

CANADA / JUDGMENT

Wright v. Wright

2026 ONCA 106

COURT

Court of Appeal for Ontario

DECIDED

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Wright v. Wright

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COA-24-CV-1303

Judges

Thorburn, Julie; Coroza, Steve A.; Gomery, Sally A.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Wright v. Wright, 2026 ONCA 106

DATE: 20260213

DOCKET: COA-24-CV-1303

Thorburn, Coroza and Gomery JJ.A.

BETWEEN

Tamara Christine Wright and Renato Lombardo

Applicants (Appellants/

Respondents by way of cross-appeal)

and

Karin Wright

Respondent (Respondent/

Appellant by way of cross-appeal)

Justin de Vries, Joanna Lindenberg and Elaine Yu, for the appellants/respondents by way of cross-appeal

Daniel Enright and Daniel Ciarabellini, for the respondent/appellant by way of cross-appeal

Heard: September 16, 2025

On appeal from the judgment of Justice Grant R. Dow of the Superior Court of Justice, dated November 6, 2024, with reasons reported at 2024 ONSC 4651.

Gomery J.A.:

- [1] In July 2020, the parties signed a Property Partnership Agreement giving Tamara Wright and her common law husband, Renato (Ron) Lombardo, an option to purchase a residential property on the Bay of Quinte from Tamara's mother, Karin Wright.[1] Two years later, Karin told Tamara that she intended to list the property for sale without first giving Tamara and Ron an opportunity to exercise their option to purchase. Tamara and Ron sued Karin, seeking enforcement of the Agreement or alternative relief.
- [2] The application judge declined to grant Tamara and Ron's claim for specific performance. He concluded that the Property Partnership Agreement was unenforceable because, in the version signed by the parties, "[h]ow the proceeds were to be split in the event of a sale on the open market was an essential term of the agreement as drafted and had not been finalized". He further concluded that (i) Tamara had failed to rebut the presumption that she unduly influenced Karin; (ii) Tamara had breached a fiduciary duty she owed to Karin; and (iii) the Agreement was unconscionable.
- [3] Despite this, the application judge ordered that, should Karin put the property on the market, Tamara and Ron would be entitled to seek to purchase it. He further ordered that, if Karin were to sell the property to a third party, Tamara and Ron would be entitled to an equal share of the proceeds of sale after the balance of the mortgage loan was repaid and Karin received \$150,000 for her contribution to the purchase of the property. This allocation was based on an amended version of the Agreement signed solely by Karin.

- [4] Tamara and Ron appeal the application judge's order declaring the Agreement unenforceable. Karin cross-appeals the application judge's order permitting Tamara and Ron to participate in the purchase of the property on the open market and, in the case of a third party sale, requiring Karin to share any excess sale proceeds with Tamara and Ron.
- [5] I would grant the appeal.
- [6] The main purpose of the Agreement was to permit Karin to continue to live on the property mortgage-free and to permit Tamara and Ron to acquire it when Karin no longer wanted to live there or passed away. The provision dealing with a third party sale was not essential to this main purpose. The Agreement is accordingly enforceable save for the provision dealing with the distribution of excess proceeds of sale in the event of a third party sale.
- [7] Moreover, Karin received independent legal advice prior to signing the Agreement with Tamara and Ron. Taking this into account and applying other governing legal principles, there is no basis to set the Agreement aside on the basis of undue influence, unconscionability, or breach of fiduciary duty.
- [8] Karin must respect her obligation under the Agreement to give Tamara and Ron an option to purchase the property on the terms to which she agreed. I would set aside the application judge's order declaring the Property Partnership Agreement unenforceable and substitute an order requiring Karin to comply with her obligations under the Agreement. Karin's cross-appeal should be dismissed.

Background

- [9] Karin is currently in her late eighties. Tamara is the eldest of Karin's four living adult children. Their father, Karin's late ex-husband, died many years ago.

Karin's acquisition of the property

- [10] By 2007, Karin was in a romantic relationship with Dieter Sallesky. Dieter purchased the waterfront home on the Bay of Quinte that is the subject of this litigation that year. Karin and Dieter lived together on the property until his death in May 2017. Karin's children did not live in the area but visited Karin from time to time.
- [11] Karin continued to live on the property after Dieter passed. In the fall of 2018, Dieter's estate executors told Karin that they were planning to put the property on the market. Karin offered to purchase it. In 2019, Dieter's estate agreed to sell the property to her for \$435,000, the same price Dieter had paid for it over a decade earlier, even though it had by that time been appraised at \$550,000.

- [12] The sale closed on June 25, 2019. The application judge found that Karin paid “in or about \$135,000 in cash” and arranged a mortgage with a local bank for the balance.[2] Karin’s long time financial advisor helped her apply for financing, based solely on Karin’s personal assets, income and cash on hand. Karin was registered on the property’s title as its sole owner.
- [13] The application judge accepted the evidence of Phillip Sallesky, Dieter’s son and the co-executor of his estate, that the executors were not looking to make a profit on the property and so accepted the price of \$435,000 offered by Karin. The application judge rejected Tamara’s evidence that she was involved in negotiations to reduce the price from \$650,000 to \$435,000.
- [14] Karin had signed a general power of attorney (POA) in Tamara’s favour in 2006. In May 2019, she executed another limited POA empowering Tamara to take certain actions on her behalf in the context of the purchase of the Bay of Quinte property. The application judge nevertheless found that Karin was, at all relevant times, capable of managing her affairs.

