

2012 WL 370119 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.
New Castle County

Ella MOFFETT, Plaintiff,

v.

Elizabeth M. SUTOR-BANKS and Dean A. Banks, D.D., Defendants.

No. 6879-MA.
February 1, 2012.

Response to Motion to Strike Accepted

1. Accepted.

2. Accepted.

3. (a) Defendant clearly delineates the timeline of the actions and the fact that both defendants carried out the wishes of the Plaintiff to the letter. Furthermore, Rule 8(b) states, “When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make the pleader’s denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.” Defendants discovered the alleged nefarious activities of David J. Durham as a result of Ella Moffett’s accident and subsequent hospitalization;

(b) Defendant clearly delineates the timeline an events and states the facts as they occurred in paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 16, 17, 19, 20, 22, 23, 24 and 25 of the Plaintiffs complaint in compliance with Rule 8(b);

(c) Defendants are not attorneys as is evidenced by this pro-se filing. The responses are as simple, concise and direct as can be to explain the alleged **elder abuse** inflicted on our Aunt Ella Moffett. Evidence was attached revealing the prior relationship of Plaintiffs counsel with David J. Durham and how they are alleged acting in collusion against our Aunt’s wishes. We pray upon this court to appoint an independent counsel who will truly act on Ella Moffett’s behalf;

(d) The interpretations of the Plaintiffs counsel of Schock v. Nash, 303 A.2d 217, 244 (Del. 1999) are not pertinent and opens the door for the Defendants to introduce information pertinent to his erroneous claim since the actions by the Defendants were made on behalf of Ella Moffett and not gratuitous in nature. References to client information that was ‘improperly obtained’ is a complete prevarication on the part of Plaintiffs counsel. Removal of any and all documents and possessions of the Plaintiff were expressly carried out by the Defendants at the Plaintiffs wishes. Slandering can only occur when what the Defendant says is completely untrue and was maliciously implied to damage their reputation. Since the attached documents prove the alleged collusion between [Plaintiffs counsel and David J. Durham](#), [slander did not exist. The analysis of Ella Moffett's Counsel is incorrect. According to 732 A2nd 217-244](#) this demonstrates the overall incompetence and alleged collusion of her attorney (with her financial advisor) and is obviously designed to misinform the court as to the actual case he was citing. Schock v. Nash (303 A.2d 217, 244 (Del. 1999) and 732, page 226 under the heading of V. Strict Construction of a Power of Attorney “{12} While a power of attorney is construed in accord with the rules for interpretation of other written instruments, it is “generally more strictly construed than ordinary contracts” [Realty Growth Investors v Council of Unit Owners, Del. Supr., 453 A.2d 450, 454-55 \(1982\)](#) “This is especially so where the authorized agent is given broad authority over all or much of the principal’s property. While a power of attorney is strictly construed, this Court, in a different context, has held that the

accompanying circumstances including the relationship of the parties should be examined to determine the intent of the parties” Realty Growth Investors v. Council of Unity Owners 452 A2nd, at 455 (“the authorization of an agent is interpreted in light of the accompanying circumstances, including the relationship of the parties, general usage, and the method of doing business”). Section IV Fiduciary duty under a power of attorney states “The creation of a power of attorney imposes the fiduciary duty of loyalty of the attorney-in-fact. [Wadsworth v Adams](#), 138 U.S. 380. At all times we were loyal to her wishes and followed them to the letter of the POA.;

(e) Defendant's answers in paragraphs 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, and 20 are not improper because we will be issuing subpoenas for David J. Durham, Ella Moffett's son (Ralph Paul Moffett) and other witnesses who worked for David J. Durham and observed his behavior with Ella Moffett. These latter two witnesses will testify to David J. Durham's alleged **elder abuse** and control over her actions. Ella Moffett herself told me she was afraid of David J. Durham and I will testify to that fact she was afraid of what he would do to her family. The court is here to uncover the truth based on the facts and not the apparent smoke screens being laid down by Plaintiffs counsel. The pleading requirements are designed to reveal the facts and the truth, which the Defendants have herein stated.

4. According to the timeline and the correct delineation of events, the Defendants filed against David J. Durham and his counsel prior to the Plaintiff's filing herein. [Chancery Court Rule 13\(g\)](#) refers to a filing after the original filing. Since the Defendant's filing occurred prior to the Plaintiffs filing, the Plaintiffs counsel's argument is moot.

