

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR.

VS.

ROBERT SULLIVANT, JR.

FILED
STATE OF MISSISSIPPI
LAFAYETTE COUNTY
2021 DEC -9 P 4:55
CHANCERY CLERK
BY DC TG

PLAINTIFF

CAUSE NO.: 2021-612(W)

DEFENDANT

**ANSWER, AFFIRMATIVE DEFENSES
AND COUNTER-CLAIM**

COMES NOW, the Defendant, Robert Sullivant, Jr., hereafter "Jr.," through undersigned counsel, and for his ANSWER, AFFIRMATIVE DEFENSES AND COUNTER-CLAIM against Robert Sullivant, Sr., hereafter "Sr.," states the following:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The facts not having been fully developed, Defendant further affirmatively invokes and pleads the protections of the provisions of Mississippi Rule of Civil Procedure 8(c) and/or Federal Rule of Civil Procedure 8(c), including: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, intervening and superceding cause, improper venue, and any other matter constituting an avoidance or affirmative defense.

SCANNED

THIRD AFFIRMATIVE DEFENSE

All acts undertaken by Defendant in this matter regarding the funds or assets of the Plaintiff were prior to the revocation of the Power of Attorney or prior to the notice to him of that revocation.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is guilty of coming before this Court with unclean hands, given that he converted Defendant's funds and therefore, he is entitled to no relief.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is entitled to no relief in this matter because his actions are *in pari delicto* with the actions of the Defendant.

ANSWER TO COMPLAINT

PARTIES

Robert Sullivant, Jr. responds to the allegations of the COMPLAINT, paragraph by paragraph, as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendant Sullivant, Jr. ("Jr.") admits that Sullivant, Sr. ("Sr.") opened a money market account with Regions Bank in his name only, but does not know the date on which that was done. Jr. admits that Sr. transferred \$230,000.00 from a joint account with Jr., into his new account. The remaining allegations of Paragraph 6 of the COMPLAINT are denied.

7. Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 7 of the COMPLAINT and demands strict proof of the same.

8. Defendant admits that he went to a Regions Bank in Oxford, Mississippi, where he was able to reverse the \$230,000.00 transaction. Defendant denies that he went to a Regions Bank in Batesville, Mississippi, and attempted to do that same thing there. The remaining allegations in Paragraph 8 of Plaintiff's COMPLAINT are denied. Defendant would affirmatively show that he promptly placed \$50,000.00 within his father's reach in his father's individual TD AmeriTrade account, paid \$6,000.00 on his father's credit card, and moved another \$5,000.00 into the joint checking account with his father and continued to pay his father's mortgage and utility bills.

9. The allegations contained in Paragraph 9 of Plaintiff's COMPLAINT are denied. Defendant would affirmatively state that all of the steps he took in any of the accounts of his mother or his father, with the express permission of his mother and his father at all times. Further that he had an agreement with Sr. and Sr. had, on several occasions, told Jr. that if he needed any funds he could take the funds adding "after all its going to be all yours." Jr. would not have moved to Mississippi and would not have left his work in Austin Texas to care for mother without some assurance of this kinds from his mother and father.

10. The allegations contained in Paragraph 10 of Plaintiff's COMPLAINT are denied.

CAUSES OF ACTION

COUNT I **BREACH OF FIDUCIARY DUTY**

11. The allegations contained in Paragraph 11 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

12. The allegations contained in Paragraph 12 of Plaintiff's COMPLAINT are denied.
13. The allegations contained in Paragraph 13 of Plaintiff's COMPLAINT are denied.

COUNT II
BREACH OF THE DUTY OF CARE

14. The allegations contained in Paragraph 14 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

15. The allegations contained in Paragraph 15 of Plaintiff's COMPLAINT are denied.
16. The allegations contained in Paragraph 16 of Plaintiff's COMPLAINT are denied.

