

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL J. QUILLING, Receiver for
Hammersmith Trust, L.L.C., Hammer-
smith Trust, Ltd., Microfund. L.L.C. and
B. David Gilliland,

Civil Action No. 1:00CV826

Plaintiff,

ANSWER TO COMPLAINT

-vs-

THE WOLCOTT LIFETIME TRUST,
JACK W. HIGGINS, TRUSTEE,
MELODY WOLCOTT GILLILAND,
JEFFREY D. SAXON, JR., OPTION
ONE MORTGAGE CORPORATION,
NORWEST BANK MINNESOTA
(now known as WELLS FARGO BANK
MINNESOTA), and NORTHPOINTE
BANK,

Defendants.

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Aileen M. Leipprandt (P-44651)
Attorneys for Plaintiff
250 Monroe NW (Ste 200)
Grand Rapids MI 49503-2251
(616) 774-8000

Charles E. Damon (P-30648)
Donald F. Oosterhouse (P-18507)
Attorneys for Defendant Melody Wolcott Gilliland
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Grand Rapid MI 49503
(616) 459-8357

NOW COMES Defendant Melody Wolcott Gilliland, by and through her attorneys, Damon,
Oosterhouse & Witte, LLP, and in answer to Plaintiff's Complaint states as follows:

1.

PARTIES, CITIZENSHIP AND SERVICE

1.01 Defendant neither admits nor denies the allegations of paragraph 1.01 being without sufficient information to form a belief and leaves Plaintiff to his proof.

1.02 Admitted. This Defendant points out that the Trustee has attempted to convey property from the trust in violation of the trust provisions and beyond his authority as trustee.

1.03 Admitted.

1.04 - 1.07 Neither admitted nor denied, this Defendant being without sufficient information to form a belief.

2.

***IN PERSONAM* JURISDICTION OVER NONRESIDENT DEFENDANTS
AND *IN REM* JURISDICTION**

2.01 - 2.05 Admitted.

3.

SUBJECT MATTER JURISDICTION AND VENUE

3.01 - 3.04 This Defendant does not contest the jurisdiction nor the venue of this Court.

4.

FACTUAL BACKGROUND

4.01 - 4.05 Defendant neither admits nor denies the allegations of paragraphs 4.01 - 4.05 being without sufficient information to form a belief and leaves Plaintiff to his proofs.

4.06 Defendant denies that the affairs of the Wolcott Trust are controlled by Gilliland, and points out that the trust document controls the trust and gives the Trustee power to deal with matters in the trust limited by the terms of the trust. This Defendant admits the remaining allegations of paragraph 4.06.

4.07 Admitted.

4.08 Denies that the money used by the Wolcott Trust to purchase the property is directly traceable to moneys which Gilliland wrongfully diverted or stole from Hammersmith, Microfund, and the defrauded investors, and points out that this Defendant gave up an interest in property in exchange for the Wolcott Trust being created with this Defendant as one of the beneficiaries. The interest in property which was given up by this Defendant is that given to her as part of the divorce judgment, a copy of which is attached as Exhibit A. This Defendant admits the remaining allegations of paragraph 4.08.

4.09 Denies that the Receiver has been vested with complete jurisdiction and control of the Property commonly known as 9047 Lakeshore Drive, in the Township of Port Sheldon, County of Ottawa, State of Michigan, and denies that the Order referred to gives him the right to possession. As to the other allegations in paragraph 4.09, this Defendant is without sufficient information to form a belief and leaves the Plaintiff to his proofs.

4.10 Admitted as to the preparation and recording of the "Lis Pendens". Denied as to allegations that the property was purchased with funds of defrauded investors. (See explanation in paragraph 4.08).

4.11 Admitted.

4.12 Neither admitted nor denied, this Defendant being without sufficient information to form a belief and leaves the Plaintiff to his proofs.

4.13 Admits that a deed was given by Higgins to Saxon and that a copy of the deed was attached as Exhibit 4. This Defendant admits the recording information of said deed and admits that Saxon has never been in actual physical possession of the property. This Defendant points out that the said deed was invalid as beyond and contrary to the terms of the trust and the power of the trustee. As to the other allegations in paragraph 4.13, Defendant neither admits nor denies, being

without sufficient information to form a belief and leaves Plaintiff to his proofs.

