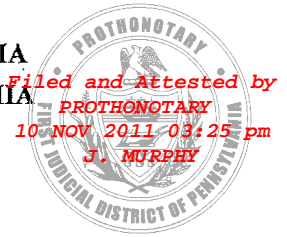


FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA



By: Benjamin D. Geffen
bgeffen@pilcop.org
Pa. Bar No. 310134
Public Interest Law Center of Philadelphia
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
215-627-7100

Attorney for Mark J. Westbrook, Plaintiff

MARK J. WESTBROOK :
2029 North 62nd Street :
Philadelphia, PA 19151 :
Plaintiff, :
vs. :
RICHARD JOHNSON :
6231 West Jefferson Street, Apt. 2 :
Philadelphia, PA 19151 :
Defendant. :

PHILADELPHIA COUNTY
COURT OF COMMON PLEAS
TRIAL DIVISION

November Term, 2011

No. _____

NOTICE TO DEFEND

NOTICE

AVISO

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

Philadelphia Bar Association
Lawyer Referral
and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
(215) 238-6333
TTY (215) 451-6197

Asociacion De Licenciados
De Filadelfia
Servicio De Referencia E
Informacion Legal
One Reading Center
Filadelfia, Pennsylvania 19107
(215) 238-6333
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COURT OF COMMON PLEAS
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No. _____

COMPLAINT
CIVIL ACTION—EQUITY

Plaintiff, by his undersigned counsel, brings this action against Defendant and in support thereof avers as follows:

I. Introduction

1. Plaintiff Mark J. Westbrook (“Plaintiff”) brings this action to recover what he is equitably owed under the laws of Pennsylvania for the sale of his home because Defendant took advantage of Plaintiff’s disabilities.
2. Plaintiff is a citizen of the Commonwealth of Pennsylvania and a resident of Philadelphia County, Pennsylvania. He resides at a group home at 2029 North 62nd Street, Philadelphia, PA, 19151.
3. Plaintiff has intellectual disabilities. His ability to read is very limited.
4. Defendant Richard Johnson (“Defendant”) is a citizen of the Commonwealth of Pennsylvania and a resident of Philadelphia County, Pennsylvania. Defendant lives at 6231 West Jefferson Street, Apt. 2, Philadelphia, PA, 19151.
5. This court has jurisdiction over Plaintiff’s claims pursuant to 42 Pa. Cons. Stat. § 931(a).
6. Venue is proper over Plaintiff’s claims pursuant to Pa. R.C.P. 1006(a), as all of the parties reside in Philadelphia County, and all of the events giving rise to the complaint occurred in Philadelphia County.

II. Facts Applicable to All Claims

7. Before moving to the group home approximately two years ago, Plaintiff lived in a house at 6534 Lebanon Avenue, Philadelphia, PA, 19151. His parents, Walter and Minnie Westbrook, bought the house in 1959 for approximately \$10,500.00. Plaintiff’s father died on October 8, 1968, leaving titled vested in Plaintiff’s mother. Plaintiff’s mother died on September 25, 1984, leaving the house to her two sons, Joseph and Mark. Following Joseph’s death, Plaintiff lived alone in the family home.

The home deteriorated around him, as he was unable to care for it. He had no electricity, heat, or water.

8. Many people in the community know Plaintiff and were aware when the City came to clean out and board up the house in or about April 2010.
9. Defendant lives approximately five blocks from Plaintiff's former house and approximately five blocks from Plaintiff's current group home. On information and belief, he is aware that Plaintiff has intellectual disabilities.
10. In or about April 2010, Defendant approached Plaintiff at his place of work about purchasing his home. Defendant falsely told Plaintiff that he had known Plaintiff's parents. Defendant promised to give Plaintiff money and to buy him clothes in consideration for his home.
11. On information and belief, several weeks after he had first approached Plaintiff, Defendant took Plaintiff in his car to Philadelphia City Hall. Plaintiff and Defendant spent several hours together at City Hall, during which time Defendant visited unknown offices and transacted unknown business.
12. On June 4, 2010, following the trip to City Hall, Defendant and Plaintiff went to a notary public to complete the sale. The notary public's understanding was that Defendant agreed to pay Plaintiff \$5,000.00, but because no money was exchanged in front of her she recorded the transfer as \$1.00. Plaintiff signed an indenture transferring the property to Defendant for \$1.00.
13. Defendant gave Plaintiff \$25.00 in cash immediately following the signing. Plaintiff has not received any additional payments.

14. Plaintiff was unrepresented by a guardian or attorney throughout the process of selling his home. He could not read well enough to understand the documents that he signed.
15. At or before the time of sale to Defendant, \$7,584.00 in back taxes were owed on the property. Defendant caused the back taxes to be repaid. On information and belief, the fair market value of the property at the time of the sale was \$53,315.00.
16. After Plaintiff signed the indenture transferring title to his family home, Defendant made improvements to the property. According to publicly available records, on or about February 11, 2011, Defendant sold the property for \$160,000.00.
17. Defendant has not responded to letters written to him requesting that he pay Plaintiff fair consideration for his home.

III. Claims

First Cause of Action—Fraudulent Misrepresentation

18. Paragraphs 1 through 17 are incorporated by reference as though set forth at length herein.
19. Defendant falsely represented to Plaintiff that he had known Plaintiff's parents to gain his confidence.
20. Defendant falsely represented to Plaintiff that he would provide him with reasonable monetary compensation for the sale of his home.
21. Defendant made these representations with the intent to induce Plaintiff to agree to sell his house to Defendant, despite the fact that Defendant had no intention to provide the promised consideration.

