



**Filed**

Supreme Court of Guam, Clerk of Court

**IN THE SUPREME COURT OF GUAM**

**MAY D. F. HANNAH,**  
Plaintiff-Appellee/Cross-Appellant,

**v.**

**LUCILLE FLORES LEON GUERRERO, IGNACIO R. LEON  
GUERRERO, ALFRED F. LEON GUERRERO, MARK D. LEON  
GUERRERO, BRIAN F. LEON GUERRERO and DOES I-IX,**  
Defendants-Appellants/Cross-Appellees.

Supreme Court Case No. CVA17-018  
Superior Court Case No. CV1651-10

**OPINION**

**Cite as: 2020 Guam 15**

Appeal from the Superior Court of Guam  
Argued and submitted on May 16, 2018  
Hagåtña, Guam

Appearing for Defendants-Appellants/  
Cross-Appellees:  
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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; ROBERT J. TORRES, Associate Justice.<sup>1</sup>

**MARAMAN, C.J.:**

[1] Defendant-Appellants/Cross-Appellees Lucille Flores Leon Guerrero, Ignacio R. Leon Guerrero, Alfred F. Leon Guerrero, Mark D. Leon Guerrero, and Brian F. Leon Guerrero (collectively, “Leon Guerreros”) appeal the trial court’s amended judgment invalidating various deeds of gift made to them by Alfred and Esther Flores. Plaintiff-Appellee/Cross-Appellant May D. F. Hannah cross-appeals from the same amended judgment setting aside certain verdicts in her favor. For the reasons below, we vacate the amended judgment and remand the matter to the trial court for further proceedings not inconsistent with this opinion.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

[2] This matter arises from a dispute between siblings, namely Hannah and the family of her sister Lucille<sup>2</sup>, about *inter vivos* conveyances of real property owned by their parents Alfred and Esther Flores, now deceased.

[3] On April 2, 2007, Alfred and Esther executed a deed of gift conveying Lot No. 39, known as “Atao,” to their daughter Lucille (“Deed 1”). After the conveyance of Deed 1 to Lucille, Alfred appointed his wife Esther on June 12, 2007, as his attorney-in-fact through a power of attorney (“APOA”) that alternatively listed Lucille should Esther be unable to serve. The APOA was notarized in Hawaii where Alfred was receiving medical treatment. Using the APOA, Esther later signed a “Correction Deed,” on her and her husband Alfred’s behalf, to purportedly correct Deed 1 to show the conveyance of “Lot No. 89” rather than “Lot No. 39.” A few weeks later, Esther

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<sup>1</sup> The signatures in this opinion reflect the titles of the justices when this matter was argued and submitted.

<sup>2</sup> Lucille’s family consists of her husband Ignacio Leon Guerrero and their three children, Alfred, Mark, and Brian.

executed a deed of gift conveying Lot No. 106, also known as “As-Pulo,” to Lucille and her husband Ignacio (“Deed 2”). On August 24, 2008, she also executed a deed of gift conveying Lot No. 283 to her grandson, Alfred, who is Lucille’s son (“Deed 3”).

[4] On January 23, 2009, Esther declined to serve as attorney-in-fact for Alfred, creating a power of attorney in Lucille. On this same date, Esther executed a separate power of attorney (“EPOA”) appointing Lucille as her attorney-in-fact. Thereafter, Lucille, acting as attorney-in-fact for both Alfred and Esther under the APOA and EPOA, respectively, executed a deed conveying Lot No. 285-R2 and Lot No. 285-1-R1 to her children Alfred, Mark, and Brian as joint tenants with the right of survivorship.

[5] After discovering these conveyances, Hannah sought rescission of the deeds of gift. In her complaint, she alleged that Lucille had unduly influenced her parents Alfred and Esther in executing the powers of attorney that formed the basis for authorizing the disputed deeds of gift. The complaint listed causes of action for: breach of fiduciary duty; aiding and abetting breach of fiduciary duty; constructive fraud; aiding and abetting constructive fraud; fraud and deceit; aiding and abetting fraud and deceit; constructive trust; quiet title; and conversion.

[6] The Leon Guerreros moved to exclude evidence of Hannah’s conversion claim, alleging, among other things, lack of notice, bad faith, and delay. In opposition, Hannah argued the trial court should give her leave to amend her complaint should it determine the conversion claim was not appropriately pleaded or absent serious prejudice to the Leon Guerreros. Before trial, the court granted the Leon Guerreros’ motion, excluding all evidence of the alleged conversion of money from Esther’s bank accounts. *See* Transcript (“Tr.”) at 2-5 (Jury Trial, Feb. 19, 2016) (discussing prior decision to exclude all evidence of conversion).

