

CITATION: *Taurasi et al. v. The Toronto-Dominion Bank*, 2024 ONSC 6306
COURT FILE NO.: CV-23-00708186-00CL
DATE: 20241111

SUPERIOR COURT OF JUSTICE – ONTARIO – COMMERCIAL LIST

RE: Melissa Taurasi and Nelda Taurasi, Applicants

AND:

The Toronto-Dominion Bank, Respondent

BEFORE: Justice Peter J. Osborne

COUNSEL: *Paul Fruitman and Xin Lu (Crystal) Li*, for the Applicants

Geoff R. Hall and Erin Chesney, for the Respondents

HEARD: June 25, 2024

ENDORSEMENT

1. The Applicants, Melissa Taurasi and Nelda Taurasi seek:
 - a. a declaration that the TD Charge (defined below) is void and of no force or effect with respect to the Applicants or their respective properties¹;
 - b. an order directing the relevant Land Registry Offices to delete the TD Charge from title to the affected properties; and
 - c. pre-judgment interest, post-judgment interest and costs.

Background

2. Defined terms in this Endorsement have the meaning given to them in the Application materials unless otherwise stated. I refer to the individual Applicants by their respective first names where appropriate given the commonality of surname.

3. The Applicants Melissa Taurasi and Nelda Taurasi are the spouses of Carlo Taurasi and Dino Taurasi respectively.

4. Carlo and Dino are brothers, founders, Co-Presidents and 90% owners of StateView Homes. Carlo is also the Chief Executive Officer. StateView Homes is the operating name of a

¹ The Application was originally brought in respect of all four Melissa and Nelda Properties. Prior to the hearing, 3 Windrose Valley was sold with the proceeds paid into Court pending the outcome of this Application. Subsequent to the hearing, 48 Puccini Drive and 48A Puccini Drive were also sold with the proceeds paid into Court pending the outcome of this Application. Accordingly, the relief sought or granted would apply to the Melissa and Nelda Properties or the respective proceeds thereof.

group of companies based in Woodbridge, Ontario owned and controlled by the Taurasi family, and which builds residential homes.

5. Melissa is also the Senior Vice President, Business Operations of StateView and is Chair, President and Director of Live Inspired, the charitable arm of StateView.

6. Nelda is the Director and Treasurer of Live Inspired.

7. The Toronto-Dominion Bank registered a global charge (the “TD Charge”) in the amount of \$37,134,091.23 on title to 30 different properties owned by StateView, Carlo, Dino and their family members, including four properties co-owned by Melissa and Nelda (the “Melissa and Nelda Properties”):

- a. 48A Puccini Drive in Richmond Hill, which is Melissa’s matrimonial home with Carlo;
- b. 48 Puccini Drive in Richmond Hill, which is Nelda’s matrimonial home with Dino;
- c. 3 Windrose Valley Blvd. in Collingwood, which is a property co-owned by Melissa and Carlo; and
- d. 16 Windrose Valley Blvd. in Collingwood, which is a property co-owned by Nelda and Dino.

8. The TD Charge was a term of a settlement agreement entered into among TD, Carlo, Dino and StateView together with its subsidiary corporate entities (the “Settlement Agreement”).

9. The TD Charge came about after TD discovered a cheque kiting fraud against the Bank resulting in unauthorized overdraft losses exceeding \$37 million. The fraud was perpetrated by StateView Homes. TD had not provided any material credit facilities to StateView, which spread its banking across multiple financial institutions.

10. Upon discovering the fraud, TD set about to seek urgent relief from this Court, including a *Mareva* injunction and *Norwich* orders. As those interim and interlocutory motions were being prepared, TD was approached by counsel for StateView and the Taurasis, who requested that TD agree to resolve and settle the motions on the basis of a settlement.

