

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

SCOTT GLASCOCK,

Plaintiff,

V.

CIVIL ACTION NO. 98-C-48

ARAM HESSAMI,
FRANCES B. MORGAN,
individually and as Executor
of the Estate of BEVERLY EARL
GLASCOCK, deceased, and
AVANTI LIMITED LIABILITY COMPANY,

Received & Filed in the office of
the Clerk of the Circuit Court of
Jefferson County, WV on 3/5/98
[Signature]
DEPUTY CLERK

Defendants.

COMPLAINT

COMES NOW the Plaintiff, Scott Glascock, and for his complaint against the Defendants named herein, does state upon information and belief as follows:

1. Beverly Earl Glascock, deceased, died as a resident of Jefferson County, West Virginia, on the 11th day of September, 1997.
2. That the subject decedent, Beverly Earl Glascock, was survived by his three children, Scott Glascock, Sally Quinn and Susan Vervaecke.
3. The Plaintiff, Scott Glascock, is a resident of Kentucky and is the natural son of the Deceased.
4. That the Defendant, Aram Hessami, is a resident of Jefferson County, West Virginia, who resides at Route 1 Box 27, Aylmere Farm, Summit Point, West Virginia, 25446, with his spouse, Frances B. Morgan.
5. That the Defendant, Frances B. Morgan, is a licensed attorney whose principal place of business is situate at 655 15th Street N.W., Suite 900, Washington, D.C., 20005; and a resident of Jefferson County with a principle place of residence of Route 1 Box 27, Aylmere Farm, Summit Point, West Virginia, 25446. Frances B. Morgan has qualified to be the Executor of the Estate of Beverly Earl Glascock, deceased, before the Fiduciary Supervisor in the County Commission of

Jefferson County, West Virginia, pursuant to the provision of the purported Will of the Deceased, executed on September 14, 1995, a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by reference.

6. The Defendant, Avanti Limited Liability Company is a West Virginia limited liability company formed June 30, 1996 and does own and operate that restaurant in Charles Town, West Virginia, d/b/a and known as Avanti's.

7. By terms of the said Will purported, the decedent devised all of his property to Defendant, Frances B. Morgan, and did appoint the Defendant, Frances B. Morgan, Executor.

COUNT I

8. The Plaintiff incorporates by reference Paragraphs 1 through 7, inclusive, as if fully set forth in their entirety herein.

9. The Deceased's purported Will does not comply with the requirements of W.Va. Code §41-1-3 and the absence of such requisites, the purported Will of the Deceased dated September 14, 1995 is not recognized by law and not eligible for probate.

10. The Will of the Deceased was exercised in the known presence and vicinity of the Defendant, Frances B. Morgan, and under the coercion, duress and threat of her presence.

COUNT II

(Undue Influence of Attorney)

11. The Plaintiff incorporates by reference Paragraphs 1 through 10, inclusive, as if fully set forth in their entirety herein.

12. The document purported to be the Last Will of the decedent, Beverly Earl Glascock, was made as a direct result of the undue influence exercised by the Defendant, Frances B. Morgan and the document is not and never was the will of the decedent. The Defendants did undue influence the decedent by limiting the persons visiting the decedent, limiting the travel of the decedent, limiting his telephone calls, limiting the decedent's spending, discouraging and prohibiting the decedent independent functioning physically and mentally.

13. The Defendant, Frances B. Morgan, solicited, invited and held a confidential relationship with the Defendant and the same looked upon by the decedent as that of an attorney/client relationship with all trust and confidences normally attenuate thereto. In this

relationship, the Defendant developed a confidential relationship with the decedent such that the decedent reposed trust and confidence in the Defendant up until the time of the Deceased's death.

14. The Defendant took advantage of this trust and confidence so reposed in her and of the knowledge obtained by her from the attorney/client relationship. Through this advantage and knowledge, the Defendant substituted her will for the decedent's and supplanted that of the decedent.

15. During this period, the Defendant was able to and did control and influence the mind and actions of the decedent to such an extent that at the time of the execution of the purported Will, the decedent was not following the dictates of his own Will, but was acting wholly under the influence of the Defendant.

16. The purported Last Will of the decedent was not the free and voluntary act of the decedent since the making and execution of the purported Will was procured by the undue influence of the Defendant.

COUNT III

(Undue Influence of Caretaker)

17. The Plaintiff incorporates by reference Paragraphs 1 through 16, inclusive, as if fully set forth in their entirety herein.