[7] The Leon Guerreros filed proposed jury instructions with the trial court, requesting the jury be instructed that the standard of proof to establish undue influence, to cancel a deed for lack of mental capacity, and to rebut the presumption of proper execution of a notarized document is by clear and convincing evidence. During a hearing with the parties, the trial court rejected the request by the Leon Guerreros to instruct the jury on the heightened burden of proof. Rather, the trial court instructed that the standard of proof for all issues was by a preponderance of the evidence, stating: “A party must persuade you by the evidence presented in court that what he or she is required to prove is more likely to be true than not true. This is referred to as the burden of proof.” Tr. at 90 (Jury Trial, Mar. 2, 2016).

[8] Following trial, the jury returned verdicts for Hannah and found that Alfred had insufficient mental capacity to appoint his wife Esther as his attorney-in-fact on July 12, 2007, and that Esther had insufficient mental capacity to appoint Lucille as her attorney-in-fact on January 23, 2009. The jury also found that Esther was unduly influenced by Lucille in executing the deeds for Lots 89 and 106, but not for Lot 283. During a post-trial hearing, the trial court determined that it would not permit the jury to assess punitive damages, reasoning the assessment of damages was not warranted because Hannah presented only evidence of liability and no evidence about damages.

[9] After the court entered an amended judgment following consideration of a post-verdict motion, the Leon Guerreros timely appealed. Hannah thereafter timely filed a cross-appeal.

## II. JURISDICTION

[10] This court has jurisdiction over appeals from a final judgment of the Superior Court. 48 U.S.C.A. § 1424-1(a)(2) (Westlaw through Pub. L. 116-155 (2020)); 7 GCA §§ 3107(b), 3108(a) (2005).

### III. STANDARD OF REVIEW

[11] We review a trial court’s refusal to give a requested jury instruction for abuse of discretion. *Guam Top Builders, Inc. v. Tanota Partners*, 2012 Guam 12 ¶ 9. When a claim of instructional error stems from a misstatement of the law, we review *de novo*. *Id.* ¶¶ 9, 12.

[12] A denial of leave to amend under Rule 15 of the Guam Rules of Civil Procedure is reviewed for abuse of discretion. *M Elec. Corp. v. Phil-Gets (Guam) Int’l Trading Corp.*, 2016 Guam 35 ¶ 41. “A trial court abuses its discretion when its decision is based on clearly erroneous factual findings or an incorrect legal standard.” *Id.* (quoting *Agana Beach Condo. Homeowners’ Ass’n v. Untalan*, 2015 Guam 35 ¶ 12).

[13] While rewards of punitive damages are reviewed for abuse of discretion, *see Fleming v. Quigley*, 2003 Guam 4 ¶ 32 (“Punitive damages are awardable in the discretion of the lower court.”), whether such damages are allowed by statute is a legal question subject to *de novo* review, *see Port Auth. of Guam v. Civil Serv. Comm’n (Javelosa)*, 2018 Guam 9 ¶ 15 (“[T]he interpretation of a statute is a legal question subject to *de novo* review.” (quoting *Guam Mem’l Hosp. Auth. v. Civil Serv. Comm’n (Chaco)*, 2015 Guam 18 ¶ 17)).

### IV. ANALYSIS

[14] While the parties raise many claimed errors, we address primarily the central issue on appeal, that being whether the trial court erred when it instructed the jury on the burden of proof.<sup>3</sup> We also address two issues raised on cross-appeal that are necessary to the disposition, those being

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<sup>3</sup> After disposing of this issue in the Leon Guerreros’ favor, the remaining issues in the appeal and cross-appeal concerning alleged juror misconduct, the sufficiency of evidence for the jury to make certain findings, inconsistencies with the trial verdicts, application of the relation-back doctrine, and the issues related to the trial court’s ruling as to the Leon Guerreros’ motion for judgment notwithstanding the verdict are either moot or unnecessary to the disposition of this appeal.

whether the trial court erred in denying Hannah's request to amend her complaint and in preventing the jury from determining punitive damages.

[15] During the proceedings below, the trial court provided a blanket instruction to the jury on the burden of proof, stating that “[a] party must persuade you by the evidence presented in court that what he or she is required to prove is more likely to be true than not true,” i.e., by a preponderance of the evidence. Tr. at 90 (Jury Trial, Mar. 2, 2016). The Leon Guerreros argue this instruction was erroneous because the burden of proof necessary to establish undue influence is by clear and convincing evidence, or some variant of it. *See* Appellants' Br. at 8-14 (Jan. 12, 2018). Conversely, Hannah argues that “in a dispute between private parties that is economic in nature, the preponderance of the evidence standard is sufficient.”<sup>4</sup> Appellee's Br. at 14 (Feb. 17, 2018). We disagree with Hannah and find that the blanket instruction given by the trial court as to the burden of proof was erroneous.

