

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR., PLAINTIFF

V.

ROBERT SULLIVANT, JR., DEFENDANT

FILED  
STATE OF MISSISSIPPI  
LAFAYETTE COUNTY

2022 DEC -8 P 12:07

CIVIL ACTION NO. 2021-612 (W)

CHANCERY CLERK

BY DC

*[Signature]*

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DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT AS TO ALL COUNTS

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COMES NOW, Defendant ROBERT SULLIVANT ("JR"), and requests that this court grant summary judgement against the Plaintiff, ROBERT SULLIVANT SR ("SR"), dismissing *with prejudice* all 13 counts charged against the Defendant.

This motion is brought pursuant to MRCP 56(b); and in consideration of the facts, the Defendant's affidavit in support, and the judicial notice, all filed concurrently with this Motion and Memorandum, the Defendant is entitled to summary judgement in this action as a matter of law, as no genuine issues of material fact remain.

The Defendant further provides the following memorandum in support of his request.

**I. INTRODUCTION**

This Plaintiff brought this action on October 25th, 2021, alleging thirteen (13) counts against the Defendant. 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.

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 (Complaint. ¶ 6).

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

**SCANNED**

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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 (see *Accounting*; Bates Nos.008-014).

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 9<sup>th</sup>, 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. (*Accounting*, Bates Nos.015-025). 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. Since filing this case in October of 2021, the Plaintiff has failed to submit an Answer and as such was defaulted, as to the Defendant's crossclaims. He has failed to provide adequate discovery or to meaningfully conference and has failed to submit to a second court-ordered IME; all of this despite having over **one year** to do so. The Defendant has been more than cordial to the Plaintiff and his attorney, providing them with **over a year** to participate and cooperate in the action that *they filed*. In return, the Plaintiff and his attorney are continuing to ignore subpoenas, discovery requests, are defying a court order for the Plaintiff to attend a second medical evaluation and have not filed an answer or defended against any of the Defendant's counterclaims. As a result of this non-participation despite the extraordinary amount of time they have had, default by the Clerk was entered against the Plaintiff as to this Defendant's counterclaims on December 1st, 2022.

Furthermore, the general sloppiness of the Plaintiff's response to Defendant's first set of discovery request is disappointing, and shows a lack of interest in genuinely litigating this matter.

**INTERROGATORY NO. 2:** Please identify, by amount and date, each "very large sum of money" that you alleged Sullivant, Jr. has transferred from Sullivant, Sr.'s checking account, as described in Paragraph 6 of your complaint.

**RESPONSE:** To Plaintiff's knowledge, there was a \$230,000 transfer on May 19, 2021. As discovery is ongoing in this matter, Plaintiff reserves the right to supplement this response.

By the above sworn statement this matter would moot, as May 19, 2021 was the day before the Plaintiff allegedly revoked Defendant's Power of Attorney. In addition the response to response to request for admission # 7 is left completely blank.

**REQUEST FOR ADMISSION NO. 7:** Please admit or deny that Sullivant, Sr. claimed to Sullivant, Jr. that none of the proceeds of the sale of the "farm house" in Panola County were property of Sullivant, Jr.

**RESPONSE:**

The response to this admission is significant to the matter. Sworn by JR in his accompanying affidavit (stmt #10), that Sr did state to JR emphatically that he transferred the money from the joint account, because the money was not his.

As a result of the plaintiff's disinterest in prosecuting his case or defending from the Defendant's counterclaims, Court intervention is necessary and summary judgment is appropriate.

## **II. STANDARD OF REVIEW**

Rule 56(b) of the Mississippi Rules of Evidence provides that, "A party against whom a claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." "As to issues on which the nonmovant bears the burden of proof at trial, the movant needs only to demonstrate an absence of evidence in the record to support an essential element of the movant's claim." Pride Oil, 761 So.2d at 191 (¶ 10).

