



AND THIS COURT ORDERS that the transfer of land dated April 11, 1994, whereby Elizabeth Bella Hicks transferred all of her right, title and interest in the lands and premises situate at #1603 - 3737 Bartlett Court, Burnaby, British Columbia to Edward Ronald Hicks, is hereby declared null and void.

AND THIS COURT ORDERS that the net sale proceeds from the sale of the subject apartment previously owned by Elizabeth Bella Hicks, and situate at 1603 - 3737 Bartlett Court, Burnaby, British Columbia, together with accrued interest, are hereby declared to form part of the estate of Elizabeth Bella Hicks, Deceased;

AND THIS COURT ORDERS that the counterclaim of the Defendant, Edward Hicks, is dismissed;

AND THIS COURT ORDERS that the Plaintiff, Donald Hicks, in his own personal capacity as well as in his capacity as Executor of the Estate of Elizabeth Bella Hicks, Deceased, is entitled to be paid full indemnity of solicitor and client costs from the Defendant, Edward Hicks;

[2] The order was made following a trial which resulted in a finding by the trial judge that the appellant, Edward Ronald Hicks, had exercised undue influence over his aged mother, and had thereby acquired her principal asset for his own use absolutely. This is a fact-sensitive claim. The trial judge made detailed and careful findings of fact including, as we would describe it, reference to a pattern of deceit and manipulation by the appellant. The trial judge drew inferences from the facts which formed the basis for his finding of undue influence.

[3] The trial judge identified the proper test, taken from *Vout v. Hay*, [1995] 2 S.C.R. 876 at 887-88. The appellant says that the trial judge mis-applied the test. The appellant submits that the trial judge misconstrued the evidence, which the appellant says can do no more than raise suspicion. He submits that suspicious circumstances by themselves cannot found a claim of undue influence.

[4] We are unable to agree that the trial judge misconstrued the evidence and cannot identify any proper basis for interfering with his findings of fact. We are also of the opinion that it was open to the trial judge to draw the inferences that he did, and to reach the conclusion that the appellant acquired his mother's property by exercising undue influence over her.

[5] We would dismiss the appeal.

[6] There is also an appeal against the order of the trial judge that the respondent be entitled to full indemnity for solicitor and own client costs.

[7] That ground of appeal has been abandoned by consent. Counsel have agreed that monies paid into court as security for costs be paid out to Milne Selkirk, solicitors for the respondent, to be held by them in trust and to be disbursed in

accordance with the result of a taxation by the registrar, or by agreement between counsel. We are all agreed that an order will go in those terms.

[8] The respondent will have the costs of the appeal.

"The Honourable Mr. Justice Macfarlane"

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