**A. The Burden of Proof to Establish Undue Influence is by Clear and Convincing Evidence**

[16] The Leon Guerreros argue the trial court erred when it instructed the jury that the burden of proof necessary to establish undue influence is by a preponderance of the evidence. *See* Appellants' Br. at 8-9. Instead, the Leon Guerreros suggest the trial court should have instructed on a heightened burden, specifically, that a party must establish undue influence by clear and convincing evidence. *Id.* We agree.

[17] The burden of proof necessary to sustain an allegation of undue influence is an issue of first impression for this court. Because the statute for undue influence stemmed from

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<sup>4</sup> As a preliminary matter, Hannah argues that the Leon Guerreros are foreclosed from raising the issue regarding the instructional error on the proper burden of proof because it was not raised in their Rule 50 motion for judgment as matter of law. *See* Appellee's Br. at 15-16 (Feb. 17, 2018); *see also* Guam R. Civ. P. 50(a). While this may be true, the Leon Guerreros requested and advocated for an instruction on the heightened burden of proof, which the trial court rejected. Thus, under the circumstances, the instructional error issue was properly preserved for appeal.

California Civil Code section 1575, we first consider California case law interpreting the California statute on which our law is based as persuasive authority. *See In re Estate of Hemlani*, 2008 Guam 25 ¶ 16. Under Guam law, undue influence occurs in one of three situations:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another's weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

18 GCA § 85311 (2005).

[18] In California, courts were at first skeptical in explaining the sufficiency of proof necessary to establish undue influence for claims based on California Civil Code section 1575. *See Longmire v. Kruger*, 251 P. 692, 696 (Cal. Dist. Ct. App. 1926) (“The question of what constitutes sufficient proof of undue influence depends upon the facts and circumstances of each particular case.”); *Beckmann v. Beckmann*, 345 P.2d 121 (Cal. Dist. Ct. App. 1959) (“What constitutes undue influence depend[s] upon the circumstances of each particular case. It is a species of constructive fraud which the courts will not undertake to define by any fixed principles . . . .” (citations omitted)). In *Longmire*, the court explained:

Any influence brought to bear upon a person entering into an agreement, or consenting to a disposal of property, which having regard to the age and capacity of the party, the nature of the transaction, and all the circumstances of the case, appears to have been such as to preclude the exercise of free and deliberate judgment, is considered by courts of equity to be undue influence, and is a ground for setting aside the act procured by its employment.

251 P. at 696. Thus, the fact that a grantor is peculiarly susceptible to the exertion of influence by a grantee, considering their position toward one another, is a “consideration of primary importance.” *Id.*

[19] In *Pailhe v. Pailhe*, 247 P.2d 838 (Cal. Dist. Ct. App. 1952), a California appellate court considered the sufficiency of the evidence necessary to establish undue influence in an action between two siblings over conveyances of real property made to one sibling by their mother. 247 P.2d at 840. There, the court expressed that “the burden is upon [a] plaintiff to prove undue influence by clear, satisfactory and convincing evidence,” and “that burden is met when advantage gained by a defendant through reliance by a grantor upon a confidential relationship is shown and the defendant fails to go forward with evidence to dispel the presumption of undue influence arising therefrom.” *Id.* at 844. Similarly, in *Estate of Truckenmiller v. Wells*, 158 Cal. Rptr. 699 (Ct. App. 1979), upon which the Leon Guerreros largely rely, the Court of Appeals of California stated that “[c]lear and convincing proof is required” to set aside a gift or testamentary disposition based on undue influence. 158 Cal. Rptr. at 703-04. In interpreting the California statute for undue influence, upon which our statute is based, the court stressed that “[u]ndue influence will not be inferred from ‘slight evidence’” and that it “can be established by circumstantial evidence so long as the evidence raises more than a mere suspicion that undue influence was used.” *Id.* (citations omitted).

[20] In response to the Leon Guerreros’ reliance on *Estate of Truckenmiller*, Hannah suggests only that reliance on such authority is misplaced because the case involved a will contest in “jurisdictions that have determined that their probate codes require a clear and convincing standard of proof in specific instances.” Appellee’s Br. at 14-15. This is incorrect because *Estate of Truckenmiller* involved California’s civil code for undue influence and extended the heightened burden of proof for establishing undue influence to *inter vivos* conveyances and gifts rather than solely testamentary dispositions. *See* 158 Cal. Rptr. at 703-04.

