

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2023 JUN -1 AM 10:44

ROBERT SULLIVANT, SR,
PLAINTIFF & COUNTERCLAIM CO- DEFENDANT,

CHANCERY CLERK

and,

EVELYN STEVENS,
COUNTERCLAIM CO-DEFENDANT

BY RA

VS.

CAUSE NO.:2021:612(W)

ROBERT SULLIVANT, JR.,
DEFENDANT & COUNTERCLAIM PLAINTIFF.

DEFENDANT'S AMENDED COUNTERCLAIMS

Plaintiff ROBERT SULLIVANT SR ("SR") brought this action on October 25th, 2021, alleging thirteen (13) counts against the Defendant, ROBERT SULLIVANT JR ("JR"). These charges are premised on a series of financial transactions involving the two parties from a joint account they held together. This joint account was used to deposit the proceeds from the sale of a home that was jointly owned by both parties. Defendant responded to the original complaint with affirmative defenses and counterclaims, and now wishes to amend said counterclaims to incorporate the following facts, claims, and new defendants.

According to the Plaintiff's Complaint, on or about May 19, 2021, SR opened a money market account with Regions Bank that was in his name only. That same day, SR transferred the sum of \$230,000.00 from the joint Regions account in which JR had signature authority to his new individual money market account.

Also, according to the Plaintiff, on May 20, 2021, SR executed a Cancellation of Durable Power of Attorney, which was filed with the Panola County Chancery Clerk that same day. SR provided the Regions Bank in Batesville, Mississippi with a copy of the same. (§ 7). Notably, nowhere does the Plaintiff assert that notification was sent in any way or via any method, formal or informal, to the Defendant, of this revocation.

Of the \$230,000 that SR transferred into his personal account, 50% belonged exclusively to the Defendant.

Up to this point, SR had been displaying mental deficiencies that excluded him from making any coherent financial decisions without assistance. SR has over drafted his Regions Bank accounts, succumbed to thousands of dollars in mail scams, has failed to pay mortgage payments in 18 months, failed to file or pay 2020- and 2021-income tax, and substantially ran up credit cards that JR had paid down for him. This pernicious and destructive activity prompted JR using the Power of Attorney, as well as rights arising under certain joint accounts, to take steps to preserve SR's funds.

On June 9th, 2021, JR did in fact resecure the \$230,000. He then promptly transferred \$50,000 into SR's T.D. Ameri Trade account, paid SR's mortgage, and restored his car insurance which had lapsed. He also transferred \$5,000 back to SR's account at Regions Bank.

Despite all of the foregoing, including the glaring the fact that the Defendant was well within his legal rights to complete these transactions, the Plaintiff filed this action charging 13 different counts of violating his duty per the Power of Attorney. Throughout the course of discovery, defendant has learned of compelling new information that implicates two new defendants (including counsel for Plaintiff), and at least 5 new claims against them, and the plaintiff.

FACTS RELEVANT TO ALL CLAIMS

1. The parties had a durable power of attorney in place that was undisturbed from 2018-2021.
2. Sr admits in his response to interrogatory #3, that he did not notify JR of the revocation, although he lived in the same house as JR at the time of the revocation.
3. The parties had shared a joint account at Region's Bank in Oxford.
4. The "farmhouse" was property in Panola County that had been sold.
5. This property was jointly owned by both parties and had previously been the property of Sullivant, Jr.'s mother/Sullivant, Sr.'s wife, Willola Vick Sullivant.
6. On May 5, 2021, Sullivant, Sr. and Sullivant, Jr. agreed to deposit the proceeds from the sale of the farmhouse, amounting to \$230,000, into a joint account to be used for another house, after the sale of the house located in Oxford, Mississippi.

7. When SR transferred \$230,000 out of the account under the influence of Ms. Stevens, he illegally converted \$115,000 of the defendant's money.
8. SR 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 A TV; (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.
9. On June 9th, 2021, after securing the \$230,000.00 using his in effect power of attorney, JR transferred \$50,000.00 to SR's T.D. Ameri Trade account.
10. During this time, SR was ignoring his financial responsibilities and was planning to use the funds he stole from JR under the influence of Ms. Stevens, to purchase a new house. Ms. Stevens admits to browsing homes with SR. She then claims that SR, in his diminished capacity, would "ride down the road and look for sale signs, and then tell [her] about them. (Stevens Depo. 26).
11. 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.
12. In her deposition taken on November 15th, 2022, Ms. Stevens admitted that she, completely by chance, went and located the POA between JR and SR, and then convinced him to revoke it. SR was in no mental condition to revoke the agreement on his own nor was there any reason to do whatsoever (Stevens Depo. 15-16).