Discussions about Tamara and Ron’s acquisition of the property

- [15] Around the time that Karin began contemplating the purchase of the property, Tamara and Ron told her that they were interested in it as an eventual retirement home. The general idea was that Tamara and Ron would assist Karin in financing her purchase of the property and that Tamara would eventually acquire it. The details of an arrangement had not been worked out by the time the sale closed. Ron and Tamara nevertheless contributed \$10,000 to the closing costs and began paying the monthly mortgage loan payments when they first became due in July 2019.[3] They also did some repairs and maintenance on the property at their own expense. Karin paid all routine overhead expenses, such as property tax and insurance, utilities and routine maintenance costs.
- [16] Karin met a lawyer, Dagney Benton, in June 2019, when she signed the closing documents for the purchase of the Bay of Quinte property. Benton had attended as an agent for Karin’s solicitor.
- [17] On August 29, 2019, Karin met Benton to discuss Tamara’s acquisition, at some point, of the title to the property. Karin and Tamara both testified that Benton was selected by Karin. Benton also recalled that Karin contacted her. Although Karin and Tamara both recalled that Karin alone attended this meeting, Benton recalled that Tamara and Ron accompanied her. In her contemporaneous notes, all three names are listed in the section where she routinely identified meeting attendees.
- [18] At the August 2019 meeting, Benton advised against adding Tamara to the title of the Bay of Quinte property, as this could make it vulnerable to claims by Tamara’s creditors. The alternative plan discussed at the meeting was that Karin would amend her will to allow for the transfer of the property to Tamara at her death, subject to Karin’s consultation with her financial advisor. Karin’s instructions to Benton to this effect at the end of the August 29

meeting were confirmed in an October 9, 2019 email that Benton sent to Karin, the full text of which I will reproduce later in these reasons.

The November 2019 Agreement

- [19] In November 2019, Tamara, Ron and Karin signed a one-page handwritten agreement that Tamara had prepared. In the November 2019 Agreement, Tamara and Ron agreed that they would continue to pay the mortgage loan on the Bay of Quinte property, and that they would pay \$150,000 to Karin's estate on her death. In return, Karin agreed that she would gift the property to Tamara in her will. The November 2019 Agreement did not address what would happen if Karin decided to sell the property prior to her death.
- [20] On April 6, 2020, Benton advised her law clerk that Tamara had called about a proposed property agreement with Karin. Benton told the law clerk to call Tamara back and have her send the details of the agreement via email so she could draft it up in a formal document.
- [21] On May 22, 2020, Tamara emailed the November 2019 Agreement to Benton. In her email, copied to Karin, Tamara wrote that she had put together "a rough draft agreement with the points that [Karin] and [her] had agreed upon", but that it would "need to be modified by [Benton] as discussed."
- [22] After receiving Tamara's email in May 2020, Benton's office contacted Karin to obtain further instructions from her and to set up a meeting with her. Benton did not contact Tamara or talk with her.
- [23] A Zoom meeting between Benton and Karin took place on June 2, 2020. Tamara did not participate in the meeting. Based on Benton's contemporaneous notes, she read aloud the November 2019 Agreement to Karin, who confirmed that its terms were "agreeable", except that it misstated the amount of Karin's down payment on the property.[4] Karin and Benton discussed the terms of a more elaborate co-ownership agreement, Karin's will and Karin's powers of attorney. Karin told Benton that she had not spoken to her financial advisor but had "instructed him to make sure all between all four kids should be around 500,000 left."
- [24] During the June 2 meeting, Benton completed a checklist to confirm Karin's assets and liabilities and Karin's state of mind. Benton noted that Karin was of sound mind, understood what a will was, was not under duress, and recognized the value of her estate. Benton testified that the absence of duress was in reference to both the proposed property agreement and the will she was drafting for Karin. She asserted that, had she had any concern about duress or undue influence, she would have noted it.
- [25] On July 9, 2020, Benton emailed drafts of Karin's last will and testament, powers of attorney and health care directive to Karin, along with a draft Property Partnership Agreement. Tamara was again not copied on this correspondence. Benton asked Karin to review the documents and then get in touch with her so that they could review them together.

[26] In the July 9 email, Benton sought instructions from Karin on how excess proceeds of sale from the Bay of Quinte property would be distributed if the property were sold to a third party for an amount greater than the amounts that each of the parties was entitled to recover under the terms of the Property Partnership Agreement. Karin's response did not address this:

As far as I know Tamara and Ron want to keep this Property for there Retirement Home! The down payment of \$150.000 will be payed back upon my death or upon the sale of they're home wichever comes first! Both Tamara and Ron are very trustworthy![5]

[27] Benton sent Karin a revised version of the Property Partnership Agreement on July 22, 2020. The sole change was the addition of the word "equally" at the end of the clause dealing with the distribution of excess profits in the case of a third party sale. Benton asked Karin to review the Agreement with Tamara and Ron to ensure that all parties were satisfied with its terms before it was signed, after which she should attend at Benton's office to execute it.

The Property Partnership Agreement executed on July 30, 2020

[28] On July 27, 2020, Tamara called Benton's office to set up an appointment for all parties to sign the Property Partnership Agreement. Benton instructed her receptionist to call Tamara to decline any meeting with her, as Benton was acting solely for Karin. I will return to this evidence later in these reasons.

[29] On July 30, 2020, Karin, Tamara and Ron signed the Agreement. Tamara's adult daughter witnessed the signatures on the Agreement. For unknown reasons, the parties signed the first draft version that Benton had sent to Karin on July 9 rather than the modified version she sent on July 22.