Mere allegations are insufficient to defeat a motion for summary judgment. Richardson v. Norfolk S. Ry., 923 So.2d 1002, 1008 (¶ 8) (Miss. 2006). The party opposing the motion must set forth specific facts that show that a genuine issue of fact exists. *Id.* To survive summary judgment, a claim must be based on more than a scintilla of evidence. Wilbourn v. Stennett, Wilkinson Ward, 687 So.2d 1205, 1214 (Miss. 1996). "It must be evidence upon which a fair-minded jury could return a favorable verdict." *Id.* Unsubstantiated assertions are insufficient. Cong Vo Van v. Grand Casinos of Miss., Inc., 767 So.2d 1014, 1024 (¶ 27) (Miss. 2000).

Once the Defendant has sufficiently alleged that no genuine issues of material fact remain, The burden then falls on the Plaintiff to present affirmative evidence to show that there were such genuine issues of material fact. Pride Oil, 761 So.2d at 191.

### III. ARGUMENT

#### 1. The Defendant Was Within His Legal Rights To Conduct The Subject Transaction

Mississippi Code Title 87, Ch.3; § 87-3-113, reads as follows:

As to acts undertaken in good faith reliance thereon, **an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time.** If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

The statute is quite unambiguous on this matter. The Defendant was given no notice of the Plaintiff's revocation of power of attorney and the agreement had been in place for 4 years at the time. The Plaintiff fails to assert anywhere in any of his pleadings that he noticed JR of the revocation. The Defendant has also attached an Affidavit, stating exactly such (Aff. of JR, ¶ 4, 5, 15, 16). The Plaintiff can assert no reason why the court should ignore this statutory mandate and allow him to proceed with his allegations, especially when he admitted through Interrogatory that he never informed JR that the power of attorney had been revoked.

The Defendant propounded interrogatories to the Plaintiff, to which the Plaintiff responded on January 13<sup>th</sup>, 2022. Interrogatory 3 states:

**INTERROGATORY:** Please identify the date in which you notified Sullivant, Jr. of the revocation of your 2017 Power of Attorney, including the manner in which such notification was delivered.

**RESPONSE:** *I did not personally notify Sullivant, Jr. of the revocation.* Upon information and belief, someone at Regions Bank informed Sullivant, Jr. when he tried to access my account.

(See *Disc. Resp.* Bates No. 139)

Also Notable, is the Plaintiff's response to Interrogatory #7, from the same set of Interrogatories as above:

**INTERROGATORY NO.7:** Identify all facts upon which you rely in support of your claims in the Complaint or upon which you rely in defending against any portion of the counterclaim.

**RESPONSE:** *The Complaint speaks for itself,* also see attached Exhibit A-

Exhibit A refers to; the Power of Attorney, and the Revocation form for such submitted by SR; which indicates nothing other than The fact that the Plaintiff admits that the Complaint is all he has to rely upon makes this case ripe for summary judgement. The Plaintiff's complaint fails as a matter of law to establish any issues of material fact and he admittedly has nothing to offer outside of the weak allegation and conclusory statements contained therein.

It is undeniable from this answer that the Plaintiff did not inform JR of this revocation, which only speaks more to his unsound state of mind. This power of attorney was in effect without issue for 4 years. JR had no reason to even suspect it had been revoked and the Plaintiff fails to explain why he attempted to. The assertion that; "[U]pon information and belief, someone at Regions Bank informed Sullivant, Jr. when he tried to access my account", is not only absurd, but also insufficient and not supported by anything on the record.

The aforementioned Mississippi Code is intended to protect those who are under a power of attorney agreement from themselves, and from carelessly, mindlessly, or through undue influence, revoking this agreement to their own detriment. The instant case is a perfect example of the necessity of this legislation. More importantly, it expressly and authoritatively shuts down the claim that any of the transactions cited by the Plaintiff and carried out by the Defendant were illegal. They were not. They were made in good faith and the Plaintiff is better off financially and otherwise as a result of the Defendant's prompt actions to prevent severe financial damage to the Plaintiff.

