

2014 WL 5308444 (Del.Ch.) (Trial Pleading)
Chancery Court of Delaware.

Nancy BEAUMONT and Steven Lee, individually and derivatively on behalf of 388 Bleecker LLC, Plaintiffs,

v.

Bradford LEE, M.D. Defendant. and 388 Bleecker LLC, Nominal Defendant.

No. 8238-VCL.
October 14, 2014.

Reply to Counterclaim

Seitz, Van Ogtrop & Green, P.A, [James S. Green, Sr.](#), Esq. (DE0481), [Jared T. Green](#) (DE5179), 222 Delaware Avenue, Suite 1500, P. O. Box 68, Wilmington, DE 19899, (302) 888-0600, for plaintiffs.

1. George Q. Lee, Bradford Lee's father, was a physician, and Bradford Lee followed in his father's footsteps and also practiced as a physician.

ANSWER: Admitted.

2. In 1996, Bradford Lee became permanently disabled.

ANSWER: Admitted. By way of further answer, as a result of his disability, Bradford Lee has, since 1996, received tax-free disability payments totaling \$18,400.00 per month, \$220,800.00 annually. Because of this substantial tax free income, Bradford Lee requested Steven to assist him in managing and investing assets Bradford Lee inherited from his parents, including both real property and securities. Bradford Lee also had sophisticated CPAs and tax attorneys who assisted him in his asset management and estate planning.

3. Steven K. Lee has a bachelor of arts in finance from the University of Pennsylvania Wharton School of Business, a masters in business administration in finance from Columbia University and, at one time, held a license from the Securities and Exchange Commissioner and worked on Wall Street.

ANSWER: Admitted.

4. Beginning in 1997, Steven Lee became Bradford Lee's exclusive financial advisor and held a position of trust and confidence with Bradford Lee in that role, and as his son. Bradford Lee has no education or experience in financial matters.

ANSWER: Denied. Bradford Lee is a highly educated man who graduated at the top of his class from Stanford University and University of California Medical School. He claims in this lawsuit to have managed Bleecker single-handedly with minimal assistance from Steven, and he has retained and used the services of sophisticated CPAs and tax attorneys to assist him in his asset management and estate planning.

5. George Q. Lee, Bradford Lee, and Bradford Lee's sister, Loretta Chow, formed the George Q. Lee Family Partnership, a California limited partnership.

ANSWER: Admitted.

6. Beginning in 2001, Steven Lee directed Bradford Lee to execute various documents which purported to transfer nominal title to certain interests in 388 Bleecker LLC and the George Q. Lee Family Partnership from Bradford Lee to Steven Lee (the "Transferred Interests").

ANSWER: Denied.

7. Steven Lee represented to Bradford Lee that such transfers of nominal title only of the Transferred Interests were lawful and had income and transfer (estate and gift) tax benefits that would, among other things, maximize Steven Lee's net inheritance upon Bradford Lee's death.

ANSWER: Denied.

8. Steven Lee represented to Bradford Lee that such transfers of the Transferred Interests were of nominal title only and that Bradford Lee would retain equitable and beneficiary ownership of the Transferred Interests.

ANSWER: Denied.

9. Steven Lee also promised and represented to Bradford Lee that he would hold the Transferred Interests in trust for Bradford Lee and apply the income and principal of the Transferred Interests as Bradford Lee directs for the balance of Bradford Lee's lifetime.

ANSWER: Denied.

10. On August 27, 2001, Steven Lee executed a durable power of attorney to secure Bradford Lee's ability to rescind the transfer of the Transferred Interests and re-vest the Transferred Interests at will.

ANSWER: Admitted that Steven executed a durable power of attorney ("DPA") naming Bradford Lee as his attorney-in-fact. The DPA is a written document, the terms of which speak for themselves. Denied that the purpose, intent, or effect of the DPA was to secure Bradford Lee's ability to rescind the Transferred Interests and/or re-invest the Transferred Interests. To the contrary, the DPA created a principal/agent relationship between Steven and Bradford Lee and Bradford Lee became Steven's fiduciary with corresponding fiduciary duties to act in Steven's best interests.

11. On April 15, 2011, Steven Lee secretly, and without the consent of Bradford Lee, attempted to transfer the Transferred Interests to Nancy Beaumont, for no consideration.

ANSWER: Admitted that Steven transferred his interests in the George Q. Lee Family Partnership and 388 Bleecker, LLC to his mother, Nancy Beaumont. Denied that the transfer was secret.

12. In November and December 2012, Bradford Lee learned of the previously-concealed purported transfer of the 388 Bleecker LLC interest from Steven Lee to Nancy Beaumont.

ANSWER: Denied.