[30] The Agreement signed by the parties on July 30 stipulated that Karin had paid \$150,000 on the total price of \$435,000 for the property when she purchased it, and that Tamara and Ron had contributed \$10,000 in closing costs as well as all mortgage payments that had since become due. Karin undertook to bequeath her ownership interest in the property to Tamara in her will, and Tamara and Ron agreed to reimburse \$150,000 to Karin's estate on Karin's death if they had not already reimbursed this amount to her during her lifetime. Karin was entitled to continue to live on the property for as long as she wished, during which time she would be responsible for the cost of general upkeep and overhead, while Tamara and Ron would continue to pay all mortgage payments.

[31] The Agreement contemplated two scenarios should Karin choose to sell the property.

[32] Pursuant to the terms in a section entitled "Termination by Buy-out of Partner", Tamara and Ron each had an option to purchase the property should Karin decide to sell it. Karin was required to give written notice to Tamara if she intended to sell, following which Tamara would have 30 days to exercise her right to purchase the property "at the amount equal to the amount of the initial down payment Karin made in the amount of \$150,000.00, along

with all other contributions made by Karin toward the renovations or upkeep of the property”, not including utilities, taxes and insurance. Tamara would also remain responsible for paying the balance of the mortgage loan. In the event Tamara did not offer to purchase Karin’s interest in the property within 30 days of receipt of notice, Ron would have the right to do so on the same terms and within the same deadline.

- [33] A section entitled “Termination by Sale” addressed the parties’ rights and obligations if Tamara and Ron did not exercise their option to purchase. Pursuant to s. 13, the property could then be sold to a third party, with the proceeds of sale to be distributed as follows:
13. In the event of a sale of the property on the open market, the proceeds of sale shall be distributed as follows:
- (a) first, to the repayment of the Charge/Mortgage or any other charges secured by a mortgage on or other lien against the property;
 - (b) second to the payment of all fees, charges, conditions or other expenses in connection with the sale of the property;
 - (c) third to the repayment to Karin of \$150,000.00;
 - (d) fourth, the remaining amount shall be distributed among the parties ^{***}. [6]
- [34] Finally, the Property Partnership Agreement incorporated general terms, including a severability clause.

Karin’s execution of the revised Property Partnership Agreement

- [35] On August 21, 2020, Karin contacted Benton’s office to arrange a meeting to execute the will and powers of attorney that had been prepared for her.
- [36] Karin and Benton met on September 2, 2020. According to Benton’s contemporaneous notes, they reviewed each paragraph of the revised version of the Property Partnership Agreement together during the meeting.
- [37] As already mentioned, the sole change from the version of the Agreement signed by the parties on July 30 was the replacement of the three asterisks that had appeared at the end of s. 13(d). In the revised version of this paragraph, if the property were sold to a third party, the excess proceeds of sale would be “distributed among the parties equally” (emphasis added).
- [38] Benton testified that her understanding, based on Karin’s July 9, 2020 email, was that “basically [Karin] wanted it to be fair because this was going to be their property. So, [Benton] ... made an assumption but confirmed that assumption with Karin when [she] met with her.”

- [39] Karin executed the revised version of the Agreement during this meeting with Benton. She took the signed version home with her for Tamara and Ron to execute, but never asked them to do so.
- [40] Karin also executed the will and powers of attorney that Benton had drafted for her at the September 2 meeting. Under that will, Tamara was bequeathed the property. Tamara was required to reimburse Karin's estate any portion of the \$150,000 down payment that she had not reimbursed to Karin prior to her death, but this amount could be subtracted from her share of the residue of the estate, which she was to share equally with her siblings.

Karin's decision to sell the property

- [41] In June 2022, Karin told Tamara that she had decided to sell the Bay of Quinte property. The application judge found that Karin intended to use "her share of the proceeds" to purchase a condo. This suggests that Karin planned to reimburse Tamara and Ron for the mortgage payments they had made. Karin was not, however, prepared to give Tamara and Ron the option to purchase the property under the terms of the Property Partnership Agreement.
- [42] As of July 2024, the property was worth significantly more than the price Karin paid for it in 2019. Tamara acknowledged in cross-examination that its market value had increased to somewhere in the range of \$900,000 to \$1,000,000.
- [43] In August 2022, Tamara and Ron began this application seeking enforcement of the option to purchase under the Agreement. Alternatively, they claim either a beneficial interest in the property, or that Karin holds its title subject to a constructive, resulting, or express trust in their favour. In the further alternative, they claim damages from Karin based on unjust enrichment, breach of contract, proprietary estoppel, or restitutionary quantum meruit.
- [44] In addition to opposing the application, Karin has revoked the will she signed in September 2020 bequeathing the Bay of Quinte property to Tamara.

The application judge's decision

- [45] The application judge found that the Property Partnership Agreement was unenforceable for four reasons.
- [46] First, he concluded that the version of the Agreement signed by the parties on July 30, 2020 was incomplete, because it did not specify how the excess proceeds of sale following a third party sale would be distributed between the parties. He found that s. 13(d) was an essential term and that only Karin signed the revised version of the Agreement that replaced the asterisks at the end of this clause with the word "equally".

