

2015 WL 7955427 (Or.Cir.) (Trial Pleading)  
Circuit Court of Oregon.  
Washington County

Robert James "Jim" CLAUS and Susan Claus, husband and wife, Plaintiff,

v.

J. Andrew KEELER, Defendant.

No. C155283CV.  
November 30, 2015.

**Complaint (Legal Malpractice, Elder Financial Abuse)**

[Hafez Daraee](#), OSB No. 932484, for plaintiff.

Not Subject to Arbitration

Filing Fee: \$531 [ORS 20.160\(1\)\(c\)](#)

Plaintiffs allege:

**1.**

**FACTS COMMON TO ALL CLAIMS**

At all times material, Plaintiffs were residents of Washington County, Oregon.

**2.**

At all times material, Defendant was an attorney, duly licensed by the Oregon State Bar and in good standing.

**3.**

Beginning sometime in October, 2013, through August, 2014, Plaintiffs retained defendant to assist them with various legal issues arising or related to that certain subdivision generally located in Sherwood Oregon and more commonly known as McFall Estates as well as with a Gilliam County law suit more commonly known as *Hardie vs. Claus*, Gilliam County Cir. Ct., Case No. 13-0026CC.

**4.**

In connection with the legal services related to McFall Estates, Defendant was asked to review certain construction contracts related to the construction of Lots 4, 5, and 6 in that subdivision.

**5.**

Defendant failed to negotiate the contracts leaving in place onerous terms such as 24% interest due on any unpaid sums, allowing an arbitration provision to remain in the contract that required any hearing on any dispute to occur in Bend, Oregon, despite the fact that the work covered by the contract was to take place in Sherwood, Oregon, and failing to negotiate a liquidated damages clause to accompany the construction deadlines, assuring that work by the contractor(s) would be done in a timely manner.

**6.**

Sometime in 2014, a dispute arose between Plaintiffs and Signature Homebuilders ("Signature"), the general contractor building a home on Lot 6, McFall Estates. Signature incorrectly priced Lot 6 nearly \$30,000 below the agreed upon sale price, listed same with the Multiple Listing Service and accepted an offer at the full but incorrect asking price of \$300,000 before Plaintiffs could remedy Signature's pricing error. Upon being asked about how to remedy this problem, Defendant had no solutions other than to advise Plaintiffs that if they failed to close the sale of Lot 6, Plaintiffs could be sued for substantial damages,

**7.**

Defendant's advice to Plaintiff regarding Lot 6 was incorrect insofar as Plaintiffs, despite being the fee title holder to that property, had not entered into a listing agreement for the sale of Lot 6, had not signed any of the purchase and sale documents related to Lot 6, and had not agreed to sell Lot 6 to the purchasers.

**8.**

Eventually Signature and Plaintiffs agreed upon a settlement of Lot 6 issues, including the pricing mistake, whereby all of the net sale proceeds from Lot 6 would be paid to Plaintiff as a settlement of all Lot 6 related issues.

**9.**

Plaintiffs asked Defendant whether the construction contract for Lot 6 would protect them with respect to the resolution reached for lot 6. Plaintiff further asked that Defendant properly document the lot 6 settlement. Defendant failed and/or refused to properly advise Plaintiffs that the settlement should be documented or it might not be enforceable if only orally agreed upon, and generally failed to adequately document the Lot 6 resolution in order to protect Plaintiffs from subsequent claims by Signature related to Lot 6.

**10.**

Plaintiffs were eventually sued by Signature over the Lot 6 issues in a private arbitration through ASP in Bend, Oregon. The Bend arbitration resulted in an adverse ruling against Plaintiffs because there was no documentation to support Plaintiffs' testimony that there was a settlement reached between Plaintiff and Signature. The Bend arbitration of Lot 6 resulted in an adverse judgment against Plaintiffs in an amount not less than \$60,000, with the exact amount not yet determined by the Court in Deschutes County.

**11.**

On or about July 30, 2014, Signature sent a demand letter to Defendant's paralegal, Michael Voight. Defendant failed to forward Signature's demand to Plaintiffs. Defendant also failed to take any action to verify the claims made in Signature's demand.

**12.**

Sometime on or before August 30, 2014, Signature, filed construction liens on Lots 1, 2, 3, 4, 5, 8 and 9, claiming in excess of \$250,000 due and owing on the various liens. In addition, Parr Lumber filed construction liens on Lots 3, 4, and 5, claiming in excess of \$100,000 due and owing to it, as did Fettig Construction claiming approximately \$10,000 due and owing for Lots 4 and 5, and Mcadam Floor, claiming in excess of \$6,000 due and owing on Lot 5.

**13.**

Defendant failed to demand a list of materials supporting each construction lien as allowed by [ORS 87.027](#), failed to demand copies of the pre-lien notices required by [ORS 87.021](#) or [ORS 87.023](#), failed to demand a copy of the underlying contractual basis of the lien claims as required by [ORS 701.305](#).

**14.**

Had Defendant demanded the documents and information identified in paragraph 13 above, Defendant would have discovered that the liens on lots 1, 2, 3, 4, 8 and 9 were invalid because a written contract required by [ORS 701.305](#) did not exist.

**15.**

Sometime in September, 2014, Signature, Parr Lumber, Flying-H and Fettig all filed lien foreclosure actions in Washington County.

**16.**

On or about September 16, 2013, Larry Hardie (“Hardie”) filed suit against Plaintiff Robert James Claus in Gilliam County, Oregon, under case number 13-0026-CC. Plaintiff retained Defendant to defend the Hardie litigation.

