



## ***Juzumas v Baron: A case of predatory marriage and financial abuse of a vulnerable, yet capable older adult***

*Jaël Marques de Souza*

The decision of *Juzumas v. Baron*<sup>1</sup> provides a tool kit for practitioners seeking to remedy a wrong created by a perpetrator of elder abuse.

This decision involves a male plaintiff, who was 89 years old at the time the reported events took place, and of Lithuanian descent, with limited English skills. His neighbour described him as having been a mostly independent widower prior to meeting the defendant, a 65-year old woman.<sup>2</sup> Once a “lovely and cheerful” gentleman, the plaintiff was later described as being downcast and “downtrodden.”<sup>3</sup>

The defendant “befriended” the respondent in 2006. She visited him at his home, suggested that she provide assistance with housekeeping and eventually increased her visits to 2 to 3 times a week despite the plaintiff’s initial reluctance.<sup>4</sup> The defendant was aware that the plaintiff feared that he would be forced to move away from his home into a facility. She offered to provide him with services to ensure that he would not need to move. In exchange, he provided her with a monthly salary.<sup>5</sup>

The defendant convinced the plaintiff to marry her so that she would be eligible for a widow’s pension following his death, and for no other reason.<sup>6</sup> She promised to live in the home after they were married and to take care of him. Most importantly, she undertook not to send him to a nursing home.<sup>7</sup> The plaintiff agreed.

Although the defendant testified that the plaintiff had suggested that they marry on the basis of their mutual feelings of affection, romance and sexual interest, Justice Lang found otherwise.<sup>8</sup> The defendant, who had been married approximately 6 to 8 times (she could not remember the exact number), had previous “caretaking” experience: prior and concurrent to meeting the plaintiff, the defendant had been caring for another older man. She had expected to inherit something from this man in addition to the pay

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<sup>1</sup> 2012 ONSC 7220 (CanLII).

<sup>2</sup> *Ibid.* at para 1.

<sup>3</sup> *Ibid.* at paras 39 and 56.

<sup>4</sup> *Ibid.* at para 25.

<sup>5</sup> *Ibid.* at para 28.

<sup>6</sup> *Ibid.* at paras 26-28.

<sup>7</sup> *Ibid.* at para 28.

<sup>8</sup> *Ibid.* at para 27.

she received for her services but was left disappointed. Justice Lang considered this evidence as an indicator that the defendant was sophisticated in her knowledge of testamentary dispositions, and that she knew that an expectation of being named as a beneficiary to someone's Will on the basis that she provided that person with care is unenforceable.<sup>9</sup>

The day before their wedding, the soon-to-be newlyweds visited a lawyer who executed a Will in contemplation of their marriage. In spite of the obvious age gap and impending marriage, the lawyer did not discuss the value of the plaintiff's house or the possibility of a marriage contract. The lawyer did not meet with the plaintiff alone.<sup>10</sup>

After the wedding ceremony, the defendant continued to care for the plaintiff several hours a week and to receive a monthly sum of money from him.

Despite the defendant's promise that she would provide better care to the plaintiff if they married, testimonies from the plaintiff's tenant and neighbour, which were both found to be credible, attested that the relationship degenerated progressively. The tenant described the defendant, who had introduced herself as the plaintiff's niece, as "abusive", "controlling" and "domineering."<sup>11</sup>

With the help of a plan devised over the course of the defendant's consultation with the lawyer who had drafted the plaintiff's Will, the defendant's son drafted an agreement which transferred the plaintiff's home to himself.

The plaintiff, the defendant and her son attended the lawyer's office in order to sign the agreement. Justice Lang found that the lawyer was aware of the plaintiff's limited English skills; that the agreement had not been explained to the client; and, moreover, that the lawyer was "virtually eviscerating the Will he had executed only one month earlier"; that he did not meet with the plaintiff alone; and that he only met with the parties for a brief time.<sup>12</sup> Additionally, Justice Lang found that the agreement signed by the plaintiff was fundamentally different from the agreement he had been shown by the defendant and her son to the plaintiff at his home.<sup>13</sup>

Justice Lang found that the lawyer did not appreciate the power imbalance between the parties. In fact, it seems the lawyer was under the impression that the defendant, and not the plaintiff, was the vulnerable party.<sup>14</sup>

The lawyer's notes indicated that the plaintiff was "cooperative" during the meeting. Justice Lang interpreted the lawyer's use of this word as indicating that the plaintiff was "acceding to someone else's direction," and was not a willing and active participant in the transaction.<sup>15</sup> In addition, Justice Lang found that the plaintiff had been under the

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<sup>9</sup> *Ibid.* at para 24.

<sup>10</sup> *Ibid.* at para 30.

<sup>11</sup> *Ibid.* at para 54.

<sup>12</sup> *Ibid.* at paras 79-84.

<sup>13</sup> *Ibid.* at para 84.

<sup>14</sup> *Ibid.* at para 88.

