

2002 WL 34255822 (Vt.Super.) (Trial Pleading)
Superior Court of Vermont.
Franklin County

Mary Jane PAQUETTE, Plaintiff,
v.
LIONEL AND FRANCINE CHARBONNEAU, Defendants.

No. S32702FC.
August 20, 2002.

Complaint

Mary Jane Paquette, By: [Gail Sophrin](#), Esq., [Brian Sawyer](#), Esq., Vermont Senior Citizens Law Project, Vermont Legal Aid, Inc., 57 North Main Street, Suite 2, Rutland, VT 05701, (802) 775-0021, Attorneys for Plaintiff.

INTRODUCTION

1. Plaintiff Mary Jane Paquette asks this court to void a transfer she made to defendants of an interest in a mortgage deed. Plaintiff conveyed this interest only because defendants pressured her to do so at a time when she was dependent upon them for housing, companionship and assistance with financial matters.
2. Defendants failed to provide plaintiff the lifelong care and shelter they had promised in return for the interest in the mortgage deed. They forced plaintiff to leave their home about two years after receiving this interest, providing her with no alternative housing.
3. Defendants not only pressured Plaintiff to convey the interest in her mortgage deed but also pressured her to sell her remaining interest in the deed at far less than its worth. Defendants kept most of plaintiff's proceeds and left her with no assets. She now lives in subsidized housing, her only income \$758 a month in Social Security.

PARTIES

4. Plaintiff Mary Jane Paquette is 65 years old, impoverished, and often in poor health. She resides at Beth El Court, Federal Street, Apartment 2N, St. Albans, Vermont. Plaintiff's annual income is less than the federal poverty guidelines. Plaintiff was thrown out of defendants' home in June 2001 and moved to Beth El Court in early December 2001.
5. Defendant Lionel Charbonneau is plaintiff's son. He resides in Swanton, Vermont.
6. Defendant Francine Charbonneau is married to Lionel Charbonneau and lives with him in Swanton, Vermont.

FACTS

7. In May 1992, plaintiff Mary Jane Paquette became joint owner of a property on Cherry Street in St. Albans Bay, Vermont, with her late husband Edmund Paquette, Jr.

8. In April 1996, plaintiff and Mr. Paquette, who were then living in Richford, Vermont, transferred the St. Albans Bay property to plaintiff's son, Glenn Charbonneau, and his then wife, Deborah Charbonneau, in exchange for a mortgage deed in the amount of \$160,000.

9. When Edmund Paquette, Jr. died in April 1997, plaintiff moved in with her other son, defendant Lionel Charbonneau, and his wife, defendant Francine Charbonneau, and their children, Bradley and Rachel Charbonneau, in Swanton, Vermont. Shortly thereafter, defendant Francine Charbonneau's parents moved into this house, as well.

10. During plaintiff's marriage to Edmund Paquette, Jr., Mr. Paquette had handled all of the financial affairs of the household. After plaintiff's husband died and she moved in with defendants, plaintiff appointed defendant Francine Charbonneau to act as her agent under a financial power of attorney.

11. When Glenn and Deborah Charbonneau divorced, the deed to the St. Albans Bay property was transferred to Deborah Charbonneau alone, in exchange for a mortgage deed from Deborah Charbonneau to plaintiff and defendants Lionel and Francine Charbonneau, as husband and wife, in February 1999 for the amount of \$141,150 - the amount remaining to be paid on the previous mortgage deed held by Glenn and Deborah Charbonneau.

12. This transaction took place in the office of attorney William Brooks in St. Albans, Vermont. It is unclear whom Mr. Brooks was representing at the time, but it seems that plaintiff did not have independent counsel for this transaction.

13. In this transaction, plaintiff allowed the transfer of one half of the mortgage deed which had been hers alone since the death of her husband in exchange for a promise by defendants to care for and shelter her for the rest of her life.

14. At the time of the transaction, plaintiff did not understand that the transfer was occurring inter vivos, and instead believed that it would be effectuated after her death. She believed that a child who cares for a parent in her older years should be compensated by receiving a greater part of the parent's savings when she dies. She entered into this transaction with this belief in mind.

15. On or before March 2001, Deborah Charbonneau offered to pay \$100,000 to discharge the mortgage deed early. Defendants accepted this offer and pressured plaintiff to do the same. Deborah Charbonneau paid off the mortgage deed for \$100,000 in March 2001.

