

2008 WL 8590389 (Alaska Super.) (Trial Pleading)  
Superior Court of Alaska.  
Third Judicial District

Noelle COVINGTON and Dana Scofield as Temporary  
Guardians and Conservators of Curtis N. Carley, Plaintiffs,

v.

Reggie I. CHAMBERS, Defendant.

No. 3AN0708381CI.  
January 28, 2008.

### **Second Amended Complaint**

[Tonja Woelber](#), Attorney at Law, P.C., [Tonja Woelber](#), Alaska Bar No. 8212171, Attorney for Plaintiffs.

Plaintiffs Noelle Covington and Dana Scofield, as temporary full guardians of father, Curtis N. Carley (“Plaintiffs”), through counsel, hereby file their Second Amended Complaint against Reggie I. Chambers (“Chambers” or “Defendant”) as follows:

#### **JURISDICTION**

1. Curtis N. Carley (“Carley”) is a resident of Anchorage, Alaska.
2. Defendant Reggie I. Chambers is a resident of Anchorage, Alaska.
3. Plaintiff Dana Scofield is Carley's daughter and a resident of Anchorage, Alaska, as of August 2007.
4. Plaintiff Noelle Covington is also Carley's daughter and a resident of Springfield, Oregon.
5. Plaintiffs were appointed temporary co-guardians of Curtis N. Carley by court order dated July 13, 2007, in Case No. 3AN 07-645 PR. Exhibit A.
6. Plaintiffs are authorized to bring this action on behalf of the respondent under [AS 13.26.150](#) and [AS 13.26.280\(c\)\(23\)](#) and (24).
7. The real property that forms the subject matter of this action is located on 4307 Harrison Street in Anchorage, Alaska.
8. The Superior Court for the State of Alaska, Third Judicial District at Anchorage, has jurisdiction of this case.

#### **ALLEGATIONS OF FACT**

9. At the time of this action, Carley is 78 years old.
10. Carley moved his family to Anchorage, Alaska in 1970. Carley served as a career fighter pilot with the United States Air Force during the Korean and Vietnam wars, and retired in 1977.
11. Carley was divorced in 1988 and has lived alone in his home on Double Tree Court since his divorce.

12. Carley sold real estate with Remax Realty until the mid 1990's.
13. In September 2003, Dr. Paul L. Craig, a neuropsychologist in Anchorage, Alaska, completed a neuropsychological examination of Carley at the request of Carley's physician for a dementia screening.
14. Dr. Paul L. Craig is Board Certified in Clinical Neuropsychology, and is an associate clinical professor in the Department of Psychiatry and Behavioral Sciences at the University of Washington School of Medicine.
15. After completion of Carley's neuropsychological screening in September 2003, Dr. Craig diagnosed Carley with "Amnestic Disorder" involving, inter alia, a major cognitive deficit with regard to memory functioning.
16. After the neuropsychological evaluation, Carley told his daughters that the examining doctor "clearly wasn't a doctor" and "must have been a veterinarian", and that Carley didn't think the doctor "knew what he was talking about".
17. Sometime in 2003, Reggie Chambers met Carley through Carley's neighbor, Jim Selle.
18. Dana Scofield was informed by her father, shortly after he had met Chambers, that "a man" [believed to be Chambers] had told him that "God told him that he was to have Carley's house" on Double Tree Court in Anchorage. Carley reported to his daughter Dana Scofield that Chambers told him "vicious, evil lies" and tried to intimidate him.
19. In the same communication referenced in the preceding paragraph, Carley indicated to his daughter Dana Scofield that "the man" [believed to be Chambers] had made a "low ball offer" on the house on Double Tree Court but that Carley had not accepted it and was "so mad I could have decked him".
20. In 1999, Carley's daughter Dana Scofield moved to Alaska and saw that her father was living in a state of total disarray and clutter in a separated section of his house, but Carley refused to discuss his living situation with her.
21. In summer 2003, Carley's daughter Dana Scofield suggested a yard sale to clear the house of clutter and un-used belongings, in order to help Carley prepare for his planned move to Oregon. After the sale Carley continued to announce his plans to move but seemed unable to take any action to further that plan and refused further help or discussion from his daughters concerning that matter.
22. On many occasions from 1999 through May 2007, Carley's two daughters offered to help their father with his financial affairs, and tried to convince him to hire a representative payee to assist him with his finances, or a professional property manager to help with the triplex. Carley consistently refused his daughters' help and suggestions.
23. In 2006, Carley owned his home on Double Tree Court, and a triplex on Harrison Street in Anchorage, Alaska.
24. On October 19, 2006, Chambers contacted Alyeska Title Guaranty Company in Anchorage and ordered a Preliminary Commitment for Title Insurance on the Harrison Street triplex. Exhibit B.
25. Carley signed a Warranty Deed transferring all of his interest in the Harrison Street triplex to Chambers on October 30, 2006. Exhibit C.
26. The Warranty Deed from Carley to Chambers for the Harrison Street triplex was recorded in the Anchorage Recording District on October 31, 2006. Exhibit C.
27. According to documents supplied by Alyeska Title Guaranty Agency ("Alyeska Title"), and maintained in the ordinary course of business, Chambers represented the sales price for the triplex to be "\$20,000". Exhibit D.

