

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 22-CV-01974

In re: Estate of Donald Crofut

### RULING ON THE MERITS

This is an appeal by which Sean Hammond appeals two rulings of the Probate Division concerning the will of Donald Crofut. The first issue appealed relates to rent payments. The second is the invalidation of the portion of Crofut's will granting Hammond an option to buy Crofut's residence for \$40,000. The parties appear to have dropped any dispute over the rent question, and the court deems it waived. Hammond is represented by Attorney Brian Hehir and the estate is represented by Attorney Daniel Burchard. Trial took place on September 28 and post-trial memos were complete October 21.

### Findings of Fact

The court finds the following facts to be established not only by a preponderance of the evidence, but by clear and convincing evidence. Decedent Donald Crofut died on April 6, 2021, at the age of 90. He met Appellant Sean Hammond, who was born in 1973, when Hammond was in DCF custody as a teenager and Crofut was an adult volunteer at Allenbrook Home. They remained friends after Hammond left Allenbrook. Crofut visited Hammond at college out of state, served as a mentor to him, and visited Hammond regularly when he was incarcerated for four and a half years in the 1990s. Crofut brought care packages and funded Hammond's account in jail. After Hammond was released, Crofut helped him find a place to

live and they spent time together hiking and traveling, and sharing an interest in history. In 2018 Hammond moved into Crofut's home, where there was one other tenant. He paid \$300 a month in rent. Crofut was a very frugal man, but was generous with Hammond and family members. Crofut helped Hammond buy a car, helped with his banking, and generally served as a mentor and friend. Hammond saw him as a father figure.

In 2018, Crofut was diagnosed with cancer. He was still active at the time, but became sicker over time. In 2019, Hammond had to do more chores for Crofut such as cleaning the house and running errands. He was working fulltime, but did as much as he could for Crofut. From January through March of 2020, Crofut was hospitalized, and Hammond visited him daily. After he went home Crofut began to need nursing care, so visiting nurses came in two or three times a week. Eventually that progressed to hospice care, and Crofut died at home in April of 2021.

Richard and Tracy Kozlowski were next door neighbors of twenty years who were very friendly with Crofut. They traditionally spent Christmas eve together, and both of them had wonderful relationships with him. However, due to the COVID-19 pandemic and the fact that Richard himself had a serious illness at the time, they were not able to visit much in Crofut's last years. Richard, a lawyer, wrote Crofut's will for him and was also his executor.<sup>1</sup> Tracy often drove Crofut to doctors' appointments after he became sick, and picked up his medications and groceries. She spent weeks working on upgrades to the house when he needed them due to his illness. Richard shoveled snow for Crofut, chatted over the fence in the yard at length, and had been Crofut's estate planning layer since 2011. Tracy and Richard were named as co-executors of Crofut's will.

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<sup>1</sup> Hammond raised a question at trial about the propriety of Kozlowski drafting a will containing provisions that he and his wife would be beneficiaries of (small) cash payments. That may be a valid issue, but it does not change the court's evaluation of Kozlowski's credibility or otherwise impact how it sees the facts in this case.

After Crofut's death, Tracy went to the home with Hammond's permission to look for a container to use for the ashes. While there, she discovered that Hammond's room was filled with numerous newly purchased items, many still in the boxes, such as steamers, vacuums, lights, printers, sneakers, and a camcorder. There were piles of clothes with tags still on. In addition, Tracy found *literal buckets of cash*<sup>2</sup> and piles of receipts from numerous stores such as Best Buy, Kohl's, Old Navy, and Walmart, as well as a wire transfer for \$750. On the day of Crofut's death, *after he was aware that Crofut had died*, Hammond spent \$1,200 at Old Navy. Hammond had purchased all of the items with Crofut's debit card. In addition, he took out \$400 in cash from Crofut's account each day for the last three months of Crofut's life. Hammond claims that Crofut gave him the debit card and the PIN number and told him to use it for whatever he wanted. The court does not find that at all credible, as Crofut was extremely careful with his money and known for his penny-pinching. Instead, the court finds that while Crofut may have given Hammond the card to purchase specific items needed for the house such as groceries or medications, he never authorized him to spend the funds on personal items for Hammond. Moreover, although he now denies saying it, the court finds that after Crofut's death Hammond admitted to Richard Kozlowski that he had "f---ed up" and stolen money from Crofut. The evidence was also clear that Crofut, although meticulous about reviewing his bank statements and marking each entry with a checkmark, had never seen the statements that showed all of Hammond's purchases and withdrawals.

