

2011 WL 5882976 (Del.Ch.) (Trial Pleading)  
Chancery Court of Delaware.  
New Castle County

Ella MOFFETT, Plaintiff,

v.

Elizabeth M. SUTOR-BANKS and Dean A. Banks, D.D., Defendants.

No. 6879-MA.  
November 14, 2011.

### **Response to Verified Complaint**

1. Accepted.

2. Accepted. Dean A. Banks, D.D. is now Elizabeth M. Sutor-Banks' husband.

3. Plaintiff Ella Moffett gave Defendant Elizabeth M. Sutor-Banks Power of Attorney when she discovered that David J. Durham, her Financial Advisor was involved in some dubious activities with the former Church of Our Savior located in Concordville, PA. After a thorough investigation of David J. Durham, Defendant Dean A. Banks, D.D. informed Ella Moffett of his alleged illegal activities with a number of **elderly** people. Upon learning of this, and showing Ella Moffett the documentation, Ella Moffett stated that she wanted David J. Durham removed from being her Power of Attorney, Financial Advisor, Executor and beneficiary of her will and Insurance Agent and beneficiary of her insurance policies. She gave Defendants permission to make these changes for her since she was incapable of handling her affairs due to her recuperation from a fall where she had broken her arm.

4. During the time that Elizabeth M. Sutor-Banks handled Ella Moffett's finances, paying her recurring bills and transferring her monies from her account at Artisan's Bank to a new account to prevent David J. Durham from removing her savings and assets. This was done with Ella Moffett's permission and at her request.

a. Ella Moffett requested that the Defendants remove the WSFS account monies of \$7,220.02 from her account at WSFS and use the monies to hire an attorney and pay for the costs to take David J. Durham to court and to help with the expenses the Defendants were incurring in taking care of Ella Moffett. During her stay at the nursing home her son, Ralph Paul Moffett visited her and she verified her wishes to him. He will be available to testify to this fact.

b. At Ella Moffett's request, Elizabeth M. Sutor-Banks removed \$380.00 from her account and using \$70.00 to pay for gardening and gutter work at the home. The remaining \$310.00 was placed in her 'sink fund' at her home when we brought her home from the nursing home. She put it in the same place she always kept it despite our advice to put it in a newer and safer location.

c. At Ella Moffett's request, we removed art carvings from her deceased husband, Beatrix Potter books and Client files left at the house by David J. Durham. The Beatrix Potter books (in a box under the bed where David J. Durham slept with his initials on the box) and wood carvings were to be given to her son, Ralph Paul Moffett, when he returned to visit her.

d. Defendants contacted all of the federal and state authorities to secure a No-Contact order against David J. Durham. The Wilmington Police said that they could only do so if Elizabeth M. Sutor (name at that time) was on the deed. We explained this to our Aunt Ella Moffett and despite our reluctance to do so, we changed the deed with her permission to prevent David J. Durham from absconding with her house.

5. Plaintiff begged the Defendants to promise her to not let David J. Durham get her house and her possessions and they have complied with her wishes, despite David J. Durham's coercion and control of her. Dean A. Banks, D.D. personally heard Ella Moffett tell him that she was afraid of David J. Durham because of his control over her. Dean A. Banks, D.D. responded to Ella Moffett several times informing her that he would comply with her wishes to keep the items from David J. Durham no matter what he tried to do.

## COUNT I

### BREACH OF FIDUCIARY DUTY

6. Defendants reallege and incorporate the averments of the preceding paragraphs as if fully set forth herein. After Ella Moffett returned from the nursing home she became more and more erratic. She began calling the Defendant sometimes 9 times a day to find out where some of her items were located in the home. The Wilmington Police were contacted two times and paid visits to the house to first investigate a break in and the second time to secure a No-Contact order against David J. Durham. During this time, despite receiving an official Termination Notice, Revocation of Power of Attorney and repeated warnings from the Defendants, David J. Durham came to Ella Moffett's home and returned financial items to her that he removed from her home without her permission while she was in the nursing home and convinced her to return all the documents we had changed back over to him.

7. At no time did Elizabeth M. Sutor-Banks violate her fiduciary responsibility to her Aunt Ella Moffett, whom she has known all of her life (61 years). According to *Schock v. Nash*, this claim doesn't even apply. David J. Ferry has not indicated which part of *Schock v. Nash* applies here. We ask for a specific section of this case to answer this claim. This is the same case cited by David J. Ferry in his claim against one of David J. Durham's clients, David and Steven Green, the two sons of Jane Green in his letter dated February 12, 2004. This letter was in the files of David J. Durham that Ella Moffett asked us to remove from her home and have been reviewed by the federal authorities who are currently investigating David J. Durham and his partner Frederick Drummond. We are acting against him in Chancery Court No. 6738-MA because Ella Moffett has told me, Dean A. Banks, D.D., that she is afraid of him and that he is responsible for initiating her legal actions. I reported this to Adult Protective Service of the State of Delaware. David J. Durham has similar cases against him in several states either settled out of court or pending court action. He has been operating with the same modus operandi establishing and endearing himself to his 'clients' as their adopted son and driving a wedge between **elderly** people and their families. He allegedly tells his clients that he is doing this out of the goodness of his heart and when they turn over Executorship of their will to him, he submits a bill from his company that just happens to be what their estate is worth. He and Frederick Drummond were driven out of Pennsylvania for these activities several years ago when NBC Channel 10 did an Investigative Report on them. Soon after, he and his associates relocated to Florida. As a result of his actions against us, the Guest of Honor at our wedding, Aunt Ella Moffett, was denied to our entire family and for her to celebrate our nuptial event. Her part in our wedding was not performed and is a direct result of his lies to her and his Alienation of Affection against us.