13. Steven Lee refused to account to Bradford Lee for the Transferred Interests. Steven Lee refused to apply income and principal of the Transferred Interests as directed by Bradford Lee.

ANSWER: Denied.

14. On January 3, 2013, Bradford Lee, acting pursuant to the power of attorney, executed a certain Assignment that rescinded the transfer of the Transferred Interests and vested such interests in names of Bradford Lee and Sally Lynum-Lee, as trustees of the Bradford Y. Lee and Sally Lynum-Lee Revocable Trust u/d/t dated 11/5/12, which is a revocable living trust, of which Bradford Lee is a settlor.

ANSWER: Admitted only that Bradford Lee, in clear breach of fiduciary responsibilities and duties both as Steven's attorney-in-fact and Manager of 388 Bleecker, LLC, purported to rescind and revoke the interests in the George Q. Lee Family Partnership and 388 Bleecker, LLC which he had transferred to Steven. Denied that the purported transfer was valid, legal, or effective.

15. Thereafter, Bradford Lee learned of the previously concealed purported transfer of the George Q. Lee Family Partnership interest from Steven Lee to Nancy Beaumont.

ANSWER: Denied.

Count one - breach of fiduciary duty

16. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

17. Upon information and belief, at all times herein relevant, Steven Lee and Nancy Beaumont were a partner, agent, or employee of each other and, in doing the things herein alleged, were acting within the course and scope of that partnership, agency, or employment.

ANSWER: Denied.

18. Upon information and belief, the acts and omissions of Steven Lee and Nancy Beaumont were authorized or ratified by each other.

ANSWER: Denied.

19. Steven Lee owed a fiduciary duty to Bradford Lee, which included the duties of loyalty, full and truthful disclosure, and the duty to refrain from self-dealing.

ANSWER: Denied.

20. Steven Lee's interests were adverse to Bradford Lee in connection with the Transferred Interests.

ANSWER: Denied.

21. Bradford Lee did not give informed consent to Steven Lee's conduct.

ANSWER: Denied.

22. Steven Lee breached his fiduciary duty by committing the acts and omissions alleged herein.

ANSWER: Denied.

23. Upon information and belief, Beaumont actively participated in Steven Lee breach of fiduciary duty and acted in furtherance of her own financial gain.

ANSWER: Denied.

24. As a proximate result of Steven Lee and Nancy Beaumont's conduct, Bradford Lee suffered damages in an amount to be proven at trial.

ANSWER: Denied.

Count two - breach of trust

25. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

26. An express trust existed under which Steven Lee, as trustee, held the Transferred Interests in trust for the benefit of Bradford Lee. Pursuant to that express trust, Steven Lee was required to apply the income and principal of the Transferred Interests as Bradford Lee directs for the balance of Bradford Lee's lifetime.

ANSWER: [STEVEN]

27. Steven Lee breached the trust by committing the acts and omissions alleged herein.

ANSWER: Denied.

28. Upon information and belief, Nancy Beaumont actively participated in Steven Lee's breach of trust and acted in furtherance of her own financial gain.

ANSWER: Denied.

29. As a proximate result of the Steven Lee and Nancy Beaumont's conduct, Bradford Lee suffered damages in an amount according to proof at trial.

ANSWER: Denied.

Count three - conversion

30. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

31. Steven Lee and Nancy Beaumont wrongfully exercised control over the Transferred Interests, which were equitably and beneficially owned by Bradford Lee.

ANSWER: Denied.

32. Steven Lee and Nancy Beaumont intentionally and substantially interfered with Bradford Lee's use and enjoyment of the Transferred Assets.

ANSWER: Denied.

33. Bradford Lee did not consent to the Steven Lee and Nancy Beaumont's acts and omissions with respect to the Transferred Interests.

ANSWER: Admitted. Denied that Bradford Lee's consent was required for any transactions between Steven Lee and Nancy Beaumont.

34. As a proximate result of Steven Lee and Nancy Beaumont's conduct, Bradford Lee suffered damages in an amount according to proof at trial.

ANSWER: Denied.

Count four - elder financial abuse

35. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

36. Steven Lee and Nancy Beaumont took financial advantage of Bradford Lee by taking, misappropriating, obtaining, or retaining the Transferred Interests for a wrongful use in violation of California's **Elder Abuse** and Dependent Adult Civil Protection Act, or similar laws in other states.

ANSWER: Denied.

37. Bradford Lee was sixty-five years of age or older at the time of the conduct.

ANSWER: Admitted that Bradford Lee is sixty-five. Plaintiffs are unable to discern from a reading of the foregoing what "conduct" Defendant is alleging or referring to, and, therefore, deny the balance of this allegation.

38. As a proximate result of Steven Lee and Nancy Beaumont's conduct, Bradford Lee suffered damages in an amount according to proof at trial.