Hammond failed repeatedly to assist Crofut's niece to stay in touch with Crofut after Crofut's cell phone died. The niece asked him repeatedly to get a new phone for Crofut, and

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<sup>2</sup> Hammond testified that this was five years' worth of tips from his job. The court did not find that credible.

finally mailed an iPad to use for Facetime calls, yet Hammond never set it up. She was thus forced to call on Hammond's phone rather than having direct access to Crofut.

Crofut executed his final will from his bed on February 7, 2021. The signing was videotaped and the court finds he was lucid and knew what he was doing. Hammond was not present. The will gave Hammond the right, with certain conditions, to buy the residence—at 27 Victoria Drive in South Burlington—for \$40,000. Will § Fourth at ¶ P. Although no appraisal was submitted in evidence, the home is undoubtedly worth significantly more than that.

The will also stated that if Hammond chose to exercise the option to buy, he could live in the home until the sale. The sale was to take place within nine months of Crofut's death or the option would be void. If he declined the option, he was permitted to stay in the home for 60 days after the death. Either way, he was responsible for "the costs of all ordinary maintenance, repairs, taxes, utilities, insurance and other operational costs" of the home. Id. ¶ P.6. If Hammond did not buy the home, it was to be sold and the funds donated to the Crofut Memorial Scholarship Fund. Id. §§ Fourth and Fifth. Crofut had talked for decades about being the first in his family to go to college and wanting to set up a fund to help others to go to college.

Hammond claims that Crofut "had no relationship with" Richard Kozlowski, which the court finds entirely false. Hammond also claims that after discovering all the purchases in Hammond's bedroom, Richard threatened to shoot him if he stepped onto the Kozlowski property. That, too, the court finds to be a flat-out lie by Hammond. Hammond claims that Crofut found Tracy Kozlowski to be a meddler, and did not welcome her assistance. The court finds that, too, to be totally false.

Each of Crofut's three wills beginning in 2020 provided some option for Hammond to buy the house. The first had provided that Hammond could buy the home for 94% of its value (to allow for the 6 % realtor's fee). Hammond denies knowing that Crofut was giving him an option to buy the house. This is not credible. In 2020 Tracy heard him say that when the house "was his" he would create a lending library. Other witnesses testified credibly that Hammond had made statements that he would be getting the house after Crofut died. In fact, the provision in the will about not cutting trees on the property line was added after he made comments about cutting the trees down when he got the property.

Tracy Kozlowski heard Hammond pressured Crofut to leave Crofut's car to him. Crofut became upset, saying that Hammond already had two cars and just wanted to sell the car for cash. Crofut added that he wanted the car to be sold and the cash to go to his scholarship fund. He remained upset about this after Hammond left the house, reiterating to Tracy his intention for the car to go to the scholarship fund. After Crofut's death, Hammond nonetheless claimed that Crofut's car was his and that the title had been signed over to him, which was false.

Hammond presented several witnesses who testified to all that he did for Crofut, how much Crofut cared for him, and their belief that Hammond was honest and was not a manipulative person. The court agrees with their views of Crofut, but as noted above finds that they were mistaken about Hammond: key parts of Hammond's testimony have been lies.

Crofut had no sympathy for anyone who was dishonest with him. He made the other tenant in his house leave after he failed to follow through on a promise to repay him for a purchase. He would have nothing to do with anyone he felt he could not trust. Crofut also cut his own daughter out of his will because he felt all she was interested in was his money.

Crofut's niece, who knew him well and spoke with him often, testified credibly that Crofut would have been very angry if he knew anyone was stealing from him. He had "high moral and ethical standards" and did not tolerate any deceit or deception. She was quite certain he would have terminated his relationship with Hammond had he known what Hammond was doing. Based upon all of the evidence before the court, the court agrees. As Hammond testified in the Probate Division, if Crofut "didn't respect you, he would . . . give you nothing." Ex. I p. 64.