8. Defendants at all times have honored the wishes of their Aunt Ella Moffett with the blessings of her son, Ralph Paul Moffett. At one point, Ella Moffett offered the Defendants her assets and her home, which we declined because her son is her rightful heir. We hired a private investigator to find her son and he came to Delaware and visited her when she was in the nursing home. If we were not acting in a fiduciary manner, why would we contact all of the federal and state authorities, find her son and pay all of her bills on time?

9. Not at any time did we violate our loyalty to our Aunt Ella Moffett. At all times we followed to the letter her wishes including keeping her assets out of the hands of David J. Durham. If the police and authorities kept him away from her, this case wouldn't be happening.

10. When we informed her of the \$7,220.20 in her bank account at WSFS, she claimed that she didn't want the money. She explained to us that David J. Durham had opened this bank account against her wishes. In fact, when we investigated the trust that David J. Durham opened at WSFS, his bank officer friend, Mr. Drew, set up the trust without a signature page thus rendering it illegal. WSFS is currently conducting an internal investigation of Mr. Drew. As per Ella Moffett's wishes, the sentimental items will be handed over to son, Ralph Paul Moffett, whom she wished to have before she was subjected to the alleged control of David J. Durham.

## COUNT II

### DEMAND FOR ACCOUNTING

11. Defendants reallege and incorporate the averments of the preceding paragraphs as if fully set forth herein. We respectfully demand his presence in Court on the established date with the records to prove his lack of veracity. His previous track record from our research and the testimony of a witness reveals a complete disrespect for the courts. We will be happy to submit ourselves to Polygraph and or Sodium Pentathol tests to prove our veracity. We respectfully request the same of David J. Durham to prove his alleged veracity. As for our Aunt Ella Moffett, we respectfully request a competency diagnosis as she asked us to perform all of these actions and now denies it due to David J. Durham's alleged coercion of her. She has been alienated from our entire family as a result of David J. Durham's interference.

12. The Defendants removed assets at the request of Ella Moffett and have promised her to carry out her wishes to keep them from being absconded with by David J. Durham.

13. Defendants respectfully request that this Court order a competency hearing of our Aunt Ella, appoint a guardian over her affairs, declare all of his changes of Power of Attorney, Executor of her will, Financial Advisor, Insurance Agent/beneficiary null and void and issue a No-Contact order against David J. Durham and his associates, Carl Durham, Rick Price, Frederick Drummond and anyone associated with him. Since he has always claimed that he was helping our Aunt Ella Moffett out of the "goodness in his heart" we also pray upon the court that he sign a document declaring that he will not submit a bill to her estate for his services rendered upon her death; which is his alleged pattern of behavior. From the beginning we have attempted to help our Aunt Ella Moffett. We are simply seeking the truth from an alleged con-man, David J. Durham, who allegedly takes advantage of the **elderly**. If he is on the up and up, why is he hiding his records and why has he fled to Florida when we wanted to meet him and examine his dealings with our Aunt Ella Moffett? This Court has an opportunity to send out a message to all financial con-artists that **elder abuse** will not be tolerated in Delaware. We respectfully request that this action be dismissed, sanctions be enforced against David J. Durham and his associates and he be required to appear at Court with the Aunt Ella Moffett's financial records. We are simply seeking justice here for our Aunt.

## COUNT III

### CONSTRUCTIVE TRUST

14. Defendants reallege and incorporate the averments of the preceding paragraphs as if fully set forth herein. A Revocable Trust was setup by David J. Durham on the behalf of Ella Moffett against her wishes. He delivered a check from an annuity that her bank, Artisan's Bank, would not deposit. He took her against her wishes to WSFS and opened a trust account for \$7,220.02 making her sign documents she didn't want to sign. When we received the trust document, there was no signature page on file, making it null and void. We sent a Revocation of Trust to David J. Durham notifying that his illegal trust was closed.

15. At no time have the Defendants obtained any assets without the express permission of Ella Moffett. There were no hummels in among the figurines we removed from her home and at no time did we take \$310.00 in cash from her home.