<sup>15</sup> *Ibid.* at para 91.

influence of emotional exhaustion or over-medication at the time the meeting took place, and suspected that the defendant might be drugging his food.<sup>16</sup>

Sometime after the meeting, the neighbour explained the lawyer's reporting letter to the plaintiff and its effect on his property. With his neighbour's assistance, the plaintiff attempted to reverse the transfer by visiting the lawyer on three separate occasions. Interestingly, each time he would visit his "wife" would appear a few minutes after his arrival. The lawyer explained to the plaintiff that the transfer could not be reversed because it was "in the computer."<sup>17</sup>

Notably, although the plaintiff initially sought a declaration that his marriage to the defendant was a nullity and void *ab initio*, he did not pursue this claim, instead seeking a divorce/dissolution of the marriage, which was granted in its place.

In consideration of the transfer of property, Justice Lang applied and cited McCamus' Law of Contracts, which outlines a "cluster of remedies" that may be used "where a stronger party takes advantage of a weaker party in the course of inducing the weaker party's consent to an agreement."<sup>18</sup> Justice Lang outlined the applicable legal doctrines of undue influence and unconscionability, stating: "if any of these doctrines applies, the weaker party has the option of rescinding the agreement."<sup>19</sup>

### **Undue Influence**

Justice Lang found that a presumption of undue influence existed between the parties as the relationship in question involved an older person and his caretaker. The court noted that the defendant must rebut that evidence by showing that the transaction in question was an exercise of independent free will, which can be demonstrated by evidence of independent legal advice or some other opportunity given to the vulnerable party allowing him or her to provide "a fully-informed and considered consent to the proposed transaction."<sup>20</sup>

### **Doctrine of Unconscionability**

Justice Lang stated that the doctrine of unconscionability "gives a court the jurisdiction to set aside an agreement resulting from an inequality of bargaining power."<sup>21</sup> The onus is on the defendant to establish the fairness of the transaction. These presumptions were not rebutted by the defendant in this case.

### **Quantum Meruit**

In addressing the defendant's claim of *quantum meruit* for services rendered, Justice Lang found that the period during which services were rendered could be distinguished as two categories: pre-marriage and post-marriage.

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<sup>16</sup> *Ibid.* at paras 63 and 92.

<sup>17</sup> *Ibid.* at para 97.

<sup>18</sup> *Ibid.* at para. 8 citing John McCamus, *The Law of Contracts* (2d) (Toronto: Irwin Law, 2012) at 378.

<sup>19</sup> *Ibid.* at para 8.

<sup>20</sup> *Ibid.* at para 11.

<sup>21</sup> *Ibid.* at para 13.

During the pre-marriage period, the defendant undertook to care for the plaintiff without an expectation or promise of remuneration, and persuaded the plaintiff to compensate her with a monthly income. Justice Lang found that no additional remuneration could be claimed for that period.

During the post-marriage period, Justice Lang found that the defendant had an expectation that she would be remunerated by the plaintiff, and that the plaintiff had agreed to do so.<sup>22</sup> For this period, Justice Lang calculated the value of the services rendered by the defendant by multiplying the number of hours she worked each week by an approximation of minimum wage at that time. She adjusted her calculation to account for occasional decreases in hours worked, as well as the period of two months during which she found the defendant had been solely concerned with her own objectives, such that she could not have been caring for the plaintiff.<sup>23</sup> Justice Lang then subtracted the amount of money that had been paid to the defendant already by way of a monthly salary, and found that only a minimal sum remained.

Justice Lang then reviewed the equitable principle that restitutionary relief which allows a court to “refuse full restitution or to relieve [a party] from full liability where to refrain from doing so would, in all the circumstances, be inequitable.”<sup>24</sup> In considering this principle, Justice Lang found that the defendant had “unclean hands” and that “the magnitude of her reprehensible behaviour is such that it taints the entire relationship.”<sup>25</sup> As a result, Justice Lang found that the defendant was not entitled to any amount pursuant to her *quantum meruit* claim.

## **Costs**

Substantial costs were awarded in favour of the plaintiff.<sup>26</sup>

## **Conclusion**

This case provides helpful guidance in the area of elder abuse, as it demonstrates the tools of contract law and equity afforded to the court in order to remedy a wrong suffered in the context of financial abuse. This case provides what is, in cases of financial abuse of the elderly, a rarity: a conclusion that is helpful to the older adult. In this case, it is not a family member or acquaintance who brought the case before the court after the vulnerable adult’s assets had already been depleted, but rather, the older adult himself who, with the help of his neighbour, was able to seek justice and reverse some of the defendant’s wrongdoing.

A Notice of Appeal has been filed in this matter.

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<sup>22</sup> *Ibid.* at para 129.

<sup>23</sup> *Ibid.* at para 128.

<sup>24</sup> *Ibid.* at para 141 citing *International Corona Resources Ltd. v. Lac Minerals Ltd.*(1987), 44 DLR (4<sup>th</sup>) 592 (CA) at 661.

<sup>25</sup> *Ibid.* at para 142.

<sup>26</sup> 2012 ONSC 7332 (CanLII).