**17.**

On or about February 21, 2014, Hardie, through is attorney, propounded Hardie's First Request for Admissions to Plaintiff Robert James Claus, that were served on Defendant as Clauses attorney.

**18.**

On March 18, 2014, Defendant sent a letter to Hardie's attorney, James Habberstadt, indicating that OJIN disclosed the filing of Requests for Admission but that Defendant had not received a copy of those requests. On March 26, 2014, Mr. Habberstadt sent a second copy of Hardie's Request for Admissions to Defendant.

**19.**

Despite receiving a second copy of Hardie's Request for Admissions, and despite meeting with Plaintiffs to discuss and to formulate responses to those Requests for Admission, Defendant failed to timely respond to the request for admissions.

**20.**

On May 30, 2014, Hardie filed a motion or summary judgment. Hardie argued that by failing to respond to the Requests for Admission, Plaintiffs had admitted them. Defendant again failed to time respond to Hardie's Motion for Summary Judgment. On July 15, 2014, and July 28, 2014, the Gilliam County Circuit Court entered General Judgments against Plaintiffs.

**21.**

Hardie subsequently transcribed the two Gilliam County General Judgments in Washington County. Hardie also issues a garnishment to Columbia State Bank ("CSB"), the construction lender for McFall Estates.

**22.**

The garnishment issued by Hardie resulted in nearly \$20,000 being taken out of Plaintiff's account at CSB. In addition, the issuance of the garnishment caused Plaintiffs to be in default on their construction loan at CSB.

**23.**

On behalf of Plaintiffs, the Professional Liability Fund hired repair counsel who was eventually successful in setting aside the two general judgments issued by the Gilliam County Circuit Court.

**24.**

By the time repair counsel was able to set aside the two judgments, construction liens had attached to McFall Estates and CSB had declared Plaintiffs to be in default under the terms of the construction loan for McFall Estates.

**26.**

**FIRST CLAIM FOR RELIEF**

**(Legal Malpractice)**

Plaintiffs restate the allegations in paragraphs 1-25.

**27.**

Defendant, among other things, breached the standard of care applicable to lawyers in the community where Defendant practices in one or more of the following particulars:

- A. By failing and/or refusing to adequately protect Plaintiffs' interest with respect to the agreements with Signature;
- B. By failing and/or refusing to request documents under ORS Chapter 87 when liens were filed against lots in McFall Estates;
- C. By failing and/or refusing to timely respond to the request for admissions in the Hardie matter;
- D. By failing and/or refusing to timely respond to the summary judgment motion in the Hardie matter;

E. By allowing judgments to be taken against Plaintiffs in the Hardie matter which Defendant knew or should have known would cause a default under the terms of the loan agreement with CSB;

F. By failing to notify Plaintiffs that Defendant was not adequately experienced in construction related matters and could not handle the issues related to the McFall Estates transaction;

G. By failing and or refusing to notify the PLF in timely manner in order to remedy the damages caused by the judgments entered in the Hardie matter.

H. By engaging unqualified individuals to assist with the dispressive of Plaintiffs legal issues then failing to properly supervise those individual(s);

I. By billing Plaintiffs for services which did not provide any value to Plaintiffs.

**28.**

As a direct and proximate result of Defendant's conduct. Plaintiffs have been damaged in an amount not less than \$450,000, the exact amount to be prevent at trial.

**29.**

## **SECOND CLAIM FOR RELIEF**

### **(Elder Financial Abuse)**

Plaintiffs restate the allegations in paragraphs 1-28.

**30.**

At all times material, Plaintiffs were vulnerable persons as defined in ORS 124,100, [124.140](#).

**31.**

Pursuant to [ORS 124.100\(3\)\(a\)](#), Plaintiffs have standing to bring this claim.

**32.**

Between October 2013 and August 2014, at Defendant's direction, Plaintiffs and Defendant or Defendant's employee approximately \$16,000 for which they received no value.

**33.**

Defendant billed Plaintiffs and collected money from them, or directed that they pay a third party employee of Defendant's directly, despite knowing that Defendant had not provided any value to Plaintiffs.

**34.**

In that same time frame, Defendant knowingly failed to properly document the settlement agreement between Plaintiffs and Signature related to Lot 6, failed to properly negotiate the terms of the construction contracts on Lots 4, 5, and 6; failed to request documentation related to the construction liens filed by Signature, failed to timely respond to requests for admissions and a motion for summary judgment in the Hardie matter, all the while billing Plaintiffs for purportedly providing legal services to them.

**35.**

As a direct and proximate result of Defendant's conduct, Plaintiffs have been damaged in an amount not less than \$450,000, with the actual amount to be proven at trial.

**36.**

Pursuant to [ORS 124.100\(2\)\(a\)](#), Plaintiffs are entitled to treble damages.

**37.**

Pursuant to [ORS 124.100\(2\)\(c\)](#), Plaintiffs are entitled to their reasonable attorney fees and costs.

WHEREFORE, Plaintiffs pray for the following relief:

On their First Claim for Relief, for an award of money damages in an amount not less than \$450,000, with the actual amount to be proven at trial;

On their Second Claim for Relief, for an award of money damages in an amount not less than \$450,000, for statutory damages equal to three times their actual damages and for an award of reasonable attorney fees and costs pursuant to [ORS 124.100\(2\)\(c\)](#).

For any and all further relief the Court may deem just and proper.

<<signature>>

Hafez Daraee, OSB No. 932484

Of Attorneys for Plaintiff

Trial Attorney: Hafez Daraee