

2014 WL 6706993 (Del.Ch.) (Trial Filing)
Chancery Court of Delaware.

Estate of George M. REED, Jr., by and through George M. Reed III as executor of the Estate, and George M. Reed III, as trustee of the George M. Reed Jr. Trust U/A DTD 04/16/12, and George M. Reed III and David S. Reed Sr., as beneficiaries of the George M. Reed Jr. Trust, Petitioners,

v.

Lisa GRANDELLI, Respondent.

No. 8283-VCG.
November 24, 2014.

Pre-Trial Stipulation and Order

Sergovic, Carmean & Weidman, P.A., [David J. Weidman](#), Esquire, I.D. No. 3559, 142 East Street, P.O. Box 751, Georgetown, Delaware 19947, (302) 855-1260, for petitioners.

Law Office of Dean A. Campbell, LLC, [Dean A. Campbell](#), Esquire, I.D. No. 3611, 401 North Bedford Street, P.O. Box 568, Georgetown, DE 19947, (302) 854-9750, for respondent.

NOW COMES, the Petitioners, the Estate of George M. Reed, Jr., by and through George M. Reed, III as executor of the Estate, and George M. Reed, III, as trustee of the George M. Reed Jr. Trust U/A DTD 04/16/12, and George M. Reed, III and David S. Reed, Sr., as beneficiaries of the George M. Reed, Jr. Trust, by and through their undersigned counsel, David J. Weidman, Esquire of Sergovic, Carmean & Weidman, P.A., and Respondent, Lisa Grandelli, by and through her undersigned counsel, Dean A. Campbell, Esquire of the Law Office of Dean A. Campbell, who state to this Honorable Court as follows:

I. ATTORNEYS WHO WILL TRY THE CASE:

PETITIONER: David J. Weidman, Esquire
Sergovic, Carmean & Weidman, P.A.

142 East Market Street

Georgetown, DE 19947

(302) 855-1260

RESPONDENT: Dean A. Campbell, Esquire
Law Office of Dean A. Campbell, LLC

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II. NATURE OF THE ACTION AND BACKGROUND FACTS.

PETITIONERS:

This case involves a lawsuit to recover a condominium interest, cash, and a Toyota Tacoma that Petitioners allege Respondent Lisa Grandelli wrongfully acquired from George Reed Jr. before he died in August, 2012. The specific counts in the Amended Complaint are as follows:

- a. Reformation of deeds
- b. Constructive Trust
- c. Partition
- d. Breach of Contract
- e. Fraud/Breach of Confidential Relationship
- f. Punitive Damages

In its simplest form, this case involves a 42-year-old woman's manipulation and exploitation of an 86-year-old man's affections for pecuniary gain, at a time when the Decedent was lonely and vulnerable to sexual overtures by the Respondent. The case history and factual background span the time period between January 1, 2011 and August 31, 2012, a period of 20 months.

The Decedent, George M. Reed Jr., (also referred to as "George Jr." or "the Decedent") was born on XX/XX/1925, and he died on August 31, 2012 at the age of 86. George Jr. had two sons: George M. Reed III and David S. Reed, Sr., who have brought this action on behalf of their father's estate and Trust.

Respondent Lisa Grandelli ("Ms. Grandelli") resides at 102 Camden-Wyoming Ave., Wyoming, Delaware 19934. Ms. Grandelli was born on XX/XX/1970. Accordingly, she was 41 when she first met the Decedent, and she is 44 now.

In the spring of 2011, Ms. Grandelli was employed at Hall's Family Restaurant in Wyoming, Delaware as a waitress. George Jr. was 85 years old at the time, and he had recently lost his wife of over fifty (50) years, on January 31, 2011.

Ms. Grandelli met George Jr. waiting on his table, and she subsequently befriended him when he returned to the restaurant. Ms. Grandelli began to flirt with George Jr. to gain his affection and interest, and he began to call her "Brown Eyes."

When she met George Jr., Ms. Grandelli was experiencing significant **financial** difficulties, and she shared that information with him. Petitioners intend to prove that Ms. Grandelli intentionally shared the information about her **financial** hardships with the Decedent, and developed a relationship with him, for the purpose of inducing him to transfer cash and property into her name, extend loans that she never intended to repay, and otherwise persuade him to provide her with significant **financial** benefits.

By July, 2011, George Jr. was being influenced by Ms. Grandelli to provide her with significant cash. For example, on July 29, 2011, George Jr. wrote a check to the Delaware State Housing Authority for \$6,480, and his calendar entry the day before indicates that she needed the money "to keep her home." The check memo entry stated that the money was a loan, which has not been repaid. Further, although Ms. Grandelli agreed to cook and clean for George Jr. in return for the loan, she failed to do so.

By September, 2011, George Jr. was regularly providing Ms. Grandelli with cash in various amounts, which apparently was not enough to satisfy Ms. Grandelli's **financial** requirements. In another calendar entry dated September 10, 2011, George Jr. wrote: "Brown Eyes not happy because I haven't given enough."

Around October, 2011, Ms. Grandelli discovered that George Jr. had significant funds in a retirement account. Beginning in November, 2011, he paid for plane tickets, furniture, and a vacation for Ms. Grandelli to travel to the keys in Florida in March, 2012. Although she informed George Jr. that she was taking her brother and son, Ms. Grandelli instead took her boyfriend, with whom she had an on again/off-again relationship, and she lied to George Jr. about it.