11. The settlement terms agreed to effectively provided that StateView would pay off the unauthorized overdraft of approximately \$37 million over time, and TD would be protected in the interim by security in the form of mortgages. These terms were reflected in the Settlement Agreement referred to above. The hope and expectation was that TD would be repaid while allowing StateView to continue as a going concern.

12. Neither Melissa nor Nelda was a signatory to the Settlement Agreement. However, they consented to the registration of the TD Charge as was required since they were co-owners of the properties against title to which the TD Charge was registered. To that end, they signed an Acknowledgement and Direction to facilitate registration of the TD Charge as contemplated by the Settlement Agreement. The Taurasis made the first payment due under the Settlement Agreement, with Melissa contributing \$2,275,000 of her own funds to do so.

13. Unfortunately, the Settlement Agreement did not achieve the desired outcome, and was never fully performed, since StateView was placed into receivership a few weeks after the Settlement Agreement had been entered into. The Taurasis defaulted on all payment obligations due under the Settlement Agreement after the first payment referred to above.

14. Melissa and Nelda now bring this Application for a declaration that the TD Charge is of no further force or effect on the basis that they consented to the registration of the TD Charge under duress and undue influence, for no consideration, and without the benefit of independent legal advice. While they acknowledge that the cheque kiting scheme resulted in the loss to TD, their position is that the scheme was carried out by StateView's Chief Financial Officer, Daniel Ciccone, without their knowledge or involvement.

15. TD's position is that at the time it entered into the Settlement Agreement, it believed that StateView was a successful home builder and that StateView was a victim of the fraud just like it was. As such, the Settlement Agreement provided a path forward pursuant to which TD would be paid back over time, it would have security in the interim, and StateView would continue as a going concern.

16. TD's position on this motion is that it was only after StateView went into receivership, with the effect that the Settlement Agreement would not be performed, that Melissa and Nelda took for the first time the position they now advance on this Application as they seek to be released from the mortgages. That, despite the fact that they acknowledged and consented to the mortgages in support of the Settlement Agreement.

17. For the reasons set out below, the Application is dismissed.

Analysis

18. On the application of an aggrieved person, this Court has wide discretion to make an order directing that the Register be rectified in such manner as is considered just: *Land Titles Act*, R.S.O. 1990, c. L.5, ss. 159 and 160.

19. The issue on this Application is whether the Court should exercise that discretion to delete the TD Charge from title to the Melissa and Nelda Properties² based on the factors advanced by the Applicants, which I address in turn.

Undue Influence

20. Melissa and Nelda submit that an evidentiary presumption of undue influence arises wherever one spouse guarantees the other's debt and the transaction is disadvantageous to the guaranteeing spouse. They further submit that whenever a wife offers to stand surety for her husband's debts, the bank "is put on inquiry": *Toronto-Dominion Bank v. PMJ Holdings Limited et al*, 2019 ONSC 7297 at paras. 29, 31, quoting with approval from *CIBC Mortgage Corp. v. Rowatt* (2002), 61 OR (3d) 737 (Ont. C.A.). They allege undue influence, and that the presumption

² Or, in respect of those Melissa and Nelda Properties that have been sold as noted in Footnote 1, direct that the proceeds being held in trust pending the outcome of this Application be distributed depending on whether the TD Charge was valid.

arises here. I pause to observe that there is no allegation on their part of duress; the issue is whether there was undue influence.

21. TD submits that the presumption of undue influence is not automatic and arises only in certain close relationships based on the nature of the relationship and the nature of the transaction. To trigger the presumption in a commercial transaction, the party seeking to rely on it must be able to show that they were truly disadvantaged by the contract or that the responding party was unduly benefitted by it. The doctrine of undue influence is not designed to protect people from their own folly, but rather to save them from being victimized by other people: *Sansalone v. Qiu*, 2022 ONSC 286, at paras. 111-113, citing with approval *Geffen v. Goodman Estate*, [1991] 2 S.C.R. 353, at paras. 23, 26, 39 and 43.

