

2011 WL 2947318 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Suffolk County

Margaret Josephine RITCHIE, Plaintiff,
v.
Kathleen SULLIVAN and Robert Leo Sullivan, Defendants.

No. SUCV2011-02482.
July 1, 2011.

Complaint

Plaintiff, By her attorney, [India L. Minchoff](#) (#652456), Law Offices of Russo & Minchoff, 123 Boston Street, 1st Floor, Boston, MA 02125, 617/740-7340 (telephone), 617/740-7310 (facsimile), india@russominchofflaw.com.

INTRODUCTION

This case involves the **financial exploitation**, abuse of trust, and breach of contract by a daughter against her **elderly**, grieving and widowed mother. Through deceit and misrepresentation, Defendant Kathleen Sullivan and her husband, Defendant Robert Leo Sullivan, obtained title to Mrs. Ritchie's home and have effectively ousted her from her residence. Defendants also breached their contractual agreements with Mrs. Ritchie and through their extreme and outrageous actions have caused Mrs. Ritchie to suffer emotional distress.

PARTIES

1. Plaintiff, Margaret Ritchie, is an individual residing in South Boston, Suffolk County, Commonwealth of Massachusetts.
2. Defendant, Kathleen Sullivan, is an individual residing in South Boston, Suffolk County, Commonwealth of Massachusetts. She is the daughter of Margaret Ritchie and wife of Robert Sullivan.
3. Defendant, Robert Leo Sullivan, is an individual residing in South Boston, Suffolk County, Commonwealth of Massachusetts. He is the son-in-law of Mrs. Ritchie and husband of Kathleen Sullivan.

FACTUAL ALLEGATIONS

4. Mrs. Margaret Ritchie ("Mrs. Ritchie") is a 75 year old widowed woman.
5. In 1979 Mrs. Ritchie and her late husband, Robert Ritchie (collectively, "the Ritchies"), purchased a two family residence located at 552 East 7th Street, South Boston, Massachusetts (the "home"). The Ritchies, who had four children, they raised their 3 youngest children in the home, including their only daughter, Defendant, Kathleen Sullivan ("Sullivan").
6. Sullivan battled alcohol and drug addiction for years and she never moved out of her parents' home. In fact, Mrs. Ritchie and her husband essentially raised Sullivan's daughter, Bailey, who they adored. When Bailey was approximately 5 years old, Sullivan married Defendant Robert Leo Sullivan and the Ritchies allowed Defendants and Bailey to live in the home's second floor unit.

7. In or about 2000, Robert Ritchie was diagnosed with Alzheimer's. The following year, on October 1, 2001, the Ritchies transferred to their daughter and son-in-law the remainderman interest in the home. See Exhibit A. In consideration of the transfer, Defendants were obligated to pay the Ritchies \$210,000.00 as set forth in a Promissory Note of even date. Payment was required to be made in monthly installments of \$1,500.00 from October 1, 2001 through May 1, 2013. See Exhibit B.

8. Also on October 1, 2001, and before the Ritchies completed the transfer of the remainderman interest in their home, they entered into a Memorandum Agreement with Defendants. The Memorandum Agreement set forth the Ritchies intention to continue living on the first floor unit of the home for the rest of their lives. See Exhibit C. The Memorandum Agreement also provided Defendants the right to occupy the second floor unit during the Ritchies' lifetimes, provided, however, Defendants bore all real estate taxes, insurance and other costs associated with maintaining the home. *Id.*

9. The Ritchies' transferred the remainderman interest in their home at less than fair market value and entered into the Memorandum Agreement, which allowed Defendants to live rent free on the second floor, based upon Defendants' agreement to provide the Ritchies' care as they aged.

10. Defendants' have breached the terms of the parties' agreements by, among other omissions and acts, failing to pay the full amounts owed pursuant to the Promissory Note and the Memorandum Agreement, failing to provide the agreed upon care, and, as set forth more fully below, wrongfully ousting Mrs. Ritchie from her home.

11. From 2000 to 2009, Mr. Ritchie's health rapidly declined. In addition to his progressing Alzheimer's, he was an insulin dependent brittle diabetic who required constant care. At the time of his death in October, 2009, the Ritchies had been married for 54 years and Mrs. Ritchie had spent the last nine years caring for her husband's needs on a daily basis. Mrs. Ritchie, who consistently put her husband's needs above her own, often became depressed as her husband's health worsened and on two occasions, in 2007 and in 2009, she was hospitalized as a result of her depression.