On December 30, 2011, George Jr. bought Ms. Grandelli a new Toyota Tacoma, and on March 1, 2012, he paid \$220,000 cash for a condominium in Eagle's Landing, Rehoboth Beach, Delaware. The title reflects George Jr. and Ms. Grandelli as joint tenants with the right of survivorship. Ms. Grandelli's cell phone records show that the day before she went to settlement on the condominium unit, she spoke with her boyfriend, Anthony Tharp, approximately 10 times. During this time, George Jr. continued to provide Ms. Grandelli with cash, and the transfers occurred at George Jr.'s home in the evenings, after his caregivers had gone for the day. During those visits, Ms. Grandelli and George Jr. would drink alcohol, and Ms. Grandelli would let him play with her breasts, according to her deposition testimony. The testimony of George Jr.'s friend, Tom Windham, in whom George Jr. confided before his death, corroborates this activity.

In her sworn interrogatory answers, Ms. Grandelli stated that she had no intention to marry George Jr., but by the time of her deposition, she had changed her position and indicated that she "would have married him", if he had asked. Her change of heart by the time of her deposition occurred despite the fact that:

- i) She never attended any social functions with George Jr., although asked.
- ii) She never met any of George Jr.'s friends.
- iii) She never had sex with him.
- iv) She never saw him naked.
- v) She didn't know the date of his birthday.
- vi) She never spent the night with him together overnight.
- vii) She never touched his genitals or vice versa.

After purchasing the condominium on March 1, 2012, Ms. Grandelli vacationed in Key West, Florida, with her boyfriend Anthony Tharp, on George Jr.'s nickel. To further her deception of George Jr., Ms. Grandelli texted George Jr. a photograph of a man while on vacation, which she claimed was her brother. George Jr. never met her brother, so he would not have known whether the man in the picture was actually her brother. In actuality, the individual was someone else. When Ms. Grandelli was caught in this fabrication at her deposition, she explained that she and her boyfriend were "just friends" even though she slept with him in the same hotel room. The net result is that Ms. Grandelli manipulated George Jr. into paying for a vacation for her and her boyfriend to Key West, Florida.

The photograph fabrication is not Ms. Grandelli's only prevarication in this case. On her application for employment with Hall's Restaurant, and in her sworn Interrogatory answers, she lied about attending college, about graduating from high school, and about attending Delaware Tech for two years.

In all, George Jr. paid expenses for Ms. Grandelli, and provided cash transfers to her totaling \$64,801.67, excluding the condominium. At trial, the Court will note that many of the checks signed by George Jr. were filled out in the handwriting of another person.

The Petitioners contend that Ms. Grandelli intentionally and wrongfully induced George Jr. to give her an interest in the condominium based upon false promises of affection, the pretense of a loving relationship, and the false impression that she would continue to have a relationship with him, which adversely affected the Decedent's judgment to enter into the purchase. The Petitioners further contend that Ms. Grandelli intentionally misled George Jr. regarding her intentions and feelings thereby exploiting his affections, because at the time she made the false promises of affection and misled the Decedent into believing that she wanted a relationship, she was living with a boyfriend part of the time, and otherwise participating in a relationship with him.

A month after George Jr. purchased the condominium with Ms. Grandelli in joint names, he suffered the first of two strokes; one on March 31, 2012, and the other shortly thereafter on April 2, 2012. After the first stroke, George Jr.'s son, George III invoked his father's power-of-attorney to take over his father's care and **finances**, and at that time, he discovered the numerous transfers of cash to Ms. Grandelli, and the cash purchases of the Toyota Tacoma and the Rehoboth Beach condominium.

George III thereafter retained Beth Miller, Esq. to prepare a Trust Agreement and obtain advice about protecting his father's remaining estate. On April 16, 2012, Ms. Miller prepared a deed to sever Ms. Grandelli's interest as a joint tenant with a right of survivorship into 50% tenancies in common.

On April 4, 2012, George Jr.'s family physician signed a note stating that George Jr. was unable to make informed decisions. George Jr. never recovered from his strokes, and he died at the end of August, 2012. Since that time, George III discovered that Ms. Grandelli rented the condominium unit to a third-party tenant, unbeknownst to him, for \$1,100 per month.

In response to the Amended Complaint, Ms. Grandelli has maintained one continuous position - that all the cash and assets transferred to her by George Jr. were gifts, so that the Court's inquiry should end there. In her view, the cash transfers, Toyota Tacoma, and the Rehoboth Beach condominium rightfully belong to her, and she asserts that the evidence to the contrary fails to prove the true nature of the parties' relationships, their motives, and their intentions.

RESPONDENT:

Lisa Grandelli is a 43-year-old woman who had the fortune of developing a close personal friendship with George Reed Jr.. Ms. Grandelli will call it "love" and you will hear multiple phone messages from George Reed Jr. in which he ends by saying "I love you." It is this mutual affection upon which Petitioner bases its claim of fraud. Under the Petitioner's narrow interpretation of love, it is not possible for two (2) people, who are significantly different in age, to be in love or otherwise have strong feelings for one another. To Defendant, you can't have "love" without having a mutually committed, sexual relationship.

The Petitioner is asking the Court to substitute its personal feelings in the place of what George Reed Jr. decided to do with his money near the end of his life. Petitioners have couched their case in "reformation" based on allegations of "undue influence" and "fraud". Reformation, however, is based on the true intent of the parties. You will not, however, hear any credible testimony that George Reed Jr. was not competent when any of his generous gifts were delivered to Ms. Grandelli. In fact Hal Dukes, Esq., who conducted the closing, will specifically testify to multiple conversations with Mr. Reed around the time of settlement. Furthermore, the typical hallmark of an undue influence case, i.e. isolation from friends and family, is not present in this case. During the relevant time period, the children had access to their father, Mr. Reed engaged in social events with friends, and he even had a full-time care giver in the house. The evidence will also show that Mr. Reed was somewhat stubborn and set in his ways, and not susceptible to undue influence. The Petitioner's will turn to arguments of fraud but will be required to prove that Ms. Grandelli's claims of love and affection were untrue.