22. In my view, no presumption of undue influence arises here in favour of Melissa or Nelda.

23. TD, upon becoming aware of the significant overdraft in the StateView accounts, wrote to Carlo, Dino, and Mr. Ciccone on March 20, 2023. Two days later, Carlo replied, introducing TD to counsel from the law firm RAR Litigation Lawyers (“RAR”). RAR advised that they would like to resolve the issue as soon as possible and contain the issue as much as possible.

24. On March 24, 2023, TD commenced an action naming the StateView corporations, Carlo, Dino, Melissa and Nelda as defendants, among others.

25. TD named Melissa and Nelda given both its limited information as to the StateView entities (TD’s knowledge was limited since TD had not been StateView’s primary banker) and the flow of funds that appeared to TD to circulate between StateView and Live Inspired (of which, as noted above, both Melissa and Nelda were officers and directors). The address for service of each of Melissa and Nelda in the corporate profile of Live Inspired was the same as the StateView head office.

26. I accept that there was a sense of urgency to reach an agreement on both sides, albeit for different but rational reasons. StateView and the Taurasis wanted to resolve the matter quickly and with minimal disruption to the business and their reputations. TD, on the other hand, was reeling from the discovery of a massive fraud and wanted to move quickly to contain and limit losses, and to freeze and hopefully subsequently recover on whatever assets were available.

27. The result was that both sides, directly and through their respective counsel, were anxious to move quickly. This was reflected in the clear expression of the desire to move quickly from RAR, and the efforts of TD to bring an urgent motion for *Mareva* and *Norwich* relief.

28. As those motions were being prepared, RAR contacted counsel for TD on behalf of StateView and its principals. The relevant evidence on this point comes from the affidavit of Peter Hanke (“Hanke”), TD’s Manager of Commercial Credit in the Commercial Banking Group who had been involved in this matter since the discovery of the fraudulent scheme. Hanke attests that when RAR, on behalf of StateView, implored TD to not “pull the trigger” on its imminent motions for injunctive relief, it did so with a view to avoiding steps that would ruin an otherwise legitimate and solvent homebuilding business that they claimed could quickly make good on the fraudulent debt it had unwittingly accumulated (Affidavit of Peter Hanke, sworn April 4, 2024, at para. 20).

29. Hanke's evidence on this Application was that, at all times, RAR led TD and its counsel to believe that it acted for all StateView entities and principals aside from Mr. Ciccone, and that they spoke as one. "This was a family business, and the family was trying to save their business after the damage caused by the rogue Mr. Ciccone" (Affidavit of Peter Hanke, at para. 22).

30. In contrast with TD's understanding, Melissa and Nelda took the position on this Application that they in fact did not have legal representation in connection with the settlement negotiations. They submitted that they routinely deferred to and depended on their husbands in financial matters, had no involvement in StateView, and in particular were not involved in the Settlement Agreement. They also submitted that no one recommended that they get independent legal advice before signing the Acknowledgement and Direction as they did.

31. I pause to observe that each of Melissa and Nelda provided an affidavit in support of this Application; however, there is no evidence from either Carlo or Dino.

32. I accept that the issue of separate legal representation for Melissa and Nelda never came up as a separate topic in the initial discussions between the Taurasis and StateView on the one hand and TD on the other, or between their respective counsel.

33. However, all of the evidence is consistent with RAR acting for Melissa and Nelda, or at a minimum, leading TD to reasonably believe they were doing so. The communications and correspondence from RAR were all to the effect that StateView and the Taurasi family, as one, had been victimized by Mr. Ciccone just as TD had been. The representations were further to the effect that the family and the company wanted to enter into the Settlement Agreement to preserve StateView as a going concern and repay TD, while they considered their remedies as against Mr. Ciccone.