18. The decedent was 66 years old when he allegedly made and executed the Will sought to be probated in the above-entitled action. The purported Will was made and executed on September 14, 1995.

19. At the time of the making and execution of the Deceased's purported Will, the decedent was in ill health and his mental faculties were considerably impaired, in that the Deceased was suffering from Parkinson's disease. The Deceased's physical and mental health had deteriorated rapidly over the months immediately preceding the time of the alleged making and execution of the Deceased's Will and thereafter.

20. Months prior to the time of the alleged making and execution of the decedent's Will, the decedent began to rely heavily on the Defendants to handle most, if not virtually all, of the decedent's affairs, including matters relating to personal maintenance, grocery shopping and the like, and financial matters, such as banking deposits, withdrawals and paying bills.

21. The Defendants did, in fact, obtain the confidence of the decedent and as a proximate result thereof did wrongfully and unduly influence the decedent into executing a General Power of Attorney in favor of the Defendant, Frances B. Morgan, and a Special Power of Attorney in favor of the Defendant, Aram Hessami, such that the Defendants did collectively obtain all of the confidences and the ability to act in all capacities for the decedent.

22. Because of the near total dependence by the decedent on the Defendants to manage virtually all of his affairs, the Defendants had almost unfettered control and influence over the decedent's mind, decisions and actions. This reached a point in the decedent's life where the decedent did whatever the Defendants advised or told him to do, which included the making and execution of the decedent's purported Will of September 14, 1995.

23. The Defendants did conspire to secure and acquire an attorney of the Defendants choosing and previously unknown to the decedent to prepare and execute multiple documents and, by doing so, were able to and did substitute their will and desires for that of the decedent.

24. The Defendants' undue influence did cause substantial and unwarranted changes to be made in the provisions of the decedent's purported Will dated September 14, 1995, compared to the provisions of the decedent's Will dated March 11, 1986, which acknowledged the natural objects of the decedent's bounty, his children.

25. At the time of the making and execution of the purported Will dated September 14, 1995, the decedent was therefore not acting at his own free will, but was simply responding completely to the dictates and influences of the Defendants. As a direct result, the purported Will of the decedent was not the free and voluntary act of the decedent, but was procured by the undue influence of the Defendants.

COUNT IV

(Fraud in the Procurement of a Will)

26. The Plaintiff incorporates by reference Paragraphs 1 through 25, inclusive, as if fully set forth in their entirety herein.

27. The Defendant did fraudulently misrepresent to the decedent, Beverly Earl Glascock, that the Plaintiff, Scott Glascock, Sally Quinn and Susan Vervaecke would be unable and/or willing to care for the decedent; that such statements were false and that the Defendants

knew that such statements were false at the time they were made to the decedent; and that such statements were made with and for the intention to defraud the Plaintiff and others from their testamentary disposition of the Estate of Beverly Earl Glascock.

28. Fraudulent representations were made by the Defendants to the decedent, Beverly Earl Glascock, with the intention of fraudulently depriving the Plaintiff and others of their testamentary devise and bequest; that the Defendants knew said representations were false and that said representations were made with the intention that the decedent change his Will to provide for the Defendants as executors and sole beneficiaries thereof.

29. The decedent relied upon the fraudulent misrepresentations of the Defendant to change his Will to designate the Defendants as the sole beneficiaries thereof. The decedent did further rely upon said fraudulent misrepresentations and undue influence exercised by the Defendants naming as Executor the Defendant, Frances B. Morgan.

COUNT V

(Tortious Interference with Inheritance)

30. The Plaintiff incorporates by reference Paragraphs 1 through 29, inclusive, as if fully set forth in their entirety herein.

31. The Defendants, at all material times hereto, acted for the sole benefit of the Defendants and not for the benefit of the decedent, Beverly Earl Glascock.

32. The Defendants did breach their duty to refrain from acts and conduct which interferes with testamentary dispositions by wrongfully and maliciously arranging for and participating in the execution of the Will of the Deceased, Beverly Earl Glascock, dated September 14, 1995, to insure that the Defendants could act as the decedent's Executor to the exclusion of all others presumably to limit the Defendants' exposure for the fraudulent misrepresentations and acts which had been undertaken against the decedent, including the embezzlement and misuse of the decedent's funds prior to death, by the Defendants, while acting in a Fiduciary capacity under purported Powers of Attorney.

COUNT VI

(Breach of Fiduciary Duties)

33. The Plaintiff incorporates by reference Paragraphs 1 through 32, inclusive, as if fully set forth in their entirety herein.