In the last years of his life, Mr. Reed found much pleasure in Ms. Grandelli's company. They spent evenings together, visited each other's house from time to time, had meals together, and even flirted.

Petitioners simply cannot accept the fact that their father gave Ms. Grandelli such extravagant gifts. They believe that Ms. Grandelli took their inheritance and are fighting to get it back by asking the Court to reverse the decisions their father made during his lifetime while he was undoubtedly competent.. At the heart of the counterclaim, and one legal issues, is that fact that George Reed III has openly admitted in pleadings that he intentionally created a trust, and intentionally severed the joint tenancy his father had established only months before, so that he and his brother could regain what they thought was their inheritance.

The relationship between Grandelli and George Reed Jr. is not in question and the Court will hear multiple phone messages left by George Reed Jr. telling Grandelli that he loved her. There was mutual affection on both sides. The evidence will show that Ms. Grandelli offered George Reed Jr. friendship, compassion, companionship, and care. Mr. Reed's decisions to flood her with extravagant gifts should not be disturbed.

Without waiving all affirmative defenses plead in the Amended Answer, Respondent will focus on the defenses of laches; estoppel; and unclean hands. Petitioners knew about the condominium and other various gifts in early April 2012. Despite that knowledge, and ability to move forward as attorney-in-fact, Petitioners sat idle until their father died before taking any action. With his death passed valuable information and evidence regarding motives, loans, loan forgiveness; etc. Had the case been filed earlier, i.e. during Mr. Reed's lifetime, his deposition could have been taken and at least the Court would have the benefit of his testimony in whatever state of mind he may have been in at that time.

Respondent's also will rely on the defense of unclean hands. There is no doubt that Petitioners engaged in a self-dealing transaction. Petitioner, George Reed, III, intentionally activated his father's springing power of attorney and immediately used it for purposes of self dealing. Using his attorney, he created a trust that named him and his brother as sole beneficiaries and then conveyed George Reed Jr.'s interest into that trust. Ultimately, and during this litigation, the trust was terminated and the real property conveyed to the brothers.

Respondent's counterclaim is simple. If the Petitioner's relief is denied, then the Court is being asked to look at the self-dealing transaction of George Reed III and reverse it. Doing so, full title would again vest in Respondent and the wishes and gift of Mr. Reed will be as he intended.

In short, George Reed Jr. made several completed gifts to Ms. Grandelli during his lifetime. courts presume that the person making the gift intended to make that gift unless the challenging party produces clear and convincing evidence to rebut that presumption. *Stone v. Stant*, 2010 Del. Ch. LEXIS 142, 27-28 (Del. Ch. July 2, 2010). In short, Petitioners will need to prove, by clear and convincing evidence, that Ms. Grandelli did not "love" George Reed Jr., and all the other elements necessary to prove either fraud or undue influence.

III. FACTS ADMITTED WITHOUT FORMAL PROOF.

PETITIONER:

1. George Jr. was married to Edna Reed for over 50 years.
2. Edna Reed died on January 31, 2011 after a multi-year battle with cancer.
3. George Jr. and Edna Reed had two sons: George III and David Scott Reed Sr.
4. When his wife died, George was blind in one eye, partially deaf in both ears, suffered from diabetes, and walked with a cane. (Defendant does not stipulate).

5. George Jr. was 85 years old when he met Ms. Grandelli.
6. Ms. Grandelli was 41 years old when she met George Jr.
7. George Jr. wrote a check to the Delaware State Housing Authority in the amount of \$6,480 on Ms. Grandelli's behalf, and the memo entry line on the check states "loan".
8. George Jr. called Ms. Grandelli "brown eyes".
9. George Jr. signed checks payable to Ms. Grandelli in various amounts between August, 2011 and May, 2012. The handwriting is different on many of the checks.
10. Ms. Grandelli drank alcohol in the evenings at George Jr.'s residence, and she allowed him to play with her breasts on many of those occasions. (Defendant does not so stipulate.)
11. George Jr. paid \$32,535 by check on December 30, 2011 to purchase a new 2012 Toyota Tacoma, which Ms. Grandelli drives and which is titled solely in her name.
12. Ms. Grandelli signed a contract in her sole name to purchase the Rehoboth Beach condominium on February 13, 2012.
13. George Jr. paid \$220,000 in cash for the Rehoboth Beach condominium.
14. Ms. Grandelli did not contribute any cash to the purchase price.
15. Ms. Grandelli subsequently leased the condominium for one (1) year, between January 2014 and January 2015 for \$1,100 per monthly without notifying Petitioners.

RESPONDENT:

1. George Reed Jr. was competent to manage his own affairs until at least late March 2012 when he suffered a stroke. (Petitioners do not so stipulate)
2. George Reed Jr. continued to operate a motor vehicle, engage in social activities, and manage his own **financial** affairs until at least late March 2012 when he suffered a stroke.
3. The deed to the condominium was executed and delivered to Mr. Reed and Ms. Grandelli identifying ownership as "tenants with right of survivorship" and not as tenants in common. Deed reference Book 3976, Page 137.
4. The real estate closing for the purchase of the condominium was conducted by a licensed Delaware attorney
5. On or about October 11, 2006, George Reed Jr. executed a durable springing power of attorney naming his sons, George Reed, III and David Scott Reed, as co-attorneys-in-fact.
6. On May 24, 2012, David Scott Reed renounced his authority as attorney-in-fact, retroactive to April 15, 2012, leaving George Reed III as sole attorney-in-fact. (Petitioners do not so stipulate)
7. On or about April 16, 2012, George Reed III, acting as attorney-in-fact, created a Trust naming George Reed III and David Scott Reed as sole beneficiaries of the Trust after the death of George Reed Jr.