- [47] Second, the application judge found that Tamara had presumptively exercised undue influence on Karin because of their mother/daughter relationship. He rejected the argument that Tamara had rebutted the presumption because Karin had received independent legal advice from Benton, given the timing of the advice and Benton's notes from the August 2019 conference.
- [48] Third, the application judge found that Tamara had a fiduciary duty to Karin based on the power of attorney that Karin executed in 2019 in connection with her purchase of the property. Although he acknowledged that Karin was capable of acting on her own behalf, he concluded that Tamara nonetheless had an obligation to put her mother's interests first when negotiating for an interest in the property.
- [49] Fourth, the application judge found that there was an inequality of bargaining power between Tamara and Karin. This resulted in an improvident bargain that did not recognize Karin's contributions to the acquisition of the Bay of Quinte property from Dieter's estate.
- [50] Based on these findings, the application judge dismissed Tamara and Ron's application for specific performance. He nonetheless found they were entitled to a portion of the proceeds of the sale of the property if it was sold to a third party:

[M]indful of the financial contribution made by the applicants (and their desire to own the property as a retirement residence), I am prepared to and order they be permitted to participate in the purchase of the property on the open market. They are also entitled [to] their share in an open market sale to be determined as if the sale was proceeding under clause 13 of the purported Property Partnership Agreement with the word "equally" inserted at the end of paragraph 13(d).

- [51] The application judge did not explain the legal basis for this order.

Issues on the appeal and cross-appeal

- [52] Tamara and Ron contend that the application judge erred in finding that the Property Partnership Agreement was unenforceable. They argue that:
- (a) The application judge erred in fact and law in finding that s. 13(d) of the Agreement which provides that "the remaining amount shall be distributed among the parties ***", was an essential but incomplete term;
 - (b) The application judge erred in law in presuming that Tamara unduly influenced Karin to enter into the Agreement, and erred in fact and law in finding that the presumption was not rebutted;
 - (c) The application judge erred in fact and law in finding that Tamara breached a fiduciary duty owed to Karin; and
 - (d) The application judge erred in fact and law in finding that the Agreement was improvident and, as such, should be set aside as unconscionable.

- [53] Karin argues that the application judge made no reversible error in finding the Agreement was unenforceable. On the cross-appeal, however, she asserts that he erred in ordering that Tamara and Ron are entitled to share in the excess proceeds of a third party sale of the property and to participate in the purchase of the property on the open market.

Section 13(d) does not render the Property Partnership Agreement unenforceable

- [54] The application judge's interpretation of the Agreement is a determination of mixed fact and law. This court must defer to such findings unless they were based on an error of law or principle, or a palpable and overriding error of fact.
- [55] The application judge found that the version of the Agreement signed by all parties was "admittedly incomplete" because s. 13(d) did not specify how excess proceeds of sale would be distributed in the event of a third party sale. He further found that s. 13(d) was an essential term of the Agreement. This, in his view, rendered the entire Agreement unenforceable.
- [56] I disagree. Applying the governing legal principles, s. 13(d) is not essential to fulfill the main purpose of the parties' agreement, and the Agreement is otherwise enforceable.

Governing legal principles

- [57] A determination that a contractual clause is incomplete or uncertain does not automatically render the entire contract unenforceable. A contract will fail only where an impugned term is essential to the main purpose of the agreement: *Woodstock Public Utility Comm. v. McKay*, 1989 CarswellOnt 1471 (H.C.), at para. 40. The court must ask whether the term at issue is "so essential to the bargain that inability to enforce that promise strictly according to its terms would make it unfair to enforce the remainder of the agreement": *Canada Square Corp. et al. v. VS Services Ltd. et al.* (1981), 34 O.R. (2d) 250 (C.A.), at p. 267, citing *Samuel Williston, Williston on Contracts*, 3rd ed., vol. 1 (Mount Kisco, N.Y.: Baker, Voorhis & Co., Inc., 1957), at pp. 156-157.
- [58] Where an incomplete contractual term is minor, the court may enforce the parts of the agreement that are sufficiently certain and ignore or sever the rest: *Stephen Waddams, The Law of Contracts*, 8th ed. (Toronto: Thomson Reuters, 2022), at p. 35; *Boult Ent. Ltd. v. Bissett* (1985), 67 B.C.L.R. 273 (C.A.), at pp. 281-283, leave to appeal refused, [1986] S.C.C.A. No. 33. In *Hole v. Hole*, 2016 ABCA 34, 27 Alta. L.R. (6th) 217, at para. 49, leave to appeal refused, [2016] S.C.C.A. No. 138, the Court of Appeal of Alberta held that "[u]ncertain terms that are not an essential part of the contract will not be fatal to its enforcement; uncertain or meaningless terms that are subsidiary may be severed from the contract". More recently, in *Monette Farms Ltd. v. Dutcyvich*, 2026 BCCA 1, at para. 85, the Court of Appeal for British Columbia stated that "[t]he overarching question about certainty of terms is whether the parties agreed on all matters that are essential, vital, or fundamental to the arrangement. On the other hand, where absent or unclear terms are ancillary or non-essential, an otherwise

enforceable contract is not void”.

The main purpose of the Agreement

- [59] The main purpose of the Property Partnership Agreement was to allow Karin to remain indefinitely on the Bay of Quinte property mortgage-free and to allow Tamara to acquire sole title to the property on repayment to either Karin or Karin’s estate of her contribution to its purchase price.
- [60] Tamara and Ron’s eventual acquisition of the property was the only possibility that the parties discussed when Karin first mentioned that she wanted to remain there following Dieter’s death. Karin and Tamara originally contemplated that, in return for Tamara and Ron’s payment of the mortgage loan, Tamara would be added to the title. When Benton advised against this at the August 2019 meeting, the alternative plan discussed was that Karin would amend her will to permit Tamara to purchase the property from her estate after her death. Benton’s October 9, 2019 email to Karin confirming her instructions at the August 2019 meeting makes it abundantly clear that this was the only scenario contemplated at the time. The email read:

Hi Karin,

I hope all is well with you.

