

2014 WL 10291369 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

Lester RALL, an Oregon resident, Plaintiff,

v.

Ziad ABUJAMOUS, aka Ziad Abou Jamous, aka Ziad Abujamons, an Oregon resident, Defendant.

No. 14CV06898.
June 13, 2014.

(Statutory **Elder Abuse**, Breach of Contract, Money Had and Received)

Amount in Controversy: \$150,600

Claims not Subject to Mandatory Arbitration

Jury Trial Demanded

Complaint

[Corey Tolliver](#), OSB No. 075500, Folawn Alterman & Richardson LLP, Bonnie @FARlawfirm.com, Will Patterson, OSB No. 084385, will@FARlawfirm.com, Trial Attorney: [Corey Tolliver](#), OSB No. 075500, for plaintiff.

Plaintiff alleges as follows:

PARTIES

1.

Plaintiff Lester Rail (“plaintiff” or “Mr. Rail”) is a resident of Multnomah County. At all material times, Mr. Rail was over 65 years old.

2.

Defendant Ziad Abujamous (“Defendant”) is an Oregon resident. On information and belief, Defendant uses a wide variety of spellings for his name, including, but not limited to, Ziad Abou Jamous and Ziad Abujamons.

BACKGROUND FACTS

3.

On information and belief, Defendant makes a living by purchasing cars at auction on behalf of a variety of car dealerships. Defendant also sells cars directly.

4

In or around September 2010, Defendant sold Mr. Rail a car for \$5,500 in cash. Subsequent to the purchase of the car, Defendant approached Mr. Rail for several small loans which were repaid as agreed between the parties. This arrangement led to a loan of \$8,800 on October 21, 2010, and a loan of \$5,500 on October 27, 2010.

5

In February of 2011, Defendant approached Mr. Rail with a request for additional funds to buy cars and open a used car lot. From February 2011 through July 2011, Mr. Rail gave additional cash to Defendant. In exchange for these cash transfers, Defendant induced Mr. Rail to make these unsecured loans by agreeing to pay \$700 per month as interest to Mr. Rail, so long as the principal remained outstanding. On August 1, 2011, Defendant signed a written acknowledgement that he owed Mr. Rail \$30,600.00 as of August 1, 2011. In this written acknowledgment, Defendant promised to pay a portion of the outstanding amount to Mr. Rail by August 20, 2011. Interest accrued at the rate of \$700 per month from August 20, 2011 until the date that the principal was paid in full.

6.

From August 2011 through September 2012, Defendant made several small payments to Mr. Rail to pay for monthly interest. These payments totaled approximately \$3,200, or approximately 5 months of interest. Between September 2012 and November 2013, Mr. Rail made numerous requests for the remaining balance. In November 2013, Defendant made a final payment of \$100 to Mr. Rail.

7.

As a direct and proximate result of Defendant's actions, Mr. Rail suffered economic damages in an amount to be proven at trial, but not less than \$30,600 in principal and \$19,600 in interest.

PLAINTIFF'S FIRST CLAIM FOR RELIEF (Elder Abuse/Abuse of a Vulnerable Person ORS 124.110)

8

Mr. Rail re-alleges all of the paragraphs above as if fully set forth herein.

9.

At all material times, Mr. Rail was a vulnerable person as defined in [ORS 124.100\(1\)\(e\)\(A\)](#), in that he was over the age of 65.

10

Defendant convinced Mr. Rail to provide a series of loans to Defendant without the intent to repay, thereby wrongfully taking property from Mr. Rail. Defendant acquired the funds described in paragraphs four (4) and five (5) from Mr. Rail. The funds described in paragraphs four (4) and five (5) belong to Mr. Rail.

11.

Mr. Rail made numerous requests to Defendant that Defendant transfer the funds described in paragraphs four (4) and five (5) back to Mr. Rail. Despite these requests, Defendant continues to hold the funds described in paragraphs five (5), six (6), and seven (7).

12.

Defendant acknowledged in writing, and therefore knew or should have known that Mr. Rail had a right to the funds that Defendant acquired from Mr. Rail.

13.

As a result of the actions and omissions of Defendant, Mr. Rail suffered the economic damages alleged in paragraph seven (7). Pursuant to ORS I24.100(2)(a) and (b), plaintiff is entitled to recover an amount equal to three times those damages, \$150,600.

PLAINTIFF'S SECOND CLAIM FOR RELIEF

(Breach of Contract)

14.

Mr. Rail re-alleges all of the paragraphs above as if fully set forth herein.

15

Defendant and Mr. Rail entered into written contracts on October 21, 2010 and October 27, 2010 whereby Mr. Rail loaned a total of \$14,300 to Defendant in exchange for promises to repay with interest.

16.

After the loans described in paragraph fifteen (15) were made, Defendant requested and received additional funds from Mr. Rail as described in paragraph five (5). Mr. Rail and Defendant orally agreed that Defendant would repay the funds described in paragraph five (5) with interest. Mr. Rail fully performed his obligations under the agreements between the parties.

17.

Neither Defendant nor Mr. Rall qualify as a financial institution, consumer finance company, or a mortgage banker under [ORS 41.580\(1\)\(h\)\(a\)](#).

18.

On August 1, 2011, Defendant subscribed a note acknowledging that he owed Mr. Rall \$30,600 and promising to pay a portion of the funds he acquired from Mr. Rail by August 20, 2011. The oral agreement to lend provided that Defendant would pay interest of \$700 per month until the principal was repaid.

19.

On information and belief Defendant has repaid approximately \$3,300 of the interest described in paragraph eighteen (18). The sum \$30,600, and unpaid interest at a rate of \$700 per month, remains due and owing.

20.

As a direct and proximate result of Defendant's failure to comply with his contractual obligations, Mr. Rail suffered damages as described in paragraph seven (7).

PLAINTIFF'S THIRD CLAIM FOR RELIEF

(Money Had and Received)

21.

Mr. Rail re-alleges paragraphs one (1) through seven (7) above as if fully set forth herein.

22.

Mr. Rail conferred the benefits described in paragraphs four (4) and five (5) to Defendant.

23.

Defendant is aware that he received the benefits described in paragraphs four (4) and five (5).

24.

When Mr. Rail conferred the benefits described in paragraphs four (4) and five (5) to Defendant, Mr. Rail had a reasonable expectation that he would be repaid principal and interest for those benefits.

25.

The Defendant reasonably expected to pay Mr. Rail for the benefits described in paragraphs four (4) and five (5).

26.

The reasonable value of the benefits that Mr. Rail conferred to Defendant is \$27,300. This sum remains due and owing, along with prejudgment interest at a rate of 9% per annum.

ATTORNEY FEES

27.

Pursuant to [ORS 124.100\(2\)\(c\)](#), plaintiff is entitled to recover his reasonable attorney fees, costs, and disbursements should he prevail his first claim for relief.

PRAYER

WHEREFORE, plaintiff demands judgment against Defendant for the following relief:

1. A judgment in favor of plaintiff and against Defendant in the amount of \$150,600 on plaintiff's first claim for relief;
2. A judgment in favor of plaintiff and against Defendant in the amount of \$50,200 on plaintiff's second claim for relief;
3. A judgment in favor of plaintiff and against Defendant in the amount of \$27,300 plus prejudgment interest at the statutory rate on plaintiff's third claim for relief;
4. Post-judgment interest on all damages awarded at the statutory rate;
5. Plaintiff's reasonable attorney fees, costs, disbursements, and prevailing party fees; and
6. Such other relief as the Court deems appropriate.

DATED: June 13, 2014.

FOLAWN ALTERMAN & RICHARDSON LLP

By

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