

2011 WL 3695847 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Clackamas County

Billie H. DYAL and Lois E. Dyal, husband and wife, Plaintiffs,
v.
Patrick L. DYAL and Mary E. Dyal, Dyal Trucking, Inc., Defendants.

No. CV11080139.
August 4, 2011.

Amount Sought: \$160,300
Not Subject to Mandatory Arbitration

Complaint (Action on Debts, Elder Financial Abuse)

Orrin R. Onken OSB 82359, Attorney for Plaintiff, 21901 NE Halsey Street Suite 202, Fairview, Oregon 97024, 503-661-2540, Fax 503-715-2540, oronken @orolaw.com, www.orolaw.com.

Plaintiffs allege as follows:

1. Plaintiffs are husband and wife. At all material time both of them resided in Clackamas County, Oregon. At all material times both plaintiffs were over sixty-five years old and are thereby vulnerable persons pursuant to [ORS 124.100](#).

2 Defendants Patrick L. Dyal and Mary E. Dyal are husband and wife. They reside in Clackamas County, Oregon. Dyal Trucking, Inc., is an Oregon corporation authorized to transact business in the State of Oregon. Patrick L. Dyal is the son of Billie H. Dyal.

FIRST CLAIM FOR RELIEF

Count One

3 On or about October 24, 2002 the plaintiffs made a loan to Dyal Trucking Inc., for the sum of \$69,930.96 with interest to accrue on any unpaid balance at the rate of six percent per annum. The loan was to be paid back in monthly payments of \$1,933.28 per month. A copy of the promissory note executed by Dyal Trucking, Inc., is attached to this complaint as Exhibit A.

4 Defendant Patrick L. Dyal, guaranteed all the obligations of Dyal Trucking Inc., contained in the note and that guaranty is appended to the bottom of the promissory note.

5 Dyal Trucking and defendant, Patrick D. Dyal have failed to make payments as required by the note, the last payment having been made on September 26, 2007.

6 The plaintiffs have been damaged by the failure to make payments when due in the sum of \$50,000.

7 The promissory note provides that in any action enforce its terms the prevailing party shall be entitled to its reasonable attorney fees.

Count 2

8 By using undue influence to obtain a loan without security and thereafter refusing to repay the loan, the defendant, Patrick L. Dyal's actions constituted a wrongful taking and retention of funds of the plaintiffs in violation the provisions of [ORS 124.110](#).

9 Plaintiffs have suffered economic damage in the sum of \$50,000 as a result of the wrongful taking and retention of funds of the plaintiffs. Pursuant to [ORS 124.100\(2\)](#), plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

Count 3

10 At all material times, defendant Mary Dyal, knew of, participated in, and permitted the above described financial **abuse**. As a result of her acting in concert with the defendant Patrick L. Dyal and failing to act to prevent Patrick A. Dyal from engaging in financial **abuse**, plaintiffs have suffered damage in the sum of \$50,000. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

SECOND CLAIM FOR RELIEF

Count 1

11 On or about November 3, 2003, plaintiffs loaned to defendants Patrick L. Dyal, Mary E. Dyal, and Dyal Trucking, Inc the sum of \$62,000. Defendants agreed to repay the loan, with interest on the principal at six percent per annum in payments combined with the loan payments due under the loan described in plaintiffs first claim for relief. Defendants supplied the plaintiff only with an amortization schedule for repayment of this loan described above, a copy of which is attached to this complaint as Exhibit B.

12 Despite demand, defendants have failed to repay the sums borrowed, the last payment on the loan being made on September 26, 2007.

13 Plaintiffs have suffered economic loss in the sum of \$60,000 due to the failure of the defendants to repay the loan.

Count 2

14 By using undue influence to obtain a loan from the plaintiffs that was unsecured and improperly documented, the defendants, Patrick L. Dyal and Mary E. Dyal's actions constituted a wrongful taking and retention of funds of the plaintiffs in violation of the provisions of [ORS 124.110](#).

15 Plaintiffs have suffered economic damage in the sum of \$60,000 as a result of the wrongful taking and retention of funds of the plaintiffs. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

Count 3

16 At all material times, defendant Mary Dyal, knew of, participated in, and permitted the the financial **abuse** described in this claim for relief. As a result of her acting in concert with the defendant Patrick L. Dyal and failing to act to prevent Patrick L. Dyal from engaging in financial **abuse**, plaintiffs have suffered damage in the sum of \$60,000. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

THIRD CLAIM FOR RELIEF

Count 1

17 On or about April 5, 2004 plaintiffs loaned to defendants Patrick L. Dyal, Mary E. Dyal, and Dyal Trucking, Inc the sum of \$15,000. Defendants agreed to repay the loan, with interest on the principal at six percent per annum in payments combined with the loan payments due under the loans described in plaintiffs earlier claims for relief. Defendants supplied the plaintiff only with an amortization schedule for repayment of this loan described above, a copy of which is attached to this complaint as Exhibit C.