4.14 Admits the allegations of paragraph 4.14, except, with respect to the last sentence, this Defendant points out that any interest which Saxon may have in the property is subject and inferior to the interest of this Defendant, and that the claims of the Receiver are inferior to the claims of this Defendant.

4.15 - 4.20 This Defendant neither admits nor denies the allegations of paragraphs 4.15 - 4.21 because Defendant is without sufficient information to form a belief and leaves Plaintiff to his proofs.

4.21 Admits that Higgins executed a deed to the receiver, but denies that Higgins had the power under the trust to execute that deed and that the receiver knew, or should have known, that the trust did not give Higgins that power.

4.22 Admitted.

4.23 This Defendant admits that her interest in the property is as a beneficiary of the Wolcott Trust, but denies that any interest which she has as a beneficiary of the Wolcott Trust is inferior to the claims of the Receiver. As to other allegations in paragraph 4.23, this Defendant neither admits nor denies such allegations being without sufficient information to form a belief and leaves the Plaintiff to its proofs, except that at least part of the consideration for purchase of the property came from this Defendant, as explained in the answer to paragraph 4.08.

5.

COUNT ONE

(Claim for Declaratory Judgment)

5.01 This Defendant restates the answers to paragraph 4 above the same as if fully set forth herein.

5.02 Admitted.

5.03 This Defendant denies that the Receiver is entitled to a declaratory judgment as requested in subparagraphs A, B, and C.

As to the other allegations in paragraph 5.03, this Defendant neither admits nor denies such allegations, being without sufficient information to form a belief and leaves Plaintiff to his proofs. This Defendant does assert, however, that the interests of all of the persons and entities mentioned in paragraph 5.03, other than Melody Gilliland, are inferior to the interest of Melody Gilliland and the Wolcott Trust.

This Defendant asks the Court to determine that the interest of this Defendant in the property is superior to the interests of all other parties to this action.

5.04 The allegations of paragraph 5.04, as they relate to this Defendant, are denied for the reasons set forth throughout this Answer.

6.

COUNT TWO

(Claim for Conversion)

6.01 This Defendant restates the answers to paragraphs 4 and 5 above the same as if fully set forth herein.

6.02 Denied for the reason such allegation is not correct.

6.03 Admits that the conveyance was wrongful and without authority; denies that the receiver was the wronged party, and points out that this Defendant was the wronged party.

6.04 Admits that the encumbrances were wrongful. Denies that the receiver was the wronged party, and points out that this Defendant was the wronged party.

6.05 The allegations in paragraph 6.05 are not allegations concerning this Defendant, and therefore this Defendant does not respond to those allegations.

7.

COUNT THREE

(Application for Injunctive Relief)

7.01 This Defendant restates the answers to paragraphs 4, 5, and 6 above the same as if fully set forth herein.

7.02 - 7.03 Paragraphs 7.02 - 7.03 are not allegations concerning this Defendant, and therefore this Defendant does not respond to those allegations.

WHEREFORE, this Defendant asks that the Court determine that the interests of the Wolcott Trust, particularly the interest of this Defendant as a beneficiary under this Trust, is superior to any possible claimed interest of any other party to this lawsuit.

AFFIRMATIVE DEFENSE

NOW COMES Defendant, Melody Wolcott Gilliland, and for her affirmative defense states:

1. The Receiver is seeking to recover from Jeffrey D. Saxon, Jr. the proceeds of the Franklin Mortgage loan and the Northpointe Bank loan. (See Counts 2 and 3 of the Complaint.)

2. The above mentioned loans and the proceeds from the loans arose from the property which was in the Wolcott trust.

3. To the extent the Receiver recovers that money from Saxon, and to the extent the mortgages are held invalid, the Receiver has received the benefit of that property and has recovered on his claim that stolen funds were used to purchase the property .

4. To allow the Receiver to recover both the proceeds of those loans in the hands of Saxon and to recover the property would be to allow the Receiver to receive double recovery.

