, joint account held in common, or a survivorship account) may be appropriately used during the joint owners' lifetimes. Such, I find, is a question separate from disposition at death.[272]

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[268] *In re Dryden*, 2021 WL 4060193, at *1 (Del. Ch. June 22, 2021).

[269] *See Speed v. Palmer*, 2000 WL 1800247, at *4 (Del. Ch. June 30, 2000) ("When property is owned by more than one individual, the presumption is that the property is owned in common.").

[270] 197 A.2d 331 (Del. 1964).

[271] *Id.* at 331–33.

[272] For example, an account that, under the *Walsh* test, is found to be a survivorship account, may have been appropriately treated by the co-owners, before death, as an asset to which all co-owners shared equal access and use. The way in which the prior owners used the account is not, under *Walsh*, relevant to (let alone dispositive of) the determination of how the account should pass at a co-owner's death.

To determine if the Respondent was justified in making the Withdrawal, I find Delaware law on gifting is the more appropriate framework. There is no dispute that Mr. Frangia was the sole owner of the M&T Account when the Respondent was added. And the Respondent does not dispute that Mr. Frangia was the only person contributing to the M&T Account. Thus, to me, the question is whether Mr. Frangia, by adding the Respondent to the title as joint owner, intended to convey a present interest to the Respondent, allowing her unrestricted use of the funds in the M&T Account.

Before I can answer that question, I look to Vice Chancellor Glasscock's decision in *Korn v. Korn*, which provides guidance on the burden of proof.[273] Therein, the Vice Chancellor explained that for "a gift to be effective under Delaware law, 'the donor must possess the requisite donative intent, the property must be properly delivered and the donee must accept the property.'"[274] The burden of proof, typically, rests with the giftee.[275] But, with gifts to children, "the Court will presume [the parent] intended the transfers in question as gifts . . . , unless [the contesting party] demonstrates by clear and convincing evidence that [the parent] did not possess such intent."[276] "Clear and convincing evidence is 'evidence that

[273] *Korn v. Korn*, 2015 WL 1862784, at *6 (Del. Ch. Apr. 22, 2015).

[274] *Id.*

[275] *Id.*

[276] *Id.*

produces in the mind of the trier of fact an abiding conviction that the truth of the factual contentions is highly probable.'"[277]

In *Korn*, the Vice Chancellor applied this framework, and burden shift, to determine if a mother, by opening and funding a joint bank account with her son, intended to give him full use and access of those funds.[278] The answer: no.[279] There, the mother testified and presented evidence demonstrating that she alone funded the account from a previous account containing nearly all of her liquid assets.[280] The mother also testified that the account was created so that her son could help her with her finances, and in further support, she introduced documentary evidence: bank records showing that (1) the mother wrote checks to the son from the joint account and (2) the mother froze the account when she discovered the son's withdrawals.[281] The Court found the mother, thus, demonstrated by clear and convincing evidence that she did not intend to make a gift of the contents of the joint account to her son.[282]

The Petitioner falls far short of the showing in *Korn*. True, Mr. Frangia was the sole owner of the M&T Account when the Respondent was added. There is also

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[277] *Id.*

[278] *Id.*

[279] *Id.* at *8.

[280] *Id.*

[281] *Id.*

[282] *Id.*

no reasonable dispute that he was the primary contributor and user of that account through the years after the Respondent's addition. But there is a dearth of evidence regarding Mr. Frangia's intent behind adding the Respondent to the title, which was done through paperwork expressly making the account "joint." Unlike *Korn*, we do not have testimony from Mr. Frangia nor bank records that demonstrate a clear intent other than full and complete access/use, which is the presumption in the parent/child context. The Petitioner relies on (1) one instance of Mr. Frangia writing a check from the M&T Account to the Respondent, (2) one instance of the Respondent admittedly using funds from the M&T Account as a loan, which she purports to have repaid, and (3) the Petitioner's testimony that Mr. Frangia was shocked and upset by the Withdrawal. Even taken together and coupled with the history of the Respondent's limited use and contribution, these facts do not leave me with an abiding conviction sufficient to overcome the presumption recognized in *Korn*.

Thus, I find the Petitioner did not meet her burden to prove, by clear and convincing evidence, that Mr. Frangia did not intend to give the Respondent full access to use the funds in the M&T Account. Absent such proof, the Respondent was justified in making the Withdrawal. Without prove of an absence of justification, the Petitioner's unjust enrichment claim must fail.

D. There was no abuse of process or malicious prosecution.

The Respondent argues that the Petitioner engaged in abuse of process and malicious prosecution of this action. Having found the Petitioner largely successful on her claims, these counterclaims must fail.[283]

E. Costs should be shifted in the Petitioner's favor as the prevailing party.

Under Court of Chancery Rule 54(d), "costs shall be allowed as of course to the prevailing party unless the Court otherwise directs." "Under Rule 54(d), the 'prevailing' party is a party who successfully prevails on the merits of the main issue or the party who prevailed on most of their claims."[284] That party is the Petitioner.[285] And because the Respondent has not demonstrated that shifting costs would be inequitable, I find costs should be shifted in the Petitioner's favor.[286]

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[283] "The elements of a claim of abuse of process are: (1) an ulterior motive; and (2) a willful act in the use of the legal process that is not proper in the regular conduct of the proceedings, i.e., the current litigation." *Sussex Cty. v. Sisk*, 2014 WL 3954929, at *4 (Del. Ch. Aug. 13, 2014). The Respondent must prove those elements by a preponderance of the evidence. *See Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *24 (Del. Ch. July 24, 2013). For malicious prosecution, the Respondent needed to, as one essential element, prove "no probable cause existed to support the [Petitioner's] charge or claim[.]" *Batchelor v. Alexis Props., LLC*, 2018 WL 5919683, at *3 (Del. Super. Nov. 13, 2018). Here, I largely find in the Petitioner's favor and find the Respondent falls far short of demonstrating impropriety which would support either of her counterclaims.

[284] *In re Mindbody, Inc., S'holder Litig.*, 2023 WL 2518149, at *48 (Del. Ch. Mar. 15, 2023) (citations omitted).

[285] There appears to be no dispute that the undue influence claim was "the key if not pivotal issue in this case." D.I. 153, 22:18–21.

[286] *In re Oracle Corp. Derivative Litig.*, 2023 WL 9053148, at *3 (Del. Ch. Dec. 28, 2023) (explaining that "typically, the burden lies with the non-prevailing party to rebut the

III. CONCLUSION

For the foregoing reasons, I find the Motion should be denied because the Petitioner has standing. I further find that the Petitioner has proven the Unit was transferred due to the Respondent's undue influence and title to the Unit should revert to Mr. Frangia. I find the Petitioner failed, however, to prove her claim for unjust enrichment. Nevertheless, the Respondent's counterclaims for abuse of process and malicious prosecution should fail. As the prevailing party, the Petitioner should also be awarded costs under Court of Chancery Rule 54(d).

This is my final report, originally issued under seal on February 9, 2024. With the original issuance, the stay of exceptions to any prior rulings was lifted and the parties were advised of their ability to file exceptions under Court of Chancery Rule 144. The deadline for any notice of exceptions remains February 20, 2024.

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presumption under Court of Chancery Rule 54(d) that the prevailing party should receive costs, of course").