34. In addition, during negotiations leading to the Settlement Agreement, RAR voluntarily offered to include the Melissa and Nelda Properties with the other properties over which they were offering TD security. An offer of security on the Melissa and Nelda Properties obviously and necessarily depended on their agreement, even though they themselves were not parties to the Settlement Agreement.

35. Moreover, the real property security arrangements were reviewed by StateView's independent transactional lawyer in addition to RAR.

36. I also observe that while Melissa and Nelda were not parties to the Settlement Agreement, Melissa witnessed the signatures of Carlo and Dino on the Settlement Agreement. In her evidence, she acknowledged that she had had the opportunity to review the terms of the agreement if she had wanted to, while maintaining that she in fact did not.

37. Melissa and Nelda admit that they signed the Acknowledgement and Direction on April 6, 2023 to facilitate the registration of the TD Charge contemplated by the Settlement Agreement. Melissa and Nelda expressly confirmed in the Acknowledgement and Direction that they had reviewed the associated documents, confirmed their accuracy, and had the effects of the Acknowledgement and Direction fully explained to them by counsel.

38. As noted above, they now allege that they did not have independent legal advice, and moreover that they individually received no consideration or benefit by consenting to the TD Charge.

39. TD properly and reasonably requested the Acknowledgement and from all the owners of the properties to be encumbered as security, through RAR. While both Melissa and Nelda took the position on the Application that they had not read the Acknowledgement and Direction, they conceded on cross-examination that if they had done so, they would have understood that the four properties were being mortgaged. They further conceded that they would have understood the confirmations they had provided as set out in the paragraphs above.

40. Also in this regard, and as noted above, Melissa personally paid the sum of \$2,275,000 from her TD account as a contribution towards the first payment due under the Settlement Agreement. In my view, this is consistent with the conclusion that she was aware of the circumstances, the obligations pursuant to the Settlement Agreement, and that she and her family wished to perform the Settlement Agreement in their collective attempt to have the StateView business continue as a going concern.

41. There is no allegation (or evidence) of any undue influence on Melissa with respect to that payment (as opposed to the allegation of undue influence on her with respect to signing the Acknowledgement).

42. Moreover, and with respect to the payment by Melissa personally, she seeks no relief in this Application to have those funds returned to her on the basis that the Settlement Agreement and/or the Acknowledgement and Direction are invalid or unenforceable against her or her properties.

43. Melissa and Nelda state that they felt significant time pressure, and that in the absence of an agreement, TD would not release its hold on funds that StateView needed to pay the Canada Revenue Agency and another lender. They accept the statements made on the examinations of the RAR lawyers to the effect that the Settlement Agreement was designed to allow StateView access to funds so it could continue operations. I accept this.

44. However, when RAR contacted TD initially, it advised TD that it had obtained the Statement of Claim relating to TD's first action from a public court file search (not from TD). Both Melissa and Nelda were aware both of the fact of TD's claim, and of the fact that they were named as individual defendants. It was as against this background that RAR then approached TD as discussed above and expressed the desire on behalf of "our clients" (plural) to resolve matters consensually as soon as possible.

45. As noted above, all parties were under significant time pressure, albeit for their respective self-interested reasons. However, this does not amount to undue influence in the circumstances.

46. Moreover, there is an additional reason that I do not accept the submission that Melissa and Nelda did not have the benefit of legal advice. They initially took the position on this Application that RAR did not act for them. However, it was subsequently revealed that in fact, each of Melissa and Nelda has commenced an action against RAR in which they take the position that RAR was indeed their counsel in March and April, 2023 in relation to these matters.

47. Each of the actions of Melissa and Nelda against RAR specifically includes the allegation that RAR, as their counsel in relation to these matters, breached its duty of care owed to them and is liable in solicitors' negligence.