[21] Other jurisdictions have also determined that a heightened burden of proof is required in civil actions alleging undue influence over *inter vivos* conveyances of real property. See *Casper v. McDowell*, 205 N.W.2d 753, 757-58 (Wis. 1973) (stating that to set aside *inter vivos* transfer based on undue influence, objector must prove all elements of undue influence by “clear, satisfactory and convincing evidence”); *Doty v. Anderson*, 563 P.2d 1307, 1309 (Wash. Ct. App. 1977) (“Proof of the undue influence must be by clear, cogent and convincing evidence.”). For example, in *Holmes v. O’Bryant*, 741 So. 2d 366 (Miss. Ct. App. 1999), the Court of Appeals of Mississippi affirmed a trial court decision which held that a plaintiff “failed to prove by clear and convincing evidence that [a] deed should be set aside and canceled on the grounds of lack of mental capacity and undue influence.” 741 So. 2d at 370. There, the court reiterated the principle that a party seeking to set aside a deed based on undue influence must establish through clear and convincing evidence that a grantor lacked mental capacity at the time of execution of the transfer. *Id.* at 372. The Supreme Court of Mississippi explained the rationale for this heightened evidentiary burden, stating that to set aside a deed on the ground of undue influence:

the evidence must show that the will of the grantor was so dominated that free agency was destroyed and the deed became the deed of the person exerting the influence. The influence exerted, whether by means of advice, arguments, persuasions, solicitations, suggestion, or entreaty, to constitute undue influence, must be so importunate and persistent, or otherwise so operate, as to subdue and subordinate the will and take away its free agency. And it is the end accomplished which colors the influence exerted and entitles a court to speak of it as wrongful, fraudulent, or undue, on the one hand, and as proper and justifiable on the other.

*Smith v. Smith*, 574 So. 2d 644, 650 (Miss. 1990) (quoting *Clark v. Magee*, 105 So.2d 753, 755 (Miss. 1958)).

[22] Besides claims of undue influence involving *inter vivos* transfers, some courts have adopted a heightened burden for claims alleging undue influence in contract actions because of the relationship between undue influence and fraud. See *Friendly Ice Cream Corp. v. Beckner*, 597

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S.E.2d 34, 38 (Va. 2004) (“Because undue influence is a species of fraud, the person seeking to set aside [a] contract must prove undue influence by clear and convincing evidence.”); *Davis v. Adelpia Commc’ns Corp.*, 475 F. Supp. 2d 600 (W.D. Va. 2007) (“[B]ecause undue influence is a type of fraud, it must be proved by clear and convincing evidence.”). In *Town House Department Stores, Inc. v. Ahn*, 2003 Guam 6, we also acknowledged that the clear and convincing evidentiary standard applies when a party moves to set aside a judgment for fraud under Guam Rule of Civil Procedure 60(b). 2003 Guam 6 ¶ 55. Because undue influence is a species of fraud, *see Longmire*, 251 P. at 696, it is appropriate to adopt a heightened burden of proof. Therefore, we hold that the burden of proof to establish undue influence in a civil action involving a gift or *inter vivos* conveyance of property is by clear and convincing evidence.

[23] This heightened burden is necessary because in cases of undue influence, “not every influence is undue, and undue influence cannot be predicated of any act unless free agency is destroyed.” *Burnett v. Smith*, 47 So. 117, 118 (Miss. 1908). Additionally, the right to freely transfer or dispose of property, without undue interference, is an important individual interest requiring a higher standard of proof to defeat the intention of a grantor or donor. *See Boshell v. Lay*, 596 So. 2d 581, 584-85 (Ala. 1992). The higher standard acknowledges the agency and free will of an individual to make a transfer of their property for a wide variety of reasons and motives. *See Wherry v. Latimer*, 60 So. 563, 565 (Miss. 1913) (“A man of sound mind may execute a will or a deed from any sort of a motive satisfactory to him, whether that motive be love, affection, gratitude, partiality, prejudice, or even a whim or a caprice.” (quoting *Burnett*, 47 So. at 118)). Thus, a grantor should not have his or her right to convey property to a grantee vitiated without a showing of something more than a mere possibility of influence.

**B. The Existence of a Confidential Relationship Implicates a Burden Shift**

[24] The heightened burden of proof we have adopted, however, implicates a burden-shifting mechanism when there is a presumption of undue influence arising from a fiduciary or confidential relationship. *See Osterberg v. Osterberg*, 156 P.2d 46, 49 (Cal. Dist. Ct. App. 1945) (explaining that presumption of undue influence may arise in the presence of a confidential relationship); *see also Bolander v. Thompson*, 134 P.2d 924, 926-27 (Cal. Dist. Ct. App. 1943) (establishing that confidential relationship creates presumption of undue influence). In *Gayle v. Hemlani*, 2000 Guam 25, we discussed a fiduciary or confidential relationship and explained that “[t]he essence of a fiduciary or confidential relationship is that the parties do not deal on equal terms, because the person in whom trust and confidence is reposed and who accepts that trust and confidence is in a superior position to exert unique influence over the dependent party.” 2000 Guam 25 ¶ 30 (quoting *Barbara A. v. John G.*, 193 Cal. Rptr. 422, 431-32 (Ct. App. 1983)).

