

2012 WL 3866234 (Tex.Dist.) (Trial Pleading)
District Court of Texas.
164 Judicial District
Harris County

Karen A. SMITH, Agent Under Power of Attorney for Louise Marie Kowalski,

v.

Dorothy SAVOY.

No. 201248654.
August 23, 2012.

Plaintiff's Original Petition

Crain, Caton, & James, A Professional Corporation, [Darlene Payne Smith](#), State Bar No. 18643525, Courtney McMillan Lyssy, State Bar No. 24060271, Five Houston Center, 1401 McKinney, 17th Floor, Houston, Texas 77010, (713) 658-2323, (713) 658-1921 Facsimile, Attorney for Karen A. Smith, Power of Attorney, for Louise Marie Kowalski.

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Plaintiff, Karen A. Smith, Agent Under Power of Attorney for Louise Marie Kowalski (“Smith”), and, for cause, respectfully shows as follows:

I. PARTIES

1. Karen A. Smith, Power of Attorney for Louise Marie Smith, is Plaintiff. See Power of Attorney dated February 17 2012, attached hereto as Exhibit A.
2. The defendant is Dorothy Savoy (“Savoy”) who may be served with process at 7115 Hwy 110 East, SW #17, Longville, LA 70652.

II. DISCOVERY LEVEL

3. This is a Level 2 case under the [Texas Rules of Civil Procedure 190.4](#).

III. JURISDICTION AND VENUE

4. This Court has jurisdiction and venue because the Court is being asked to decide ownership of real estate in Harris County, Texas. Further, this Court has jurisdiction and venue over this proceeding pursuant to [Section 37.003 of the Texas Civil Practice and Remedies Code](#).

IV. FACTS

5. On March 16, 1989, Louise Marie Kowalski (“Ms. Kowalski”) purchased the property located at 3210 Ohio Street, Baytown, Texas, 77520. The property is more specifically described as:

Lot 11, Block 18, of East Baytown, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 7, page 54, of the map records of Harris County, Texas.

Ms. Kowalski is the legal and equitable title owner of the property. See Deed, attached hereto as Exhibit B.

6. In the spring of 2012, Ms. Kowalski suffered a fall, and underwent medical treatment and care at the Rehabilitation and Healthcare Center of Baytown.

7. On April 4, 2012, during Ms. Kowalski's treatment, her daughter Dorothy Kowalski Savoy ("Savoy"), fraudulently induced her in her frail state to execute a quitclaim deed attempting to transfer title to her property at 3210 Ohio Street, Baytown, Texas, 77520. See Quitclaim deed, attached hereto as **Exhibit C**. There was no consideration for the execution of this deed. Savoy told Ms. Kowalski that if she did not sign the deed, the healthcare facility where Ms. Kowalski was staying would take her home, and she would lose her Medicaid benefits. Nothing could have been more untrue and fraudulent.

8. At the time Ms. Kowalski signed the quitclaim deed, she did not understand the consequences of doing so, and believed that she was in danger of losing the home she had owned for almost twenty-five years.

9. Upon learning of the fraudulent transfer on May 21, 2012, Smith sent correspondence to Savoy demanding that she reverse the quit claim deed. See attached Exhibit D. On May 30, 2012, Ms. Kowalski hired counsel and the attorney sent correspondence to Savoy requesting that Savoy execute a deed transferring the requisite property back to Ms. Kowalski. See attached Exhibit E. Then on July 4, 2012, Ms. Kowalski herself sent a final demand to Savoy requesting that she execute a deed transferring the property back. See attached Exhibit F. To date, all of the requests have gone unanswered, and even when a deed was provided, Savoy refused to execute it.

10. Savoy has exercised dominion and control over the property, and refused to transfer it back to Ms. Kowalski. Savoy has even changed the locks on Ms. Kowalski's home, and when she was able to return home, found herself locked out in the heat. Plaintiff, as power of attorney, seeks to void the quit claim deed conveying Ms. Kowalski's property to Defendant, and obtain damages against Savoy.

11. Plaintiff pleads trespass to try title, fraud, violation of the **Elder Abuse** statute, and seeks a Declaratory Judgment declaring the transfer void.

V. CAUSES OF ACTION

Trespass to Try Title

12. The parties are named above. Kowalski's property is specifically described in the Deed, attached hereto as Exhibit B. Kowalski claims a fee simple interest in the Disputed Property and is entitled to possession of the Disputed Property. Savoy entered upon and dispossessed Ms. Kowalski of the Disputed Property. Savoy has attempted possession of the Disputed Property, and claims it as her own. Savoy has no right to possess the Property.

Fraud

13. Savoy is liable for fraud. As set forth in the facts section above, Savoy materially misrepresented that Ms. Kowalski would lose her home and become ineligible for Medicaid benefits if she did not transfer it to Savoy. At the time Savoy made the misrepresentation she either had knowledge of its falsity or made it recklessly without any knowledge of the truth

of the assertion, Savoy intended for Ms. Kowalski to rely upon the misrepresentation and she did indeed rely upon the misrepresentation and suffered injury as the result thereof.

Elder Abuse

14. Smith sues Savoy for the **elder abuse** and neglect of Ms. Kowalski. As set forth in facts of this Petition, Savoy intimidated and influenced Ms. Kowalski into deed her home via a quitclaim deed. Savoy accomplished the transfer by deliberately misrepresenting to Ms. Kowalski that her home would be taken away and she would be ineligible for Medicaid benefits unless she effectuated the transfer. She has changed the locks, with no regard for her mother, who came home from rehabilitation to be locked out in the heat.

Declaratory Judgment

15. Petitioner asks this Court to declare under Chapter 37 of the Texas Civil Practices & Remedy Code, and requests a judicial declaration that the quitclaim deed dated April 4, 2012 is void, and that Ms. Kowalski owns the Disputed Property in fee simple.

Relief

16. Smith seeks a judicial finding/declaration that Ms. Kowalski has title to and is entitled to possession of the Disputed Property, and Smith seeks all damages, both actual and punitive against Savoy.

Attorney's Fees

17. Smith is entitled to attorney's fees under §§16.034 & 37.009 of the Texas Civil Practice & Remedies Code. All perquisites and conditions precedent to the recovery of attorney's fees have occurred.

WHEREFORE, Plaintiff, Karen Smith, Power of Attorney for Louise Marie Kowalski, requests that upon hearing the Court grant the following relief:

1. Declaratory judgment in favor of Plaintiff declaring that (1) the Quitclaim Deed attached hereto as Exhibit C is void and of no effect; (2) title to the Disputed Property, described in Exhibit B, is vested solely in Louise Marie Savoy, and (3) Plaintiff, as Agent, has authority to sign any and all documents necessary to facilitate the conveyance of the property back to Louise Marie Kowalski; and

2. Award Plaintiff damages, interest, attorney's fees, expert fees and such other relief to which Plaintiff may show herself justly entitled, to be assessed against Savoy.