12. Seizing on her mother's extreme grief and depression following Mr. Ritchie's death, on December 23, 2009, Sullivan presented a deed to her mother which transferred her mother's life estate to Defendants. At all material times, Sullivan, who did not pay any consideration for her mother's life estate, represented to her mother (as well as to her mother's attorneys whom she contacted as attorney-in-fact for her mother) that her mother's signature was necessary for the sole purpose of financing Sullivan's daughter, Bailey's, college tuition. According to Sullivan, the bank would not provide a refinance mortgage so long as title to the home was encumbered by her mother's life estate. At no time did Defendants represent to Mrs. Ritchie that she was relinquishing her ownership interest in the home or that she was foregoing her right to live in her home for the rest of her life.

13. Mrs. Ritchie did not sign the December 23, 2009 deed before any attorney and it was not signed before a notary public. In fact, the notary public that appears on the deed, Maureen Bailey, is Mrs. Ritchie's niece, and she has admitted that Mrs. Ritchie did not sign the deed in her presence, and that she never asked any questions of her aunt to ensure that the deed was signed by her, freely and voluntarily, or that she understood the purpose of the transaction. Maureen Bailey notarized the deed solely at the request of Sullivan.

14. Until December 2010, Mrs. Ritchie continued to reside in her home as she had done since 1979. However, in or about December 2010, while Mrs. Ritchie was receiving treatment for depression, Sullivan, acting as her mother's health care agent and attorney-in-fact asked Mrs. Ritchie's doctors to commit her life in an institution. Mrs. Ritchie's doctors refused, finding that Mrs. Ritchie's depression was manageable with medication. Thereafter, in January, 2011, when Mrs. Ritchie stated her intention to return home Sullivan attempted to force her mother into an assisted living facility. When Mrs. Ritchie declined to reside in assisting living, Sullivan told her she had no interest in the property and she would allow her to return home. Defendants subsequently changed the locks at the home and informed Mrs. Ritchie that they intended to rent her apartment to Defendant Robert Sullivan's relatives. At the same time, Defendants disconnected Mrs. Ritchie's home phone, which she had for decades.

15. Mrs. Ritchie has only been permitted into her residence three times since January, 2011 and during her last entry into her home in June, 2011, she observed that Defendants had storage boxes and bubble wrap in her unit.

16. As a result of Defendants' actions, Mrs. Ritchie has been forced to reside with her sister, Barbara Bailey Gill, at her residence South Boston.

17. Defendants' actions, which were in breach of the fiduciary and confidential duties owed to Mrs. Ritchie, were fraudulent, constitute misrepresentation and also breach of contract. Their actions have also forced Mrs. Ritchie to endure severe emotional distress with accompanying physical manifestations, including sleep deprivation and loss of appetite.

COUNT I- BREACH OF FIDUCIARY DUTY

18. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

19. Defendants acted in a fiduciary capacity to Plaintiff.

20. By virtue of their fiduciary relationship, Defendants had a duty to act in the Plaintiff's best interest.

21. By taking advantage of Plaintiff's trust and dealing with the subject matters of such trust so as to benefit themselves and prejudice Plaintiff, Defendants breached their fiduciary duties to Plaintiff.

22. Plaintiff has been damaged as a direct and proximate result of Defendants' breach of fiduciary relationship.

COUNT II- BREACH OF CONFIDENTIAL DUTY

23. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

24. Plaintiff trusted in, and relied upon, Defendants.

25. Defendants acted in a confidential relationship to Plaintiff.

26. By virtue of their confidential relationship with Plaintiff, Defendants had a duty to act in the best interests of Plaintiff

27. As a result of the above stated acts and commissions, Defendants took advantage of Plaintiff's trust in such a way as to benefit themselves and prejudice Plaintiff and they breached their confidential duties owed to Plaintiff.

28. Plaintiff has been damaged as a direct and proximate result of Defendants' breach of their confidential relationship.

COUNT III- MISREPRESENTATION

29. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

30. As a result of the above stated acts and commissions, Defendants' committed misrepresentation against Plaintiff.

31. Defendants' misrepresented to Plaintiff that the transfer of her life estate interest in the home was for the sole purpose of **financing** her granddaughter's college education. At no time did Defendants reveal that they intended to oust Mrs. Ritchie or that by signing a deed she was relinquishing her entitlement to reside in the home and maintain an interest in the home.

32. Defendants' also misrepresented to Plaintiff that they would provide her personal home care until her death in exchange for their remainderman interest, sold to them at below fair market value, as their right to live on the second floor unit of the home.

33. Plaintiff has suffered actual damages as a direct and proximate cause of Defendants' misrepresentations.

COUNT IV- DECEIT

34. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

35. Defendants' acts and commissions as set forth above constitute deceit.

36. Defendants' acted deceitfully and with fraud in order to cause Plaintiff to transfer her life estate interest in the home.

37. Plaintiff has suffered actual damages as a direct and proximate cause of Defendants' deceit.

COUNT V- UNDUE INFLUENCE

38. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

39. Defendants intentionally preyed on Plaintiff while she was in a weakened mental and emotional state, which, in turn, allowed Defendants to procure Plaintiff's interest in the home.