13. Finally, Ms. Stevens admits in her deposition that she knew the \$230,000 belonged to both JR and SR, yet she influenced him to withdraw the money regardless and use the funds for a new home. (Id. 29).
14. Ms. Stevens also claimed she took SR to a medical exam with a Psychiatrist to determine the need for conservator, but the psychiatrist was unable to do the exam and instead clipped SR's toenails. (Id. 23-24).
15. Ms. Stevens admits that she accompanied SR to Attorney Westfaul to revoke the POA and upon information and belief, has attended every meeting between Mr. Alford and SR.
16. Ms. Stevens used the plaintiff's lawsuit as an opportunity to financially manipulate him and extract money belonging to both SR and JR.
17. This is further evidenced by the fact that Ms. Stevens claims she is not paid by SR for her work, nor has she filed tax returns for years. (Id. 51). Ms. Stevens also had her name placed on three of SR's bank accounts and used funds that this court ordered held in trust to purchase a \$41,000 truck. (Id.)
18. There is no way that SR, particularly in his diminished capacity, could have effectuated this fraud upon his own son without the assistance Ms. Stevens. Ms. Stevens found the power of attorney. She took SR to Mr. Westfaul's office to revoke the power of attorney knowing that this action was intended to prevent the JR from retrieving his own money. Once JR retrieved the his money, Ms. Steven made the initial appointment with Mr. Alford in attempt to get back JR's money that she aided SR in stealing. She met with Mr. Alford on every meeting with SR and Mr. Alford.
19. Ms. Stevens committed multiple counts of perjury in her deposition in an attempt to cover up her involvement with and manipulation of SR.

20. Ms. Stevens took advantage of SR's mental capacity to place her name on three of SR's bank accounts totaling over \$468,000. Ms. Steven's used her manipulation over SR to purchase a truck and put her name on the title with the funds that were supposed to be Mr. Alford's trust.

COUNTERCLAIM ONE
COMPENSATION

21. Defendant realleges ¶¶ 1-20 as if fully incorporated herein.

22. JR. has acted to preserve and secure the assets of SR.

23. 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 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. Managing condo as rental property.

(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 farmhouse, 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.

(16) Mortgage payments dating from May of 2021, when SR decided to abandon the premises and his mortgage payment responsibilities.

COUNTERCLAIM TWO
DEMAND FOR ACCOUNTING

24. Defendant realleges ¶¶ 1-23 as if fully incorporated herein.

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

26. SR. and JR. are her two intestate beneficiaries.

27. SR. has taken steps to the detriment of JR's inherited interests.

28. 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 A TV; (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.

29. In doing so, SR. treated this personal property as his own without accounting for the interest of JR.

30. The Court should enter and order compelling SR. to retrieve these items of personal property and account to JR. for them.

31. 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.

CLAIM THREE
CIVIL CONSPIRACY

32. Defendant realleges lines 1-31 as is fully incorporated herein.

33. A civil conspiracy claim requires "a combination of persons for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully." *Gallagher Basset [t] Services, Inc. v. Jeffcoat* , 887 So.2d 777, 786 (Miss. 2004).

34. The claim requires "(1) an agreement between two or more persons, (2) an unlawful purpose, (3) an overt act in furtherance of the conspiracy, and (4) resulting damages to the plaintiff. (Id).

35. There is no doubt that the defendants came to an agreement to revoke the POA between JR and SR, and to illegally convert \$115,000 of his funds. They also met with Mr. Alford and conspired to bring legal action against the defendant for taking back the funds that rightfully belonged to him.

36. Under the guise of this legal action, the co-defendants also engaged in the behavior outlined in paragraphs 28 and 31 causing serious financial damage to JR.

CLAIM FOUR
CONVERSION

37. Defendant realleges lines 1-36 as is fully incorporated herein.

38. To establish the tort of conversion, "there must be proof of a wrongful possession, or the exercise of a dominion in exclusion or defiance of the owner's right, or of an unauthorized and injurious use, or of a wrongful detention after demand." *Stevens v. Smith*, 71 So.3d 1230, 1233 (¶

9) (Miss.Ct.App.2011) (quoting *Cnty. Bank, Ellisville, Miss. v. Courtney*, 884 So.2d 767, 772–73 (¶ 10) (Miss.2004).

39. The co-defendants wrongfully possessed and converted \$115,000 of JR’s funds into their own personal account. They did so while knowing that this money did not belong to them. Both defendants represented that the funds were 100% theirs, which was obviously not true. Ms. Stevens admits to knowing that the half the funds belonged to JR but went ahead and converted the money regardless.

CLAIM FIVE
ABUSE OF PROCESS

40. Defendant realleges lines 1-39 as is fully incorporated herein.

41. A cause of action for abuse of process has been described as follows:

[It] consists in the misuse or misapplication of a legal process to accomplish some purpose not warranted or commanded by the writ. It is the malicious perversion of a regularly issued civil or criminal process, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby, and for which perversion an action will lie to recover the pecuniary loss sustained. *Cent. Healthcare v. Citizens Bank*, 12 So. 3d 1159, 1167 (Miss. Ct. App. 2009)

42. Ms. Stevens drove her co-defendant to the bank to illegally convert the money, brought him to an attorney to revoke the POA, and has been present at every meeting between SR and Mr. Alford. After JR noticed that his funds had been illegally converted, he transferred his portion bank into a personal account. For this, SR initiated a lawsuit seeking to have the money *he and his co-conspirator stole*, returned to them through an overt abuse of the legal process.