COUNT III
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

17. The allegations contained in Paragraph 17 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

18. The allegations contained in Paragraph 18 of Plaintiff's COMPLAINT are denied.
19. The allegations contained in Paragraph 19 of Plaintiff's COMPLAINT are denied.
20. The allegations contained in Paragraph 20 of Plaintiff's COMPLAINT are denied.
21. The allegations contained in Paragraph 21 of Plaintiff's COMPLAINT are denied.

COUNT IV
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

22. The allegations contained in Paragraph 22 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

23. The allegations contained in Paragraph 23 of Plaintiff's COMPLAINT are denied.
24. The allegations contained in Paragraph 24 of Plaintiff's COMPLAINT are denied.
25. The allegations contained in Paragraph 25 of Plaintiff's COMPLAINT are denied.

26. The allegations contained in Paragraph 26 of Plaintiff's COMPLAINT are denied.

COUNT V
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

27. The allegations contained in Paragraph 27 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

28. The allegations contained in Paragraph 8 of Plaintiff's COMPLAINT are denied.

29. The allegations contained in Paragraph 29 of Plaintiff's COMPLAINT are denied.

COUNT VI
BREACH OF DUTY OF LOYALTY

30. The allegations contained in Paragraph 30 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

31. The allegations contained in Paragraph 31 of Plaintiff's COMPLAINT are denied.

COUNT VII
NEGLIGENCE

32. The allegations contained in Paragraph 32 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

33. The allegations contained in Paragraph 33 of Plaintiff's COMPLAINT are denied.

34. The allegations contained in Paragraph 34 of Plaintiff's COMPLAINT are denied.

COUNT VIII
GROSS NEGLIGENCE

35. The allegations contained in Paragraph 35 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

36. The allegations contained in Paragraph 36 of Plaintiff's COMPLAINT are denied.

37. The allegations contained in Paragraph 37 of Plaintiff's COMPLAINT are denied.

COUNT IX
CONVERSION

38. The allegations contained in Paragraph 38 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

39. The allegations contained in Paragraph 39 of Plaintiff's COMPLAINT are denied.

40. The allegations contained in Paragraph 40 of Plaintiff's COMPLAINT are denied.

COUNT X
UNJUST ENRICHMENT

41. The allegations contained in Paragraph 41 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

42. The allegations contained in Paragraph 42 of Plaintiff's COMPLAINT are denied.

43. The allegations contained in Paragraph 43 of Plaintiff's COMPLAINT are denied.

COUNT XI
PUNITIVE DAMAGES

44. The allegations contained in Paragraph 44 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

45. The allegations contained in Paragraph 45 of Plaintiff's COMPLAINT are denied.

46. The allegations contained in Paragraph 46 of Plaintiff's COMPLAINT are denied.

COUNT XII
INJUNCTIVE RELIEF AND RESTRAINING ORDER

47. The allegations contained in Paragraph 47 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

48. The allegations contained in Paragraph 248 of Plaintiff's COMPLAINT are denied.

49. The allegations contained in Paragraph 49 of Plaintiff's COMPLAINT are denied.

50. The allegations contained in Paragraph 50 of Plaintiff's COMPLAINT are denied.

COUNT XIII
EMERGENCY RELIEF

51. The allegations contained in Paragraph 51 of Plaintiff's COMPLAINT require neither admission or denial but to the extent necessary, are denied.

52. The allegations contained in Paragraph 52 of Plaintiff's COMPLAINT are denied.

53. The allegations contained in Paragraph 53 of Plaintiff's COMPLAINT are denied.

54. The allegations contained in Paragraph 54 of Plaintiff's COMPLAINT are denied.

55. The allegations contained in Paragraph 55 of Plaintiff's COMPLAINT are denied.

56. The allegations contained in Paragraph 56 of Plaintiff's COMPLAINT are denied.

57. The allegations contained in Paragraph 57 of Plaintiff's COMPLAINT are denied.

58. Sullivan, Jr. admits that he will account for the \$115,000.00 described in the Complaint that was the property of Sullivan, Sr. He will also account as required by the recently entered Agreed Order.