48. Indeed, paragraph 5 of the Statement of Claim in Melissa's action states: "The RAR Defendants acted as legal counsel to Melissa in March and April, 2023, as part of a retainer for persons and entities related to StateView Homes." Nelda's Statement of Claim is even clearer and states that "the RAR Defendants acted as legal counsel to Nelda in March and April, 2023, as part of a retainer, for persons and entities related to StateView Homes who were named in an action commenced by the Toronto Dominion Bank."

49. At paragraphs 31/32³, the Statements of Claim state: "There was an express or implied retainer agreement between Melissa/Nelda and the RAR Defendants. The terms of the retainer agreement include, but are not limited to ... The RAR Defendants would act in Melissa's/Nelda's best interests ... and ... the RAR Defendants would provide legal services to Melissa at the standard of a reasonably competent and diligent lawyer under the circumstances".

50. At paragraphs 32/33, the Statement of Claim pleads that "the RAR Defendants owe Melissa/Nelda a duty of care by virtue of their solicitor-client relationship."

51. While I make no determination with respect to the merits of those claims, the position taken by Melissa and Nelda in those claims is completely inconsistent with the position they now take in this Application that RAR did not provide them with legal advice, and they did not have the benefit of counsel.

52. Moreover, on April 25, 2023, Melissa and Nelda (together with Carlo and Dino) served a Notice of Change of Lawyers, removing RAR as counsel of record and appointing new counsel. That step, again undertaken with the assistance of (new) counsel, is inconsistent with the assertion that RAR had not previously acted for them and provided them legal advice.

53. Also, I do not accept the proposition that Melissa and Nelda received no benefit from the Settlement Agreement. StateView was the only source of income for the Taurasi family. None of Carlo, Dino, Melissa or Nelda earned income from any other source to fund their lifestyles and ordinary living expenses. StateView was the only source of revenue for Live Inspired. It was clearly of critical importance to the Taurasi family that StateView continue as a going concern, precisely as RAR had represented to TD.

54. Each of Melissa and Nelda gave evidence to the effect that by late March and early April, 2023, they were both aware that the \$37 million overdraft in StateView's TD accounts was caused by a cheque kiting scheme, and moreover that RAR was retained to deal with this issue with TD. They also admitted on cross-examination that it was important to them personally that StateView keep operating as a business as their families were dependent on the income derived from StateView since it was the only source of income for their households.

³ The paragraph numbering varies slightly in each pleading.

55. The evidence of TD was to the effect that it would not have entered into the Settlement Agreement but for the fact that the payment obligations were secured by, among other things, the TD Charge.

56. I am satisfied that Melissa and Nelda received or obtained a benefit from the Settlement Agreement and the TD Charge to which they consented. In all the circumstances, the Settlement Agreement and the Acknowledgement and Direction authorizing the TD Charge cannot be concluded to have been manifestly disadvantageous to Melissa or Nelda.

57. I also agree with the submission of TD that it is not determinative of the issue on this Application that there is no established connection between the four Melissa and Nelda Properties and the fraudulent scheme. TD does not allege that fraudulent funds can be traced into those properties.

58. Rather, those properties are relevant because RAR specifically offered them up as properties over which security could be placed. In seeking to have the TD Charge remain registered on title to the Melissa and Nelda Properties, TD is simply seeking to enforce the bargain that the parties made as reflected in the Settlement Agreement and confirmed in the Acknowledgement and Direction.

59. For all of these reasons, I find that there was no presumption of undue influence on Melissa or Nelda. On the contrary, I find that Melissa and Nelda willingly and knowingly signed the Acknowledgement and Direction and consented to the TD Charge being registered against title on the Melissa and Nelda Properties for all of the above reasons. In doing so, they had the benefit of the legal advice from RAR just as they allege in their respective actions.

60. When StateView was put into receivership, their source of income was clearly not going to continue. They subsequently changed lawyers, and then sued RAR in respect of the very advice that they initially took the position in this Application that they had not received. They then sought to avoid the clear terms of the bargain they had entered into.