## 2. Essential Elements Are Glaringly Absent From The Plaintiff's Claims.

As a preliminary note, it cannot be disputed that 50%, or roughly \$115,000 of the Plaintiff's claim, in fact belongs solely to the Defendant (*Accounting*, Bates Nos.8-14); (Aff. of JR; ¶ 3).

The Plaintiff alleges 13 claims in his Complaint, all of which lack merit, are missing essential elements, and of which the Plaintiff has provided no proof, documentary or otherwise, let alone admissible evidence. They begin by alleging Breach of Fiduciary Duty and Breach of Duty of Care. Both of which fail based on the Affidavit of the Defendant and the Exhibits attached hereto. The Plaintiff, at all times, has acted in the best interest of SR and in this case, he saved him from himself. The Plaintiffs conclusory statements in this regard are not sufficient to survive summary judgement as no reasonable jury could return a verdict in his favor based on such statements, and the court should grant them no weight; particularly when the Plaintiff has had over one year to substantiate them and has hardly even attempted to do so.

Because the entire premise of the Complaint crumbles under the Defendant's evidence and Affidavit, as well as the Plaintiff's lack of any support or the possession of any admissible evidence from the Plaintiff; the Plaintiff cannot possibly establish the elements of *any of his claims*. The money he claims was stolen from him was, in fact, *actually stolen from the Defendant*, who then returned SR's portion while exercising his power of attorney, which as previously discussed was legally still in full force and effect. (Aff. of JR; ¶ 8, 9, 12). Even if it were not, the Plaintiff has failed to present any evidence of damages related to these transactions and would be entitled to no relief.

Each count in the Complaint is either a breach of care, negligence, and a claim for unjust enrichment and conversion. Again, each of these claims fail, as the Plaintiff has not shown, outside of mere allegations, that the Defendant breached any duty of care or loyalty, that he acted at all negligently, or that he attempted to unjustly enrich himself. All of the evidence presented to the Court shows the exact opposite.

In order to survive summary judgement, "[T]he non-moving party must produce specific facts showing that there is a genuine material issue for trial. M.R.C.P. 56(e); Fruchter v. Lynch Oil Co., 522 So.2d 195, 199 (Miss. 1988). The non-moving party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

At this point, "a mere scintilla of colorable evidence" would be *a massive improvement* to the Plaintiff's claims, but even that does not exist; and no sound minded jury could return a verdict against the Defendant given the fact pattern and evidence that has been presented to this point.

### 3. The Plaintiff Has Failed To Cooperate With Proper Procedure And Court Orders

The Plaintiff filed his Complaint in this matter on October 25th, 2021, well over a year ago. Independent Medical Evaluations (IME) on the Plaintiff, due to legitimate concerns about his cognition and ability to even participate in this action, were ordered by this Court on February 8<sup>th</sup>, 2022. The Plaintiff took one legitimate evaluation, with Dr. Brian Thomas, and the other opinion was stricken by this Court. Plaintiff has since has failed to even schedule a second one, despite a court order, an agreement between the parties to do so, and a motion to compel the Plaintiff to comply with said order. At this point, the Plaintiff has conceded to the sole opinion of Dr. Thomas.

The report of Dr. Thomas was unfavorable to the Plaintiff to say the least, and it seems that defying a court order and avoiding a second opinion is his strategy going forward. Dr. Thomas specifically reported that;

“The examinee demonstrates marked cognitive decline from estimated premorbid functioning. While his intellectual functioning appears preserved, he demonstrates impairment in all other areas of cognition assessed with the exception of preserved spatial/constructional skills. **he does appear to be unable to manage complex financial affairs due to a decline in his ability to receive and evaluate information and communicate decisions.** He has a history of writing multiple checks to various organizations that he, upon review with me, had difficulty fully explaining why he wrote checks to some organizations noting "They wanted \$5 every time you turn around" but "I don't do that anymore." Related to other purchases he noted, "I'm a sucker for stuff like that all right." The affidavit of his son provides his opinion that the examinee is making poor decisions and susceptible to being swindled. It is my opinion that the examinee is more susceptible to being swindled or taken advantage of because of his cognitive decline.”