28. In 2006, the municipal assessment on the triplex located on Harrison Street was \$283,600. Exhibit E.
29. In 2006, according to the Preliminary Commitment for Title Insurance prepared by Ayeska Title, there was no mortgage or any other monetary lien or encumbrance on the Harrison Street triplex. Exhibit F.
30. Chambers procured an owner's policy of title insurance from Ayeska Title on the Harrison Street triplex, naming himself as the sole insured, for a sale price of \$20,000, for which he paid \$250. Exhibit G.
31. The Closing Statement prepared by Ayeska Title in the ordinary course of business shows the sales price for the triplex to be \$20,000. Exhibit H.
32. According to notes made by an employee of Ayeska Title in the ordinary course of business, Chambers represented that "there is no purchase agreement. Taxes are not to be prorated, Buyer is paying all fees. Rents are being collected outside of closing". Exhibit I.
33. Neither Carley nor Chambers provided Ayeska Title with a purchase agreement for the Harrison Street triplex.
34. There is no purchase agreement for the "sale" of the Harrison Street triplex from Carley to Chambers.
35. In November 2006, Carley maintained two bank accounts: a checking account with Bank of America, and a savings account at Wells Fargo (\*\*\*\*615) that was used for the Harrison Street triplex.
36. Other than the bank accounts and his two properties, Carley owned only miscellaneous assets of nominal value.
37. In December 2006, the mailing address for the Carley's Wells Fargo savings account (\*\*\*\*615) was changed to Chambers' home address. Exhibit J.
38. On December 1, 2006, a new checking account (\*\*\*\*708) was opened at Wells Fargo in Anchorage, naming Carley and Chambers as "joint owners". Exhibit K.
39. The joint account referenced in the preceding paragraph included a right of survivorship, i.e., the surviving owner would own the entire account at the death of the deceased owner, by operation of law.
40. The new Wells Fargo checking account (\*\*\*\*708) was set up so that upon Carley's death Chambers would be entitled to all of the money in the account by operation of law.
41. In December 2006, Carley's Wells Fargo savings account (\*\*\*\*615) was closed, and the proceeds (\$622.51) were transferred to the new checking account at Wells Fargo (\*\*\*\*708) with Carley and Chambers as joint owners. Exhibit L.
42. As part of the alleged sale of the triplex, Chambers wrote out a check to Ayeska Title for \$250.00 for the title insurance on October 25, 2006. Exhibit G.
43. As part of the alleged sale of the triplex, someone provided a cashier's check, drawn on Wells Fargo Bank, for \$20,242.00 dated October 27, 2006. Exhibit M.
44. Ayeska Title wired the amount of \$20,000 to Carley's Bank of America account on or about November 8, 2006. Exhibit N.