8. On April 16, 2012, George Reed III, executed a deed conveying, or attempting to convey, George Reed Jr.'s interest in the condominium into the newly formed Trust.
9. Title to the condominium has since been transferred from the Trust to George Reed III and David Scott Reed.
10. Petitioners admitted in pleadings that the deed was executed and recorded in order to sever the joint tenancy with right of survivorship.

The condominium, if ordered partitioned by this Court, cannot be partitioned in kind.

IV. ISSUES OF FACT THAT REMAIN TO BE LITIGATED.

PETITIONER:

1. Did Ms. Grandelli exploit George Jr.'s affection for selfish **financial** gain?
2. Did Ms. Grandelli cultivate a position of trust with George Jr. for selfish **financial** gain?
3. Did Ms. Grandelli exploit "undue sympathy and affection" from George Jr. to obtain transfers of cash and assets?
4. If so, must the Court approve of the transfers even if it finds that George Jr. consciously intended donative acts? *See Swain v. Moore, Del. Chan., 71 A.2d 264 (February 7, 1950)*
5. If so, did Ms. Grandelli's position of trust impose a fiduciary duty upon her with an accompanying legal presumption of fraud concerning the interested subject transactions without consideration? *Scott v. Williams, Del. Chan., 1967 WL 88967, Marvel, V.C. (February 18, 1967)*
6. Do George Jr.'s calendar entries reflect Ms. Grandelli's manipulative behavior?
7. Do George Jr.'s calendar entries reflect his state of mind about Ms. Grandelli's motivations?
8. Did George Jr. suffer from cognitive impairment as of April 5, 2012?
9. Was George Jr. unable to make informed decisions as of April 5, 2012, thereby entitling his son, George III, to exercise George Jr.'s power of attorney?
10. Was George Jr. incapacitated after his two strokes on March 31, 2012 and April 4, 2012, thereby allowing George III to exercise his father's power of attorney under [12 Del. C. §49A-102\(6\)](#) and [12 Del. C. §49A-109\(c\)](#)?
11. Did Ms. Grandelli manipulate and/or influence George Jr.'s **financial** decisions?
12. Did George Jr.'s spending habits change as a result?
13. Did Ms. Grandelli deceive George Jr. regarding the true nature of her feelings about him?
14. Did George Jr.'s age and health conditions render him vulnerable to deception?
15. Did Ms. Grandelli establish a confidential relationship with George Jr.?

16. Did Ms. Grandelli's **financial** condition establish a motive to deceive George Jr. and/or manipulate his **financial** decision-making?
17. Did Ms. Grandelli take advantage of George Jr.'s **financial** position out of self-interest?
18. Can Ms. Grandelli factually establish a relationship with George Jr. sufficient to support the cash and asset transfers to her as gifts?
19. Did Ms. Grandelli lie to George Jr. about taking her brother to Key West, Florida in order to induce George Jr. to pay for a vacation for her and her boyfriend?
20. Do Ms. Grandelli's cell phone records support a pattern of deception toward George Jr., where they show regular contact with her boyfriend while she was receiving cash transfers and other assets from George Jr.?
21. Did George Jr. know about Ms. Grandelli's relationship with her boyfriend throughout this time period?
22. Can Ms. Grandelli corroborate her defense that the subject transactions were gifts, by evidence other than her own self-serving testimony?
23. How much money should Ms. Grandelli have to pay George Jr.'s Trust for loans that she never repaid?
24. How much money should Ms. Grandelli have to repay George Jr.'s Trust for cash transfers, which are voidable?
25. How much money should Ms. Grandelli have to pay George Jr.'s Trust from rent that she received this past year from the subject condominium?

RESPONDENT:

1. What was George Reed Jrs. intent on February 29, 2012, when he accepted delivery of a deed in joint tenancy
2. With respect to each completed gift, did George Reed Jr. have donative intent.
3. With respect to each completed gift, did George Reed Jr. deliver the gift.
4. Did George Reed intend to have title to the condominium placed in joint tenancy with right of survivorship with Ms. Grandelli.
5. Was George Reed Jr. susceptible to undue influence.
6. Did Ms. Grandelli have the opportunity to exert undue influence.
7. Did Ms. Grandelli have the disposition to assert undue influence for an improper purpose.
8. Did Ms. Grandelli assert such undue influence as to overcome George Reed Jrs. own free will.
9. Did Ms. Grandelli make a false representation of fact to George Reed Jr.. 10. Did Ms. Grandelli make a false representation of fact to George Reed Jr. with knowledge that such representation was false.
11. Did Ms. Grandelli act with intent to induce George Reed Jr. to act based on her alleged false misrepresentation of fact.

12. Did George Reed Jr. justifiably rely on Ms. Grandelli's alleged misrepresentations of fact when he gave her the various gifts.
13. Is there damage to, and if so to what extent, to the Petitioners as a result of that justifiable reliance on the alleged misstatements of fact.
14. Was George Reed III a fiduciary to George Reed Jr. on April 16, 2012.
15. Did George Reed III engage in self-dealing by a fiduciary by transferring the condominium interest to a trust in which he and his brother were the sole beneficiaries.
16. Was the springing power of attorney properly activated by a letter from a physician to Mr. Reeds' accountant.
17. Did George Reed III violate the terms of the General Durable Power of Attorney by making a gift to himself.