22. Plaintiff justifiably relied upon the promises made by Defendant in agreeing to sell his family property for considerably less than it is worth and as a result has been injured.
23. Defendant induced Plaintiff to agree to sell his house by stating that he would pay him fair consideration, knowing that he had no intention of giving him a reasonable sum.
24. Defendant knew that Plaintiff's intellectual disabilities would prevent him from understanding that Defendant was taking advantage of him. He knew that Plaintiff would not be able to read or understand the contract that he signed.
25. The actions of Defendant in dishonestly representing to Plaintiff that he would give him fair consideration in the form of money and clothing in return for the sale of his home constitute a fraudulent misrepresentation.
26. Although demand has been made, Defendant has failed to pay Plaintiff a reasonable consideration for the sale of his home.
27. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.
28. Plaintiff does not have an adequate remedy at law.

Second Cause of Action—Undue Influence

29. Paragraphs 1 through 28 are incorporated by reference as though set forth at length herein.
30. Defendant used excessive and unfair persuasion in taking advantage of Plaintiff's inability to read and understand the nature of the transfer. As a result of Defendant's

deceit in gaining Plaintiff's trust, and Plaintiff's intellectual disabilities, Plaintiff was justified in assuming that Defendant would not act in a manner inconsistent with his welfare.

31. Plaintiff's unusual susceptibility, combined with the dominant position of Defendant and his use of excessive and unfair persuasion, resulted in a transfer induced by undue influence and is subject to restitution.
32. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.
33. Plaintiff does not have an adequate remedy at law.

Third Cause of Action—Mistake

34. Paragraphs 1 through 33 are incorporated by reference as though set forth at length herein.
35. As a result of his not being able to read the document by which he transferred his property to Defendant, Plaintiff was mistaken as to its contents, and the instrument fails to reflect the terms of the prior agreement between Plaintiff and Defendant.
36. Defendant knew that Plaintiff was mistaken as to the contents of the instrument.
37. Performance of the instrument has resulted in the unjust enrichment of Defendant at the expense of Plaintiff.
38. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.
39. Plaintiff does not have an adequate remedy at law.

Fourth Cause of Action—Unjust Enrichment

40. Paragraphs 1 through 39 are incorporated by reference as though set forth at length herein.
41. The actions of Defendant in offering clothes and money to Plaintiff gave rise to an implied contract that Defendant would pay Plaintiff fair consideration for his home, and it would be unjust if Defendant were not required to pay Plaintiff that fair consideration.
42. Plaintiff conferred a great benefit on the Defendant by giving him title to his home. Defendant clearly appreciated the benefits conferred upon him by Plaintiff, as he was able to sell the property at a large profit. It is inequitable for Defendant to have accepted and retained such benefits without paying Plaintiff fair value for his home.
43. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.
44. Plaintiff does not have an adequate remedy at law.

Fifth Cause of Action—Illegality

45. Paragraphs 1 through 44 are incorporated by reference as though set forth at length herein.
46. The transfer of Plaintiff's property to Defendant for \$1.00 is unenforceable as a matter of public policy. Defendant had an oral agreement with Plaintiff to provide him with reasonable compensation for the sale of his home.

47. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.

48. Plaintiff does not have an adequate remedy at law.

Sixth Cause of Action—Unconscionability

49. Paragraphs 1 through 48 are incorporated by reference as though set forth at length herein.

50. There was a gross inequality in bargaining power between Plaintiff and Defendant. This gross inequality left Plaintiff without a meaningful choice when he accepted the terms Defendant proposed.

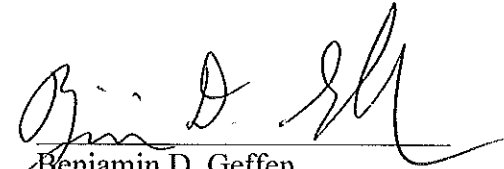
51. The contractual sales price for the home was unreasonably favorable for Defendant.

52. Because Plaintiff has already rendered performance of the agreement, and rescission is not a viable remedy, Defendant is liable in restitution and as a constructive trustee to prevent unjust enrichment.

53. Plaintiff does not have an adequate remedy at law.

WHEREFORE, Plaintiff prays that this Court enter an order against Defendant as follows:

1. Directing that Defendant make restitution to Plaintiff in the amount of Plaintiff's losses, plus interest from June 4, 2010, and costs, including reasonable attorneys' fees;
2. Declaring Defendant to be a constructive trustee of the proceeds of his resale of the property in question;
3. Declaring that Plaintiff may reform and rectify his deed to Defendant dated June 4, 2010, by cancelling the deed as it now stands recorded and executed, and recording in place thereof a similar deed to Defendant, changing the purchase price to \$53,315.00; and
4. Granting such other relief as the Court deems necessary and appropriate.



Benjamin D. Geffen
Attorney for Plaintiff

OF COUNSEL:
Public Interest Law Center of Philadelphia
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia PA 19103
215-627-7100

VERIFICATION

I, Mark Westbrook, hereby state:

1. I am the plaintiff in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Mark Westbrook", is written over a horizontal line.

Mark Westbrook
Plaintiff

DATED: November 10, 2011

ACKNOWLEDGMENT OF VERIFICATION BY ATTORNEY

Commonwealth of Pennsylvania :
County of Philadelphia : ss.
:

On this, the 10th day of November, 2011, before me, LaTrice D. Brooks, the undersigned officer, personally appeared Benjamin D. Geffen, known to me to be a member of the Bar of the Supreme Court of said Commonwealth and a subscribing witness to the within Verification, and certified that he was personally present when Mark Westbrook, whose name is subscribed to the within Verification, executed the same, and that said person acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

LaTrice D. Brooks
NOTARY PUBLIC

Sworn to and subscribed
before me this 10th day
of November, 2011.

LaTrice D. Brooks
Notary Public

