

2011 WL 1560410 (Ill.Cir.) (Trial Pleading)  
Circuit Court of Illinois.  
County Department  
Law Division  
Cook County

Krystyna POTWORA, Plaintiff,

v.

Jerzy MACIEJEWSKI aka Jerry Maciejewski and Anna Maciejewski aka Barbara Maciejewski, Defendants.

No. 2011-L-003892.  
April 13, 2011.

Ad Damnum: 300,000.00

**Complaint**

[Dana Zivkovich Johnson](#), Attorney at Law, Attorney for Plaintiff Krystyna Potwora, Atticus Law Firm LLC, Attorney Number: 44232, 8 W. Main St., Glenwood, Illinois 60425, Telephone: 708-833-7755.

NOW COMES Plaintiff, Krystyna Potwora, by and through her attorneys, Atticus Law Firm LLC, and complains of Defendants, Jerzy Maciejewski aka Jerry Maciejewski and Anna Maciejewski aka Barbara Maciejewski, as follows:

**Facts Common to All Counts**

1. Plaintiff, Krystyna Potwora, is and was, at all relevant times, a resident of the County of Cook in the state of Illinois.
2. Defendants, Jerzy Maciejewski and Anna Maciejewski, is and was, at all relevant times, residents of the County of Cook in the state of Illinois.
3. In April 2008, Plaintiff's husband died and Plaintiff became the sole beneficiary of a brokerage account worth approximately \$309,827.09.
4. At the time of her husband's death, Plaintiff was retired and relied upon the accounts maintained by her husband as her primary source of funds.
5. These assets were to be used for Plaintiff's well being after the death of her husband.
6. Plaintiff receives \$1353.40 in social security and \$442.78 as a pension from her previous employer for a total of 1796.18 per month.
7. The assets in the brokerage account were necessary to maintain Plaintiff's existing lifestyle.
8. After the death of Plaintiff's husband, the funds in the brokerage account were transferred in kind to a newly established account in Plaintiff's sole name.
9. In April 2008, Plaintiff named Defendant Jerzy Maciejewski as a beneficiary of the newly established brokerage account.

10. In May 2008, Plaintiff requested assistance with management of her account of Defendants to which Defendants agreed.
11. Defendants names' were added to the accounts containing these funds to assist with financial management only.
12. At the time, Plaintiff was not properly informed and not fully aware of the effect of naming Defendants to the accounts.
13. Defendants were named as joint holders of the brokerage account containing Plaintiffs assets under the presumption that Defendants would assist with the management of the assets and not obtain an ownership interest in the assets.
14. Information concerning the capacity in which Defendants had access to the accounts was specifically kept from Plaintiff and/or Plaintiff was misinformed by Defendants or individuals acting on Defendants' behalf concerning the nature and extent of the effect of naming Defendants to the brokerage accounts containing Plaintiffs assets.
15. Plaintiff never intended to provide Defendants with an ownership interest in the assets held in the brokerage accounts.
16. Defendants then transferred registration of the brokerage account to Stanley Nieminski, to be named as the registered representative.
17. Mr. Nieminski was a personal friend of Defendants at the time of the transfer.
18. The accounts were moved from American Funds to Charles Schwab by Stanley Nieminski at the request of Defendants.
19. The type of account was changed from a non-money managed account to a money-managed account, incurring higher and continuing quarterly commission fees for the registered representative.
20. This change was at the request of Defendants and did not work to the benefit of Plaintiff.
21. Rather, the change in the account resulted in a net loss on the amount of funds as a result of the type of investment in the amount of approximately \$50,000.
22. In August 2009, Defendants convince Plaintiff to list her residence for sale and move into their home.
23. Plaintiff hired a realtor and a real estate attorney referred by Defendants.
24. At the advisement of Defendants, Plaintiff provides the real estate attorney a limited power of attorney for use at closing.
25. Prior to closing, Plaintiff attempted to contact her realtor and attorney to notify them she wants to rescind the contract and does not want to sell her home.
26. Plaintiff communicates to Defendants she wants to rescind the contract and does not want to sell her home and asks them to notify the realtor and attorney.
27. Defendant Barbara Maciejewski stated to Plaintiff she could not get out of the contract.
28. Defendants refused to notify or attempt to notify the realtor and attorney of Plaintiffs intent because they believed that Plaintiff should proceed with the sale.
29. On August 14, 2009, the closing took place and Plaintiff moved in with Defendants at their residence.

30. The sale proceeds of \$267,688.52 are deposited into Plaintiff's bank account at National City.

31. On September 11, 2009 and unbeknownst to Plaintiff at the time, Defendant Anna Maciejewski remitted a check from Plaintiff's National City bank account in the amount of \$250,000.00 to the Charles Schwab brokerage account.