V. RELIEF REQUESTED.

PETITIONER:

- a. Petitioners request reformation of the February 24, 2012 deed into George Jr.'s sole name, where he paid \$220,000 cash for the condominium without contribution from Ms. Grandelli.
- b. Alternatively, Petitioners request a constructive trust over Ms. Grandelli's 50% interest in the condominium, and an Order to have the condominium sold, so that the entire net sales proceeds are paid over to Petitioners upon the sale.
- c. Petitioners request the return of the 2012 Toyota Tacoma.
- d. Alternatively, Petitioners request a constructive trust over the 2012 Toyota Tacoma, and an Order to have it sold, so that the entire net sales proceeds are paid over to Petitioners upon the sale.
- e. Petitioners request reimbursement of the \$6,480 loan (dated July 29, 2011), the \$4,000 loan (dated December 9, 2011), and the \$1,000 loan (dated December 26, 2011), as well as any other loans the Court determines George Jr. made to Ms. Grandelli.
- f. Petitioners request reimbursement in the amount of \$757.60 for plane tickets purchased for Ms. Grandelli's benefit.
- g. Petitioners request reimbursement in the amount of \$3,808.91 paid to Expedia travel service for Ms. Grandelli's benefit.
- h. Petitioners request reimbursement for all cash amounts paid to Ms. Grandelli by check directly, as restitution.
- i. Petitioners request punitive damages for Ms. Grandelli's **financial abuse** of a vulnerable **elderly** person, after a finding that her conduct was outrageous and motivated by reckless indifference to George Jr.'s **financial** interests.
- j. Petitioners request reimbursement of their attorney's fees under the bad-faith exception to the "American Rule", where fee-shifting is warranted by Ms. Grandelli's intent to deceive and manipulate George Jr. into providing her with cash and assets based upon materially false representations of affection, and by deliberately concealing the true nature of her motivations and intent.
- k. After deducting legitimate expenses for insurance, property taxes, and homeowner's association fees from the \$13,200 annual rent received by Ms. Grandelli, Petitioners request the remaining rent proceeds for the last 12 months.

RESPONDENT:

1. Respondent will, of course, defend against all of Petitioner's Requests for Remedies listed above, and request they be dismissed.
2. Ms. Grandelli requests the Court rescind, or otherwise invalidate, the deed executed by George Reed III on April 16, 2012, and all subsequent deeds flowing therefrom, as a result of self dealing by a fiduciary.
3. Ms. Grandelli requests the Court rescind, or otherwise invalidate, the deed executed by George Reed II on April 16, 2012, as a result of its statutory defects.
4. Ms. Grandelli requests the Court rescind, or otherwise invalidate, the deed executed by George Reed II on April 16, 2012, as George Reed III lacked the authority under the Durable Power of Attorney to make such a gift to himself.
5. In the event title to the condominium is not returned solely to Ms. Grandelli and she continues as a co-tenant in the property, Ms. Grandelli seeks a partition of the condominium.
6. Ms. Grandelli seeks equitable shifting of attorneys fees and award of all costs of defense.

VI. ISSUES OF LAW THAT REMAIN TO BE LITIGATED.

PETITIONER:

1. Are Petitioners entitled to reformation of the deed dated February 24, 2012, so that 100% of the legal interest in the subject condominium vests in George Jr.'s Trust, based upon Ms. Grandelli's misrepresentation, fraud, and/or deceit?
2. Are Petitioners entitled to reformation of the deed dated April 16, 2012 to correct to scrivener's errors which could adversely affect Petitioner's 50% record title interest in the condominium and/or otherwise cloud title to the property?
3. Should the Court impose a constructive trust over Ms. Grandelli's record legal interest in the subject condominium for the benefit of George Jr.'s 2012 Trust?
4. Were George Jr.'s decisions caused by improvidence sufficient to invoke this Court's equitable powers to protect George Jr.'s estate from Ms. Grandelli's designs, as manifested by the interested transactions? See [Faraone v. Kenyon, Del. Chan., 2004 WL 550745](#), Jacobs, J. (March 15, 2004)
5. If the Court does not reform the subject deeds, or impose a constructive trust, should the subject condominium be partitioned, so that George Jr.'s 2012 Trust and Ms. Grandelli each receive 50% of the net sales proceeds?
6. Did Ms. Grandelli breach contracts with George Jr. by defaulting on various loans marked as such?
7. Did Ms. Grandelli commit fraud upon George Jr. by making materially false representations about her feelings for him and/or by concealing the true nature of her motivations and intent?
8. Did Ms. Grandelli commit fraud upon George Jr. by manipulating him with sexual overtures shortly after the loss of his wife, thereby rendering him vulnerable at an advanced age, in order to induce him to make transfers of cash and assets without consideration?
9. Did Ms. Grandelli enter into a confidential and/or fiduciary relationship with George Jr. by initiating a semi-sexual relationship based upon false pretenses? See [Swain v. Moore, Del. Chan., 71 A.2d 264 \(February 7, 1950\)](#)