16. Prior to the discharge, plaintiff and defendants discussed that they would use the proceeds to pay off their respective debts and split the rest of the money. Instead, defendants paid off approximately \$12,000 in plaintiff's credit card bills, did not pay off plaintiff's approximately \$16,000 loan for her car, and kept or used the rest of the money for themselves. When plaintiff asked defendants what had been done with the rest of the money, they told her it was none of her business.

17. In early June 2001, after an argument about television use in the living room where plaintiff was sleeping, defendant Lionel Charbonneau ordered plaintiff to leave the house. Plaintiff moved out shortly thereafter.

18. After living with her other son, Glenn Charbonneau, and his family for several months, plaintiff moved into a subsidized apartment in St. Albans in early December 2001.

19. During the time that plaintiff lived with defendants in their home in Swanton, she slept in the living room of the house. She was expected to provide and did provide care on a daily basis to defendant Francine Charbonneau's elderly parents. Defendant Francine Charbonneau held financial power of attorney for plaintiff and handled all of her financial affairs. Plaintiff turned over her Social Security check to defendant Francine Charbonneau each month to pay plaintiff's and the household's bills. Plaintiff also turned over to defendant Francine Charbonneau the monthly amount paid on the mortgage deed for the St. Albans Bay property held by Glenn and Deborah Charbonneau and later by Deborah Charbonneau alone.

20. During the time that she lived with defendants, plaintiff frequently suffered from verbal abuse from defendants' teenage son, Bradley Charbonneau. Plaintiff did not feel that she could express any dissatisfaction about the conditions of her living arrangement or the financial transaction at issue in this case without invoking anger from defendants and defendants' children.

21. Plaintiff filed a complaint with Adult Protective Services against defendants, alleging **financial exploitation**. At the hearing on this complaint, defendants caused plaintiff a great deal of emotional distress when they offered into evidence her diary, which they had stolen from her. Defendants refused to return this diary to plaintiff until her attorney asked them to do SO.

22. Adult Protective Services substantiated plaintiff's **financial exploitation** complaint against defendants.

CAUSES OF ACTION

First Cause of Action - Undue Influence

23. Plaintiff was in a vulnerable mental state in February 1999 because she believed defendants' promise to provide care and shelter to her for the rest of her life, because she had never handled her own financial affairs, and because she was living with defendants in their home. She was dependent upon defendants during this time and relied on them to meet her daily needs. She feared reprisal from defendants and their teenage son if she expressed dissatisfaction with the terms of the agreement.

24. Defendants Lionel and Francine Charbonneau took advantage of plaintiff's vulnerability and dependence and manipulated her to permit the transfer of one half of a mortgage deed to defendants -- a transfer which she believed would not take place until her death and which she intended as a conditional gift in exchange for defendants' promise to care for her for the rest of her life. Defendants also took advantage of plaintiff's vulnerability and dependence when they pressured her to agree to payment of the significantly lower amount of \$100,000 for discharge of the mortgage deed in March 2001.

Second Cause of Action - Failure of Conditional Gift

25. Defendants promised plaintiff on multiple occasions that they would care for her and shelter her for the rest of her life.

26. Defendants knew that the transfer of one half of the mortgage deed was a conditional gift which plaintiff gave to them in exchange for the fulfillment of this promise.

27. Less than three months after procuring the conditional gift of one half of plaintiff's life savings, and then giving to plaintiff far less than one half of the proceeds from the pay off of the mortgage deed, defendants failed to fulfill their promise to care for and provide a home for plaintiff for the rest of her life when they threw plaintiff out of their home.

Third Cause of Action - Breach of Contract

28. Prior to plaintiff transferring one half of her life savings to defendants, defendants promised plaintiff that they would provide care and shelter to plaintiff for the rest of her life.

29. Defendants' promise or agreement to care for and shelter plaintiff for the rest of her life induced plaintiff to complete the transaction in February 1999.

30. In June 2001, when defendants ordered plaintiff to leave their home, defendants substantially and maliciously breached this promise or agreement.

31. This substantial, malicious breach of the agreement entitles plaintiff to reconveyance of the money she transferred to defendants and to compensatory and punitive damages.