61. As noted in *Sansalone* at para. 111, the doctrine of undue influence is not designed to protect people from their own folly, but rather to save them from being victimized by other people. Whether the actions of Melissa and Nelda amount to a folly, in my view they were not victimized by others (i.e., their own husbands, Carlo and Dino or other stakeholders of StateView), but rather they consented to the TD Charge for their own good and valid reasons at the time. Even if I were to accept that Melissa and Nelda did not take the time to read the documents they were signing or think about their effect, that does not meet the test for undue influence: see *Bank of Nova Scotia v. Anozie*, 2023 ONSC 1183, at para. 21.

62. In my view, Melissa and Nelda have not put forward any evidence of conduct sufficient to rise to the level of undue influence by respective husbands, Carlo and Dino. Their evidence is to the effect that they were directed to sign the documents that had been emailed to them and that they trusted and deferred to their husbands. They have not established undue influence, pressure or coercion.

63. If I am in error in concluding that no presumption of undue influence arises in the circumstances of this case, I would in any event find that the presumption was rebutted by TD. As

stated by the Court of Appeal for Ontario in *JGB Collateral v. Rochon*, 2020 ONCA 464, 151 O.R. (3d) 601, at para. 13:

The judge must decide on the totality of the evidence, whether the allegation of undue influence has been proved. The nature and ingredients of the impugned transaction between the benefiting spouse or party and the other party are essential factors in deciding both whether the evidential presumption has arisen, and whether the lender has rebutted it. If the judge concludes that there was no undue influence, the presumption is rebutted and does not apply.

64. Finally in this regard, while independent legal advice can be a factor to be considered in an analysis of undue influence, it is neither required nor determinative to rebut the presumption of undue influence: *Bank of Montréal v. Duguid*, (2000), 47 OR (3d) 737 (Ont. C.A.), at paras. 25-27.

65. I find that there was no undue influence, such that the presumption is rebutted and does not apply for all of the above-noted reasons.

Alleged Impairment of Nelda Taurasi

66. Finally, Nelda submits that she was intoxicated at the time of signing the Acknowledgement and Direction, and that this in some way intersects with her allegation of undue influence. In my view, it does not.

67. I pause to observe that obviously, this allegation has no relevance to Melissa and relates to Nelda only.

68. On her cross-examination, Nelda stated that she was “intoxicated slightly that day so I didn’t read [the Acknowledgement and Direction].” Nelda further stated that she suffers from anxiety and alcohol-related issues, and that she [sic] “had drank that day.”

69. I note that no reference to intoxication on that day, alcohol-related issues or anxiety, was made in either of her two affidavits sworn on this Application, the first sworn in October, 2023 and the second sworn in April, 2024.

70. In any event, there is no evidence in the record of the extent of the alleged intoxication, the type or quantity of alcohol consumed or when, whether and how any consumption on the date in question compared to Nelda’s typical consumption. There is no evidence of the effect, if any, of the alcohol on Nelda, no other evidence of intoxication (including but not limited to any corroborating evidence from Melissa or from her husband Dino as to alcohol-related issues for Nelda generally, or intoxication specifically on the date in question) and there is no medical or clinical evidence of any kind about addiction or mental health issue such as anxiety.

71. In the circumstances, I cannot conclude that intoxication on the date in question was a factor that bears on the analysis of Nelda’s capacity on the date she signed the Acknowledgement and Direction, and nor can I conclude that it assists me with respect to the allegation of undue influence at all.

Result and Disposition

- 72. For all of these reasons, the Application is dismissed.
- 73. The parties advised at the conclusion of oral argument that they had agreed on the quantum of costs payable to the successful party(ies) at \$90,000 inclusive of fees, disbursements and HST.
- 74. As TD has been successful on the Application, it is entitled to its costs from Melissa and Nelda in the amount of \$90,000, all-inclusive, which amount is payable within 60 days.
- 75. Order to go in accordance with these reasons.

Osborne J.