10. Did Ms. Grandelli breach any fiduciary duties established by a confidential relationship with George Jr.?
11. If so, can Ms. Grandelli overcome the presumption of fraud by showing the fairness of the entire transaction? *See Coleman v. Newborn, Del. Chan., 948 A.2d 422 (November 27, 2007)*
12. Were the transfers of cash and assets from George Jr. to Ms. Grandelli self-dealing transfers that are voidable in equity?
13. Did Ms. Grandelli provide George Jr. with full disclosure of her feelings and motives for George Jr. to enable him to voluntarily consent to the interested transactions?
14. Were the cash transfers from George Jr. to Ms. Grandelli gifts?
15. Was the purchase of the 2012 Toyota Tacoma a gift?
16. Was the purchase of the Rehoboth Beach condominium in joint names a gift?
17. Does Ms. Grandelli's gift defense prevent the Court of Chancery from undoing the transfers of cash and assets in this situation, given the circumstances present? *See Swain v. Moore, Del. Chan., 71 A.2d 264 (February 7, 1950)*
18. Can Ms. Grandelli rebut the presumption against a finding of gifts for the subject transfers of cash and assets from George Jr. to her, in the absence of value or consideration in return?
19. Were the transfers of cash and assets equitable on their face?
20. Does Ms. Grandelli's conduct rise to the level of outrageousness to warrant punitive damages?
21. Does Ms. Grandelli's conduct warrant fee-shifting as an exception to the American Rule, requiring her to reimburse Petitioners for their attorney's fees in this case?
22. Did George III validly exercise his father's power of attorney?
23. Did the language of George Jr.'s power of attorney authorize him to act as his father's agent in the absence of a "certificate" from a physician?
24. Did George III properly exercise his authority under his father's power of attorney to protect his father's property from further dissipation by Ms. Grandelli?
25. Does Dr. Chavarry's April 5, 2012 note satisfy the requirements of a "certificate" in the event that the Court determines that a "certificate" was necessary for the power of attorney to arise?
26. Did George III's execution of the April 16, 2012 deed, thereby severing the JTWROS into tenancies in common, constitute a self-dealing transaction by George III, where the deed placed George Jr.'s interest in the subject condominium into George Jr.'s Trust?
27. Was George Jr.'s Trust ousted as a cotenant-in-common, thereby entitling Petitioners to the rental payments under the lease Ms. Grandelli signed with the third-party tenant in January, 2014, pursuant to [25 Del. C, §702?](#)

RESPONDENT:

1. Respondent joins in Petitioner's statement of Issues of Law, with the exception of #9, #10, #11, #12, #13, #15 and #18. These issues of law constitute a new remedy not previously plead.

Petitioner's Response: The concept of the fiduciary relationship is not a remedy at all, or a separate legal theory. Instead, the concept is integrally related to, and embedded in, the claim of fraud. The allegations in the Amended Complaint concerning fraud and restitution, and the subsequent discovery, both articulate and reveal the factual basis of the parties' relationship as a confidential relationship, as well as the basis for the factual breach of fiduciary duties resulting from the formation of that relationship.

The claim for the return of the Toyota is based on Counts V and VI for monetary damages (the cost of the Toyota) and restitution. All of the issues surrounding the nature of the parties' relationship and the Toyota were thoroughly explored by the parties during discovery. In fact, paragraphs 7, 8, 13, and 14 all allege the nature of Respondent's motives to cultivate a confidential (Respondent asserts "loving") relationship based upon false representatives and actions.

VII. PETITIONERS' WITNESS LIST.

1. George Reed, III
2. Ron Vasick, Jr., CPA
3. Beth M. Miller, Esq.
4. Tom Windham
5. Officer Derek Lawson
6. Lisa Grandelli
7. Angela Joan Pollock (by deposition)
8. Dr. Patricia Androvich Chavarry, DO (by deposition)

VIII. RESPONDENT'S WITNESS LIST.

1. Lisa Grandelli
2. Hal Dukes, Esquire
3. Ron Vasick, Jr., CPA
4. Tom Windham
5. Tim Carper
6. Amy Bush

IX. WITNESSES FOR WHOM SUBPOENAS WILL BE ISSUED.

PETITIONER:

1. Ron Vasick, Jr., CPA
2. Beth M. Miller, Esq.
3. Tom Windham
4. Officer Derek Lawson

RESPONDENT:

1. Ron Vasick, Jr, CPA
2. Tom Windham
3. Hal Dukes.,

X. JOINT EXHIBITS WITH OBJECTIONS

1. Durable Power of Attorney dated October 11, 2006.
2. George Jr.'s list of doctors. (Objection, relevance)
3. George Jr.'s list of medications. (Objections, list based on hearsay.)
 - *Petitioners:* Refresh recollection
4. George Jr.'s calendar entries between January, 2011 and March, 2012. (Objection ; hearsay)
 - *Petitioners:* [DRE 803\(3\)](#); [807](#). *In the Estate of Putney, Del Chan., 1983 WL 103273*, Longobardi V.C. (March 8, 1983); *Rash v. Rash, Del. Chan., 1986 WL 2794*, Hartnett V.C. (February 26, 1986)
5. Check ledger entries. (Objection, hearsay)
 - *Petitioners:* [DRE 803\(3\)](#); [807](#). *In the Estate of Putney, Del Chan., 1983 WL 103273*, Longobardi V.C. (March 8, 1983); *Rash v. Rash, Del. Chan., 1986 WL 2794*, Hartnett V.C. (February 26, 1986)
6. Summary of checks prepared by Beth Miller, Esq. (Objection, hearsay)
 - *Petitioners:* Ms. Miller will provide testimony at trial.
7. Medical record dated October 24, 2011. (Objection, hearsay and no foundation))
 - *Petitioners:* [DRE 803\(4\)](#). The medical records were also relied upon by Dr. Chavarry, who has been deposed in this case.

8. Medical record dated January 24, 2012. (Objection, hearsay and no foundation)

• *Petitioners*: [DRE 803\(4\)](#). The medical records were also relied upon by Dr. Chavarry, who has been deposed in this case.

9. Medical record dated April 2, 2012. (Objection, hearsay and no foundation)

• *Petitioners*: [DRE 803\(4\)](#). The medical records were also relied upon by Dr. Chavarry, who has been deposed in this case.

10. Medical records dated April 4, 2012. (Objection, hearsay and no foundation)

• *Petitioners*: [DRE 803\(4\)](#). The medical records were also relied upon by Dr. Chavarry, who has been deposed in this case.

