

2011 WL 2947348 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Washington County

Harold JARNAGAN, Plaintiff,

v.

Timothy S. JARNAGAN and Laurel W. Jarnagan, Husband and Wife, Defendants.

No. C113537CV.
June 29, 2011.

(Elder Abuse - Ors 124.100, et seq.)

Not Subject to Mandatory Arbitration

Complaint

Patricia L. Chor, OSB #92257, Attorney for Plaintiff, Patricia L. Chor, OSB #92257, Attorney at Law, 8655 Sw Citizens Drive, Suite 104, Wilsonville, OR 97070-7694, Phone: (503) 427-0622, Fax: (877) 833-8576, Email: pchor @chorlaw.com.

Plaintiff alleges as follows:

1. Plaintiff, HAROLD JARNAGAN, is a resident of Tigard, Washington County, Oregon.
2. Defendant, TIMOTHY S. JARNAGAN is plaintiff's adult son and only child, and resided, to plaintiff's knowledge and belief, at 7326 SE 27th Avenue, Portland, Multnomah County, Oregon. He may now reside in or near Capitola, California.
3. Defendant, LAUREL W. JARNAGAN, is TIMOTHY S. JARNAGAN'S wife and resided, to plaintiff's knowledge and belief, at 7326 SE 27th Avenue, Portland, Multnomah County, Oregon, until recently. She may now reside in or near Capitola, California.
4. Plaintiff is an 82 year old man, and at all times relevant to this complaint, was over the age of 65.
5. Plaintiff resided in, and was sole owner in fee simple of a home located at 286 Bonefish Court, Aptos, Santa Cruz County, California (hereinafter, "California home"), which he had purchased in August, 1997, for \$90,000, plus \$6,915 in closing costs, A down payment of \$25,750 was apparently paid by defendant Timothy S. Jarnagan.
6. Title to the California home transferred from the sellers to plaintiff at closing in August, 1997. Plaintiff obtained a purchase money mortgage of \$171,000, and proceeded to make all mortgage payments, and to pay all property taxes, maintenance, and other costs of home ownership until sale of the property in March, 2005.
7. In December, 2001, and again in October, 2003, after plaintiff refinanced his home, defendants induced plaintiff to sign deeds transferring the California home to them. Those deeds were never recorded and thus did not appear in county property records. Defendants assured plaintiff that he owned his home and that the only purpose of the deeds transferring the property to Defendants was to allow the home to pass easily to them upon plaintiff's death.

8. In 2004, plaintiff decided to move to the Portland, Oregon area. In October 2004, defendant Timothy S. Jarnagan purchased a home at 9410 SW Brentwood Place, Tigard, Washington County, Oregon (hereinafter “Oregon home”) for \$1172,496 to be plaintiff's residence. The deed was recorded in plaintiff's name and plaintiff believed that he owned the home.

9. Plaintiff's California home was sold for \$575,000 in March, 2005. At the time of sale, plaintiff held title to the California home, according to the deed recorded in the Santa Cruz County property records, as reflected in the title company report. Trusting his son completely, plaintiff requested that the profit of \$410,791, to be paid to defendant Timothy S. Jarnagan. Plaintiff intended and believed that the purchase price of the Oregon home would be deducted from those funds, and the balance safeguarded by his son. Plaintiff believed that he would have full access to and control of the proceeds of the sale. Defendants assured plaintiff that his understanding was correct.

10. On February 22, 2005 defendants induced plaintiff to sign a deed transferring the plaintiff's Oregon home to them. Defendants led plaintiff to believe that the home belonged to him and that the deed would only make the property pass easily to defendants upon his death.

11. In August, 2010, plaintiff became suspicious about his ability to access the proceeds of sale of his California home, and asked defendants for information about the whereabouts of the proceeds. Defendants told him that the funds were safe in an account in defendant Laurel W. Jarnagan's name. Plaintiff then requested transfer of the money to his name. Defendants failed to respond to plaintiff's requests, except to tell plaintiff that certificates of deposit in Laurel Jarnagan's account belonged to plaintiff, although it was in the defendant's name. Defendants refused to transfer the funds into plaintiff's name.

12. Unable to access profits from the sale of his California home, and extremely concerned about his financial security, plaintiff applied for a reverse mortgage on his Oregon home in October, 2010. At that time, he discovered through the loan officer, that the deed of February 22, 2005 transferring his Oregon home to defendants had been recorded on October 18, 2010. Consequently, plaintiff was unable to secure a mortgage on his home. Defendants refused to transfer the property back to plaintiff.

13. After causing a lengthy delay, while leading plaintiff to believe they would make a good faith effort to resolve the issues, defendant Timothy Jarnagan engaged an attorney in this matter and apparently agreed to arbitrate the matter. On June 7, after counsel had tentatively scheduled the arbitration, Timothy Jarnagan refused to participate. His attorney then felt compelled to resign. At that time, plaintiff's attorney was informed for the first time, that defendants live in California, in contradiction to evidence that they live in Portland, Oregon.

14. Plaintiff obtained an **Elder Abuse** Prevention Restraining Order on June 14, 2011, in Washington County Circuit Court, Case No. C112534RO, pursuant to [ORS 124.005, et seq.](#) restraining defendants from transferring, encumbering, or otherwise disposing of plaintiff's Oregon home or money. The order also restrains defendants from contacting plaintiff.

CLAIM FOR RELIEF

Elder Financial **Abuse**: [ORS 124.100](#) and [124.110](#)

15. Plaintiff realleges paragraphs 1 through 14, above.

16. Plaintiff, an **elderly** and vulnerable person, was induced to sign deeds transferring his California home to defendants. Plaintiff trusted defendants when they assured plaintiff that plaintiff was still the owner of the property, and led him to believe that the deeds transferring title to them would only cause transfer of the home to them at plaintiff's death. Since the deeds were never recorded, the property appeared to be in plaintiff's name at all times relevant to this claim.

17. Defendants wrongfully took ownership of the profit from the sale of plaintiffs California home, by leading plaintiff to believe that they would care for the money and make it available to him upon request. Defendants have continuously refused demands made on them to return the funds thus obtained to the plaintiff.

18. Defendants led plaintiff to believe that he had paid for his Tigard home with part of the profit from the sale of his California home, and that he was the sole owner of the property. Defendants wrongfully induced plaintiff to sign a deed transferring his Tigard home to them, leading him to believe that the deed would only pass the property to them at his death.

19. Defendants held plaintiff's funds from the sale of his California home either in an express or a constructive trust for the benefit of plaintiff, and defendants, without good cause, failed to take reasonable steps to make the proceeds of sale of that home available to plaintiff, and acted in bad faith or should have known of the right of plaintiff to have the money or property transferred or otherwise made available to him.

20. As a result of defendants' actions as set forth in paragraphs 15-19, plaintiff has suffered emotional distress, mental suffering, humiliation, severe anxiety, deteriorating health, sleeplessness, inconvenience, mistrust in the intentions of others, and he demands judgment in his favor against each defendant.

21. Pursuant to 124.100(1)(c), plaintiff is entitled to his reasonable attorney fees incurred herein.

Wherefore, plaintiff demands judgment in his favor and against defendants as follows:

- (a) Economic damages in an amount to be determined at trial or \$410,791, whichever amount is greater;
- (b) \$50,000 in non-economic damages;
- (c) Treble damages for economic and non-economic damages;
- (d) Interest at the legal rate on economic and non-economic damages from March 2, 2005 and;
- (e) Reasonable attorney fees incurred by the plaintiff on this claim.
- (f) Such other relief as the court deems just and equitable.

Dated: June, 2011.