I am just following up with you following our meeting on August 29, 2019 wherein we discussed the pros and cons of adding Tamara on title to your property at 23 Thompson Point Road.

At that time, we determined it may be best to provide for the transfer of that property into Tamara’s name through your Will, rather than adding Tamara on title to the property at this time, as there were more cons than pros to doing so at this time.

You therefore instructed that we would do nothing further with regard to the ownership of the property at this time, but that you wanted to ensure you had a Will in place which would transfer the property to Tamara and Ron upon your death. However, you wanted to inform yourself as to your assets and net worth, prior to making a final decision for the distribution of your estate on your death. Please advise if you have had an opportunity to review your assets with your Financial Advisor, and if you are now in a position to complete your Will. [Emphasis added.]

- [61] The overriding purpose of the parties’ agreement was further borne out by the November 2019 Agreement. It provided uniquely for the transfer of the title of the property from Karin’s estate to Tamara, on payment by Tamara of \$150,000. In the meantime, Karin would remain on the property, and Tamara and Ron would continue to pay the monthly mortgage loan payments.
- [62] The Agreement incorporated the terms of the November 2019 Agreement but also provided for the possibility of an inter vivos transfer of the property between Karin and Tamara or Karin and Ron, through an option to purchase in their favour. Although there is no evidence

that the parties discussed the mechanism of an option to purchase as such, it is consistent with their agreement that, once Karin no longer wished to reside on the property, it would be transferred to Tamara and Ron. The preamble to the Property Partnership Agreement affirms that “it is the intention of Tamara and Ron to move into the property in the future”.

- [63] Significantly, there is no evidence that, prior to July 2020, Karin and Tamara ever discussed the possibility that Karin would sell the property to anyone else, let alone how any excess proceeds of sale would be distributed should this occur. The issue only arose after Benton sent Karin the draft Property Partnership Agreement.
- [64] This is not to say that it was inappropriate for Benton to address the possibility that Tamara and Ron would not exercise the option to purchase when Karin decided to sell, either because they no longer wished to acquire the property or could not afford to pay Karin \$150,000. On the contrary, a prudent solicitor would contemplate this eventuality.
- [65] Karin’s lack of interest on the issue, however, again shows its irrelevance from her perspective. When Benton asked Karin on July 9, 2020, for instructions on how the proceeds of sale should be distributed in the event of a third party sale, Karin effectively declined to give Benton any directions. This led Benton to simply add the word “equally” at the end of s. 13(d). There is no evidence that Karin discussed this term with Tamara and Ron.

Section 13(d) is not an essential term and its uncertainty does not prevent the enforcement of the Agreement as a whole

- [66] Given the main purpose of the Agreement, s. 13(d) was a non-essential or collateral aspect of it. The incompleteness or uncertainty of this term is not fatal. The balance of the Agreement is enforceable.
- [67] There is no unfairness in enforcing the other terms of the Agreement. If either Tamara or Ron exercises their option to purchase, the property will be sold to them. If Tamara and Ron decline to exercise their option to purchase, Karin may still sell the property on the open market. Alternatively, if Karin retains the property until her death, under the terms of the Agreement, her will must provide that Tamara may acquire the property on payment to the estate of \$150,000 from her share of the distribution (assuming she has not transferred this money to Karin during her lifetime) as set out in s. 16 of the Agreement.
- [68] The severability clause contained in the Agreement further weighs in favour of enforcing the non-impugned provisions. In s. 20, the parties agreed that, if possible, the finding that one of the Agreement’s provisions was unenforceable would not preclude the enforcement of the balance of the Agreement:

In case any one or more of the provisions of or a part of a provision contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision or part of a provision of this agreement, but this agreement shall be construed as if such invalid or illegal or unenforceable provision [or] part of a provision had never been contained herein.

[69] I would therefore find for the appellants on this ground of appeal.

There was no basis to find that Tamara unduly influenced Karin

[70] As summarized in *Kavanagh v. Lajoie*, 2014 ONCA 187, 317 O.A.C. 274, at para. 19, “undue influence focuses on a person’s dominance over another person’s will by exercising a pervasive influence on him or her, whether through manipulation, coercion, or outright abuse of power.” The onus is on the party claiming undue influence to prove that such influence was exerted by the other party expressly for the purpose of receiving some advantage: *Kavanagh*, at para. 19.

[71] Undue influence may, however, be presumed in certain circumstances: *JGB Collateral v. Rochon*, 2020 ONCA 464, 151 O.R. (3d) 601, at para. 9, citing *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353, at p. 378. If a presumption is found to arise, the benefitting party must adduce evidence to rebut it: *JGB Collateral*, at para. 12; *Geffen*, at p. 379.

[72] The application judge found that “[a]s mother and daughter ... the situation at hand” gave rise to a presumption of undue influence, and that Tamara and Ron had not rebutted that presumption:

Here, for her \$135,000 down payment, Karin Wright got the benefit of a place to live. She was also the reason the purchase price was apparently lower than market value. Tamara Wright and her spouse made the mortgage payments and covered some other expenses as part of getting priority to ownership of the property when Karin Wright no longer wished to live there. I find this financial contribution was not sufficient to rebut the presumption of undue influence. I am re-enforced in this conclusion by the evidence from Brandon Whitby [Karin’s financial advisor] that Karin Wright had the financial resources necessary to pay the caring [sic] expenses of the property had she chosen to do so.