18 Despite demand, defendants have failed to repay the sums borrowed, the last payment on the loan being made on September 26, 2007.

19 Plaintiffs have suffered economic loss in the sum of \$15,000 due to the failure of the defendants to repay the loan.

Count 2

20 By using undue influence to obtain a loan from the plaintiffs that was unsecured and improperly documented, the defendants, Patrick L. Dyal and Mary E. Dyal's actions constituted a wrongful taking and retention of funds of the plaintiffs in violation of the provisions of [ORS 124.110](#).

21 Plaintiffs have suffered economic damage in the sum of \$15,000 as a result of the wrongful taking and retention of funds of the plaintiffs. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

Count 3

22 At all material times, defendant Mary Dyal, knew of, participated in, and permitted the the financial **abuse** described in this count. As a result of her acting in concert with the defendant Patrick L. Dyal and failing to act to prevent Patrick L. Dyal from engaging in financial **abuse**, plaintiffs have suffered damage in the sum of \$15,000. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

FOURTH CLAIM FOR RELIED

Count 1

23 On or about August 5, 2004, plaintiffs loaned to defendants Patrick L. Dyal, Mary E. Dyal, and Dyal Trucking, Inc the sum of \$10,300. Defendants agreed to repay the loan, with interest on the principal at six percent per annum in payments combined with the loan payments due under the loan described in plaintiffs earlier claims for relief. Defendants supplied the plaintiff only with an amortization schedule for repayment of this loan described above, a copy of which is attached to this complaint as Exhibit D.

24 Despite demand, defendants have failed to repay the sums borrowed, the last payment on the loan being made on September 26, 2007.

25 Plaintiffs have suffered economic loss in the sum of \$10,300 due to the failure of the defendants to repay the loan.

Count 2

26 By using undue influence to obtain this unsecured and improperly documented loan and thereafter failing to repay it upon demand, the defendants, Patrick L. Dyal and Mary E. Dyal's actions constituted a wrongful taking and retention of funds of the plaintiffs in violation of the provisions of [ORS 124.110](#).

27 Plaintiffs have suffered economic damage in the sum of \$10,300 as a result of the wrongful taking and retention of funds of the plaintiffs. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

Count 3

28 At all material times, defendant Mary Dyal, knew of, participated in, and permitted the the financial **abuse** described in this claim for relief. As a result of her acting in concert with the defendant Patrick L. Dyal and failing to act to prevent Patrick L. Dyal from engaging in financial **abuse**, plaintiffs have suffered damage in the sum of \$10,300. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

FIFTH CLAIM FOR RELIEF

Count 1

29 Between April 24, 2011 and May 27, 2011, or thereabouts, Patrick L. Dial converted various items of personal property in the form of logging equipment belonging to the plaintiffs by removing it from the property, selling it, and keeping the proceeds for himself.

30 Plaintiffs have been damaged by the above conversion in the sum of \$25,000.

Count 2

31 The above described conversion constituted a wrongful taking of property of a vulnerable person. The economic damage to the plaintiffs as a result of the wrongful taking is \$25000. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to an award of three time the amount of economic damage plus reasonable attorney fees.

Count 3

32 At all material times, defendant Mary Dyal, knew of, participated in, and permitted the the financial **abuse** described in this claim for relief. As a result of her acting in concert with the defendant Patrick L. Dyal and failing to act to prevent Patrick A. Dyal from engaging in the above-described conversion, plaintiffs have suffered damage in the sum of \$25,000. Pursuant to [ORS 124.100\(2\)](#) plaintiffs are entitled to three times the amount of economic damage and reasonable attorney fees.

WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

1. On plaintiffs first claim for relief, judgment against all defendants in the sum of \$50,000, said amount to be tripled pursuant to [ORS 124.100\(2\)\(a\)](#).
2. On plaintiffs second claim for relief, judgment against all defendants in the sum of \$60,000 said amount to be tripled pursuant to [ORS 124.100\(2\)\(a\)](#).
3. On plaintiffs third claim for relief, judgment against defendants Dyal Trucking Inc., Patrick L. Dyal and Mary E. Dyal in the sum of \$15,000, said amount to be tripled pursuant to [ORS 124.100\(2\)\(a\)](#).

4. On plaintiffs fourth claim for relief, judgment against defendants Dyal Trucking Inc., Patrick L. Dyal and Mary E. Dyal in the sum of \$10,300, said amount to be tripled pursuant to [ORS 124.100\(2\)\(a\)](#).

5. On plaintiffs fifth claim for relief, judgment against defendants Patrick A. Dyal and Mary E. Dyal in the sum of \$25,000, said amount to be tripled pursuant to [ORS 124.100\(2\)\(a\)](#).

6. On each claim for relief an award of costs and reasonable attorney fees.

Dated *Aug 2*, 2011.

Billie H. Dyal - Plaintiff

Lois E. Dyal - Plaintiff

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