*(Thomas Report; Bates No.137 ).*

Per documents subpoenaed from First Security Bank of Batesville on November 28<sup>th</sup>, 2022, the Plaintiff is still writing checks to mail scam solicitors. It obvious that the Plaintiff does not have capacity to control this compulsive behavior and make reasonable decisions. Hence, SR is still at risk of being the subject of the Ms. Steven’s scams by bringing this suit against JR, and also, notably; this IME confirms that SR was not cognitively capable of revoking the power of attorney to begin with.

The Plaintiff has also failed to participate in discovery by not responding to one (1) interrogatory and one (1) document request, which were sent on April 4<sup>th</sup>, 2022, nearly 7 months ago. (Aff. of JR; ¶ 13).

These discovery requests are imperative and the Plaintiff's silence on them is disquieting, as is discussed in the following section (4).

### **OUTSTANDING INTERROGATORIES**

9. Please state the balance in Plaintiffs TD Ameri Trade account at the time of the most recent statement, and along with the balance, provide the date of the most recent statement.

### **OUTSTANDING REQUESTS FOR PRODUCTION OF DOCUMENTS**

6. Please produce all records relating to or reflecting any spending by Plaintiff in excess of \$5,000.00 in a single transaction since the filing of this Complaint.

(See *Second Set of Disc.*; Bates Nos. 146-147)

The lack of response to these simple requests bears a strong indication that the Plaintiff finances are currently being unduly influenced by either his Attorney, Ms. Evelyn Stevens, or both. The Plaintiff's silence on this matter is a seriously concerning issue, one which is compounded by the deposition of Evelyn Stevens.

#### **4. The Plaintiff Is Still Acting Financially Reckless**

Ms. Mary H. "Evelyn" Stevens was a caretaker that JR employed and paid to assist SR with his day-to-day needs. Ms. Stevens worked for JR from 2018 until June 2021, when SR moved to an assisted living facility. Despite terminating her own employment, Ms. Stevens continued her relationship with SR. She then blocked JR's number from her phone, and from SR's phone (Aff. of JR, ¶ 11 ). Ms. Stevens admitted in her deposition that she remains active in SR's life and that she still works for him, although she does not receive any payment in return. Ms. Stevens admits that she has received gifts including automobiles from SR and has even put her name on his accounts as a joint party. More concerning, she admits that she reports none of these gifts or compensation to the IRS nor does she pay any taxes on them.

Ms. Stevens does not "work" for the Plaintiff, she is on a campaign to extract financial and material goods from a mentally deteriorating elderly man and Attorney Alford is at the very least complicit in this scheme, given the overwhelming amount of information and evidence he has received which undeniably shows that his client has no claims and is being taken advantage of.



Ms. Stevens accompanied SR to the law office of Jay Westfall, to discuss revoking the power of attorney, which he then attempted to do. (*Deposition*; 33:11-16).<sup>1</sup> Nothing about Ms. Stevens or her testimony settles well. She is strong evidence that the Plaintiff is highly susceptible to financial scamming and influence, and she herself admits to multiple tax frauds in her deposition. (*Deposition*; 51:8-20; 52:10-13)<sup>2</sup>. Again, despite this knowledge and the report from Dr. Thomas unambiguously and affirmatively declaring the Plaintiff incapable of managing his finances, Attorney Alford refuses to acknowledge that his client is actually suffering as a result of this lawsuit and that it should be ended promptly.