Defendant responds to the "WHEREFORE PREMISES CONSIDERED" paragraph by denying that Plaintiff is entitled to any relief, other than what has been previously admitted.

Further, any allegations of the Complaint not specifically admitted are hereby denied.

COUNTER-CLAIM OF DEFENDANT, ROBERT SULLIVANT, JR.

AND NOW, having asserted his Affirmative Defenses and having responded to the details of the Complaint, Robert Sullivant, Jr. now enters his Counter-Claim as follows:

1. Sullivant, Jr. and Sullivant, Sr. shared a joint account at Regions.
2. The "farm house" was property in Panola County that had been sold.

3. That property was jointly owned by Sullivan, Jr. and Sullivan, Sr.
4. It had been the property of Sullivan, Jr.'s mother/Sullivan, Sr.'s wife, Willola Vick Sullivan.
5. Willola Vick Sullivan died intestate and Sullivan, Jr. is the only child of Willola Vick Sullivan and Sullivan, Sr.
6. Sullivan, Jr. and Sullivan, Sr. were her intestate heirs.
7. On May 5, 2021, Sullivan, Sr. and Sullivan, Jr. agreed to deposit the proceeds from the sale of the "farm house," amounting to \$230,000, into a joint account to be used for another house, after the sale of the house located in Oxford, Mississippi.
8. When Sullivan, Sr. transferred the \$230,000.00, as admitted in Paragraph 6 of his own recitation of facts, from the joint account at Regions Bank, he converted \$115,000.00 of Sullivan, Jr.'s funds.
9. This, coupled with other risky and substantial behavior, including Sullivan, Sr.'s overdrafts, thousands of dollars in mail scams, failure to pay mortgage payments, failure to file or pay 2020 income tax, substantially running up credit cards that Jr. had paid down for him, hiring a driver for no purpose, allowing one auto insurance policy to lapse and allowing another to nearly lapse, responding to phone scams and closing a bank account without addressing any auto-pays, prompted Sullivan, Jr., using the Power of Attorney, as well as rights arising under certain joint accounts, to take steps to preserve Sullivan, Sr.'s funds.
10. Sullivan, Jr. did this and quickly after securing the \$230,000.00, transferred \$50,000.00 to Sullivan, Sr.'s T.D. AmeriTrade account. He took this step on June 9, 2021.
11. Still Sullivan, Sr. sued son, Sullivan, Jr., for converting \$230,000.00, despite the fact

that he knew or should have known that only half of those funds were his and, despite the fact that he knew or should have known that Sullivan, Jr. had transferred back into Sullivan, Sr.'s name, \$50,000.00.

12. Sullivan, Jr. also paid \$6,000.00 on Sullivan, Sr.'s credit card bill.

13. Still, Sullivan, Sr. sued Sullivan, Jr. for converting \$230,000.00.

14. Sullivan, Jr. also paid Sullivan, Sr.'s mortgage and utility bills.

15. Still, Sullivan, Sr. sued Sullivan, Jr. for converting \$230,000.00.

16. Sullivan, Jr. further renewed Sullivan, Sr.'s auto insurance that Sullivan, Sr. had allowed to lapse and preventing a subsequent policy from lapsing.

17. Sullivan, Jr. also transferred \$5,000.00 back to Sullivan, Sr.'s joint checking account at Regions on July 6, 2021.

18. Sullivan, Jr. took all of these steps for the benefit of Sullivan, Sr., and to protect and preserve his funds.

19. Still, Sullivan, Sr. apparently did not know, or was not aware of the following:

- a. That half of the \$230,000.00 was not his, in fact, Sullivan, Sr. expressly stated to Sullivan, Jr. that he believed it was all his and his Complaint is consistent with that erroneous position;
- b. That Sullivan, Jr. had returned to Sullivan, Sr. \$50,000.00;
- c. That Sullivan, Jr. had paid Sullivan, Sr.'s credit card bill, his mortgage for several months and his utilities for several months;
- d. That Sullivan, Sr.'s auto insurance lapsed and that Sullivan, Jr. procured subsequent insurance;
- e. After that time, Sullivan, Sr.'s subsequent insurance nearly lapsed and Sullivan, Jr. was able to act quickly and save it;

f. That Sullivant, Jr. transferred \$5,000.00 to the joint account that Sr.'s and Jr. share; and

g. That he had an obligation to file his 2020 income tax and had failed to do so.