ANSWER: Denied.

Count five -fraud, deceit, and fraudulent inducement against Steven Lee

39. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

40. Steven Lee made a promise to Bradford Lee.

ANSWER: Steven is without information or knowledge sufficient to form a belief as to the truth of this averment because it does not state what the promise is or was.

41. Steven Lee did not intend to perform this promise when he made it. Steven Lee concealed that secret intent from Bradford Lee until late 2012.

ANSWER: Steven is without information or knowledge sufficient to form a belief as to the truth of this averment because it does not state what the promise is or was. Denied that Steven ever made a promise to his father that he did not intend to keep and did in fact keep. Denied that Steven ever had or concealed a secret intent from his father.

42. Steven Lee intended that Bradford Lee would rely on this promise.

ANSWER: Steven is without information or knowledge sufficient to form a belief as to the truth of this averment because it does not state what the promise is or was.

43. Bradford Lee reasonably relied on Steven Lee's promise.

ANSWER: Steven is without information or knowledge sufficient to form a belief as to the truth of this averment because it does not state what the promise is or was.

44. Steven Lee did not perform the promised acts.

ANSWER: Denied.

45. As a proximate result of Steven Lee's conduct, Bradford Lee suffered damages in an amount according to proof at trial.

ANSWER: Denied.

Count six - intentional infliction of emotional distress

46. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

47. Steven Lee and Nancy Beaumont intentionally or recklessly engaged in extreme and outrageous conduct with the intent to cause Bradford Lee severe emotional distress.

ANSWER: Denied.

48. As a result of Steven Lee and Nancy Beaumont's tortious conduct, Bradford Lee suffered severe discomfort, annoyance, and mental suffering. As a result of this severe mental distress, Bradford Lee suffered general damages in an amount according to proof at trial.

ANSWER: Denied.

Count seven - declaratory judgment

49. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

50. An actual controversy exists between Bradford Lee, on the one hand, and Steven Lee and Nancy Beaumont, on the other, concerning their respective rights and duties with respect to the Transferred Interests in that Bradford Lee contends that he is sole nominal, beneficial, and equitable owner of the Transferred Interests, whereas Steven Lee and Nancy Beaumont dispute this contention and claim some interest therein.

ANSWER: Admitted.

51. Bradford Lee desires a judicial determination of his rights and duties, and a declaration as to which party's contentions regarding the Transferred Interests are correct.

ANSWER: Admitted.

52. A judicial declaration is necessary and appropriate at this time under the circumstances so that Bradford Lee may ascertain his rights and duties regarding the Transferred Interests.

ANSWER: This paragraph states a legal conclusion to which no responsive pleading is required.

Count eight - unjust enrichment

53. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

54. Through their acts and omissions described herein, Steven Lee and Nancy Beaumont attempted to enrich themselves and benefit financially.

ANSWER: Denied.

55. Through their acts and omissions described herein, Steven Lee and Nancy Beaumont attempted to impoverish Bradford Lee.

ANSWER: Denied.

56. The enrichment to Steven Lee and Nancy Beaumont is directly related to the impoverishment to Bradford Lee.

ANSWER: Denied.

57. Steven Lee and Nancy Beaumont were not justified in their actions.

ANSWER: Denied.

58. Bradford Lee has no adequate remedy at law.

ANSWER: Denied.

Count nine - undue influence against Steven Lee

59. Bradford Lee restates each foregoing paragraph.

ANSWER: Plaintiffs repeat and reallege their foregoing Answers as if set forth at length herein.

60. Steven Lee unfairly persuaded Bradford Lee to enter into the transactions described above.

ANSWER: Denied.

61. At the time Steven Lee did so, he dominated Bradford Lee, and his relationship with Bradford Lee justified the assumption that Steven Lee would not act detrimentally to Bradford Lee's interests.

ANSWER: Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole, or in part, by the analogous applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole, or in part, by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole, or in part, by Bradford Lee's unclean hands

FIFTH AFFIRMATIVE DEFENSE

The Counterclaim is barred, in whole, or in part, by the statute of frauds.

SIXTH AFFIRMATIVE DEFENSE

The Counterclaim fails to allege fraud with particularity as required by [Court of Chancery Rule 9\(b\)](#).

SEVENTH AFFIRMATIVE DEFENSE

The Counterclaim is barred by Bradford Lee's breaches of fiduciary duty.

WHEREFORE, Plaintiffs respectfully request that Defendant's Counterclaim be dismissed with prejudice and that Plaintiffs' be awarded their costs and such other relief as the Court deems just.

SEITZ, VAN OGTROP & GREEN, P.A

/s/ James S. Green, Sr.

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