

7955
RJR

2014 WL 10187469 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Middlesex County

Joseph D. McDONALD, and Agnes M. McDonald, Plaintiffs,

v.

Richard D. CAMPBELL, and Dawn M. Campbell, Defendants.

No. MICV201304891.
January 18, 2014.

First Amended Verified Complaint with Jury Demand

John N. Tramontozzi, Esquire, BBO#501690.

John J. Martino, Esquire, BBO#650981, Martino and Tramontozzi, LLC, 616 Main Street, Melrose, MA 022176, Telephone: (781) 662-0900.

PARTIES

1. The Plaintiff Joseph McDonald is an individual and resides at 84 Clarke Road, Brookfield, Carroll County, New Hampshire.
2. The Plaintiff Agnes McDonald is an individual and resides at 84 Clarke Road, Brookfield, Carroll County, New Hampshire.
3. Defendant Richard D. Campbell is an individual and resides at 31 Park Street, North Reading, Middlesex County, Massachusetts.
4. Defendant Dawn M. Campbell is an individual and resides at 31 Park Street, North Reading, Middlesex County, Massachusetts.

STATEMENT OF FACTS

5. On July 29, 2003, the Plaintiffs provided the purchase price/bank money order of \$155,000.00 to the Defendant Richard D. Campbell for the purpose of purchasing the property located at 31 Park Street, North Reading, Middlesex County, Massachusetts.
6. The money provided by Plaintiffs was used by Defendants to purchase property at 31 Park Street, North Reading, Middlesex County, Massachusetts ("subject property").
7. On or about August 6, 2003, the property located at 31 Park Street, in North Reading, Massachusetts was purchased at the purchase price of \$155,000.00 and the Defendants took title to the subject property as tenants by the entirety.
8. After the purchase the plaintiffs provided an additional \$20,000.00 cash to be used solely for improvements to the property.
9. The aforementioned transactions created a purchase money resulting trust in favor of the Plaintiffs.

WHEREFORE, Plaintiffs request as a result of the purchase money resulting trust, that title to the property be conveyed to the plaintiffs in the amount of \$175,000.00 and to grant such other relief as the Court shall deem meet and proper.

COUNT I- PURCHASE MONEY RESULTING TRUST

10. The Plaintiffs restate and reallege paragraphs 1-9 (inclusive) as if specifically set forth herein.

11. Plaintiffs provided to the Defendants \$175,000.00 to purchase and improve the subject property. (First Essex Bank Check No.: 752604058, payable to Richard Campbell and Dawn Campbell, dated July 29, 2003; in the amount of \$155,000.00; funds from Plaintiff's personal account and \$20,000.00 given to defendants withdrawn from plaintiff's personal account with Federal Savings Bank).

12. The purchase price and additional sum of money paid to the Defendants created a purchase money resulting trust for the purposes of purchasing and improving the subject property.

WHEREFORE, Plaintiffs request as a result of the purchase money resulting trust, that title to the property be conveyed to the plaintiffs in the amount of \$175,000.00 and to grant such other relief as the Court shall deem meet and proper.

COUNT II- FRAUD AND DECEIT

13. The Plaintiffs restate and reallege paragraphs 1-12 (inclusive) as if specifically set forth herein.

14. On or about July 29, 2003, Defendant Richard D. Campbell intended that Plaintiffs rely on his promise to return their money once he bought the abovementioned property, renovated, and sold it for more than he purchased it for.

15. Plaintiffs relied on the fraud and misrepresentations of the Defendant Richard D. Campbell.

16. As a direct result of Defendant Richard D. Campbell's fraud, Plaintiffs have been deprived of \$175,000.00 plus interests and costs.

17. The Plaintiffs suffered great harm from being deprived of the aforementioned \$175,000.00.

WHEREFORE, the Plaintiffs request that this Honorable Court grant such relief as the Court shall deem meet and proper.

COUNT III- BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

18. The Plaintiffs restate and reallege paragraphs 1-17 as if specifically set forth herein.

19. The covenant of good faith and fair dealing is implicit in the performance of every contract entered into in the Commonwealth of Massachusetts.

20. The Defendants breached the covenant of good faith and fair dealing by knowingly and fraudulently misrepresenting the purpose regarding the property and money provided to the defendants from the Plaintiffs.

21. As a direct result of Defendants' breach, the Plaintiffs suffered monetary damages.

22. The Plaintiffs suffered great harm from being deprived of the aforementioned \$175,000.00.

WHEREFORE, the Plaintiffs request that this Honorable Court grant such relief as the Court shall deem meet and proper.

COUNT IV- CONVERSION

23. The Plaintiffs restate and reallege paragraphs 1-22 as if specifically set forth herein.
24. The Defendants exercised dominion and control of the personal property of the plaintiffs.
25. After demand, the Defendants have failed to relinquish dominion and control of certain personal property.
26. The Plaintiffs have suffered monetary damages in the value of their personal property, the \$175,000.00 provided to Defendants.

WHEREFORE, the Plaintiffs request that this Honorable Court grant such relief as the Court shall deem meet and proper.

COUNT V- QUANTUM MERUIT

27. The Plaintiffs restate and reallege paragraphs 1-26 as if specifically set forth herein.
28. The Plaintiffs have provided the purchase price to Defendants totaling \$175,000.00 which benefitted Defendants with the intent to have their investment returned.
29. Plaintiffs have inquired and requested repayment of the money provided to Defendants.
30. Defendants have refused and continue to refuse repayment of the \$175,000.00.
31. As a direct and proximate cause of Defendants' refusal to repay the money provided the Defendants, Plaintiffs have incurred significant monetary damages.
32. The Defendants were unjustly enriched by in the amount of \$175,000.00

Wherefore, the Plaintiffs request that this Honorable Court grant such relief as the Court shall deem meet and proper.

COUNT VI- VIOLATION OF THE ELDER PROTECTION STATUTE

33. The Plaintiffs restate and reallege paragraphs 1-32 as if specifically set forth herein. 34 The. Plaintiffs are **elderly** as defined in Mass General Laws chapter 19A, §14.
35. The Plaintiffs' consent to give the Defendants a total of \$175,000.00 was a consequence of Defendants' misrepresentations.
36. As a direct and proximate cause of Defendants' misrepresentations and fraud, Plaintiffs were **financially exploited** by the Defendants in violation of Mass General Laws chapter 19A, §§1-26, the **Elder** Protection Statute.
37. The Defendants caused Plaintiffs a substantial monetary loss, which was a direct result of Defendants' misrepresentations.

Wherefore, the Plaintiffs request this Honorable Court grant such relief as the Court shall deem meet and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY

Respectfully submitted,

Agnes and Joseph McDonald

By their attorneys,

<<signature>>

John N. Tramontozzi, Esquire

BBO#501690

<<signature>>

John J. Martino, Esquire

BBO#650981

Martino and Tramontozzi, LLC

616 Main Street

Melrose, MA 022176

Telephone: (781) 662-0900

Dated: 1/18/2014

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.