20. Sullivant, Sr. has been engaging in a pattern of erratic and irregular spending over the past 4 years.

21. For these reasons, Sullivant, Jr. acted to preserve Sullivant, Sr.'s funds while responsibly paying Sullivant, Sr.'s bills and making funds available to Sullivant, Sr.

22. While ignoring these daily concerns, Sullivant, Sr. was looking for another house to buy with the \$230,000.00 proceeds, half of which did not belong to him, assisted by his sitter Evelyn Stevens

CLAIM FOR A CONSERVATORSHIP

23. For these reasons, Sullivant, Jr. asks for the imposition of a conservatorship.

24. The court should appoint an independent co-conservator with specifically outlined powers and should appoint Sullivant, Jr. as a co-conservator because Sullivant, Jr. has detailed knowledge of his father's finances and what needs to be done.

25. The independent co-conservator and Sullivant, Jr. should be required by the Court to set a monthly budget to be approved by the court.

26. The independent co-conservator and Sullivant, Jr. should act to preserve and protect the funds as this court should further direct.

27. The court should order the requisite independent medical exams under Rule 35 in order to determine whether or not the imposition of a conservatorship under these circumstances is necessary.

DEMAND FOR ACCOUNTING

28. The Estate of Willola Vick Sullivant was opened and closed in the Chancery Court of Panola County, Mississippi.

29. Sr. and Jr. are her two intestate beneficiaries.

30. Sr. has taken steps to the detriment of Jr.'s inherited interests.

31. Sr. has released, for no consideration, personal property in which the Estate of Willola Vick Sullivant had an interest, including the following: (1) one New Holland tractor; (2) one Mahindra tractor with front end loader and back hoe; (3) one bush hog; (4) one disc; (5) several plows; (6) one tractor boom; (7) one post hole auger; (8) one 4 wheel ATV; (9) one sprayer; (10) other tractor implements; (11) ladders; (12) one dog kennel; (13) one welding cart; and (14) one full 1974 Lionel train set that belonged solely to Jr.

32. In doing so Sr. treated this personal property as his own without accounting for the interest of Jr.

33. The Court should enter and order compelling Sr. to retrieve these items of personal property and account to Jr. for them.

34. Sr. also took possession of certain funds arising out of the sale of real property owned by the Estate of Willola Vick Sullivant. This includes the following sales: (1) 4 acres in Panola County for approximately \$20,000; (2) 1 acre in Panola County for approximately \$5,000; (3) 16 acres in Panola County for approximately \$60,000; and (4) condo in Germantown, Tennessee, worth approximately \$160,000.00.

COMPENSATION

35. Jr. has acted to preserve and secure the assets of Sr.

36. Jr. is entitled to compensation for these actions and the benefit that has accrued to Sr. for these actions including, but not limited to, the following: (1) selling the above described properties, 2 without a real estate agent and by locating other agents for the other two, negotiating a price and terms,

preparing for and attending the closings; (2) remodeling the condo and renting the condo, which increased the value by approximately \$40,000.00; (3) preparing tax returns; (4) paying household bills and negotiating insurance, cable, alarm system and set up and managing auto pays along and utility accounts; (5) maintaining two houses, repairs and maintenance and making decisions as to what needed to be done; (6) protecting Sullivant, Sr. from scams, taking constant supervision and contact with scammers to reverse charges and discontinue auto billing, along with reviewing checking account and bank card statements and driving to Pope, Mississippi, daily to get mail; (7) repairing computer; (8) purchasing groceries and preparing meals, almost 3 meals a day, 365 days out of the year; (9) taking Sullivant, Sr. to appointments with doctors and managing his appointments with doctors; (10) arranging for the first stay at Azalea Gardens, moving furniture in and checking on Sullivant, every two or three days while at Azalea Gardens; (11) remodeling and moving furniture into the Oxford house; (12) arranging financing and closing on Oxford house and getting the prior owner out of the house due to a delay after closing; (13) refinancing an obligation owed on property and lowering the monthly payment by 1/3; (14) moving Sullivant, Sr.'s personal items out of the farm house, which was 80 hours of work, along with arranging for movers and storage for large furniture items and supervising the moving of heavy items; and (15) hiring a sitter, scheduling a sitter, planning for sitter activities and paying sitter.