34. The Defendants wrongfully, and as a direct result of their undue influence, did cause the Deceased, Beverly Earl Glascock, to execute a General Power of Attorney in favor of the Defendant, Frances B. Morgan, on September 14, 1995.

35. The Defendant, Frances B. Morgan, while acting as Attorney-In-Fact, for the decedent, Beverly Earl Glascock, did wrongfully take, convert, embezzle and acquire, by virtue of her being an attorney-in-fact, substantial sums of yet unknown magnitude from the decedent's estate for the sole benefit of the Defendants' personal and business interests, including but not limited to the upkeep, management and maintenance of Aylmere Farm and Avanti's.

36. The Defendant, Frances B. Morgan, did breach fiduciary duties owed to the decedent, by engaging in self-dealing, including but not limited to the following: 1) charging or permitting the charging of the Defendants' gasoline purchases upon the accounts of the decedent; 2) the charging or permitting the charging of multiple meals and overnight accommodations for the Defendants upon the accounts of the decedent; 3) the charging or permitting the charging of materials and hardware goods for the improvement, restoration and upkeep of the Defendants' residence and business venture, Avanti's Restaurant, upon the decedent's accounts; 4) charging or permitting the charging of liquor for the benefit of the Defendants and the Defendants' business venture, Avanti's, upon the decedent's account; 5) charging or permitting the charging of the costs of entertaining the Defendants and the Defendants' guests upon the accounts of the decedent; 6) using or permitting the use of the Deceased's long distance telephone service for purposes of calls for the sole benefit of the Defendants and the Defendants' business ventures and causing the same to be satisfied from the personal accounts of the Deceased; 7) the purchase or permitting the purchase of groceries and diverse household items for the sole benefit of the Defendants through use of the decedent's personal checking account and finances; 8) the payment of persons obtained and employed by the Defendants to perform repairs, maintenance and improvements upon the Defendants' residence and business properties and interest, including Avanti's Restaurant, from

the personal checking account and finances of the decedent; and 9) depleting and utilizing those funds held by the decedent in a joint checking account with the Plaintiff for personal engagement, gain and benefit.

37. The Defendants, Aram Hessami and Avanti Limited Liability Company, did knowingly encourage and benefitted from the above breaches of duty and did tortiously contribute and conspire to wrongfully acquire the assets of the decedent.

38. The Defendant, Frances B. Morgan, did fail to provide to the decedent any accounting for the sums which were wrongfully taken and converted from the decedent's Estate and did knowingly and willfully hide and shelter said spending and self-dealing from the Plaintiff and Deceased.

39. By reason of the acts of the Defendants, this Plaintiff and the Estate of Beverly Earl Glascock, deceased, have sustained damages in the sum as yet unknown to the Plaintiff. Leave of Court will be sought to amend this Complaint to insert the true amount of such damages when the same can be ascertained.

COUNT VII

(Breach of Fiduciary Duties)

40. The Plaintiff incorporates by reference Paragraphs 1 through 39 inclusive, as if fully set forth in their entirety herein.

41. The Defendants, as a result of their undue influence, did wrongfully cause the decedent to execute a Power of Attorney in favor of Aram Hessami on August 17, 1995, for the purpose of causing a refinance of the decedent's primary residence in the amount of One Hundred Seventy Thousand Dollars and No/Cents (\$170,000.00).

42. The Defendant, Aram Hessami, as the decedent's purported attorney-in-fact, did cause the refinance of said residence in the amount of One Hundred Seventy Thousand Dollars and No/Cents (\$170,000.00) for the sole benefit of the Defendants and to the detriment of the Deceased and the decedent's estate.

43. Upon information and belief, the Defendant, Aram Hessami, did wrongfully take, convert, embezzle and acquire proceeds of the said refinance in the amount of One Hundred

Seventy Thousand Dollars and No/Cents (\$170,000.00) and direct the same to the sole benefit of the Defendants and the Defendant, Aram Hessami's, business interest in Avanti's.

COUNT VIII

(Conspiracy and Constructive Trust)

44. The Plaintiff incorporates by reference Paragraphs 1 through 43, inclusive, as if fully set forth in their entirety herein.

45. That the Defendants, while acting as purported attorneys-in-fact, the decedent, Beverly Earl Glascock, did wrongfully take, convert, embezzle and acquire, by virtue of their being attorneys-in-fact, the aforementioned sum of One Hundred Seventy Thousand Dollars and No/Cents (\$170,000.00) and other substantial, diverse and unquantifiable sums from the decedent which the Defendants have used in and about the purchase, upkeep, maintenance and improvement.