45. On December 5, 2006, Carley signed a check transferring \$20,000 from his Bank of America account to the Wells Fargo joint account owned with Chambers via check #5951. Exhibit O.
46. Bank of America check #5951 was written out by Chambers but signed by Carley. Exhibit O.
47. Bank of America check #5951 was deposited into the Wells Fargo joint account owned by Carley and Chambers (\*\*\*\*708) on or about December 6, 2006. Exhibit O.
48. Chambers in essence paid nothing to Carley for the purchase of the triplex because the sale proceeds were routed through Carley's Bank of America account to the newly-opened Wells Fargo account owned jointly with Chambers, with a right of survivorship.
49. On February 16, 2007, Carley signed a 16-page "Durable Power of Attorney for Finance" naming "my friend, Reggie I. Chambers" as his attorney-in-fact for all financial purposes, "and to act as guardian or limited guardian of my estate should guardianship proceedings become necessary or desirable." The Durable Power of Attorney was "effective immediately" and was not to be affected by Carley's "subsequent disability". No alternate attorneys-in-fact were named in the document. Exhibit P.
50. As of March 2007, Carley's house on Double Tree Court was subject to a mortgage of about \$120,000, held by Wells Fargo Bank.
51. On or about April 18, 2007, Chambers wrote out check #6039 for \$100,000 from Carley's Bank of America account, to pay down the mortgage on Carley's house on Double Tree Court. Exhibit Q.
52. The check described in the preceding paragraph was written out by Chambers, but signed by Carley.
53. The check described in the preceding paragraph states on the memo line "pay on mortgage #4722409234 - principal payment" in Chambers' handwriting.
54. Plaintiffs found out about the "sale" of the triplex to Chambers in early May 2007.
55. Plaintiffs immediately contacted Adult Protective Services in Anchorage, Alaska regarding the financial exploitation of their father by Chambers.
56. Adult Protective Services contacted the Department of Law of the Attorney General's Office of the State of Alaska, which commenced a protective proceeding for Carley on or about May 25, 2007, under Case No. 3AN 07-645 PR.
57. On May 26, 2007, Carley was admitted to the hospital on Elmendorf Air Force Base because he was falling at home and seemed unstable.
58. On or about May 26, 2007, Carley was examined by doctors at Elmendorf Air Force Base for severe memory dysfunction and worsening dementia.
59. The Attorney General's Office moved for expedited consideration of the petition for guardianship on May 25, 2007. The motion was granted by the superior court on May 31, 2007. A hearing on temporary full guardianship was held on June 12, 2007. The petitioner (the State of Alaska) and the respondent, Curtis N. Carley, through counsel, stipulated to immediate appointment of Carley's two daughters (the Plaintiffs in this case) as temporary co-guardians. The court signed an order appointing Carley's two daughters temporary co-guardians, with full guardianship powers, on July 13, 2007. The court's order specifically states that it "supersedes any existing Powers of Attorney". Exhibit R.

60. A hearing on permanent appointment of the temporary co-guardians is scheduled for November 19, 2007, at 9:30 a.m. in the probate court.

61. On July 6, 2007, the temporary co-guardians then filed, through counsel, a Complaint for rescission of the "sale" of the Harrison Street triplex to Chambers, and for damages for fraud and negligence, in the above-captioned case.

62. In mid-June 2007, Carley was moved to the Oregon home of his daughter, Noelle Covington, for personal home care on a trial basis. After a month, the co-guardians decided to move Carley to an assisted living home. While at the assisted living home, Carley became increasingly paranoid and was remitted to the psychiatric ward at Sacred Heart Memorial Hospital. Carley was subsequently admitted to Memory Care, a high security care facility for patients with dementia, where he is now receiving care. However, Carley remains a resident of Alaska.

## **FIRST CAUSE OF ACTION**

### **Conversion**

63. The allegations of paragraphs 1 through 62 are re-alleged as if fully set forth.

64. Defendant Chambers deprived Curtis N. Carley of money and property by transferring it to himself without consideration, or for inadequate consideration, including but not limited to the property known as the Harrison Street triplex.

65. Defendant Chambers collected rents and profits associated with the operation of the Harrison Street triplex, both before and after the alleged sale of the premises, and converted said funds to his own use, without consideration.

66. Defendant Chambers has withdrawn money from bank accounts of Curtis N. Carley, including from a joint account owned with Carley, and converted said funds to his own use, without consideration.

67. Defendant Chambers' actions as described above constitute the conversion of the property of Curtis N. Carley, for which Chambers is fully liable.