32. In or around September 2009, Agnieszka Pytlinska asked Plaintiff for money and Plaintiff said no.

33. On September 14, 2009, Defendant Anna Maciejewski wrote one check for \$7500.00 from Plaintiff's National City bank account to Agnieszka Pytlinska and another check to Piotr Pytlinska for \$7500.00 noting them both as gifts in the memo line.

34. In late September 2009, Plaintiff moved out of Defendants' residence based upon **elder abuse**, financial exploitation, and harassment.

35. On October 9, 2009, Plaintiff met with Stanley Nieminski to inquire of the balance on the brokerage account and to direct him not to release any funds without her permission.

36. Stanley Nieminski indicated he could not provide the account balance and for Plaintiff to return the following day.

37. On October 10, 2009 Stanley Nieminski stated Plaintiff could not withdraw any money at that time and presented her with a small blue Post-It note, having written the date and account balance on it.

38. Mr. Nieminski also informed Plaintiff that the Charles Schwab Brokerage account was frozen, that no funds could be moved from the account, and that no action could be taken with the account, however the account was not frozen at the time those statements were made.

39. Plaintiff made due written demand on Defendants to take appropriate action to release the brokerage account and compensate her for her losses, however, Defendants failed to comply.

### **COUNT I - BREACH OF FIDUCIARY DUTY**

1-39. Plaintiff restates and re-alleges paragraphs 1 through 39 herein and incorporates the same herein by reference.

40. During May of 2008, Plaintiff and Defendants entered into an oral agreement.

41. Pursuant to that agreement, Defendants agreed to assist Plaintiff with the management of assets Plaintiff inherited upon the death of her husband for the benefit of Plaintiff.

42. By doing so, Defendants owed Plaintiff a duty of impartiality, of loyalty, and of prudent investment.

43. Defendants knowingly and without the consent of Plaintiff transferred funds out of accounts maintained solely for Plaintiffs benefit, and otherwise executed transactions where funds maintained solely for Plaintiffs benefit and subject to the agreement of the parties concerning these accounts, Defendants caused these funds to be reduced or depleted for their own benefit and without Plaintiffs knowledge or consent.

44. Specifically, Defendants issued two checks for \$7,500 each to themselves, remodeled their bathroom for \$5,000 from funds from Plaintiffs account, a \$15,000 difference between what Defendants permitted Plaintiffs house to sell for from the asking price Plaintiff authorized, a \$17,000 difference between the proceeds of the sale of Plaintiffs house and the amount deposited into the brokerage account that was not being used for Plaintiff's benefit.

45. Defendants transferred the funds in the brokerage account into a higher risk investment structure such that the accounts lost a value of \$50,000 as a result of the change in investment structure.

46. The aforementioned acts by Defendants constitute breach of their fiduciary duty of utmost good faith and undivided loyalty to Plaintiff and by acting as Plaintiffs caretakers and under the agreement of assisting Plaintiff for Plaintiffs benefit, Defendants took advantage of their position for their own financial gain all to the detriment of Plaintiff.

47. Plaintiff suffered damage and loss as a result of the actions of Defendants.

WHEREFORE, Plaintiff respectfully requests this honorable Court grant her the following relief:

A. That Defendants be found to have breached their fiduciary duty to Plaintiff;

B. That Defendants be ordered to return all funds taken from Plaintiff, her accounts, or as the proceeds of any transaction in which Plaintiff would have benefited;

C. That Defendants be ordered to pay \$52,000.00 because of their breach of fiduciary duty for funds taken from accounts belonging to Plaintiff;

D. That Defendants be ordered to pay \$50,000.00 because of their mismanagement of brokerage accounts to the detriment of the Plaintiff;

E. That Defendants be ordered to pay pre-judgment interest on all funds taken from Plaintiff; and

F. That this Court award any and all other relief it deems equitable and just.

## **COUNT II- CONVERSION**

1.39. Plaintiff restates and re-alleges paragraphs 1 through 39 herein and incorporates the same herein by reference.

48. In April 2008, after the death of her husband, Plaintiff was the owner and had right of possession to all property, monies, and other assets maintained in a brokerage account of which she was the sole beneficiary.

49. Plaintiff maintains a right of ownership to the funds and property contained in this brokerage account at all times after the funds and property were moved to brokerage accounts held by Charles Schwab and while they were under the management of Stanley Nieminski.