Fourth Cause of Action - Unjust Enrichment

32. Defendants induced plaintiff to transfer one half of her life savings to them by promising to care for and shelter plaintiff for as long as she lived.

33. Defendants also unduly influenced plaintiff to agree to the discharge of the mortgage deed for \$100,000, far less than the amount still due on the mortgage.

34. When defendants caused the amount payable on the mortgage deed to be significantly lowered, then spent not only the money plaintiff had given them through the transfer of one half of the mortgage deed but also all but \$12,000 of the one half belonging to plaintiff, and then failed to fulfill their promise to plaintiff, defendants violated the agreement, and betrayed the trust and confidence plaintiff had placed in them.

35. If the transfer of plaintiff's life savings to defendants is not canceled and a constructive trust imposed to return equitable ownership of the original mortgage deed in the amount of \$141,150 to plaintiff, defendants will be unjustly enriched and unfairly profit from their violation of plaintiff's confidence and trust.

Fifth Cause of Action - Breach of Fiduciary Duty

36. At all times relevant to this action, defendant Francine Charbonneau held power of attorney for financial affairs for plaintiff.

37. Plaintiff was not independently represented in the transaction which resulted in one half of the mortgage deed being transferred to defendants. She did not understand that this transfer was taking place inter vivos rather than after her death.

38. Plaintiff believed defendants' promise to care for her and shelter her for the rest of her life in exchange for the transfer of one half of the mortgage deed. She also trusted defendants to act in her best interest in setting the terms of the discharge of the mortgage deed and distributing one half of the proceeds to plaintiff. Plaintiff's trust was betrayed when she was divested of her life savings and thrown out of defendants' house and forced to fend for herself.

39. As plaintiff's agent for financial affairs, defendant Francine Charbonneau had a fiduciary duty to handle plaintiff's finances and property in plaintiff's best interest, and to avoid self-dealing.

40. Inducing the transfer of one half of plaintiff's interest in a mortgage deed to defendants, pressuring plaintiff to agree to a significantly lower amount to discharge the mortgage, spending all but \$12,000 of plaintiff's remaining share of the proceeds under the terms of the deed, and ordering plaintiff to leave defendants' home after promising to provide her with care and shelter for the rest of her life, all constitute self-dealing and are breaches of fiduciary duty by defendant Francine Charbonneau.

Sixth Cause of Action - Intentional Infliction of Emotional Distress

41. Defendants Lionel Charbonneau's and Francine Charbonneau's behavior in unduly influencing plaintiff to permit transfer of one half of her interest in a mortgage deed and then to accept a significantly lower sum to discharge the mortgage, fraudulently divesting plaintiff of most of her remaining half of the proceeds from the discharge, violating their promise to provide plaintiff care and shelter for the rest of her life, and subjecting her to potential homelessness, constituted outrageous and extreme conduct.

42. As a result of defendants' actions, plaintiff has suffered extreme emotional distress.

PRAYER FOR RELIEF

43. WHEREFORE, plaintiff prays that this Honorable Court:

(1) enter an order declaring that the defendants procured the conditional gift of one half of the mortgage deed for \$141,500 through undue influence;

(2) enter an order revoking plaintiff's conditional gift of one half of the mortgage deed to defendants;

(3) enter an order that a constructive trust be imposed and that \$129,150 (the value of the February 1999 mortgage deed -- \$141,150 -- less the \$12,000 from the proceeds from the discharge of the mortgage deed which was actually paid toward plaintiff's expenses) be returned to plaintiff; or in the alternative, if the February 1999 mortgage deed is found to be legitimate, enter an order that a constructive trust be imposed and that the value of one half of the mortgage deed less the \$12,000 from the proceeds from its discharge be returned to plaintiff;

(4) award plaintiff compensatory and punitive damages for defendants' intentional and malicious actions;

(5) provide such other and further relief as this Court deems just and proper.

Dated in Rutland, Vermont, this 20 day of August, 2002.

Mary Jane Paquette

<<signature>>

<<signature>>

By: Gail Sophrin, Esq.

Brian Sawyer, Esq.

Vermont Senior Citizens Law Project

Vermont Legal Aid, Inc.

57 North Main Street, Suite 2

Rutland, VT 05701

(802) 775-0021

Attorneys for Plaintiff