

2006 WL 5895095 (Mass.Super.) (Trial Pleading)
Superior Court of Massachusetts.
Norfolk County

Gaspare CIRELLA, Plaintiff,
v.
Charles MEDICI and Karen Ward, Defendants.

No. 06-01749.
October 10, 2006.

Complaint

Respectfully submitted, Plaintiff, By his attorney, [India L. Minchoff](#), Esq. (652456), Law Offices of Russo & Minchoff, 123 Boston Street, 1st Floor, Boston, MA 02125, 617/740-7340, 617/740-7310.

Norfolk, ss

INTRODUCTION

This is a civil action involving an **elderly** man who is physically and mentally weak. In this action, the Defendants have preyed on the Plaintiff by the exertion of undue influence and deceit. As a result of the Defendants' wrongful acts, the Plaintiff was defrauded out of **financial** assets, has had his credit history destroyed, is presently in jeopardy of having his home foreclosed upon, and is experiencing severe emotional distress.

PARTIES

1. Plaintiff, Gaspare Cirella, is an individual residing in Norfolk County, Massachusetts.
2. Defendant, Charles Medici, is an individual residing in Plymouth County, Massachusetts.
3. Defendant, Karen Ward, is an individual residing in Plymouth County, Massachusetts.

FACTUAL ALLEGATIONS

4. The plaintiff is an eighty-nine (89) year old retired veteran.
5. Plaintiff met the Defendant, Charles Medici ("Medici"), approximately fifteen (15) years ago. Medici later introduced the plaintiff to Defendant Karen Ward ("Ward").
6. Over time, defendant Medici became increasingly dominating over the plaintiff.
7. In 1997, defendant Medici attempted to pressure the plaintiff and his daughter, Simone Elli Cirella ("Simone"), to sell the plaintiff's residence at 15 Roger Road, Holbrook, Massachusetts and to allow him to manage the plaintiff's assets.

8. The plaintiff and Simone owned the property jointly and Simone refused to agree to such an agreement. The property at this time was free and clear of liens and mortgages.
9. The following year, in 1998, defendant Medici, with the assistance of his now wife, defendant Ward, caused Simone's name to be removed from the title of the real estate. Under information and belief, Ward caused Simone's signature to be forged on the deed to the property. Ward was also the notary on the deed. *See* Exhibit A: Deed dated April 1, 1998.
10. Simone only became aware of the 1998 transfer in June 2006.
11. Immediately after fraudulently causing Simone's name to be removed from the title of the plaintiff's property, defendants coerced the plaintiff into refinancing his home and providing them thirty thousand dollars (\$30,000.00).
12. Defendants represented to the plaintiff that they needed thirty thousand dollars (\$30,000.00) to purchase property in Hull, Massachusetts and they were at risk of losing their investment deposit of one hundred and twenty thousand dollars (\$120,000.00) without the plaintiff's **financial** backing.
13. The plaintiff did not want to refinance his residence and provide the defendants with any money. The defendants' however, continually badgered the plaintiff and the plaintiff began to feel intimidated by the defendants' actions.
14. Defendants represented to the plaintiff that they would repay the plaintiff's refinance mortgage within three (3) months by refinancing the property they intended to purchase in Hull, Massachusetts.
15. However, instead of satisfying the mortgage in three (3) months, the defendants sought the plaintiff's agreement for them to make monthly payments on the mortgage until it was discharged.
16. To date, approximately eight (8) years later, the Defendants have failed to discharge the mortgage on plaintiff's property.
17. After unduly influencing the plaintiff to take out a mortgage on his residence, the defendants continued to prey on plaintiff's susceptibility and coerced plaintiff to provide them additional money and credit.
18. Defendant Medici persuaded plaintiff to write him additional checks totaling five thousand dollars (\$5,000.00).
19. Defendant Ward coerced the plaintiff into providing her with checks totaling eight thousand dollars (\$8,000.00). *See* Exhibit B: All checks dated May 19, 1998.
20. The checks to the defendants were drawn on plaintiff's Holbrook Co-operative Bank account and Chase, First USA Bank, and Fleet credit card accounts.
21. In addition, the defendants obtained plaintiff's credit cards and made personal charges without the plaintiff's knowledge or consent.
22. Also, the defendants, without plaintiff's consent, changed the mailing addresses on many of the credit card accounts so that the statements were sent directly to them.
23. The defendants failed to pay the plaintiff's credit card balances and, as a result, plaintiff has been sued by several credit card companies for the collection of delinquent charges caused by the defendants.
24. When the plaintiff discovered that he was being sued, the defendants, in yet a further attempt to conceal their misconduct, told the plaintiff that they would appear in court and settle the matters.