#### IV. CONCLUSION

The Plaintiff has failed to raise any issues of material fact, despite having more than ample time to investigate his claims, and this action was brought in bad faith. The Defendant has at all times acted in the best interests of SR and not a shred of evidence says otherwise.

The Plaintiff claims also fail to present any factual issues as Mississippi Code expressly allowed for each of the Defendant's transactions that are in question, and the Plaintiff has essentially admitted this. Moreover, even if this court rules that the Defendant's actions in transferring the money back did not comport with the law, absolutely no damages were suffered by the Plaintiff and he is not entitled to any relief. The Plaintiff has come forward with erroneous and false claims and is being influenced to villainize the one person, JR, who is dedicated to protecting him and has been for multiple years, and to great personal sacrifice.

It is no coincidence that Ms. Stevens was at every appointment with SR and Mr. Alford, drove SR to Attorney Westfall to revoke the power of attorney, and has received cars and gifts that she refuses to report as income, as well being placed on SR's bank accounts, giving her the ability to access his funds. All of this has taken place since this action was filed. Ms. Stevens is an admitted tax fraud who is seeking to financially and materially benefit from the continuing strain on the relationship between JR and SR that this action, and more notably the Plaintiff's intentional delays, have caused.

The Plaintiff has failed to come forward with any support for his allegations and conclusory statements, refuses to answer to discovery propounded 7 months ago, and cannot create any issues of fact to be considered. The Plaintiff has also failed to Answer the Defendants counterclaims which were filed

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<sup>1</sup> Bates No. 056

<sup>2</sup> Bates Nos. 074-075

concurrently with his Answer over one year ago, and default from the Clerk on those claims was certified on December 1st, 2022.

The Plaintiff's attempt to rest his case at the stage of the original complaint should and must be rejected. "A nonmoving party cannot rest on its pleadings, but must demonstrate that there is admissible evidence that will support its position. Tolle v. Carroll Touch, Inc., 23 F.3d 174, 178 (7th Cir. 1994). No such admissible evidence exists in this case and the Plaintiff isn't even feigning that it might.

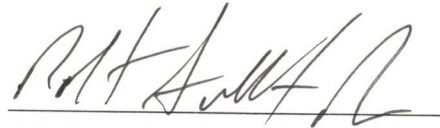
Miss. R. Civ. P. Rule 56(c). provides that the judgment sought *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The rule does not provide for evidence which *might* be introduced or developed at trial. The party resisting summary judgement must produce any such evidence in opposition to the motion. It is thus incumbent upon a Plaintiff to respond to a motion for summary judgment by demonstrating material factual disputes. The comment to Rule 56 also notably provides that summary judgment "serves as an instrument of discovery in calling forth quickly the disclosure on the merits of either a claim or defense on pain of loss of the case for failure to do so." Commercial Bank v. Hearn, 923 So. 2d 202 (Miss. 2006). This is exactly the Defendant's purpose with this Motion.

**WHEREFORE**, based on the foregoing motion and memorandum and the supporting documents filed concurrently, Plaintiff ROBERT SULLIVANT JR asserts that no genuine issues of material fact remain in this matter and that he is entitled to judgment as a matter of law. The Defendant thereby requests that his Motion for Summary Judgement be **GRANTED**, in its entirety, that nothing be taken from the Plaintiff's Complaint, and that this court dismiss counts 1-13 (each count) asserted against the Defendant therein; **with prejudice**.

Respectfully submitted.

Robert Sullivan, Jr., *Pro Se*

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

ROBERT SULLIVANT, JR.  
[robert@steelandbarn.com](mailto:robert@steelandbarn.com)  
1002 CRAWFORD CIRCLE  
OXFORD, MS 38655


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**CERTIFICATE OF SERVICE**

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I do hereby certify that on November 25, 2022 I have served by hand delivery and/or email a true and correct copy of the above and foregoing document to:

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

  
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Robert Sullivant, Jr., *Pro Se*