11. Dr. Chavarry's Note dated April 5, 2012.

12. Physician's Affidavit dated June 11, 2012. (Objection, relevance)

13. Trust Agreement dated April 16, 2012.

14. Deed dated April 16, 2012.

15. Deed dated December 11, 2013.

16. Property Information Sheet - Kent County - dated June 7, 2012.

17. Deed dated September 14, 2006.

18. Dover Post list of divorces dated June 24, 2008. [Objection, hearsay]

• *Petitioners*: Nonhearsay. Used for impeachment purposes.

19. Mortgage dated August 26, 2011.

20. Mortgage statement dated June 15, 2012.

21. Respondent's employment application with Hall's Family Restaurant.

22. Respondent's earnings record between January, 2011 and August, 2012. [Objection, relevance]

23. Respondent's 2011 Federal Tax Return. [Objection, relevance] If permitted, Respondent requests they be submitted confidentially to the Court.]]

24. Respondent's 2012 Federal Tax Return. [Objection, relevance]. [If admitted, Resopndent requests they be submitted confidentially to the Court.]

25. Check #5071 from George Jr.'s bank account.

26. Excerpt from George Jr.'s calendar dated July 28, 2011. (Objection, hearsay)

• *Petitioners*: [DRE 803\(3\)](#); [807](#). In the *Estate of Putney, Del Chan.*, 1983 WL 103273, Longobardi V.C. (March 8, 1983); *Rash v. Rash, Del. Chan.*, 1986 WL 2794, Hartnett V.C. (February 26, 1986)

27. Mortgage Satisfaction Piece dated September 13, 2011.

28. Checks written from George Jr.'s account.

29. Title to 2012 Toyota Tacoma. [objection to the extent a proper foundation is not established]

30. Contract for 2012 Toyota Tacoma.

31. April 2, 2012 DMV record for 2012 Toyota Tacoma. [Objection, hearsay unless properly certified.]

• *Petitioners*: Nonhearsay. Used for impeachment purpose.

32. April 2, 2012 DMV record for 1999 Toyota owned by Respondent and ex-Husband jointly. [Objection, hearsay unless properly certified.]

• *Petitioners*: Nonhearsay. Used for impeachment purpose.

33. April 2, 2012 DMV record for 2002 Ford F-150 owned by

Respondent and boyfriend - jointly. [Objection, hearsay unless properly certified.]

• *Petitioners*: Nonhearsay. Used for impeachment purpose.

34. Checks written from George Jr.'s account. [Objection, hearsay and lack of foundation.]

• *Petitioners*: [DRE 803\(3\)](#); [807](#). *In the Estate of Putney, Del. Chan.*, 1983 WL 103273, Longobardi V.C. (March 8, 1983); *Rash v. Rash, Del. Chan.*, 1986 WL 2794, Hartnett V.C. (February 26, 1986)

35. George Jr.'s November, 2011 and December, 2011 Discover card statements. (Objection, hearsay and lack of foundation)

• *Petitioners*: [DRE 803\(3\)](#); [807](#). *In the Estate of Putney, Del. Chan.*, 1983 WL 103273, Longobardi V.C. (March 8, 1983); *Rash v. Rash, Del. Chan.*, 1986 WL 2794, Hartnett V.C. (February 26, 1986)

36. Respondent's March/April, 2012 bank statement. [Objection, hearsay]

• *Petitioners*: Nonhearsay. Used for impeachment purpose.

37. Contract to buy Eagle's Landing Condominium.

38. George Jr.'s check dated February 16, 2012 for \$11,000.

39. February 22, 2012 email from realtor. [Objection, hearsay]

• *Petitioners*: Nonhearsay. Used for impeachment purpose.

40. HUD-1 Settlement Sheet dated March 1, 2012.

41. George Jr.'s check dated February 27, 2012 for \$220,000.
42. Deed dated February 24, 2012.
43. Respondent's cell phone records between March 1, 2011 and April 30, 2012.
44. Kitchen Tune-Up Invoice dated May 25, 2012.
45. George Jr.'s check dated March 19, 2012.
46. Letter from Beth Miller to Respondent dated May 11, 2012.
47. Check #1204 dated May 31, 2012.
48. Check #1165 dated October 22, 2012.
49. Respondent's bank statements between January 1, 2011 and August 31, 2012. [Objection, hearsay]
 - *Petitioners*: Nonhearsay. Used for impeachment purpose.
50. Respondent's lease with tenant in condominium unit.
51. Respondent's Affidavit.
52. Respondents Answers to Interrogatories.
- 53: Petitioner's Responses to Interrogatories

In addition to the above joint exhibits, Respondent intends to introduce a tape recording of a series of voice messages left by George Reed Jr. on Respondent's cell phone voice mail. In addition, Petitioner shall have George Reed Jr.'s cell phone in Court to present evidence of pictures and texts sent to him by Ms. Grandelli.

Petitioner reserves the right to use additional exhibits produced during discovery for impeachment purposes.

Respondant reserves the right to use additional exhibits produced during discovery for impeachment purposes.

XII. ESTIMATED LENGTH OF ENTIRE TRIAL: Three (3) days.

XIII. IS SEQUESTRATION (SECLUSION FROM COURTROOM TO AVOID HEARING OTHER TESTIMONY) REQUESTED?

PETITIONER: Yes.

RESPONDENT: Yes

XIV. EVIDENTIARY ISSUES REQUIRING RESOLUTION BEFORE TRIAL.

PETITIONER:

1. Before he died, George Jr. was treated by his family physician, Dr. Patricia Chavarry, in Dover, Delaware. After he died, Dr. Chavarry moved to Vestal, New York, where she now practices medicine. On July 31, 2014, counsel in this case took Dr. Chavarry's deposition by telephone, in Binghamton, New York, where she appeared at the office of Czerenda Court Reporting Inc. The deposition focused on George Jr.'s cognitive state following his strokes, and the circumstances surrounding the preparation of her note dated April 5, 2012, which George III used to invoke his father's 2006 power of attorney.

