

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

MARGIE LOU WELCH by and through)	
her Public Guardian, Charlotte Honner)	
)	
v.)	
)	[SoA1][SoA2][SoA3][SoA4]
CONSTANCE LYNN MAKEMSON,)	
)	
Defendant.)	
)	
_____)	Case No. 3PA-13-_____ Civil

COMPLAINT

Plaintiff Margie Lou Welch (“Welch”) by and through her Public Guardian, Charlotte Honner, appears before this court seeking damages in excess of \$ 30,000 from Defendant Constance Lynn Makemson (“Makemson”). Such damages arise out of Makemson’s: (1) conversion of funds belonging to Welch; (2) breach of her fiduciary duty to Welch; (3) breach of the covenant of good faith and fair dealing in her interactions with Welch; and (4) conduct in fraudulently obtaining and using an access device belonging to Welch.

PARTIES

1. Welch is an adult individual who resides in Wasilla, Alaska in the Third Judicial District, State of Alaska.
2. Pursuant to an Order of this Court dated March 15, 2012 in 3PA-11-00331 PR, James and Cindy Springer were appointed as the Guardians of Welch.

3. Pursuant to an Order of this Court dated November 26, 2012, Cindy and James Springer were dismissed as Welch's guardians and Public Guardian Charlotte Honner with the Office of Public Advocacy (Public Guardian Section) assumed the duties of Guardian and Conservator of Welch.

4. Defendant Makemson is an adult individual who resides at 230 E. Sheridan # 1, Wasilla, Alaska in the Third Judicial District, State of Alaska and whose mailing address is 1690 N. Lacy Loop, Wasilla, AK 99654-5616.

JURISDICTION AND VENUE

5. This court has personal jurisdiction over Plaintiff Welch.

6. This court has personal jurisdiction over Defendant Makemson.

7. This court has jurisdiction over the subject matter of the present action.

8. The events, transactions, and occurrences forming the factual nexus and subject matter of Plaintiff's complaint against Defendant Makemson took place within the Third Judicial District, State of Alaska.

FACTS

9. Prior to December 6, 2010, Defendant Makemson was a close friend of Welch for twelve (12) or thirteen (13) years.

10. Due to their close relationship, Makemson had free access to Welch's home prior to December 6, 2010.

11. In April of 2010, Welch's husband died and Welch received the proceeds of his life insurance policy.

12. After the death of her husband, Welch's health worsened and she was admitted to the hospital.

13. From approximately June 9, 2010 to December 6, 2010, Defendant Makemson served as Welch's fiduciary and attorney-in-fact (hereinafter, "Fiduciary").

14. Makemson owed a fiduciary duty to Welch both because of their close relationship and because Welch, on June 9, 2010, made Makemson one of her power of attorneys.

15. At all times when she was serving as Welch's Fiduciary, Defendant Makemson knew that Welch was at least sixty (60) years of age and not able to effectively manage her own affairs.

16. As Welch's Fiduciary, Defendant Makemson had a duty to act in good faith and in the interests of Welch.

17. Despite this duty, Defendant Makemson entered into one or more financial transactions adversely affecting the financial interests of Welch while serving as her Fiduciary.

18. Defendant Makemson, while acting and serving as Welch's Fiduciary, failed to account for the dispersal and use of funds taken from Welch's financial resources.

19. While acting and serving as Welch's Fiduciary, Makemson utilized the financial resources of Welch for Makemson's personal profit or advantage with no significant benefit accruing to Welch.

20. During the period of time when she was acting as Welch's Fiduciary, Defendant Makemson wrongfully converted, lost, wasted or dissipated approximately \$30,640.00 in cash or other monetary instruments (hereinafter,

“Funds”) belonging to Welch, using such Funds for Makemson’s own use and benefit and/ or for the use and benefit of persons other than Margie Lou Welch.

21. In addition, while serving as Welch’s Fiduciary, Makemson fraudulently obtained an access device belonging to Welch (hereinafter, “Access Device”).

22. Defendant Makemson, during the period when she was serving as Welch’s Fiduciary, used the Access Device for Makemson’s personal profit or advantage with no significant benefit accruing to Welch.

23. While serving as Welch’s Fiduciary, Makemson knowingly made unauthorized purchases using the Access Device for Makemson’s personal profit or advantage with no significant benefit accruing to Welch, thereby injuring Welch’s financial interests.

24. Defendant Makemson’s conduct towards Welch while she was serving as Welch’s Fiduciary was outrageous, with her acts being done with malice or bad motives or reckless indifference to the interests of Welch.

COUNT I: NEGLIGENT BREACH OF FIDUCIARY DUTY

25. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

26. At all times relevant to this litigation, Defendant Makemson owed a fiduciary duty to Welch.

27. Defendant Makemson negligently breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to Welch.

28. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial, arising out of Makemson's negligent breach of her fiduciary duty to Welch.