40. Through undue influence, Defendants' subverted Plaintiff's sound judgment and genuine desire regarding the transfer of her interest in the home.

41. Plaintiff suffered actual damages as a direct and proximate cause of Defendants' undue influence.

COUNT VI- BREACH OF CONTRACT

42. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

43. Defendants' acts and commissions as set forth above constitute breach of contract.

44. Defendants have breached their agreement to provide care to Plaintiff until her death.

45. Defendants have breached their agreement that Plaintiff would reside in the home for the rest of her life.

46. Defendants have failed to pay the amounts obligated pursuant to the Memorandum Agreement and the Promissory Note.

47. Plaintiff has been damaged as a direct and proximate result of Defendants breaches of contract.

COUNT VII- RESCISSION

48. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

49. Based on the foregoing, the deed from the Ritchies dated October 1, 2001, is void and should be rescinded.

50. Based on the foregoing, the deed conveying Plaintiff's life estate interest to Defendants is void and should be rescinded.

COUNT VIII- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

51. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

52. As a result of the above stated facts, Defendants' actions constitute calculated actions intended to cause Plaintiff severe emotional distress and Defendants knew their actions would cause and have Plaintiff severe emotional distress.

53. Defendants' conduct was extreme and outrageous; it was beyond all possible all possible bounds of decency.

54. The emotional distress sustained by Plaintiff resulting from Defendants' action was severe and of a nature that no reasonable person could have been expected to endure.

COUNT IX- NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

55. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

56. As a result of the above stated facts, Defendants' actions caused the Plaintiff emotional distress.

57. Plaintiff's emotional distress has caused physical manifestations.

COUNT X- ACCOUNTING

58. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

59. As power of attorney for Plaintiff, Defendant Kathleen Sullivan controlled Mrs. Ritchie's **finances**.

60. Plaintiff is entitled to an accounting of all monies controlled by Mrs. Ritchie.

61. Plaintiff is also entitled to an accounting of all monies, if any, Defendants' allege they paid pursuant to the Promissory Note and Memorandum.

COUNT XI- UNJUST ENRICHMENT

62. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

63. By virtue of the above-stated transactions, Defendants have been unjustly enriched.

64. Plaintiff suffered damages as a direct and proximate cause of Defendants' unjust enrichment.

COUNT XII- DECLARATORY JUDGMENT

65. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

66. Controversies have arisen appropriate for a declaratory judgment as to the validity of the transfer of Plaintiff's real property located at 552 East 7th Street, South Boston to Defendants in 2001 and in 2009.

67. Defendants' received control over Plaintiffs real property as a result of their proximity to her, undue influence over her, and by deceit, fraud, misrepresentation, and breach of contractual obligations.

68. By reason of the foregoing, Plaintiff is entitled to a declaration pursuant to M.G.L. c. 231A that the transfer of the real estate to Defendants was improper and void, and to make declarations against Defendants requiring them to re-transfer said real estate to Plaintiff.

69. The deed dated December 23, 2009 is void as a matter of law since it was not executed before a notary public as is required.

COUNT XIII - INJUNCTIVE RELIEF

70. Plaintiff restates and re-alleges the foregoing paragraphs as if set forth fully herein.

71. Defendants have wrongfully changed the locks at the home and have denied Mrs. Ritchie access to her residence.

72. Plaintiff, who has a likelihood of success on the merits, is entitled to preliminary and permanent injunctive relief, prohibiting Defendants from denying her access to her residence.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

1. Enter judgment in favor of Plaintiff on all counts;
2. Prohibit Defendants from denying Plaintiff access to her residence through the issuance of a preliminary and permanent injunction;
3. Order rescission of the deed dated October 1, 2001 and require Defendants to reconvey the property located at 552 East 7th Street, South Boston to Plaintiff;
4. Order rescission of Plaintiff's transfer of her life estate interest in the property located at 552 East 7th Street, South Boston to Defendants by deed dated December 23, 2009 and require the reconveyance of the property to Plaintiff;
5. Declare the deed dated December 23, 2009 void as a matter of law and set aside the transfer;
6. Order Defendants to pay Plaintiff the fair rental value of Unit 2 from October 1, 2001 to date, plus interest;
7. Order Defendants to pay Plaintiff the fair rental value of Unit 1 from January 1, 2011 to date, plus interest;
8. Order Defendants to satisfy and extinguish all encumbrances, liens and/or mortgages placed on the property since December 23, 2009;
9. Order Defendant Sullivan to produce an accounting to Plaintiff of all money controlled by her while she was acting as Plaintiff's attorney-in-fact;
10. Order Defendants to pay Plaintiff's costs and attorney fees associated with this action; and
11. Order such other relief as this Court deems fair and just under the circumstances.

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY

End of Document

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