[73] The application judge rejected the argument that Tamara could not be found to have exercised undue influence because Karin had received legal advice from Benton, for two reasons. First, Benton “was not involved until after the real estate transaction had closed.” Also, when the parties met with Benton in August 2019, her notes “have all three of them as clients.”

[74] The application judge’s findings are insufficient, on applicable legal principles, to ground a presumption of undue influence. Even if such a presumption arose, Tamara and Ron rebutted it.

A presumption of undue influence does not arise

- [75] To determine whether a presumption of undue influence arises, a court must consider “whether the potential for domination inheres in the nature of the relationship itself”: Geffen, at p. 378; Morreale v. Romanino, 2017 ONCA 359, at para. 22. A court must also consider the nature of the parties’ transaction. To trigger a presumption of undue influence, a transaction cannot be readily explicable by the parties’ relationship, but must rather be “immoderate and irrational”: Vanier v. Vanier, 2017 ONCA 561, 28 E.T.R. (4th) 200, at para. 50.
- [76] A potential to dominate is not inherent to every relationship between an adult child and their parent, even if the parent is elderly. The specific relationship between the parties must be considered. For example, in Morreale, where a daughter was alleged to have exerted undue influence over her parents whose capacity was not in issue, the presumption was found not to apply.
- [77] Here, in finding that the nature of Tamara and Karin’s relationship supported a presumption of undue influence, the application judge relied solely on the fact that they are mother and daughter. He did not consider or make any determinations about the specific nature of Karin and Tamara’s relationship or avert to evidence that could ground a finding that, given their specific relationship, there was a potential for Tamara to dominate Karin’s will. On the contrary, he found that Karin was capable of managing her own affairs at all relevant times and that she negotiated the price for the Bay of Quinte property without Tamara’s involvement.
- [78] The application judge furthermore did not find that the bargain struck was immoderate or irrational. He merely found that it advantaged Tamara and Ron more than it did Karin.
- [79] Based on the application judge’s findings, no presumption of undue influence could be established.

Even if a presumption had been established, it was rebutted

- [80] The application judge held that the presumption of undue influence was not rebutted by the fact that Karin had received legal advice from Benton, as Benton “was not involved until after the real estate transaction had closed” and Karin had purchased the property. He also suggested, based on Benton’s notes of the August 2019 meeting, that Karin might not have been Benton’s only client. These findings were unsustainable given the unequivocal evidence that Karin alone retained Benton and that she received timely and independent legal advice from her prior to entering into the Agreement.
- [81] Benton’s uncontradicted evidence was that she at all times acted only for Karin. She testified that she was retained solely by Karin in August 2019 and that she never acted for Tamara and Ron. Her file indicates that she only met Tamara and Ron once, at the August 2019 meeting. In the client intake form Benton completed in August 2019, she listed only Karin as her

client. Benton testified that, on the appointment form relied on by the application judge, she used the space next to the word “client” to record who attended the August 2019 meeting, and that this did not indicate that Tamara and Ron were her clients.

- [82] Benton never wrote to anyone other than Karin or sought and received instructions from anyone other than Karin. Neither Tamara nor Ron was copied on any of the emails exchanged between Karin and Benton. There is no evidence that Benton ever even spoke directly with Tamara and Ron after the August 2019 meeting.
- [83] Benton’s evidence on this point is summarized in her July 2020 email to her office receptionist, who had asked Benton how she should respond to Tamara’s call requesting a meeting to sign the Property Partnership Agreement. Benton instructed her receptionist to tell Tamara that she would have to find another witness, writing, “I cannot meet with them to sign the Agreement. They should sign the agreement with someone else, as I am acting for Karin only, I do not act for them. I just met with them because Karin wanted them to be here when we first met, but I act for Karin only, and not them” (emphasis added).
- [84] Karin and Tamara confirmed that Benton acted only for Karin. Karin stated that there was no joint retainer: she alone was Benton’s client and she alone paid Benton’s fees. Tamara likewise testified that Benton never acted for her. Benton was Karin’s lawyer. Tamara and Ron were unrepresented during discussions with Karin culminating in the signature of the Property Partnership Agreement.
- [85] Benton moreover provided advice to Karin before she entered into any binding agreement with Tamara and Ron. Tamara and Ron undoubtedly intended that one or both of them would eventually acquire the property when they assisted Karin with the closing costs of her purchase and began making the monthly mortgage loan payments. At that point, however, they had not reached any agreement with Karin about how or when this might occur, or indeed that it would necessarily occur at all.
- [86] After Karin acquired the property, she initially wanted Tamara to be added on title. Benton advised against this at the August 2019 meeting, and Karin accepted this advice. The alternative potential plan discussed at the meeting was that Karin would amend her will. This is reflected in Benton’s October 2019 email to Karin and the parties’ handwritten November 2019 Agreement. But even the proposed amendment to Karin’s will was, at least from Benton’s perspective, subject to Karin consulting with her financial advisor to ensure that she had sufficient financial resources to ensure that her other children would receive a meaningful inheritance. There is no reference on the record to an option to purchase until early July 2020, when Benton sent Karin the draft Property Partnership Agreement.
- [87] A presumption of undue influence arises only in the context of a specific transaction. The transaction at issue here is the Agreement and, in particular, the option to purchase in Tamara and Ron’s favour and Karin’s undertaking to bequeath the Bay of Quinte property to Tamara subject to Tamara’s payment of \$150,000 to her estate. Given that neither of these terms was considered by the parties until after Karin first retained and met with Benton, the

salient question is whether Karin received independent legal advice sufficient to rebut any presumption of undue influence between this time and her signature of the Agreement on July 30, 2020. The evidence unequivocally shows that she did.