COUNT II: RECKLESS BREACH OF FIDUCIARY DUTY

29. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

30. At all times relevant to this litigation, Defendant Makemson owed Welch a fiduciary duty.

31. Defendant Makemson recklessly breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to Welch.

32. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial, arising out of Makemson's reckless breach of her fiduciary duty to Welch.

COUNT III: INTENTIONAL BREACH OF FIDUCIARY DUTY

33. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

34. At all times relevant to this litigation, Defendant Makemson owed Welch a fiduciary duty.

35. Defendant Makemson intentionally breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to Welch.

36. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial, arising out of Makemson's intentional breach of her fiduciary duty to Welch.

COUNT IV: UNJUST ENRICHMENT

37. Plaintiff re-alleges the allegations set forth in Paragraphs 1-23 above and incorporates same herein by reference.

38. At all times relevant to this litigation, Defendant Makemson owed a legal duty to Welch to not unfairly or unduly take advantage of Welch or commit wrongful acts in order to unjustly enrich herself at Welch's expense or at the expense of Welch's property or financial interests.

39. During the period from approximately June 9, 2010 to December 6, 2010, Defendant Makemson unjustly enriched herself by wrongfully converting, taking, utilizing or managing the property and financial interests of Welch.

40. Such acts and omissions leading to the Defendant's unjust enrichment were the actual and proximate cause of harm to Welch.

41. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial, arising out of Makemson's unjust enrichment.

COUNT V: CONVERSION

42. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

43. At all times relevant to this litigation, Defendant Makemson owed Welch a duty to not convert Welch's property to Makemson's own use and benefit.

44. Defendant breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to Welch.

45. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial.

COUNT VI: BREACH OF CONTRACT AND COVENANT
OF GOOD FAITH AND FAIR DEALING

46. Plaintiff re-alleges the allegations set forth in Paragraphs 1-23 above and incorporates same herein by reference.

47. At all times relevant to this litigation, Defendant Makemson was in a contractual relationship with Welch and owed a duty to Welch to act in good faith and deal fairly with her.

48. Defendant Makemson breached that duty on more than one occasion by wrongfully converting, taking, utilizing or managing property and financial interests of Welch.

49. Such acts and omissions leading to the Defendant's breach of her duty to deal in good faith and fairly with Welch were the actual and proximate cause of harm to Welch.

50. Defendant Makemson's conduct was outrageous, with her acts being done with malice or bad motives or reckless indifference to the interests of Welch.

51. Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial.

COUNT VIII: FRAUDULENTLY OBTAINING AN ACCESS DEVICE

52. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

53. At all times relevant to this litigation, Defendant Makemson owed a duty to Welch to not fraudulently obtain Welch's Access Device.

54. Defendant breached that duty and that breach was the actual and proximate cause of harm to Welch.

55. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial.

COUNT VII: FRAUDULENT USE OF AN ACCESS DEVICE

56. Plaintiff re-alleges the allegations set forth in Paragraphs 1-23 above and incorporates same herein by reference.

57. At all times relevant to this litigation, Defendant Makemson owed a duty to Welch to not fraudulently use Welch's Access Device to obtain property or services which were unauthorized by Welch.

58. Defendant breached that duty on more than one occasion and such breaches were the actual and proximate cause of harm to Welch.

59. Accordingly, Defendant Makemson is liable in damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial.

COUNT IX: PUNITIVE DAMAGES

60. Plaintiff re-alleges the allegations set forth in Paragraphs 1-24 above and incorporates same herein by reference.

61. At all relevant times, Defendant Makemson owed Welch a duty to act with due care and regard for Welch's rights, safety and interests, including Welch's property and financial interests, particularly in light of the fact that Welch is an "older Alaskan" as defined in AS 44.21.415 who was unable to effectively manage her own affairs.

62. Defendant breached that duty of due care on more than one occasion and such breaches constitute outrageous conduct and reckless disregard of the rights, safety and interests, including property and financial interests, of Margie Lou Welch.

63. Defendant's outrageous conduct towards Welch was done with malice or bad motives or reckless indifference to Welch's interests.

64. Accordingly, Defendant is liable for punitive damages to Welch in excess of \$30,000.00, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

(a) Judgment entered in favor of Plaintiff and against Defendant on Counts I-VIII of plaintiff's complaint and an award of compensatory damages of not less than \$30,640.00;

(b) Judgment entered in favor of Plaintiff and against Defendant on Count IX (Punitive Damages) of this Complaint and an award of punitive damages of not less than \$30,000.00;

(c) An award of pre-judgment interest, attorney fees, costs and post-judgment interest in favor of Welch and against Defendant; and

(d) Such further and other legal and equitable relief as the Court may deem just and necessary under the circumstances.

DATED this ____h day of March at Anchorage, Alaska.

By: _____

Kathleen A. Frederick
Assistant Public Advocate
Counsel for Plaintiff Margie Lou Welch
Bar No. 9903003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by means of (delivery)(U.S. mail)(fax)(e-mail) on the ____ day of March, 2013 upon:

Constance Lynn Makemson
1690 N. Lacy Loop
Wasilla, AK 99654

By: _____