EMERGENCY RELIEF

37. Because of the financial instability of Sr., the Court should enter emergency relief to preserve his interests.

38. A much larger sale of real property in Panola County is currently under contract and must close by December 31, 2021.

39. The contract price is \$630,000 and Sr. and Jr. are joint owners of the property.

40. This sale is part of Section 1031 exchange and if Sr. does not comply with the terms of that exchange, his tax consequences will be severe.

41. Until the conservatorship, compensation, and accounting issues are resolved these funds should be held in trust and not made available to Sr.

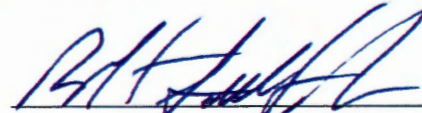
42. The substantial sums he holds in his individual TD Ameritrade account should also be held until these three issues are resolved.

43. Sr. does have monthly income sufficient to meet his current needs without these sums.

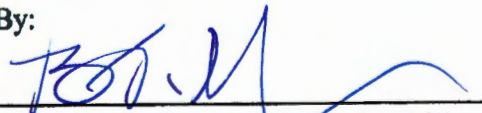
44. This Court should also enter an order preventing Sullivan, Sr. from driving.

THEREFORE, Sullivan, Jr. asks that all of the relief sought by Sullivan, Sr. be denied, other than accounting, as Sullivan, Jr. has agreed, and that the appropriate independent medical exams under Rule 35 be ordered and further for the appointment of an independent conservator. Sullivan Jr. further asks for emergency relief to preserve the assets and interests of Sullivan Sr. as described above. The Defendant, Robert Sullivan, Jr. asks for such other relief as this court may find merited under the circumstances.

Respectfully submitted, this the 9th day of December, 2021.


ROBERT SULLIVANT, JR., DEFENDANT

By:


BRADLEY T. GOLMON (MSB #10261)
Counsel for Defendant, Robert Sullivan, Jr.
HOLCOMB, DUNBAR, WATTS, BEST,
MASTERS & GOLMON, P.A.
400 Enterprise Drive
Post Office Drawer 707
Oxford, Mississippi 38655
Telephone (662) 234-8772
Facsimile (662) 238-7552

STATE OF MISSISSIPPI

COUNTY OF Lafayette

Before me the undersigned authority in and for the aforesaid county and state, this day there personally appeared the within named **ROBERT SULLIVANT, JR.**, who being duly sworn, on oath, states that he is the Defendant in the foregoing Answer and Counter-Claim to Complaint and that all of the matters, things and allegations contained in said Answer and Counter-Claim are true and correct as therein stated and that any allegation made on information and belief, Affiant verily believes to be true.

Robert Sullivan, Jr.
ROBERT SULLIVANT, JR., DEFENDANT

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this the 9th day of December, 2021.

Melinda S. Stricklin
NOTARY PUBLIC

My Commission Expires:



CERTIFICATE OF SERVICE

I, BRADLEY T. GOLMON, do hereby certify that a copy of the foregoing document has been mailed via U.S. Mail, postage prepaid, to the following:

Swayze Alford, Esq. (MSB #8642)
Kayla Ware, Esq. (MSB #104241)
Post Office Drawer 1820
Oxford, Mississippi 38655
(662) 234-2025 phone
(662) 234-2198 facsimile

THIS, the 9th day of December, 2021.



BRADLEY T. GOLMON