25. Defendants failed to settle the matters and several judgments have been issued against the plaintiff for the defendants' unpaid credit card charges.

26. Plaintiff filed a complaint on the defendants on March 31, 2004 and voluntarily decided to dismiss the case since the defendants promised that the debt would be satisfied without litigation. To date, over two (2) years later, the defendants have failed to satisfy these debts.

27. At least one Judgment Creditor, Cavalier Growth & Income Fund LLC, has received an execution on their Judgment and has now levied upon, seized and taken the right, title and interest in plaintiff's Holbrook property. *See* Exhibit C: Execution dated September 14, 2006.

28. Plaintiff faces another court appearance in the Quincy District Court on December 5, 2006 regarding credit card debt incurred by the defendants which they were obligated to and promised to pay.

29. Due to defendants' **financial exploitation** of the plaintiff, a representative at South Shore **Elder** Services has filed a report with the District Attorney in Norfolk County.

30. The defendants' conduct has caused the plaintiff severe emotional distress. In December 2002, plaintiff suffered a stroke.

31. Plaintiff's emotional distress continued to worsen as creditors were constantly contacting him. Plaintiff's doctor has expressed concerns that such emotional distress may contribute to the likelihood of subsequent strokes.

COUNT I

FRAUD

32. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 31 of this complaint as if fully set forth herein.

33. As a result of the above stated facts, the defendants' actions constitute fraud.

34. Plaintiff suffered actual damages as a direct and proximate cause of the defendants' fraudulent conduct.

COUNT II

UNDUE INFLUENCE

35. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 34 of this complaint as if fully set forth herein.

36. As a result of the above stated facts, the defendants' intentional preying on the plaintiff's susceptibility constitutes undue influence.

37. Plaintiff suffered actual damages as a direct and proximate cause of the defendants' undue influence.

COUNT III

BREACH OF CONTRACT

38. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 37 of this complaint as if fully set forth herein.

39. As a result of the above stated facts, the defendants' actions constitute breach of contract.

40. Plaintiff suffered actual damages as a direct and proximate cause of the defendants' breach of contract.

COUNT IV

BREACH OF FIDUCIARY DUTY

41. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 40 of this complaint as if fully set forth herein.

42. As a result of the above stated facts, the defendants' actions constitute a breach of fiduciary duty.

43. Plaintiff has suffered actual damages as a direct and proximate result of defendants' breach of fiduciary relationship.

COUNT V

BREACH OF CONFIDENTIAL DUTY

44. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 43 of this complaint as if fully set forth herein.

45. As a result of the above stated facts, the defendants' actions constitute a breach of confidential duty.

46. Plaintiff has suffered actual damages as a direct and proximate result of defendants' breach of confidential duty.

COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

47. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 46 of this complaint as if fully set forth herein.

48. As a result of the above stated facts, the defendants' actions caused the plaintiff emotional distress.

49. Plaintiff's emotional distress has caused physical manifestations; the plaintiff suffered a stroke and due to the increasing severity of the situation, is at risk of another stroke that may lead to his death.

COUNT VII

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

50. The plaintiff repeats and re-alleges the allegations in paragraphs 1 through 49 of this complaint as if fully set forth herein.

51. As a result of the above stated facts, the defendants' actions constitute calculated actions intended to cause plaintiff emotional distress and defendants knew their actions were causing plaintiff severe emotional distress.

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

53. The defendants' actions are the cause of the plaintiff's distress.

54. The emotional distress sustained by the plaintiff is severe and of a nature that no reasonable man could be expected to endure.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS.

Date: October 6, 2006

Respectfully submitted,

Plaintiff,

By his attorney,

<<signature>>

India L. Minchoff, Esq. (652456)

Law Offices of Russo & Minchoff

123 Boston Street, 1st Floor

Boston, MA 02125

617/740-7340

617/740-7310

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