Under [DRE 804\(a\)\(5\)](#), Dr. Chavarry is unavailable as a witness, because Delaware does not have the power to subpoena her to appear at trial, due to the fact that she lives outside of the State's jurisdiction. Her deposition testimony, however, is admissible under [DRE 804\(b\)\(1\)](#), and Petitioners intend to submit the original deposition transcript as evidence, for the Court to review at its leisure.

2. During the relevant time period between January, 2011 and August, 2012, Angela Pollock provided daily care to George Jr. As his caregiver, Ms. Pollock was privy to George Jr.'s **finances**. George Jr. also shared information with her about the nature of his interactions with Ms. Grandelli.

After he died, Ms. Pollock moved to New Jersey, where she now resides. Ms. Pollock has a daughter with a mental handicap, and she owns and operates a small pizzeria in Shiloh, New Jersey. Between the care that she provides to her daughter and her duties as a small business owner, she does not have time to appear at trial on December 1, 2014. More importantly, under [DRE 804\(a\)\(5\)](#), Ms. Pollock is unavailable as a witness, because Delaware does not have the power to subpoena her to appear at trial, due to the fact that she lives outside of the State's jurisdiction. However, on March 31, 2014, Ms. Pollock provided her deposition at the office of Sergovic, Carmean and Weidman P.A., at which time counsel for both parties asked her questions under oath about the issues in this case.

Her deposition testimony is admissible under [DRE 804\(b\)\(1\)](#), and Petitioners intend to submit the original deposition transcript as evidence, for the Court to review at its leisure.

RESPONDENT:

Respondent submits that the depositions of Dr. Chavarry and Ms. Pollock are admissible pursuant to [DRE 804\(a\)](#).

XV. PLEADINGS WHICH NEED TO BE AMENDED.

PETITIONER: Petitioners do not seek to amend the Amended Complaint by formal motion, where the Counts set forth therein provide Respondent with notice of the requested relief. However, if necessary, Petitioners request the Court to implement Rule 15(b) of the Court of Chancery Civil Rules of Procedure if amendments are necessary to conform any issues to the evidence, and the merits of the action will be served thereby.

RESPONDENT: Respondent does not seek to amend the Amended Complaint by formal motion, where the Counts set forth therein provide Respondent with notice of the requested relief. However, if necessary, Petitioners request the Court to implement Rule 15(b) of the Court of Chancery Civil Rules of Procedure if amendments are necessary to conform any issues to the evidence, and the merits of the action will be served thereby.

XVI. PRETRIAL LEGAL MEMORANDA OR MOTIONS.

PETITIONER: None.

RESPONDENT - None:

XVII. SPECIAL PROBLEMS.

PETITIONER: The only special problems in this case (to the Petitioners' knowledge) involve the submission of two deposition transcripts for witnesses who are otherwise unavailable, as detailed in Section XIV above.

RESPONDENT: Respondent has stipulated to the admission of the depositions.

In Section VI above, Paragraphs 9, 10, 11, 12, 13, and 18, Petitioner for the first time in this litigation introduces questions of law related to developing Ms. Grandelli as a fiduciary. This concept of a fiduciary relationship was not raised in any of the pleadings. Conversely, in Paragraph 27 of the Amended Complaint, Petitioner premises the relief in Count I specifically on: (1) mental incompetence; (2) undue influence; and (3) fraud. There are no allegations of a fiduciary relationship or self-dealing. The finding of a fiduciary relationship is a factual inquiry based on a relationship of confidence and trust. *Coleman v. Newborn*, 948 A.2d 422 (Del. Ch. 2007) A breach of fiduciary duty is a separate cause of action for which Respondent was not placed on notice and therefore did not discuss discovery based on that allegation. Furthermore, Petitioner for the first time requests relief in the form of return of the Toyota Tacoma truck. Again, this was not raised in the pleadings... Petitioner is attempting to amend its pleadings at the eleventh hour.

Petitioners' response: The concept of the fiduciary relationship is integrally related to, and embedded in, the claim of fraud. The allegations in the Amended Complaint concerning fraud and restitution articulate the basis of the parties' relationship as a confidential relationship, as well as the basis for the breach of fiduciary duties resulting from the formation of that relationship. As the Respondent even notes above, it involves a *factual* inquiry. The claim for the return of the Toyota is based on Counts V and VI for monetary damages and restitution. All of the issues surrounding the nature of the parties' relationship and the Toyota were thoroughly explored by the parties during discovery. In fact, paragraphs 7, 8, 13, and 14 all allege the nature of Respondent's motives to cultivate a confidential (Respondent asserts "loving") relationship based upon false representatives and actions.

XVIII. CERTIFICATION OF GOOD FAITH SETTLEMENT NEGOTIATIONS.

Petitioners and Respondent certify in good faith that they have attempted settlement, to no avail.

XIX. TRIAL DATE: December 1, 2014 through December 3, 2014

This Order shall supplement the pleadings and govern the course of the trial unless modified by the Court to prevent manifest injustice.

SERGOVIC, CARMEAN & WEIDMAN, P.A.

By: /s/ David J. Weidman, Esquire

DAVID J. WEIDMAN, ESQUIRE

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(302) 855-1260

Attorney for Petitioners

Dated: *11-21-14*

LAW OFFICE OF DEAN A. CAMPBELL, LLC

BY: /s/ Dean A. Campbell, Esquire

DEAN A. CAMPBELL, ESQUIRE

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(302) 854-9750

Attorney for Respondent

Dated: *11-21-14*

IT IS SO ORDERED, this 24 day of November, A.D., 2014.

<<signature>>

VICE CHANCELLOR

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