50. On multiple occasions, Defendants took and unlawfully converted funds from these accounts by executing bank drafts to themselves or others without the permission of Plaintiff and contrary to Plaintiff's interest and ownership right in the monetary assets in the account maintained by Charles Schwab.

51. In October of 2009, finding out that Defendants unlawfully converted Plaintiffs property, Plaintiff made written demand on the Defendant to return the property or reimburse Plaintiff for its value.

52. Despite demand, Defendants has failed and refused to return the property to Plaintiff or to reimburse Plaintiff for its value, and has continually withheld possession of the property and refused to reimburse Plaintiff up through the time of filing this suit.

53. Defendant's failure to return the property to Plaintiff is vexatious.

54. At the time and place of the conversion as alleged above, the market value of the property was approximately \$301,990.72, for which Plaintiff is entitled to recover, as well as statutory legal interest on the value of the property from the date of the conversion up to the present.

55. The taking and conversion of the property by Defendant was done willfully and maliciously with a wanton disregard for Plaintiffs rights in that Defendant knew at all times relevant herein that Plaintiff was the title owner of the property. After demand was made on Defendant to return the property or reimburse Plaintiff for its value, Defendant willfully and maliciously refused to return the property or reimburse Plaintiff. Such conduct on the part of Defendants is sufficient to justify an award for exemplary damages.

WHEREFORE, Plaintiff respectfully requests this honorable Court grant her the following relief:

- A. That Defendants be found to have converted monetary property of the Plaintiff;
- B. That Defendants be ordered to return all funds taken from Plaintiff, her accounts, or as the proceeds of any transaction in which Plaintiff would have benefited;
- C. That Defendants be ordered to pay \$301,990.72 as a result of their conversion of Plaintiff's property;
- D. That Defendants be ordered to pay pre-judgment interest on all funds taken from Plaintiff; and
- E. That this Court award any and all other relief it deems equitable and just.

### **COUNT III - COMMON LAW FRAUD**

1.-39. Plaintiff restates and re-alleges paragraphs 1 through 39 herein and incorporates the same herein by reference.

56. In May of 2008, Defendants entered into an agreement with Plaintiff where they agreed to assist Plaintiff in managing her finances.

57. Defendants knowingly came into a position of control over Plaintiff's finances and personal well being.

58. They represented their intention to assist with Plaintiff's finances and had a duty to assist Plaintiff in a manner that benefited Plaintiff's best interests.

59. Defendants made representations on numerous occasions concerning the nature of financial decisions, including moving the investment funds between account holders and managers, without Plaintiff's consent, and without adequately informing Plaintiff concerning the effect of these representations and decisions.

60. Defendants knowingly misrepresented that the financial decisions and advice that they were providing to Plaintiff was in Plaintiff's best interest.

61. In reliance upon these representations, Plaintiff agreed to move her investments per the advice and direction of Defendants.

62. In reliance upon these representations, Plaintiff agreed to sell her home and move in to Defendants' home.

63. In addition, through their agent, Stanley Nieminski, Defendants failed to properly inform, misinformed, or purposefully wrongfully informed Plaintiff concerning the capacity, extent, and effect of adding Defendants as joint account holders on her investment accounts and other bank accounts.

64. Defendants knew or should have known that the statements and advice provided to Plaintiff concerning the management of her accounts was not in Plaintiff's best interest as Defendants stood to be the beneficiaries of the advice provided.

65. Representations by Defendants to Plaintiff were made to induce Plaintiff to take actions against her own interests that would benefit the Defendants.

66. Plaintiff justifiably relied upon Defendants as one of the defendants was her son, who agreed to assist her concerning her well-being.

67. Plaintiff suffered harm as a result of Defendants misrepresentations and inducements concerning the sale of real property and management of investments accounts owned by Plaintiff.

68. Plaintiff suffered specific harm concerning the sale of her property, and the loss of income from accounts, including funds transferred from the accounts by Defendants and used for Defendants sole benefit.

WHEREFORE, Plaintiff respectfully requests this honorable Court grant her the following relief:

A. That Defendants be found to have made fraudulent misrepresentations to the Plaintiff that Plaintiff relied upon to her detriment and suffered harm and loss as a result;

B. That Defendants be ordered to return all funds taken from Plaintiff, her accounts, or as the proceeds of any transaction in which Plaintiff would have benefited;

C. That Defendants be ordered to pay \$100,000.00 as a result of their fraud resulting in harm suffered by Plaintiff

D. That Defendants be ordered to pay treble damages as a result of their fraudulent misrepresentations and actions;

E. That Defendants be ordered to pay pre-judgment interest on all funds taken from Plaintiff; and

F. That this Court award any and all other relief it deems equitable and just.