- [88] I have already reviewed the advice that Benton provided to Karin in August 2019. When Benton met next with Karin on June 2, 2020, they reviewed the terms of the November 2019 Agreement, confirmed the information in it,[7] and reviewed Karin's assets and the terms to be added to her will. In examination, Benton expressed the view that Karin was of sound mind during the meeting, that she was not under duress, and that she recognized the value of her estate. She did not note any concerns.
- [89] On July 9, 2020, Benton sent Karin the draft Property Partnership Agreement, an amended draft will, and new POAs. She suggested that, once Karin had reviewed these documents, they could meet to review them together. In the meantime, she sought Karin's instructions on the distribution of any excess proceeds of sale in the event of a third party sale. In response, Karin expressed the view that as far as she knew Tamara and Ron wanted to keep the property as their retirement home. She also confirmed that she had spoken with her financial advisor about her investments and sought confirmation that her children would receive equally from her investments under the terms of her amended will.
- [90] On July 22, 2020, Benton sent Karin the amended Agreement and suggested that, once she had reviewed it with Tamara and Ron, Karin should book an appointment to execute the Agreement, the will, and the POAs. By this time, Karin had had ample opportunity to review the drafts and to raise any concerns. She chose not to do so before signing the Agreement on July 30, 2020.
- [91] Benton testified that Karin did not raise any concerns about the Property Partnership Agreement at any point, before or after the parties signed the Agreement on July 30, 2020. She was satisfied with its terms. Benton's contemporaneous notes of the September 2, 2020 meeting bear this out. With respect to Tamara and Ron's option to purchase, Benton recorded that Karin understood she "would only get \$150k from them buying [the property] — no increase in value — she's okay [with] that." With respect to s. 13(d), Benton noted: "Third party sale — confirmed division of equity remaining equally is what is fair". Overall, Karin confirmed that the revised Agreement was "good".
- [92] In short, the record clearly shows that Karin received independent legal advice about the Agreement prior to signing it and that, having received this advice, she agreed to its terms. As a result, even if a presumption of undue influence arose, it was rebutted.
- [93] I would therefore find for Tamara and Ron on this ground of appeal.

There was no basis to find that Tamara breached a fiduciary duty to Karin

- [94] The application judge found that the limited power of attorney in Tamara's favour that Karin executed in 2019 in connection with her purchase of the property "placed Tamara Wright in a conflict as to whose interests she was required to put first". As a result, for the Property Partnership Agreement to be enforceable, "it was necessary to make clear Tamara Wright was not involved given [Karin and Tamara] had separate interests in determining who received what proceeds from any transfer in the title to the property." He again rejected the argument that Karin had obtained independent legal advice because this advice was not received until after Karin obtained title to the Bay of Quinte property.
- [95] In my view, the application judge erred in principle in concluding that Tamara was in a conflict of interest as a result of the 2019 POA. He failed to consider the limited scope of the 2019 POA and the duties owed by an attorney when a grantor is of sound mind.
- [96] The legal obligation of an attorney varies based on the grantor's capacity. Where a grantor of a POA is mentally capable, the relationship between the grantor and attorney is similar to one of agency: *Richardson (Estate Trustee of) v. Mew*, 2009 ONCA 403, 96 O.R. (3d) 65, at para. 48, citing *Banton v. Banton* (1998), 164 D.L.R. (4th) 176 (Ont. Gen. Div.), at p. 239. In *Banton*, at p. 239, the court explained that, where a grantor has the mental capacity to deal with their property, the role of the attorney is akin to an agent. In these circumstances, even where the power conferred is general, the attorney's primary responsibility will be to carry out the grantor's instructions: *Banton*, at p. 239. Such an attorney owes fiduciary duties to the grantor, but they "pale in comparison" to the fiduciary duties owed by an attorney holding a continuing power over a grantor who has lost capacity to manage their property: *Banton*, at p. 239.
- [97] While the application judge correctly noted that the 2019 POA "made specific reference to executing documents regarding the property", he did not avert to the restricted nature of Tamara's mandate which only empowered Tamara "to do all things and to execute any and all documentation required to effect the purchase/mortgage of [Property]".
- [98] Tamara signed a consent on the mortgage application on Karin's behalf, pursuant to Karin's instructions. She also arranged a meeting between Karin and Benton in June 2019, after Benton was retained by Karin's solicitor to act as his agent on the sale. Tamara did not otherwise take any actions on Karin's behalf for the purpose of Karin's purchase of the property or her obtaining financing for it, based on the May 2019 power of attorney or on an earlier general power of attorney that Karin had executed in her favour in 2006.
- [99] Furthermore, as already noted above, Karin received timely and independent legal advice prior to signing the Agreement. In these circumstances, to the extent that Tamara owed Karin a fiduciary duty based on the 2006 or 2019 POAs, that duty did not preclude an enforceable agreement between them. Even if Tamara was acting under either of the POAs and derived a benefit from doing so, it was with Karin's full knowledge and consent, as informed by the independent legal advice she received: *Richardson (Estate Trustee of)*, at

para. 49.

[100] As a result, I would find for Tamara and Ron on this ground of appeal.

The Property Partnership Agreement was not unconscionable

[101] The application judge found that there was an inequality in bargaining power between Tamara and Karin when they reached their agreement, resulting in an improvident bargain. His reasoning was as follows:

I accept that [the transaction] does not fairly recognize the value Karin Wright brought to the acquisition of the property in the form of not only providing the necessary down payment but also in obtaining a discounted price from the fair market value for the property, no doubt in recognition of her relationship with Dieter Sallesky. That is, there was an inequality of bargaining power between mother and daughter. An improvident bargain resulted.