## **SECOND CAUSE OF ACTION**

### **Civil Fraud**

68. The allegations of paragraph 1 through 62 are re-alleged as if fully set forth.

69. Defendant Chambers deceived Curtis N. Carley into believing that \$20,000 was adequate consideration for the purchase of the Harrison Street triplex.

70. Defendant Chambers deceived Curtis N. Carley into believing that he was helping Carley when in fact he was converting Carley's property to his own use.

71. Defendant Chambers knew or should have known that Carley had diminished capacity at the times relevant to the above allegations.

72. Defendant Chambers acted with intent to defraud Curtis N. Carley.

### **THIRD CAUSE OF ACTION**

#### **Breach of Fiduciary Duty**

73. The allegations of paragraphs 1 through 62 are re-alleged as if fully set forth.
74. At all relevant times, Chambers purported to act as Carley's agent.
75. As Carley's agent, Chambers owed Carley the highest duty of care known to the law.
76. From February 16, 2007, onward, Chambers purported to act as Carley's attorney-in-fact under a Durable Power of Attorney.
77. Chambers intentionally and/or negligently breached his fiduciary duties to Carley and an agent and as an attorney-in-fact by deceiving Carley and by converting Carley's property to his own use.

### **FOURTH CAUSE OF ACTION**

#### **Breach of Implied Duty of Good Faith and Fair Dealing**

78. The allegations of paragraphs 1 through 62 are re-alleged as if fully set forth.
79. Chambers entered into a real estate transaction with Carley concerning the Harrison Street triplex.
80. The real estate transaction referenced in the preceding paragraph imposed on both parties to the transaction a duty of good faith and fair dealing.
81. There is a duty of good faith and fair dealing implied in every contract under Alaska law.
82. Chambers breached his duty of good faith and fair dealing toward Carley by purporting to "purchase" a property assessed at \$283,600 for, at most, \$20,000.
83. Chambers breached his duty of good faith and fair dealing by exerting undue influence over Carley and inducing him to enter into a real estate transaction in which Carley was "paid" far less than market value.

### **FIFTH CAUSE OF ACTION**

#### **Misrepresentation**

84. The allegations of paragraphs 1 through 62 are re-alleged as if fully set forth.
85. Chambers knew or should have known that Curtis Carley had diminished capacity, manifested by memory problems and/or other mental deficits, at all times relevant to the transactions recited in this Complaint.
86. Chambers knew that the fair market value of the Harrison Street triplex was at least \$283,600 and misrepresented to Carley that said property was worth \$20,000.
87. Chambers negligently, recklessly or intentionally misrepresented the value of the Harrison Street triplex to Curtis Carley, inducing him to sell the property at a price far below market value.

88. Chambers negligently, recklessly or intentionally misrepresented to Carley that he would properly manage Carley's financial matters for Carley's benefit, including but not limited to having his bank statements sent to Chambers' address, opening a joint account with him, filing his taxes, and changing or attempting to change his beneficiary designations and estate planning documents.

89. Chambers caused Carley damages by virtue of said misrepresentations, in an amount to be determined at trial.

WHEREFORE Plaintiffs plead for relief as follows:

1. For rescission of the sale of the Harrison Street triplex;
2. for an accounting of all of Carley's financial matters in which Chambers was involved;
3. for an injunction against Chambers to prohibit him for having any further communication with Carley or any member of his immediate family;
4. for reimbursement of all monies taken by Defendant from Carley's bank accounts and from rents collected from the Harrison Street triplex and otherwise, with the maximum allowable interest permitted by law;
5. for full costs and attorney's fees under [Alaska Rule of Civil Procedure 82](#), from May 2007 through the resolution of this proceeding, due to Chambers' fraud and bad faith;
6. for enhanced attorney's fees under [Alaska Rule of Civil Procedure 82](#) based on Chambers' vexatious and bad faith conduct, the unreasonableness of the defenses raised, and the need to deter others from similar conduct;
7. for punitive damages for Chambers' outrageous conduct in an amount to be determined by the jury, and
8. for any other and further relief deemed appropriate by the court.

DATED at Anchorage, Alaska on January 28, 2008.