

2002 WL 34168246 (La. Dist. Ct.) (Trial Pleading)
District Court of Louisiana,
Twenty-Second Judicial District Court.

Elton J. ALLEN,
v.
BANK ONE, N. A.

No. 2001-13592.
September 12, 2002.

Division: "F"

Amended and Supplemental Petition for Damages and to Appoint Curator Ad Hoc

Seale, Daigle & Ross, LLC, [T. Jay Seale, III](#) #11901, [Patrick K. Reso](#) #20583, [Allen Harvey](#) #14839, 200 North Cate Street, Hammond, Louisiana 70404, Telephone: 504-542-8500, Fax: 504-542-4111.

NOW INTO COURT, through undersigned counsel, comes ELTON J. ALLEN, ("Mr. Allen" hereinafter), an interdict, domiciled in the Parish of St. Tammany, State of Louisiana, who appears herein through Parish National Bank, his court appointed Curator of Property, who with respect represents that:

I.

Made defendant herein is Todd Allen, a person of the full age of majority, upon information and belief, domiciled in the Parish of St. Tammany, State of Louisiana.

II.

Todd Allen is the son of Mr. Allen, plaintiff herein.

III.

Mr. Allen is an **elderly** gentleman, who is currently 65 years old. Sometime prior to early 2000, Mr. Allen began suffering from the effects of dementia and Alzheimer's Disease. Realizing his father's state, Todd Allen began to manipulate Mr. Allen in a plot to plunder his father's assets

IV.

As a part of his plot to plunder his father's assets, on June 26, 2000 Todd Allen manipulated his father and compelled him to sign a power of attorney agreement, granting Todd Allen authority over his father's affairs.

V.

This power of attorney agreement made Todd Allen the mandatary and fiduciary of Mr. Allen and thereby imposed a duty upon Todd Allen to act in a reasonable, prudent and diligent manner in regards to his father's assets.

VI.

As a further part of his plot to plunder his father's assets, in August of 2000 Todd Allen escorted Mr. Allen to a Bank One branch office in New Orleans, Louisiana. While there, Mr. Allen submitted a loan application, attached as Exhibit "A", and subsequently obtained a loan on August 7, 2001 ("Loan One" hereafter) in the amount of thirty-five thousand dollars (\$35,000). Mr. Allen allegedly signed a promissory note, security agreement and UCC-1, dated August 7, 2001, copies of which (excluding the promissory note) are attached hereto as Exhibit "B", to evidence the indebtedness.

VII.

On or about August 30, 2000, Todd Allen again escorted Mr. Allen to the Bank One branch office where another application was submitted to the same loan officer who handled Loan One. A copy of the August 30, 2000 application is attached as Exhibit "C". On information and belief, the application was approved and a second loan evidenced by a promissory note dated October 4, 2000, was made to Mr. Allen on October 4, 2000 (Loan Two) in the amount of One Hundred Sixty Thousand Dollars (\$160,000.00), bearing interest at the rate of 10.95%.

VII.

At the time Loan Two was made, Mr. Allen purportedly executed a mortgage encumbering his home located at 1622 11th Street, Slidell Louisiana in St. Tammany Parish in the amount of One Hundred Sixty Thousand Dollars (\$160,000.00) in favor of Bank One. A copy of said note and mortgage are attached hereto as Exhibit "D" *in globo*.

IX.

At all material times hereto and specifically on August 7, 2000 and October 4, 2000, Mr. Allen was 63 years of age, suffered from mental dementia, had been previously diagnosed with Alzheimer's disease, was deprived of reason, and did not have the capacity to contract. His condition was known in the community and was specifically known to his son, Todd Allen.

X.

Todd Allen orchestrated these loan transactions for his own personal gain. Todd Allen was arrested in December 2000 and charged with multiple counts of **exploitation** of the infirm for the unauthorized actions he took with respect to his invalid father's assets. The One Hundred Ninety-Five Thousand Dollars \$195,000.00 which Mr. Allen received from Loan One and Loan Two was confiscated by Todd Allen and converted by Todd Allen to his personal use. Mr. Allen has never benefitted from any of this money. Mr. Allen is entitled to damages as a result of this conversion.