[25] However, a “mere suspicion” of a relationship by itself does not establish a confidential relationship. 26 Cal. Jur. 3d *Deeds* § 153; *see also O’Neil v. Spillane*, 119 Cal. Rptr. 245, 250 (Ct. App. 1975). A confidential relationship may arise by legal principles, *see Gayle*, 2000 Guam 25 ¶ 8; *Buchmayer v. Buchmayer*, 157 P.2d 9, 11-12 (Cal. Dist. Ct. App. 1945), or by questions of facts, *see Bolander*, 134 P.2d at 926; *Butler v. LeBouef*, 203 Cal. Rptr. 3d 572, 580-81 (Ct. App. 2016). Such a relationship may exist “whenever trust and confidence is reposed by one person in the integrity and fidelity of another.” *Spillane*, 119 Cal. Rptr. at 250. “It is likewise frequently emphasized that the existence of a confidential relationship presents a question of fact which, of necessity, may be determined only on a case by case basis.” *Id.*

[26] Guam case law regarding undue influence and the presumption of undue influence arising from a confidential relationship illustrates the burden-shifting mechanism when a fiduciary or

confidential relationship is established. In *Sablan v. Sablan*, 2017 Guam 3, a divorce action which involved transactions of land conveyances between spouses, we concluded that “a presumption of undue influence arises from . . . transactions where one spouse gains a material advantage over the other.” 2017 Guam 3 ¶ 34. We also held there to be a burden-shifting mechanism in *Estate of Benavente v. Maquera*, 2000 Guam 9, for claims of undue influence involving transactions between an attorney and a client, where the attorney obtains an advantage from the client. 2000 Guam 9 ¶¶ 15-16. There, we also emphasized that the burden of proof shifts to an attorney to put forth evidence to overcome the presumption of undue influence. *Id.*

[27] In both *Sablan* and *Estate of Benavente*, the presumption of undue influence arose because there existed a fiduciary or confidential relationship between the parties, and in *Estate of Benavente*, an attorney-client relationship which involved land conveyances arising from a deed. Our precedent, however, does not establish that a confidential relationship may exist solely from a lineal relationship between two parties. Rather, “[p]articularly in family relationships, such as parent-child and husband-wife, the existence of a confidential relationship is an issue of fact, and is not presumed as a matter of law,” and “the mere existence of a familial relationship is not indicative of a confidential relationship.” *In re Ingersoll Tr.*, 950 A.2d 672, 692 (D.C. 2008) (first quoting *Upman v. Clarke*, 753 A.2d 4, 9 (Md. 2000); then quoting *Orwick v. Moldawer*, 822 A.2d 506, 512 (Md. Ct. Spec. App. 2003)). The existence of such a relationship may warrant an inference of a confidential relationship, but the “relation alone will not, in and of itself, suffice to initiate and support the presumption of undue influence.” *Sablan*, 2017 Guam 3 ¶ 32 (quoting *In re Cover’s Estate*, 204 P. 583, 590 (Cal. 1922)).

[28] As we have discussed, our cases establish that the presumption of undue influence is a rebuttable presumption and the party for whom it is against must put certain evidence forward to

rebut or overcome the presumption. *See id.* ¶¶ 34-36; *Estate of Benavente*, 2000 Guam 9 ¶¶ 15-16; *see also In re Estate of Borja*, No. CV96-00044A, 1997 WL 208982, at \*4 (D. Guam Apr. 21, 1997) (holding that in probate actions, contestants of will have burden of proving undue influence, but if presumption of undue influence applies, “the burden of proof shifts to the will’s proponents to show the absence of undue influence”); *Estate of Gelonese v. Balassi*, 111 Cal. Rptr. 833, 838 (Ct. App. 1974) (“The presumption of undue influence, when established, is a rebuttable presumption.”). We believe it is necessary to apply this same burden-shifting mechanism here, where a presumption of undue influence arises from a confidential relationship involving an *inter vivos* transfer of property.

