

2011 WL 1479670 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

John K. SEELEY, an individual, Plaintiff,
v.
U.S. GOLD & SILVER INVESTMENTS, INC., an Oregon
corporation and Lawrence H. Heim, an individual, Defendants.

No. 110404552.
April 6, 2011.

1. **Elder** Financial **Abuse** (ORS 124.100 et seq.)
2. Breach of Contract
Claim for \$2,901,267.00
Not Subject to Mandatory Arbitration

Complaint

[R. Scott Jerger](#), OSB #02337, Field Jerger LLP, 621 SW Morrison, Suite 1225, Portland, OR 97205, Tel. (503) 228-9115, Fax: (503) 225-0276.

COMES NOW the Plaintiff, John K. Seeley (“Seeley”) who respectfully alleges:

PARTIES

1.

At all material times herein, Plaintiff John K. Seeley was and is a resident of Port Orchard, Washington.

2.

At all times material herein, Defendant U.S. Gold & Silver Investments, Inc. (“US Gold & Silver”) was and is an active Oregon corporation with its principle place of business in Portland, Oregon.

3.

At all times material herein, Defendant Lawrence Heim was an individual residing in Multnomah County.

JURISDICTION

4.

This court has jurisdiction to hear this suit because the claims arise under Oregon state law. This court has personal jurisdiction over Defendants because they are residents of this state.

VENUE

5.

Venue is proper because the acts or omissions complained of took place in Multnomah County.

BACKGROUND FACTS

6.

Seeley is a 96 year old senior citizen living in an assisted living facility in Port Orchard, Washington.

7.

Defendant Lawrence H. Heim (“Heim”) is the president and sole corporate officer and director of Defendant US Gold & Silver. Heim and US Gold & Silver are collectively referred to as the “Defendants.”

8.

At all material times, Heim has dominated and controlled US Gold & Silver for his own benefit. This was at the expense of Seeley.

9.

Heim has failed to adequately capitalize or obtain insurance coverage for US Gold & Silver. This has caused Seeley to have an inadequate remedy against US Gold & Silver.

In January and February 2004, Seeley entered into two “Business Arrangement and Agreements” with Defendants whereby Seeley agreed to loan gold and silver to US Gold & Silver.

10.

Business Arrangement and Agreement #JKS-SILVER-010104 (“Silver Agreement”) was entered into on January 22, 2004 Pursuant to the Agreement, Seeley agreed to loan 61 bags of U.S. 40% silver coins (Kennedy half dollars dated 1965-1970) to Defendants in consideration for interest of 5% per annum (later adjusted to 6% per annum) on the loan valuation of \$87,150.00. The Agreement provided, *inter alia*, that Seeley could take delivery of the coins, plus interest, at the end of the term. The term of the original agreement ended on December 31, 2004, however the Silver Agreement provides that Seeley may extend the Agreement for an additional year.

11.

Business Arrangement and Agreement #JKS-GOLD-010104 (“Gold Agreement”) was entered into on February 5, 2004. Pursuant to the Agreement, Seeley agreed to loan 503 one ounce U.S. Gold Eagle coins to Defendants in consideration for interest of 5% per annum (later adjusted to 6% per annum) on the loan valuation of \$151,001.00. The Agreement provided, *inter alia*, that Seeley could take delivery of the coins, plus interest, at the end of the term. The term of the original agreement ended on December 31, 2004, however the Gold Agreement provides that Seeley may extend the Agreement for an additional year. The Gold and Silver Agreements are collectively referred to as the “Agreements.”

12.

The Gold Agreement was extended by Seeley until March 31, 2010 when it was properly terminated per the terms of the Agreement. On March 21, 2010 (on a letter dated March 10, 2010), Seeley terminated the Agreement in writing and demanded the return of the Gold coins.

13.

The Silver Agreement was extended by the parties until December 31, 2010 when it expired pursuant to its terms. Subsequent to the termination of the Silver Agreement, Seeley demanded the return of the 61 bags of U.S. 40% silver coins.

14.

To date, \$5,229.00 of delinquent interest payments are owed on the Agreements.

FIRST CLAIM FOR RELIEF

(Elder Financial Abuse) ORS 124.100 et seq.

15.

Seeley realleges and incorporates by reference paragraphs 1 through 14, above.

16.

Seeley has performed all obligations under the loan agreements by loaning Defendants the gold and silver coins and all conditions precedent have been performed or have occurred.

17.

On or around March 21, 2010 and February 3, 2011 Seeley delivered a notice to Defendants demanding payment on the Gold and Silver Agreements, respectively. In response to these demands, Defendants delivered 303 of the 503 one ounce Gold coins and did not deliver any of the silver coins.

18.

To date, Defendants have failed to deliver 200 one ounce U.S. Gold Eagle coins and 61 bags of 40% silver Kennedy half dollars. Additionally, Defendants have failed to pay \$5,229.00 of interest per the Agreements.

19.

Defendants have wrongfully taken and appropriated the gold and silver coins and delinquent interest money from an **elderly** person by failing and refusing to return the gold and silver coins and refusing to pay the money owed under the loan agreements.

20.

Defendants have failed to transfer to Seeley the gold and silver coins and the interest money that defendants hold and control in trust for Seeley without good cause, have continued to hold the gold and silver coins and money after written demand for their return.

21.

Defendants have failed to take reasonable steps to make the gold and silver coins and interest money readily available to Seeley.

22.

The ownership and control of the gold and silver coins was acquired by Defendants from Seeley in bad faith, and Defendants knew or should have known of the right of Seeley to have the money and gold and silver coins transferred as requested.

23.

On information and belief, the gold and silver coins are no longer in the possession of Defendants. Today's market rate for U.S. Gold Eagle coins is \$423.80 per ounce equaling \$284,760.00 in economic damages for the loss of the 200 U.S. Gold Eagle coins. The market rate for the silver content in the 40% Silver Kennedy half dollars is \$37.50 per ounce. The total silver content in the 61 bags is 18,056 ounces of silver equaling \$677,100.00 in economic damages for the loss of the silver Kennedy half dollars.

24.

Seeley is entitled to an amount equal to three times economic damages.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

Seeley, for his Second Claim of Relief, alleges as follows:

25.

Seeley realleges and incorporates by reference paragraphs 1 through 24 above.

26.

Defendants materially breached the Agreements by failing and refusing to pay the money owed and return the property under the loan agreements.

27.

89Seeley is entitled to recover interest at the rate of 9% on the Agreements in accordance with [ORS 82.010](#).

28.

WHEREFORE, Seeley requests the following relief:

- a. On his First Claim of Relief, for a judgment against Defendants, in the amount of \$2,901,267.00, together with interest at 9% from December 31, 2010 until paid, his reasonable attorneys fees, and for his costs and disbursements incurred herein;
- b. On his Second Claim of Relief, for a judgment against Defendants in the amount of \$967,089.00 together with interest at 9% from December 31, 2010 until paid and for his costs and disbursements incurred herein; and
- c. For such other and further relief as the court deems just and proper.

Dated this 6th day of April 2011.

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