[102] In my view, applying the correct principles, the Agreement is not unconscionable.

[103] Unconscionability is an equitable doctrine used to set aside “unfair agreements [that] resulted from an inequality of bargaining power”: John D. McCamus, *The Law of Contracts*, 2nd ed. (Toronto: Irwin Law, 2012), at p. 424, cited in *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at para. 54. Assessing whether a bargain is unconscionable involves a two-stage analysis.

[104] First, the court must determine whether the parties’ respective bargaining positions were unequal, that is, whether one party could not “adequately protect their interests in the contracting process”: *Uber*, at para. 66. Although there are no rigid limitations on the types of bargaining inequality that may give rise to an unconscionable bargain, relevant considerations may include:

- Differences in the parties’ wealth, knowledge, or experience;
- A party’s personal characteristics or vulnerabilities;
- A situation of dependence or trust and confidence between the parties; and
- Cognitive asymmetry, where “as a practical matter, only one party could understand and appreciate the full import of the contractual terms”: *Uber*, at paras. 67, 70-71.

[105] If the court determines that the parties had unequal bargaining positions, it must then determine if, due to this inequality, the bargain unduly advantages the stronger party or unduly disadvantages the more vulnerable: *Uber*, at para. 74. Improvidence is assessed contextually, taking into account relevant considerations such as the difference between the price paid and the market price, the commercial setting, and the parties’ positions: *Uber*, at para. 75.

- [106] The application judge concluded that Karin, Tamara and Ron had unequal bargaining power absent any finding that Karin was unable to protect her interests. This fell short of the analysis mandated in *Uber*. Karin and Tamara's mother/daughter relationship, standing alone, is not sufficient to ground the determination required on the first stage of the unconscionability analysis.
- [107] The evidence in this case furthermore does not support a finding that Karin was unable to protect her interests, because the essential aspects of her agreement with Tamara and Ron were negotiated after Karin had the benefit of independent legal advice.
- [108] I conclude that the Property Partnership Agreement cannot be set aside as an improvident bargain, even if the application judge was of the view that it did not adequately account for Karin's contribution to the purchase of the property. A bad bargain is not necessarily unconscionable.
- [109] I would therefore find for Tamara and Ron on this ground of appeal.

Karin's cross-appeal

- [110] Since I find that Tamara and Ron have a right to enforce provisions of the Property Partnership Agreement allowing them to acquire the property through the option to purchase provisions or after Karin's death, the application judge's orders with respect to the sale of the property to a third party are moot.
- [111] Given the application judge's determination that s. 13(d) of the Agreement signed by the parties is incomplete, if Karin decides to sell the property and neither Tamara nor Ron exercises their respective options to purchase, the parties will have to settle how to divide any excess proceeds of sale from a sale to a third party. I encourage them to do so on an amicable basis.

Disposition

- [112] I would allow Tamara and Ron's appeal. The application judge's order that the Property Partnership Agreement is not enforceable and his dismissal of Tamara and Ron's application for specific performance of the Agreement should be set aside. An order granting Tamara and Ron's application for specific performance of the Agreement, and in particular ss. 9 to 11 and 14 to 16 of the Agreement, should be substituted. The Agreement is binding, save for s. 13(d). Karin must give Ron and Tamara the option to purchase the Bay of Quinte property in the event it is listed for sale and must amend her will to bequeath the property to Tamara, subject to Tamara's payment of \$150,000 to Karin's estate (assuming she has not transferred this money to Karin during her lifetime).
- [113] I would dismiss Karin's cross-appeal because it is moot.

- [114] If the parties are unable to agree on costs before this court and the application judge, the appellants shall serve and file a bill of costs of no more than 5 pages in length along with any supporting documents within 30 days of receipt of this judgment, and the respondent shall serve and file a bill of costs of no more than 5 pages in length along with any supporting documents within 10 days thereafter.

Released: February 13, 2026 “J.A.T.”

“S. Gomery J.A.”

“I agree. Thorburn J.A.”

“I agree. S. Coroza J.A.”

- [1] For simplicity’s sake, I will refer to the parties and other family members by their first names.
- [2] The mortgage documents reflect that Karin paid \$130,500 in cash and assumed a mortgage loan with a principal of \$304,500.
- [3] These monthly payments were initially \$1,262.99. They increased to \$1,295.05 in October 2020. Tamara and Ron made \$40,109.95 in mortgage payments before the dispute between the parties arose. After Tamara and Ron began this litigation, Karin refused to accept further payments from them. They have continued to set aside the monthly payments.
- [4] The November 2019 Agreement stated that Karin had paid a deposit of \$135,000; Karin has maintained throughout that she deposited \$150,000. As mentioned earlier, the mortgage loan documents reflect that she made a cash payment of \$130,500.
- [5] I have reproduced the text of this email as it appears on the record.
- [6] These asterisks appear in the version of the Agreement sent by Benton to Karin on July 9 and signed by the parties on July 30, 2020.
- [7] The November 2019 Agreement stated that Karin had made a down payment of \$135,000 on the property. This was inaccurate. The down payment was supposed to be \$135,000 but the closing documents reflect that she advanced only \$130,500 in cash when she purchased the property. The July 2020 Agreement states Karin made a down payment of \$150,000.

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Prepared on 29 October 2026 · Esheria