5. Pursuant to Rule 12(f) the pleading of the Defendant has to be proven to be redundant, immaterial, impertinent or scandalous. The Defendants have laid out the facts and the truth to the best of their abilities in order for the court to be made aware of the alleged nefarious activities of both David J. Durham and Plaintiffs counsel.

6. Since the answer is designed to inform the court of the facts and the truth of the relationship between the Plaintiff, her financial advisor and her counsel, and their alleged control over her, we respectfully ask this Honorable Court that our response be entered into the record. We will bring the necessary witnesses to prove everything we allege in this response.

7. The Defendants would like to draw the court's attention to the following:

***Our observations in regard to disregarding the Motion to Strike:

1. “The court is to determine and give effect to the legislators' intent”
2. “statutes are to be read as a whole and all works much be given effect”
3. “If a statute is reasonably susceptible of different conclusions, or interpretations, it is ambiguous”
4. ‘Ambiguity can result if the interpretation loads to an absurd conclusion”
5. “Additionally, if uncertainty exists, the statute must be viewed as a whole, and the court must seek to harmonize it and avoid mischievous results”

***There are several cases which I ask the court to consider:

1. [Coleman v. State](#) 729 A2nd 847, 851 (Del 1991)
2. [Williams v. State](#) 818 A2nd 906, 912 (Del 2002)

3. [Snyder v. Andrews, 708 A2d 237, 241 \(Del 2002\)](#)
4. [Newtowne Village Service Corp v. Newtowne Rd Dev Co, 772 A2d 172, 175 \(Del 2001\)](#)
5. [Murphy v. Board of Pension Trustees, 442 A.2d 950, 951 \(Del 1992\).](#)

***Additional considerations:

1. What was the legislators' intent when they drafted the statutes and laws regarding P.O.A.'s?
2. The whole statute is to be read and its full meaning must be considered by the court in order to rule effectively.
3. Is the statute ambiguous? No, it's very clear as to what a power of attorney is and how it's to be enforced.
4. The interpretation does not lead to an absurd conclusion; it's very clear in what it says and means.
5. There is no uncertainty whatsoever in what the law means and says.

WHEREFORE, Defendants, Elizabeth M. Sutor-Banks and Dean A. Banks, D.D. respectfully request that this Honorable Court:

A. Revoke and/or rescind any and all document transfers instituted by David J. Durham and/or his associates, including, but not limited to, Power of Attorney, Executor of Ella Moffett's will and impose a No-Contact order on David J. Durham and any and all of his personal and business associates and attorneys.

B. Allow the Defendants to turn over the assets to her son Ralph Paul Moffett and NOT David J. Durham. The Defendants have obtained everything with the permission of Ella Moffett.

C. Entering a judgment in favor of the Defendants, awarding guardianship to her son, Ralph Paul Moffett, and imposing sanctions and financial relief to the Defendants from David J. Durham for alienating the affection of our Aunt Ella according to our Bill of Particulars that are attached.

D. Invalidate all of the transfers of Ella Moffett's assets to David J. Durham, including, but not limited to her properties discussed herein.

E. File legal action with the Office of Disciplinary Council against David J. Ferry for his prior relationship with David J. Durham (who is controlling the finances of Ella Moffett; see attached) and for allegedly acting in collusion with David J. Durham.

F. Dismissing any and all actions against the Defendants in favor of transferring all of the assets over to her son, Ralph Paul Moffett.

G. Enforcing that the deed be transferred to her son, Ralph Paul Moffett.

H. Awarding the Defendant's fees and expenses and imposing sanctions against David J. Durham or any of his associates and/or attorneys from having any contact or financial dealings with Ella Moffett whatsoever, as well as returning any and all investment capital that he obtained illegally while using his revoked Power of Attorney.

I. Granting any further relief that this Honorable court finds equitable to protect and secure the finances of our Aunt Ella Moffett.

J. Deny the Plaintiffs Motion to Strike.

<<signature>>

Elizabeth M. Sutor-Banks

<<signature>>

Dean A, Banks, D.D.

329 4th Avenue, Wilmington, DE. 19808 - 302.999.7768, Dated: January 18, 2012

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