

2009 WL 9513954 (Conn.Super.) (Trial Pleading)  
Superior Court of Connecticut.  
Hartford County

Elaine Erwin MATULIS,  
v.  
Robert MCCABE, Executor of the Estate of Valerie McCabe, Deceased.

No. HHBCV095011302.  
June 30, 2009.

**Revised Complaint**

Plaintiff, Elaine Erwin Matulis Januszewski, McQuillan and DeNigris, LLP, Her Attorneys, [Martin McQuillan](#).

***FIRST COUNT: PARTITION ACTION:***

1. Plaintiff is a resident of Berlin, Connecticut within this judicial district.
2. Plaintiff was a co-owner with one Valerie McCabe of a certain piece of real property located in this judicial district, known as 359 Wethersfield Road, Berlin, Connecticut, 06037.
3. Said property is described on Schedule A attached hereto.
4. On April 13, 2005, Valerie McCabe died domiciled in Berlin, Connecticut.
5. On July 14, 2005, the Probate Court for the District of Berlin appointed Robert McCabe of 30 Wilson Hill Road, Merrimack, New Hampshire, 03054 as executor of her will. He qualified to act and continues to act in said capacity.
6. In such capacity, the Defendant, Robert McCabe, Executor, co-owns the subject premises with the Plaintiff.

WHEREFORE,

Plaintiff seeks a partition of said premises, as specified below.

***SECOND COUNT: DECLARATORY JUDGMENT***

1-6 Paragraphs 1-6 of the First Count are hereby designated as paragraphs 1-6 respectively of this Count as if more fully set forth herein.

7. Since approximately October 1998, and up to the present, the Plaintiff has managed the property on behalf of the co-owners.
8. Her duties as manager included, but are not limited to, advertising the premises for rent, serving as the contact person for tenants in all respects, collecting the rent, incurring and paying income tax liability in connection therewith, dealing with tenant complaints and issues, engaging tradespeople to perform building repairs, improvements, upgrades, attending to yard work, snow and ice removal, and the like.

9. The parties are unable to agree upon an appropriate amount of compensation to be paid Plaintiff respecting said services and the reimbursement of fees and costs incurred since commencing said services.

10. Plaintiff has an interest, or a reasonable fear of danger of uncertainty, as to her rights or other jural relations.

11. There is an actual *bona fide* issue in dispute and/or substantial uncertainty of legal relations which requires settlement between the parties.

WHEREFORE,

Plaintiff seeks a declaratory judgment as to the rights and responsibilities of the parties, as more fully set forth below.

***THIRD COUNT: TORTIOUS INTERFERENCE WITH A FINANCIAL EXPECTANCY***

1-8 Paragraphs 1-8 of the Second Count are hereby designated as paragraphs 1 - respectively of this Count as if more fully set forth herein.

9. When the tenants occupying the premises vacated, Plaintiff spent substantial amounts of her time and money to prepare the premises for re-rental, so as to continue the cash flow generated thereby.

10. Defendant, as co-owner, directly and/or through his counsel of record in this matter, forbade her to re-rent the premises and insisted they remain vacant, despite the on-going expenses of ownership. Those expenses include but are not limited to taxes, insurance, heat, snow removal, etc

11. The Defendant continues to forbid Plaintiff to re-rent the premises to this day and, owning only an undivided half-interest in same, she is unable to do so without his consent, which he withholds unreasonably and without justification.

12. Plaintiff was thus deprived of her share of the leasehold income which would have been thus generated.

13. Defendant knew of Plaintiff's financial expectancy respecting her share of said leasehold rental income.

14. In prohibiting her from re-renting the premises, Defendant tortiously intended to interfere with Plaintiff's financial expectancy.

15. Plaintiff has been damaged financially by reason of the Defendant's aforesaid tortious interference with her financial expectancy.

WHEREFORE, THE PLAINTIFF CLAIMS:

***A. As to the first count:***

1. A partition of the premises, according to the respective rights of the co-owners;

2 If a sale would better promote the interests of the co-owners, then a sale of the premises and an escrow of the proceeds, to be distributed to the parties according to their respective rights to the real estate after the payment of the expenses of the sale, and after any reimbursement of the Plaintiff for funds expended and services performed which the court may order.

3. The appointment of a committee to make such a sale;

**B. As to the Second Count:**

Pursuant to the provisions of [Connecticut General Statutes §52-29](#) and [§17-54 et seq.](#) of the Connecticut Practice Book, Plaintiff seeks a declaratory judgment of the Court:

1. That she is entitled to reimbursement for her expenses incurred in managing the property as aforesaid, and in defending herself from the Defendant's efforts to call her to account unjustifiably before the Probate Court.
2. The amount to which she is entitled;
3. That she is entitled to compensation for her personal services thus rendered;
4. The amount;
5. That she is entitled to reimbursement respecting income taxes she paid on the accumulated income generated by the premises, as it pertains to the portion of the income allocable to the co-owner;
6. The amount;
7. That she is entitled to her attorneys' fees or costs incurred in the prosecution of this action;
8. The amount;
9. Such other relief as to the Court appears appropriate.

**C. As to the Third Count (*Tortious Interference with a Financial Expectancy*):**

1. Fair, just and reasonable monetary damages;
2. Cost of suit;
3. Attorneys' fees and costs;
4. Such other relief as to the Court appears fair and appropriate.

PLAINTIFF, ELAINE ERWIN MATULIS

JANUSZEWSKI, MCQUILLAN AND DENIGRIS, LLP

HER ATTORNEYS

By <<signature>>

Martin McQuillan