43. The court’s processes certainly do not exist to assist bad actors in furthering their fraudulent activity. Or in this case, suing the person you stole money from in order to get the money you stole back when the theft was uncovered. This qualifies as an abuse of process. This lawsuit was also crafted to harass and bully the defendant, and to drive a wedge between a father and son so that Ms. Stevens can reap financial benefit from an incapacitated and elderly man without any pushback or interference.

CLAIM SIX
TORTIOUS INTERFERENCE WITH A CONTRACT
(Against Evelyn Stevens)

44. Defendant realleges lines 1-43 as is fully incorporated herein.

45. To succeed on a claim of tortious interference with a contract, a plaintiff must prove the following elements: (1) intentional and willful acts, (2) calculated to cause damage to the plaintiff in his lawful business, (3) done with the unlawful purpose of causing damage and loss, without right or justifiable cause on the part of the defendant (which constitutes malice), and (4) resulting in actual damage or loss. *Watkins v. Oakes*, 318 So. 3d 1125, 1129 (Miss. Ct. App. 2020).

46. The parties of Sullivant SR and Sullivant JR had a durable POA in place for several years without incident. Completely out of the blue, Ms. Stevens convinces SR to revoke the POA specifically for the purpose of preventing JR from retrieving the joint funds from the control of Ms. Stevens. The intent was to harm JR both emotionally by creating animus between him and SR, and financially, by literally stealing over 100k from JR, not to mention the possessions described in paragraphs 28 and 31 of this complaint.

47. These actions by Ms. Stevens are tortious and directly interfered with the parties' contract (POA), and the wishes of both parties contained therein. What Ms. Stevens did was calculated, malicious, and actionable.

CLAIM SEVEN
BREACH OF ORAL CONTRACT
(Against Robert Sullivant Sr.)

48. Defendant realleges lines 1-47 as is fully incorporated herein.

49. Defendant, prior to the death of his mother Willola Wick, had an agreement in place with Mr. and Mrs. Sullivant Sr. This agreement dictated that when Mrs. Sullivant and SR were unable to care for themselves any longer, that the defendant would take over the duties and responsibilities of their care, under any circumstances. In exchange for this guarantee, Mr. and Mrs. Sullivant

agreed that JR would inherit certain land they would purchase just for him, and their remaining assets. This contract was entered into prior to the purchase of the land, and the contract is evidenced by the purchasing of the land, as Mr. and Mrs. Sullivant had no reason of their own to purchase said land.

50. JR held to his obligations in this agreement when his mother needed a Conservator and SR called JR and asked him to return to Mississippi from Austin Texas where he was living, to take care of his mother. This required JR to sacrifice his career and the life he had built, in order to honor the contract with SR. Which he undeniably did.

51. However, SR did not honor the contract. Despite the fact that JR dropped his life and sacrificed his future to adhere to this agreement, SR, instead reciprocating the contract adherence, overtly violated it not only by filing this lawsuit, but by also securing and releasing funds that belonged to JR per the contract, as outlined in paragraphs 24-31.

WHEREFORE, in light of the foregoing, Defendant ROBERT SULLIVANT JR., requests the following relief:

1. Enter an order compelling Plaintiff/ Co-Defendant ROBERT SULLIVANT SR. to retrieve these items of personal property as listed in paragraphs 28 and 31, and account to JR for them.
2. Enter an order compelling Plaintiff/Co-Defendant ROBERT SULLIVANT SR. to compensate JR for the items listed in paragraph 23.
3. Enter an order compelling Plaintiff/Co-Defendant ROBERT SULLIVANT SR. to perform according to the parties' oral contract as referenced in paragraph 49.
4. Damages from both co-defendants, including punitive, in an amount to be determined at a later time and upon retrieval of further information.
5. A permanent injunction barring Ms. Evelyn Stevens from exercising any influence over SR's finances or having her name be present on any account belonging to SR or SR and JR.

6. Any other relief this court deems necessary and just.

Respectfully Submitted: June 1st, 2023.

A handwritten signature in black ink, appearing to read "Robert Sullivan Jr.", written over a horizontal line.

Robert Sullivan Jr.
Defendant/Counterclaim Plaintiff

CERTIFICATION

I do hereby certify that on June 1st, 2023, I have served by email a true and correct copy of the above and foregoing to:

Swayze Alford
1221 Madison Avenue
Oxford, MS 38655
Attorneys for Plaintiff Robert Sullivant, Sr.



Robert Sullivant Jr.
Defendant Pro Se