

FILED

- 9 MAY 2023

NOTICE OF APPEAL



COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2023/84277

TITLE OF PROCEEDINGS

Appellant Hilary Lorraine Kramer
Second Appellant Jaime Ferrer
Respondent David Lindsay Stone

PROCEEDINGS IN THE COURT BELOW

Title below Stone v Kramer
Court below Supreme Court of NSW
Case number below 2017 / 261027
Dates of hearing 20-24,27 November 2020, 20 October 2022
Material date 16 February 2023
Decision of Robb J

FILING DETAILS

Filed for Hilary Lorraine Kramer and Jaime Ferrer, Appellants
Legal representative Andrew John Fleming, Walker & White

Legal representative reference
Contact name and telephone
Contact email

HEARING DETAILS

This notice of appeal is listed for directions at

31 May 2023 at 9.00 am

TYPE OF APPEAL

ESTOPPEL BY ENCOURAGEMENT

DETAILS OF APPEAL

- 1 This appeal is brought under section 101 *Supreme Court Act 1970* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The Appellants have filed a Notice of Intention to Appeal on 14 March 2023.

- 4 The Appellants appeal from the whole of the decision below being [2021] NSWSC 1456. The Appellants do not appeal from the issues raised in *Stone v Kramer* (No 2) [2022] NSWSC 1716 or the New Issue referred to in the orders made 16 February 2023 concerning who shall pay the stamp duty incidental to any transfer of the Colo property to the Respondent.

APPEAL GROUNDS

1. The primary judge erred in finding that the late Dame Leonie Kramer (“the Deceased”) made a representation in the terms of or to the effect of the third representation to the Respondent (J[249]).
2. The primary judge erred in finding (J[244]) that the third representation was an “assurance” the Deceased would give the Colo property to the Respondent in her Will.
3. The primary judge erred by failing to find the Deceased did not encourage the Respondent to act to his detriment in reliance upon the making of the third representation.
4. The primary judge erred in finding that subjective knowledge by the Deceased that the Respondent had acted to his detriment is not essential where she ought reasonably to have assumed (J[234]) or ought to have known ([J251]) that part of the Respondent’s motivation for continuing was an expectation he would receive the Colo property.
5. The primary judge erred in finding at J[234] that the Deceased ought reasonably to have assumed or ought to have known (J[251]) that part of David’s motivation for continuing was an expectation he would inherit the Colo property.
6. The primary judge erred in finding that the Deceased acted unconscionably in not leaving the Respondent the Colo property in her will despite the fact that she left him a legacy of \$200,000.
7. The primary judge erred in finding that the Respondent is entitled to equitable relief to relieve him of the effect of unconscionable conduct attributed to Dame Leonie (J[252]).

8. The primary judge erred in declaring that the Appellants as executors of the estate of the Deceased and in lieu of clause 6 of the will of the Deceased dated 11 November 2011 hold the Colo property on trust for the Respondent (order 1 made 16 February 2023) in circumstances where:
- (a) It was unreasonable for the Respondent to have acted in reliance upon the third representation given that he and the Deceased were in a commercial relationship in the form of a share farming agreement by which the Respondent farmed the Colo property and lived in one of the cottages on it;
 - (b) The Respondent received a legacy of \$200,000 pursuant to clause 6 of the deceased's will dated 11 November 2011.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Orders 1, 2, 3 made 16 February 2023 be set aside.
- 3 The Appellant's costs of the appeal and of the hearing at first instance be paid by the Respondent.

UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under s.101(2)(r) *Supreme Court Act 1970*.

SIGNATURE OF LEGAL REPRESENTATIVE


This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

I have advised the appellants that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


Solicitor on Record

9 May 2023

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

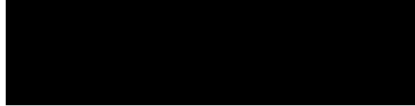
PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANTS**First Appellant**

Name Hilary Lorraine Kramer

Address

**Second Appellant**

Name Jaime Ferrer

Address

**Legal representative for Appellant**

Name Andrew John Fleming

Practising certificate number



Firm Walker & White

Contact solicitor Andrew John Fleming

Address Level 13, 111 Elizabeth Street
Sydney NSW 2000

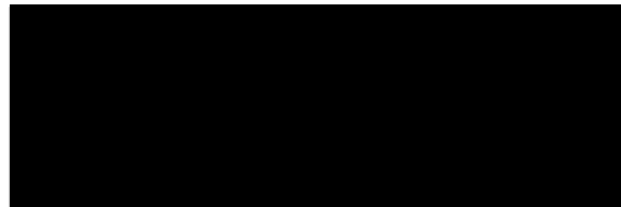
DX address Not applicable

Telephone

Fax

Email

Electronic service address

**DETAILS ABOUT RESPONDENT****Respondent**

Name David Lindsay Stone

Address