[29] Therefore, when a confidential relationship triggering the presumption of undue influence has been established by clear and convincing evidence, the burden shifts to the opposing party to offer evidence to demonstrate a reasonable explanation for the transfers and thus a lack of undue influence. *See Holmes*, 741 So. 2d at 371 (stating that party asserting confidential relationship “ha[s] the burden of proving by clear and convincing evidence that a confidential relationship existed”); *Thomas v. Lampkin*, 470 So. 2d 37, 39 (Fla. Dist. Ct. App. 1985) (“[A] rebuttable presumption of undue influence arises where, (1) the moving party establishes that a confidential relationship existed between the grantor and grantee and (2) the grantee was active in the procurement of the deed.”). This requires the benefiting party to show by a preponderance of the evidence “that the confidence was not abused, by proving that the other party acted, not upon any reliance or confidence placed in the former, but with full knowledge of the facts, and entire understanding of the effect of the transaction.” *O’Neill v. Dennis*, 240 P.2d 376, 377 (Cal. Dist. Ct. App. 1952) (quoting *Webb v. Saunders*, 201 P.2d 816, 818-19 (Cal. Dist. Ct. App. 1949)); *see also Sablan*, 2017 Guam 3 ¶ 35 (“[T]he weight of authority concludes the burden of rebutting the

presumption of undue influence is by a preponderance of the evidence.” (alteration in original) (quoting *In re Marriage of Mathews*, 35 Cal. Rptr. 3d 1, 5-6 (Ct. App. 2005))). Thus, to overcome the presumption of undue influence, the proponents of the disputed transfers, in this case the Leon Guerrerros, must present evidence that the *inter vivos* transfers were not induced by undue influence.<sup>5</sup>

[30] We reiterate that the burden of proof to establish undue influence in a civil action involving a gift or *inter vivos* conveyance of property is by clear and convincing evidence. When a confidential relationship is established, there exists a rebuttable presumption of undue influence implicating an evidentiary burden shift. This burden shift requires the proponent of the act to present evidence, under the preponderance of the evidence standard, to establish an absence of undue influence in order to overcome the presumption. Whether that presumption has been overcome is an issue left to the trier of fact, in this case, the jury. *See Bolander*, 134 P.2d at 927 (stating that if the presumption of undue influence is rebutted by competent evidence, “there is then a conflict which the trier of the case must decide”). If there is no confidential relationship, a party must establish undue influence by clear and convincing evidence and may not rely on the presumption of undue influence.

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<sup>5</sup> We do not find it necessary to hold specifically that a challenge to a grantor’s mental capacity to execute a deed also requires clear and convincing evidence. This is because such a ruling would conflate the issues of undue influence with lack of mental capacity, particularly when a grantor’s mental capacity to execute a deed is a factual question that may implicate other types of claims or causes of actions. Additionally, a grantor’s mental capacity to execute a deed can be subsumed within an allegation of undue influence, therefore requiring proof by clear and convincing evidence. *See* 18 GCA § 85311 (stating that undue influence occurs when one takes “an unfair advantage of another’s weakness of mind”). We also do not find it necessary to address whether notarized documents created a presumption of due execution because we have already explained in *Shorehaven Corp. v. Taitano*, 2001 Guam 16, when the presumption of due execution applies. *See* 2001 Guam 16 ¶¶ 12-15, 25 (finding that defendant did not produce clear and convincing evidence to rebut presumption afforded to plaintiff that notarized documents are regular and valid); *see also In re Estate of Hemlani*, 2008 Guam 25 ¶ 16 (finding that will contestant failed to rebut presumption of due execution afforded to petitioner). Further, the trial court correctly determined that under the circumstances, the presumption of due execution did not apply because Hannah challenged Alfred and Esther’s mental capacity, not whether the notarized documents were duly executed or notarized. *See* Tr. at 12, 22-23 (Jury Trial, Mar. 1, 2016).

[31] Here, the trial court erroneously instructed the jury that the preponderance of the evidence standard applied for all issues, rather than the clear and convincing evidentiary standard requested by the Leon Guerreros to establish undue influence. The trial court also failed to instruct the jury as to the rebuttable presumption of undue influence, despite recognizing the legal principles surrounding the presumption and the burden-shifting mechanism. By submitting the issue of establishing undue influence on the preponderance of evidence standard and by not instructing on the rebuttable presumption of undue influence arising from a confidential relationship, the jury could not assess the evidence appropriately. And because the blanket instruction on the burden of proof did not adequately apprise the jury of the correct burden to apply, the Leon Guerreros were severely prejudiced by the instruction. Instead, the jury should have been instructed as to the heightened burden of proof, i.e., by clear and convincing evidence, to establish undue influence, and the accompanying presumption of undue influence (should a confidential or fiduciary relationship be established).<sup>6</sup> Failing to instruct on the heightened standard as to undue influence fundamentally prejudices the entire trial, requiring us to vacate in its entirety the amended judgment.

**C. The Trial Court Abused its Discretion in Not Allowing Hannah to Amend Her Complaint**

[32] On cross-appeal, Hannah argues the trial court abused its discretion by not allowing amendment of her complaint under Rule 15(b) to more specifically state her conversion claim. *See* Appellee’s Br. at 34-36. We agree.