46. The Defendant, Avanti's Limited Liability Company is a limited liability company of which Aram Hessami is a member/owner. Said limited liability did conspire to its said remaining Defendants to convert, acquire, and take said monies and did accept and receive said monies known to have been wrongfully taken from the Deceased, including but not limited to the \$170,000.00 immediately set forth above and those sums identified in Paragraph 32 hereof.

47. That the Defendants, Hessami, Morgan and Avanti, have wrongfully and fraudulently converted said proceeds from the Estate of the Deceased, Beverly Earl Glascock, and that the Plaintiff, by virtue of the fact that he claims an interest in the Estate as a proper and rightful beneficiary, is entitled to a constructive trust upon the Defendants' real estate and business, Avanti's.

COUNT IX

(Injunction)

48. The Plaintiff incorporates by reference Paragraphs 1 through 47, inclusive, as if fully set forth in their entirety herein.

49. The Defendants have threatened and still threaten to sell and dispose of the remainder of the decedent's estate and to convert the proceeds thereof to their own exclusive use and benefit under the guise that they are the sole and intended beneficiaries of the Estate.

50. The Plaintiff believes that there is great danger of the Defendants immediate conversion and distribution of the proceeds of the Estate of Beverly Earl Glascock, deceased, to their own exclusive use and benefit.

51. The Defendants, upon information and belief, are experiencing financial difficulty which has continued since 1995 and the Defendants have no unencumbered real estate or other assets which would compensate the Estate for losses caused by the Defendants above-described acts and threatened acts. There is, thus, great danger to the Plaintiff and will be unable to properly administer the Estate of Beverly Earl Glascock, deceased, as a result of depletion. By reason of the foregoing, there is real danger that the Estate will sustain a great loss unless the Defendants are restrained and enjoined from acting as Executor during the pendency hereof and/or from distributing, selling, or disposing of the Estate of Beverly Earl Glascock, deceased, during the pendency hereof.

WHEREFORE, the Plaintiff respectfully prays for the following relief:

- 1) Judgment that the Will of the Deceased, Beverly Earl Glascock, dated September 14, 1995, and admitted to probate, is not the Last Will and Testament of the Deceased, Beverly Earl Glascock, *devisavit vel non*;
- 2) That the Last Will and Testament of the Deceased, Beverly Earl Glascock, dated March 11, 1986, be ordered admitted to probate and administered in accordance therewith;
- 3) That a finding be made that the Will of the Deceased, Beverly Earl Glascock, dated September 14, 1995, was acquired through the undue influence of the Defendants;
- 4) That judgment be entered against the Defendants for an amount equal to those sums wrongfully converted procured, acquired and taken by the Defendants while acting as purported attorneys-in-fact from the Deceased, as the evidence shall establish;
- 5) That the Court decree and impose a constructive trust upon all assets of the Defendants to satisfy the devise and bequest to Plaintiff of that under the decedent's Will of March 11, 1986;
- 6) That a finding be made that the Defendants did fraudulently misrepresent and induce the Deceased, Beverly Earl Glascock, into the execution of that Will dated September 14, 1995;

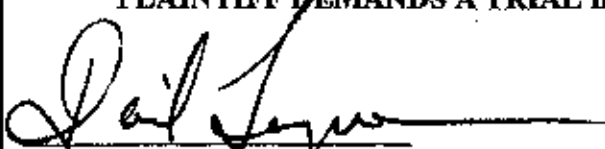
7) That judgment be entered granting to the Plaintiff punitive damages, as the evidence may warrant, together with interest, court costs and attorneys fees.

8) That an Order be entered granting the Plaintiff such other further and general relief that the Court deems just.

JURY DEMAND.

PLAINTIFF DEMANDS A TRIAL BY JURY.

**PLAINTIFF
BY COUNSEL**



Tammy Mitchell Bittorf, Esq.
David Layva, Esq.
McCune, Bittorf & Layva
115 West King Street
Martinsburg, WV 25401

LAST WILL AND TESTAMENT

OF

BEVERLY EARL GLASCOCK

KNOW ALL MEN BY THESE PRESENTS that I, Beverly Earl Glascock, of Jefferson County, West Virginia, being of sound and disposing mind and memory do hereby revoke any and all former Wills and Codicils to Wills by me made, and do make, publish and declare this to be my Last Will and Testament as follows, to-wit:

SECTION I. I direct my Executrix hereinafter named, to pay all of my debts, funeral expenses, costs of administration, death taxes, state or federal, attributable to my estate, reasonable cost of a suitable marker for my grave and the inscription thereof and all other obligations of my estate as soon as shall be practical after my deceased. I direct that these expenses be paid from my residuary estate


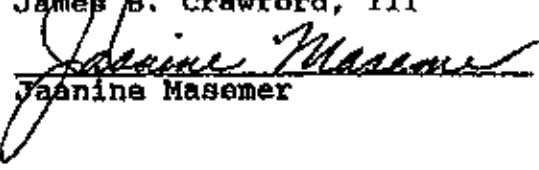
SECTION II. All of the rest, residue and remainder of my estate, of whatsoever kind and character and wheresoever situated, I hereby give, devise and bequeath unto Frances B. Morgan, to be hers absolutely in fee simple.

SECTION III. I hereby nominate and appoint Frances B. Morgan as Executrix of this my Last Will and Testament. I hereby direct that she shall not be required to give surety on her bond.

IN WITNESS WHEREOF, I have hereunto signed my name and set my seal to this my Last Will and Testament, written on three sheets of paper, including this page, and acknowledge the same to be my Last Will and Testament in the presence of the undersigned witnesses, this 14 day of September, 1995.

Beverly Earl Glascock (SEAL)

subscribed our names as witnesses thereon on this 14th day of September, 1995, said testator then being of sound mind and over the age of eighteen years.


James B. Crawford, III

Jaanine Masemer

of Charles Town, West Virginia

of Harpers Ferry, West Virginia

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

Before me, the undersigned authority, this day personally came James B. Crawford, III and Jaanine Masemer, who being first duly sworn, upon their oaths say:


1. That they are the attesting witnesses of the Will of Beverly Earl Glascock, hereto attached, which Will is dated the 14th day of September, 1995; and that at the request of said testator, these affiants make and subscribe this affidavit to be used as evidence upon the proof of said Will when the same is offered for probate.

2. That the said testator, Beverly Earl Glascock, in the presence of these affiants, signed, sealed and acknowledged and annexed the writing as and for, and to be his Last Will and Testament; and that at the same time these affiants each subscribed their names as witnesses to the said Will at the request of the said testator, in the presence of the said testator, and in the presence of each other, all being present at the same time.

That the said testator, Beverly Earl Glascock, at the time of the signing by him of said Will, was, as these affiants verily believe, a resident of Jefferson County, West Virginia, above the age of eighteen years and of sound mind and dispo-

Taken, subscribed and sworn to this 14th day of September,
1995 by James B. Crawford, III and Jaanine Masemer.

Commission expiration date
and seal:



NOTARY PUBLIC



IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

SCOTT GLASCOCK,

Plaintiff,

V.

ARAM HESSAMI,
FRANCES B. MORGAN,
individually and as Executor
of the Estate of BEVERLY EARL
GLASCOCK, deceased,

Defendants.

RECEIVED

MAR 11 2002

JEFFERSON COUNTY
CIRCUIT COURT

CIVIL ACTION NO. 98-C-48

AGREED ORDER OF DISMISSAL

ON THIS 8th day of March 2002, came the Plaintiff, Scott Glascock, by counsel, Tammy Mitchell Bittorf, Esq., and the Defendants, Frances Morgan, individually and as Executor of the Estate of Beverly Earl Glascock, by counsel, James T. Kratovil, Esq.

WHEREUPON, it was represented to the Court that the parties hereto have compromised all disputes arising out of this action and further AGREED to the dismissal of this action pursuant to the terms and conditions set forth in a Settlement Agreement and Release by and between the parties herein.

ACCORDINGLY, it is hereby ADJUDGED and ORDERED that this action be and hereby is DISMISSED with prejudice and it is further ORDERED that the Clerk remove this case from the active docket of this Court and place it among causes ended.

The Clerk is directed to enter the foregoing as and of the date first hereinabove appearing and to forward attested copies to counsel of record, Tammy Mitchell Bittorf, Esq., 1428 Edwin Miller Boulevard, Martinsburg, West Virginia, 25401 and James T. Kratovil, Esq., P.O. Box 337, Charles Town, West Virginia, 25414.

Prepared by:

~~_____~~
Tammy Mitchell Bittorf, Esq., #5779
Counsel for Plaintiff

Reviewed and Approved by:

~~_____~~
James T. Kratovil, Esq., #2103
Counsel for Defendants

Donald C. Hott
The Honorable Donald C. Hott

Entered this 8th day of March 2002.

2 cc
T. Bittorf
J. Kratovil
3-12-02
JK