XI.

Mr. Allen never authorized Todd Allen to self-deal or to contract with himself in the course of the mandate relationship.

XII.

The power of attorney agreement signed by Mr. Allen does not authorize Todd Allen to donate Mr. Allen's property.

XIII.

As fiduciary and mandatary of his father, Todd Allen owes an accounting of his father's assets for the year 2000, and specifically for the money loaned to Mr. Allen as a result of Loan One and Loan Two. Mr. Allen now demands that such an accounting be made.

XIV.

By manipulating his father into borrowing Loan One and Loan Two, by converting the money obtained in the course of these loan transactions, and by wasting, squandering, looting and plundering the assets of his father, Todd Allen has breached his fiduciary duty to his father, has exceeded his authority as mandatary of his father, has failed to act reasonably and with prudence and diligence and has mismanaged the affairs of another, for all of which Mr. Allen is entitled to damages.

XV.

Mr. Allen has never ratified or confirmed any of the actions of Todd Allen alleged in these premises.

XVI.

The actions of Todd Allen have caused Mr. Allen severe mental anguish and emotional distress for which Mr. Allen is also entitled to general damages. The threatened loss of collateral as a result of the improper loans and granting of security endangers Mr. Allen's well being, and has and will cause him mental anguish and emotional distress, particularly should he lose his home and the familiar surroundings even more significant in his confused mental state brought on by the progressive disease from which he suffers.

XVII.

Bank One, N.A. and Todd Allen are liable jointly, severly and *in solido*, for the mental anguish and emotional distress caused to Mr. Allen.

XVIII.

As Todd Allen is, on information and belief, a Louisiana domiciliary, he is subject to the jurisdiction of this Court; however, he is currently absent from the state and his whereabouts are currently unknown to Plaintiff. In the alternative, he is a nonresident Mississippi domiciliary with sufficient contacts with the State of Louisiana to be subject to the personal jurisdiction of this Court.

XIX.

As jurisdiction exists over Todd Allen, an attorney at law should be appointed as curator ad hoc for the purposes of receiving service of process and representing Todd Allen in these proceedings in accordance with [LA-C.C.P. art. 5091\(A\)\(1\)\(a\)](#).

WHEREFORE, ELTON J. ALLEN prays that an attorney at law be named as curator ad hoc for TODD ALLEN, that this Petition be served on said curator ad hoc, and that he be cited and required to answer same, and that after due proceedings are had, there be judgment in favor of ELTON J. ALLEN and against TODD ALLEN compelling TODD ALLEN to make an accounting of his father's assets for the year 2000, and awarding damages for a reasonable amount to compensate ELTON J. ALLEN for the breach of TODD ALLEN'S fiduciary duty, for the mismanagement of his affairs, for TODD ALLEN exceeding his authority as mandatary, for TODD ALLEN'S failure to act as mandatary and fiduciary in a reasonable, prudent and diligent

manner, for TODD ALLEN'S breach of fiduciary duty, for TODD ALLEN'S conversion of the property of ELTON J. ALLEN and for the mental anguish and emotional distress he has suffered as a result of TODD ALLEN'S fault, actions and inactions. ELTON J. ALLEN further prays for all general and equitable relief allowed by law.

Respectfully submitted this 9th day of August, 2002.

SEALE, DAIGLE & ROSS, LLC

<<signature>>

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ORDER

Considering the foregoing, IT IS ORDERED that ?? Esq., attorney at law, is appointed as curator ad hoc to receive service of process and represent the absentee, Todd Allen, in these proceedings

THUS DONE AND SIGNED IN Covington, Louisiana, this 17 day of September, 2002.

<<signature>>

DISTRICT JUDGE