### Conclusions of Law

The issue before the court is whether the evidence supports a finding of undue influence. The Estate argues that the burden of proof is on Hammond, but the court finds that it need not determine that question because the proof is so clearly on the side of the Estate here.

There is no direct evidence that Hammond expressly suggested the idea of Crofut giving him an option to buy the house at \$40,000, or expressly pressured him into doing so. Of course, such direct evidence "is seldom available." In re Everett's Will, 105 Vt. 291, 315 (1933). Instead, the argument the Estate puts forth is that by hiding the fact that he was stealing from Crofut, and pretending to be a selfless assistant in Crofut's declining months, Hammond "create[d] an irresistible ascendancy by imperceptible means." Id. The will was signed on February 7, 2021. The provision at issue was added then. At that time, Hammond had been using the ill man's debit card for months without Crofut's knowledge or permission. *See, e.g.*, Ex, H-12 to H-14, H-18-H-19 (receipts dated from June 2020 to January 2021). There is no question based upon the evidence that, had Crofut known of this, he would have excised Crofut from his will. He was a penny-pincher by nature and did not suffer liars

lightly. He had kicked a tenant out for not being true to his word. He had cut a daughter out of his will when he felt she was only interested in his money. He would certainly not have offered Crofut the right to buy the house had he known that he was being stolen from.

Subverting “the sound judgment and genuine desire of the individual, is enough to constitute undue influence.” Everett’s Will, 105 Vt. at 291. “Any species of coercion, whether physical, mental, or moral, which subverts the sound judgment and genuine desire of the individual, is enough to constitute undue influence.” Landmark Tr. (USA), Inc. v. Goodhue, 172 Vt. 515, 524 (2001)(quoting Everett’s Will, 105 Vt. 291 at 315). While this may not be the classic case of whispering lies in the testator’s ear to influence his disposition of his assets, it was the equivalent: lying by omission. It could also be construed as fraud by someone in a confidential relationship with the testator, another basis for voiding a bequest. *See* Restatement (Third) of Property (Wills & Don. Trans.) § 8.3 cmt. j (2003)(if doctor agreed to provide lifetime care in exchange for bequest, but failed to tell testator that he had a short time to live, “[b]ecause G’s doctor was in a confidential relationship with G, the doctor’s failure to disclose a material fact constitutes fraud” and the will would be invalid). *Accord, In re Newhall’s Est.*, 214 P. 231, 235 (Cal. 1923)(“false representations, even in the absence of proof that they were used as pressure upon the mind of the testator, have been held to constitute fraud if it can be shown that they were designed to and did deceive the testator into making a will different in its terms from that which he would have made had he not been misled.”). The court concludes that Hammond’s lack of honesty with Crofut, hiding the fact that he was stealing Crofut’s money, subverted Crofut’s “sound judgment and genuine desire.” Id. The provision was the result of both undue influence and fraud and is therefore invalid.

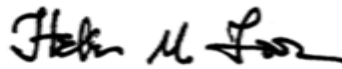
Lastly, the court concludes that the invalidation of the disputed portion of the will does not require invalidation of any other provision. *See, e.g., In re Prob. of Alleged Will of*

Landsman, 725 A.2d 90, 97–98 (N.J. Super. 1999)(“Where the undue influence affects only a portion of the will, the affected portion can be severed and the remainder of the will can be enforced.”); 64 A.L.R.3d 261, § 2[a] (“the great majority of American jurisdictions have endorsed the view that where a part of a testamentary instrument is shown to have been the result of undue influence . . . , other portions of the instrument may nevertheless be given effect, at least if such other portions are separable. . . .”). The will has an express provision as to the decedent’s intent: if the home not purchased by Hammond, it is to be sold and the proceeds added to the scholarship fund. Will, Section Fourth, ¶ P.7, and Section Fifth. The invalid provision is easily separable.

#### Order

The Probate Division’s ruling is affirmed for the reason set forth above. Section Fourth ¶¶ P.1-P.6 of the will are invalid.

Electronically signed on December 13, 2022 pursuant to V.R.E.F. 9(d).



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Helen M. Toor  
Superior Court Judge