16. Defendants request that this Court honor the wishes of Ella Moffett as expressed to the Defendants, her niece and nephew; to remove David J. Durham from her life completely. We have always sought to have a guardian appointed on her behalf who has does not have a prior relationship with David J. Durham, Raymond Tomasetti, William P. Brady and David J. Ferry. We have witnesses that heard her say she wanted David J. Durham fired and removed from her personal and business affairs.

#### **COUNT IV**

##### **UNJUST ENRICHMENT**

17. Defendants reallege and incorporate the averments of the preceding paragraphs as if fully set forth herein

18. At no time have we caused any detriment to Ella Moffett as we are carrying out her wishes as prescribed by her before David J. Durham re-entered her life against the entire family's wishes.

19. We have operated at a loss due to our involvement with keeping David J. Durham's influence away from her. We have spent our own money, her money at her request, lost many hours from work and our family has suffered as a result of his interference.

20. Defendants only desire is to have our Aunt Ella not be taken advantage of by David J. Durham, and that her son, Ralph Paul Moffett, be appointed as her guardian and rightful heir. We are not seeking damages against her; however we are seeking damages against David J. Durham.

#### **COUNT V**

##### **UNJUST ENRICHMENT**

21. Defendants reallege and incorporate the averments of the preceding paragraphs as if fully set forth herein.

22. At the advice of the Wilmington Police Department, the deed for 308 Irving Drive changed to add Elizabeth Sutor-Banks WITH the permission of Ella Moffett. It is not a requirement to be an attorney to change legal documents.

23. The Deed is valid for the following reasons:

a. Elizabeth Sutor-Banks amended the deed at the request of Ella Moffett in order to be able to secure a No-Contact order against David J. Durham, who is currently under investigation by federal and state authorities.

b. When Elizabeth Sutor-Banks received the Power of Attorney from her aunt Ella Moffett, a Revocation of Power of Attorney letter was sent to David J. Durham at two of his ever changing addresses. He continued to use his Power of Attorney by transferring funds without her permission. That's why we changed her bank accounts. Elizabeth Sutor-Banks has NEVER received a letter of revocation making her Power of Attorney still legal.

c. At the request of her Aunt Ella Moffett, Elizabeth Sutor-Banks obtained the deed to stop David J. Durham from illegally seizing her property to cover her debt to him that he claims he is "doing out of the goodness of his heart." At no time has Elizabeth Sutor-Banks ever tried to attain financial gain as can be proven by her rejection of Ella Moffett's offer of her house and property. We will provide copies of the documents from the files David J. Durham kept at her home that Ella Moffett requested that we remove. These documents prove his inappropriate personal involvement acting as an 'adopted son' to all of his clients.

24. Defendants respectfully ask the Court to keep the Deed in full force just as it is or change it over to her rightful heir and biological son, Ralph Paul Moffett.

25. Defendants are seeking justice for our Aunt Ella Moffett from the alleged coercion, domination and manipulation of David J. Durham. This Court has an opportunity to send a message to any and all con-artists that they cannot operate with impunity in the State of Delaware.

WHEREFORE, Defendants, Elizabeth M. Sutor-Banks and Dean A. Banks, D.D. respectfully request that this Honorable Court:

A. Revoke and/or rescind any and all document transfers instituted by David J. Durham and/or his associates, including, but not limited to, Power of Attorney, Executor of Ella Moffett's will and impose a No-Contact order on David J. Durham and any and all of his personal and business associates and attorneys.

B. Allow the Defendants to turn over the assets to her son Ralph Paul Moffett and NOT David J. Durham. The Defendants have obtained everything with the permission of Ella Moffett.

C. Entering a judgment in favor of the Defendants, awarding guardianship to her son, Ralph Paul Moffett, and imposing sanctions and financial relief to the Defendants from David J. Durham for alienating the affection of our Aunt Ella according to our Bill of Particulars that are attached.

D. Invalidate all of the transfers of Ella Moffett's assets to David J. Durham, including, but not limited to her properties discussed herein.

E. File legal action with the Office of Disciplinary Council against David J. Ferry for his prior relationship with David J. Durham (who is controlling the finances of Ella Moffett; see attached) and for allegedly acting in collusion with David J. Durham.

F. Dismissing any and all actions against the Defendants in favor of transferring all of the assets over to her son, Ralph Paul Moffett.

G. Enforcing that the deed be transferred to her son, Ralph Paul Moffett.

H. Awarding the Defendant's fees and expenses and imposing sanctions against David J. Durham or any of his associates and/or attorneys from having any contact or financial dealings with Ella Moffett whatsoever, as well as returning any and all investment capital that he obtained illegally while using his revoked Power of Attorney.

I. Granting any further relief that this Honorable court finds equitable to protect and secure the finances of our Aunt Ella Moffett.

<<signature>>

Elizabeth M. Sutor-Banks

<<signature>>

Dean A, Banks, D.D.

329 4<sup>th</sup> Avenue, Wilmington, DE. 19808 - 302.999.7768, Dated: November 10, 2011

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