WHEREFORE, if the Receiver otherwise prevails on his claims with respect to the Wolcott

Trust, any claim for recovery on the property should be limited to the value of the property in excess of the amount recovered from Saxon from proceeds of the loans on the property, if any.

CROSS-CLAIM

Defendant Melody Wolcott Gilliland, by and through her attorneys, Damon, Oosterhouse & Witte, LLP, for her Cross-Claim against Defendants Jack W. Higgins, Trustee; Jeffrey D. Saxon, Jr.; Option One Mortgage Corporation; Norwest Bank Minnesota (now known as Wells Fargo Bank Minnesota), and Northpointe Bank says:

1. The Wolcott Trust is a trust established with Defendant/Cross-Plaintiff Melody Wolcott Gilliland as a lifetime beneficiary.
2. The Wolcott Trust contains provisions giving power to the Trustee and limiting the power of the Trustee. One limit on the power of the Trustee is that the Trustee shall take no action to the prejudice of beneficiary Melody Wolcott Gilliland. A copy of the Trust Agreement is attached as Defendant/Cross-Plaintiff Melody Wolcott Gilliland's Exhibit B.
3. Under the terms of the Trust, the Trustee did not have authority to convey the property to Jeffrey D. Saxon, Jr., and did not have the power to convey the property to the Receiver, as those conveyances were done.
4. Since the Trustee was without authority to convey, and since the grantees in the two deeds and all those claiming under Jeffrey D. Saxon, Jr. knew, or should have known, that the Trust did not authorize either conveyance, Jeffrey D. Saxon, Jr. and all those claiming under him by way of mortgage or otherwise have no valid claims.

WHEREFORE, Defendant Melody Wolcott Gilliland asks the Court to issue a Declaratory Judgment that states as follows:

- A. That the Wolcott Trust owns the property in Ottawa County, Michigan, described in paragraph 4.07 of the Complaint.
- B. That Defendant Melody Wolcott Gilliland is the lifetime beneficiary of said trust.
- C. That the conveyances by the Trustee, one to Jeffrey D. Saxon, Jr. and one to the Receiver, were beyond the authority of the Trustee and therefore void; that all interest in the property in the other cross-defendants, which came through Jeffrey D. Saxon, Jr., are void; that the beneficial interest of Melody Wolcott Gilliland is still in place, and that her rights have not been affected by the deeds given by the Trustee beyond the Trustee's authority.

COUNTER-CLAIM

NOW COMES Defendant, Melody Wolcott Gilliland, by her attorneys, Damon, Oosterhouse & Witte, LLP, and for her Counter-Claim against the Plaintiff, Michael J. Quilling, Receiver for Hammersmith Trust, LLC, Hammersmith Trust, Ltd., Microfund, L.L.C. and B. David Gilliland, says:

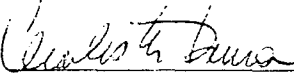
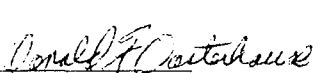
1. That the Receiver obtained a deed from the Trustee of the property as set forth in paragraph 4.21 of the Complaint.
2. That said deed was contrary to the authority of the Trustee under the Trust Agreement and in violation of the Trustee's duties and limitations under the Trust Agreement.
3. That the Receiver knew, or should have known, that the Trustee did not have authority to give the Warranty Deed to the Receiver. The Receiver took advantage of the fact that the Trustee could be bullied into violating his trust responsibility.
4. The deed to the Receiver from the Trust is, therefore, invalid.

WHEREFORE, this Defendant/Counter Complainant asks the Court for a Declaratory Judgment as follows:

- D. That the deed from the Trustee to the Receiver was outside of the authority of the Receiver.
- E. That the Receiver knew, or should have known, that the Trustee did not have authority to give the conveyance to the Receiver.
- F. That the deed to the Receiver is void.
- G. That Melody Wolcott Gilliland's interest as lifetime beneficiary under the Trust is superior to any claim of the Receiver.

Respectfully submitted,

DAMON, OOSTERHOUSE & WITTE, LLP
Attorneys for Defendant Melody Wolcott Gilliland

By  
Charles E. Damon and
Donald F. Oosterhouse