[33] Rule 15(b) states, in relevant part:

When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the

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<sup>6</sup> As we stated in *Shorehaven* and reaffirm here, clear and convincing evidence means evidence and “testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” 2001 Guam 16 ¶ 19 (quoting *In re Chiovero*, 570 A.2d 57, 60 (Pa. 1990)).

pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made by motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues.

Guam R. Civ. P. 15(b).<sup>7</sup> The main consideration of whether to grant leave to amend a pleading is prejudice to the opposing party. *Yoshida v. Guam Transp. & Warehouse, Inc.*, 2013 Guam 5 ¶¶ 35-36. “A party will suffer prejudice ‘if the [party] had no notice of the new issue, if the [party] could have offered additional evidence in defense, or if the [party] in some other way was denied a fair opportunity to defend.’” *Id.* at 36 (alterations in original) (quoting *Cioffe v. Morris*, 676 F.2d 539, 542 (11th Cir. 1982)). Outside a showing of actual prejudice, a court should allow a party to amend their pleading and present evidence on the issue. *Deakyne v. Comm’rs of Lewes*, 416 F.2d 290, 299 (3d Cir. 1969).

[34] Here, the Leon Guerreros contend they did not know about the conversion action as to conversion of funds. *See* Appellants’ Reply Br. at 8 (Mar. 19, 2018). This appears contrary to the record. A general claim of conversion was in the counts alleged in both the original complaint and the first amended complaint. *See* Record on Appeal (“RA”), tab 1 at 11 (Compl., Sept. 21, 2010); RA, tab 29 at 14 (First Am. Compl., July 11, 2011). In November 2010, the Leon Guerreros even tried unsuccessfully to dismiss the claims of conversion, and their filings noted “[c]onversion is ‘any act of dominion wrongfully exerted over another’s *personal property* . . . .’” RA, tab 17 at 10 (Defs.’ Mot. Dismiss, Nov 15, 2010) (emphasis added). This questions the Leon Guerreros’ belief that Hannah never asserted a conversion claim for funds. The Leon Guerreros also attempted a second time to dismiss the claims of conversion, and much of the 2012 deposition of Lucille focused on various withdrawals from Esther’s bank accounts to Lucille, *see* RA, tab 114 at 8-48

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<sup>7</sup> Guam Rule of Civil Procedure 15 derives from Rule 15 of the Federal Rules of Civil Procedure; therefore, federal interpretation of the rule is persuasive. *See M Elec. Corp.*, 2016 Guam 35 ¶ 40.

(Decl. James M. Maher re: Pl.’s Trial Ex. Dep. 21, Nov. 10, 2014); *id.* at Ex. 2 (photocopies of checks discussed). Hannah also asserted that the conversion of funds was discussed in various other depositions, some performed by Lucille’s counsel; however, the only proof of such depositions appears in Hannah’s opposition to the second motion *in limine* as excerpts. *See* RA, tab 170 at 2-15 (Pl.’s Opp’n to Defs.’ 2d Mot. Lim., Feb. 15, 2016).

[35] The record reflects the Leon Guerreros had notice for some time that Hannah’s claim for conversion related to the conversion of funds from Esther’s bank accounts by Lucille. In response to evidence supporting they were on notice of this claim, the Leon Guerreros direct the court in their reply brief to the time it took for Hannah to seek to amend her complaint—suggesting bad faith to amend on Hannah’s part. *See* Appellants’ Reply Br. at 8-9. However, it seems apparent by Hannah’s actions she intended to pursue the claim of conversion relating to the funds withdrawn from Esther’s bank accounts. The Leon Guerreros fail to articulate how they were prejudiced by proceeding to trial on a claim that Hannah was trying to actively litigate during discovery. *See Deakyne*, 416 F.2d at 299. And given the substantial amount of time the Leon Guerreros were on notice of the conversion claim, the trial court should have given Hannah leave to amend and continue the trial, if necessary, to allow the Leon Guerreros to prepare a defense. *See id.*

#### **D. The Trial Court Erred in Precluding the Jury from Determining Punitive Damages**

[36] Finally, we address the trial court’s determination to preclude the jury from assessing punitive or exemplary damages. This question is whether the trial court’s failure to let the jury assess punitive damages, because “no evidence of damages was presented” is incorrect. *See* Tr. at 2-3 (Further Proceedings, May 13, 2016). Hannah argues the trial court erred in not permitting the jury to assess punitive damages because she was only required to prove that a tortious act occurred to receive punitive compensation. *See* Appellee’s Br. at 38. In response, the Leon

Guerreros contend that Hannah waived any nominal damages, and that since no evidence of damages was presented, the court correctly denied assessment. *See* Appellants' Reply Br. at 12-13. We disagree with the Leon Guerreros and find that the trial court erred in precluding an assessment by the jury of punitive damages after it had returned verdicts finding that various tortious acts had occurred.

