

Jury: elderly woman deceived into transferring home

Verdicts & Settlements

By Mass. Lawyers Weekly staff
March 29, 2024

Return of House

The plaintiff was an 80-year-old home-bound widow who had lived in her house for more than 50 years. In March 2020, she discovered her only son, who was her care-taker, deceased in his bedroom.

First responders arrived, and due to the poor condition of the home, the town condemned it and she was required to vacate the premises.

The plaintiff eventually moved into a rehabilitation facility in Danvers, where she had no contact with anyone outside the facility. At that time, the plaintiff learned that her only sister was near death and would be entering hospice. The person who informed the plaintiff of her sister's impending death was one of the two co-defendants, who were brother and sister.

The defendant sister then came up with the idea of having the plaintiff transfer her home to the defendants for no money. The defendants would repair and renovate the plaintiff's house in exchange for the promise of letting her live in the home for the rest of her life and pay rent to the defendants.

The home had an assessed value of approximately \$450,000 at the time. The defendant sister told the plaintiff that she and her brother were venture capitalists, that he was a contractor, and that if she didn't give them the house, the plaintiff could lose it in a real estate tax foreclosure, none of which was true.

On July 24, 2020, the defendant sister met with the plaintiff on the outside patio of the rehab facility, presented her with a deed to the property, and asked the



plaintiff to sign the deed over to a limited liability company formed on the same date. It was the first time the plaintiff had seen the defendant sister in approximately 35 years.

The defendant did not explain the deed to the plaintiff, and there was no notary public present. The deed used the plaintiff's former married name from 30 years earlier. It also recited consideration paid of \$100,000, despite the fact that no consideration was ever paid.

The defendant took the signed deed to her longtime close friend, who was a notary. The friend notarized the deed without meeting with or speaking to the plaintiff. The defendant then recorded the deed at the registry the same day.

The co-defendant brother proceeded to clean out the property, make repairs, and pay the previously deferred back taxes. The plaintiff moved back into the property in December 2020. She began paying \$500 a month in rent to the defendant brother.

While the plaintiff was living at the property, both defendants used her ATM debit card and withdrew more than \$13,000 for their own benefit, including large cash withdrawals from ATMs at the Encore casino, payments for real estate taxes, and homeowner's insurance for the home the plaintiff no longer owned.

The defendants also sold her car without telling her.

In early 2022, the co-defendant brother threatened to increase the plaintiff's rent. When she objected, he threatened to sell the property and told the plaintiff that she would need to "make other arrangements." After those threats, the plaintiff complained to an elder services worker, which eventually led to the lawsuit to recover title to the home and the monies converted.

After a five-day trial, the jury found that the defendants had obtained title to the plaintiff's home by fraud and undue influence and were unjustly enriched. The jury answered yes to a special question as to whether the plaintiff should be able to recover title to her home.

The jury also awarded the plaintiff more than \$13,000 in monies that the defendants had converted using her ATM debit card.

Action: Fraud

Injuries alleged: Undue influence, fraud, unjust enrichment

Case name: Benjamin v. Laviska

Court/case no.: Essex Superior Court/No. 2277-cv-00255

Jury and/or judge: Jury/Judge Kathleen McCarthy-Neyman

Demand: Return of house

Highest offer: \$0

Amount: Return of real estate, \$13,000 monies converted

Date: Oct. 18, 2023

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