[37] "Guam's remedies code . . . authorizes, under certain circumstances, the assessment of [exemplary or] punitive damages in order to deter unlawful conduct and punish a defendant." *Park v. Mobil Oil Guam, Inc.*, 2004 Guam 20 ¶ 14 (citing 20 GCA § 2120 (1992)). Specifically, section 2120, which was derived from California Civil Code section 3294, states:

In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

20 GCA § 2120 (2005). And "[b]ecause there is an 'extra measure of blameworthiness inher[ent] in fraud,' fraud plaintiffs may generally recover punitive damages." *Gov't of Guam v. Kim*, 2015 Guam 15 ¶ 55 (citations omitted).

[38] In general, actual or compensatory damages are required for an award of punitive damages. *See Contento v. Mitchell*, 104 Cal. Rptr. 591, 592 (Ct. App. 1972); *Contractor's Safety Ass'n v. Cal. Comp. Ins. Co.*, 307 P.2d 626, 629 (Cal. 1957) (in bank). "This rule is based on the principle that the defendant must have committed a tortious act before exemplary damages can be assessed." *Contento*, 104 Cal. Rptr. at 592. The prerequisite for actual damages to be imposed for punitive damages to be assessed, however, "is simply the requirement that a tortious act be proven." *Esparza v. Specht*, 127 Cal. Rptr. 493, 496 (Ct. App. 1976) (citing *Brewer v. Second Baptist Church*, 197 P.2d 713, 720 (Cal. 1948) (in bank)); *see also Fullington v. Equilon Enters., LLC*, 148 Cal. Rptr. 3d 434, 446-47 (Ct. App. 2012). California courts have found that its punitive

damages statute, on which Guam's statute is based, allows for the recovery of punitive damages even where the relief is only in restitution and no compensatory monetary rewards are awarded. *See Millar v. James*, 62 Cal. Rptr. 335, 337 (Ct. App. 1967) (finding plaintiff's recovery in the form of specific restitution, rather than monetary damages, does not necessarily preclude award of exemplary damages). This is underpinned by the idea that in cases of restitution or recovery of property, where there has been a taking resulting from ill or deceptive intent, a plaintiff has still been damaged "even though monetary damages are not awarded." *Esparza*, 127 Cal. Rptr. at 496; *see also Topanga Corp. v. Gentile*, 58 Cal. Rptr. 713, 719 (Ct. App. 1967) (remanding for assessment of punitive damages in fraud action where there was no award of monetary damages). We hold that once a tortious act has been proven, a party's recovery in the form of restitution or recovery of property, without monetary damages, does not necessarily preclude an award of exemplary or punitive damages.

[39] While recognizing in their brief the principle in *Esparza* that the requirement of actual damage is "simply that a tortious act be proven," the Leon Guerrerros still argue that Hannah sought only the return of the land to the probate estate and waived any nominal damages. *See Appellants' Reply Br.* at 12-13. Hannah has always sought relief for compensatory damages, both in her complaints and in her proposed jury instructions. *See RA*, tab 1 at 11-12 (Compl.); *RA*, tab 29 at 15 (First Am. Compl.); *RA*, tab 193 at 44 (Lodgment of Proposed Jury Instrs. by Pl., Mar. 1, 2016). Lucille's contention that Hannah did not seek compensatory damages is incorrect. Further, the jury determined that Lucille had acted with undue influence and breached her fiduciary duty to Esther to bring certain properties into her immediate family's control. As a result, Hannah suffered a loss of her interest in her parents' property—property that would have rightly passed to her in probate, if not for Lucille's supposed conduct. The exertion of undue influence over another to

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receive a beneficial conveyance of property without due consideration is the type of conduct punitive damages is meant to deter. We find the trial court erred in precluding an award of punitive damages after the jury had returned verdicts finding that various tortious acts had occurred.

## V. CONCLUSION

[40] We find: (1) the trial court erred in providing the jury with a blanket instruction as to the burden of proof; (2) the trial court abused its discretion in not allowing Hannah to amend her complaint; and (3) the trial court erred in precluding an award of punitive damages after the jury had returned verdicts finding that various tortious acts had occurred. We also hold that the burden of proof to establish undue influence in a civil action involving a gift or *inter vivos* conveyance of property is by clear and convincing evidence, and when a confidential relationship triggering the presumption of undue influence has been established by clear and convincing evidence, the burden shifts to the opposing party to offer evidence to demonstrate a lack of undue influence. Accordingly, we **VACATE** the amended judgment and **REMAND** to the trial court for further proceedings not inconsistent with this opinion.

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/s/  
F. PHILIP CARBULLIDO  
Associate Justice

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/s/  
ROBERT J. TORRES  
Associate Justice

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/s/  
KATHERINE A. MARAMAN  
Chief Justice