



Ventura County Clerk and Recorder
Philip J. Schmit
02/26/2008 02:04:10 PM
177311 \$14.00 AR

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, State Bar number, and telephone number):
Recording requested by and return to:
**WILLIAM B. STEINMEYER
STEINMEYER ROTH LLP
280 E. THOUSAND OAKS BLVD., SUITE A
THOUSAND OAKS, CALIF. 91360**

ATTORNEY FOR JUDGMENT CREDITOR ASSIGNEE OF RECORD
SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA
STREET ADDRESS: **3855 F ALAMO STREET**
MAILING ADDRESS:
CITY AND ZIP CODE: **SIMI VALLEY**
BRANCH NAME: **EAST COUNTY**

FOR RECORDER'S USE ONLY

PLAINTIFF: **WOOD**
DEFENDANT: **MCCOMB ET AL** **LIEN NOTICE MAILED**

CASE NUMBER:
SC036168

ABSTRACT OF JUDGMENT—CIVIL AND SMALL CLAIMS Amended

FOR COURT USE ONLY

1. The judgment creditor assignee of record applies for an abstract of judgment and represents the following:
a. Judgment debtor's
Name and last known address
EDDIE B. JAMISON Lien notice mailed to debtor at
2462 NALIN DRIVE address shown. Gov't Code 27297.5
LOS ANGELES, CALIF. 90077
b. Driver's license no. [last 4 digits] and state: Unknown
c. Social security no. [last 4 digits]: Unknown
d. Summons or notice of entry of sister-state judgment was personally served or mailed to (name and address):

2. Information on additional judgment debtors is shown on page 2.
3. Judgment creditor (name and address):
**CRAIG WOOD, PETERSON TRUST, 12032
3RD AVE NE, SEATTLE, WASH 98125**
Date: **2/22/08**
WILLIAM B. STEINMEYER

4. Information on additional judgment creditors is shown on page 2.
5. Original abstract recorded in this county:
a. Date: **5-7-2007**
b. Instrument No.: **20070507-00093207-0 1/5**

(SIGNATURE OF APPLICANT OR ATTORNEY)

(TYPE OR PRINT NAME)

6. Total amount of judgment as entered or last renewed:
\$ 485962.11
7. All judgment creditors and debtors are listed on this abstract.
8. a. Judgment entered on (date): **10-22-06**
b. Renewal entered on (date):
9. This judgment is an installment judgment.

10. An execution lien attachment lien is endorsed on the judgment as follows:
a. Amount: \$
b. In favor of (name and address):



This abstract issued on (date):
FEB 26 2008

11. A stay of enforcement has
a. not been ordered by the court.
b. been ordered by the court effective until (date):
12. a. I certify that this is a true and correct abstract of the judgment entered in this action.
b. A certified copy of the judgment is attached.
Clerk, by **MICHAEL D. PLANET**, Deputy
M. CLEMENT

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VENTURA
SUPERIOR COURT
FILED

MAY 25 2006

MICHAEL D. PLANEY,
Executive Officer and Clerk

BY: _____ Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

CRAIG WOOD, et al.,
Plaintiffs,
vs.
PATRICK McCOMB, et al.
Defendants.

Case No: SC036168

**TENTATIVE STATEMENT OF
DECISION**

This matter came on regularly for court trial on January 24, 2006 in Department 41 of the above-entitled court before the Honorable Frederick H. Bysshe, Judge of the Superior Court. Plaintiff Craig Wood was present with counsel Thomas M. Roth and defendant Eddie B. Jamison was present with counsel Daniel N. Oveck. On March 10, 2006 the court was in receipt of all briefs and ordered the matter to stand submitted. If the statement of decision is requested, plaintiff is ordered to prepare such statement. If the statement of decision is not requested, the tentative decision shall become the statement of decision.

This sad tale began when Mrs. Merle Peterson, an elderly, infirm woman, fell under the influence of defendant Patrick McComb, an apparent charlatan, falsely claiming to be family, who after becoming acquainted, initiated a scheme to drain the resources from this vulnerable, trusting lady. As part of his scheme to take advantage of Mrs. Peterson, defendant McComb persuaded Mrs. Peterson to

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1 borrow \$250,000.00 against her home to help finance his proposed nightclub investment.

2 Defendant Eddie Jamison, a licensed attorney who also represented defendant McComb, was
3 involved in setting up and consummating this loan to Mrs. Peterson. Shortly after the loan proceeds
4 were distributed to defendant McComb, foreclosure proceedings were initiated against the Mrs.
5 Peterson's home when she defaulted on the first payment.

6 Trial in this action, which was brought by the Successor Trustee of Mrs. Peterson's family trust,
7 concerned the question of the liability and damages, if any, of defendant McComb and defendant
8 Jamison, the plaintiff having settled with the other named parties in this action. Since defendant
9 McComb's default has been taken, trial in this action particularly focused on the question of whether
10 defendant Jamison acted as Mrs. Peterson's attorney and what liability and damages flowed from such
11 representation.

12 The court makes the following findings of fact and conclusions of law:

13 **FINDINGS OF FACT**

14 1. Plaintiff is the successor trustee of the Peterson Living Trust, which was settled by Mrs.
15 Peterson and Donald Peterson, husband and wife, on May 4, 1990.

16 2. Defendant Eddie B. Jamison is a licensed California attorney.

17 3. Mrs. Peterson and Donald Peterson enjoyed a marriage of over 50 years. They had one
18 son, Mark Peterson.

19 4. Mrs. Peterson died on November 3, 2002 at the age of 79, shortly after the events leading
20 to this action.

21 5. Donald died in October, 2004, after spending several years suffering from sever
22 Alzheimer's Disease.

23 6. Mrs. Peterson and Donald resided at 1914 Montgomery Road, Thousand Oaks,
24 California. At all times relevant to this action, title to the residence was held by the Peterson Trust.

25 7. In or about May, 2002, the Petersons were involuntarily removed from their residence at
26 1914 Montgomery by Adult Protective Services, and the property was condemned for health and safety
27 reasons. Donald was placed in an Alzheimer's facility where he resided at all times relevant to this
28 action. Mrs. Peterson moved to her son Mark's house.

1 8. Mark died on March 6, 2002.

2 9. A few weeks later, while still grieving the loss of her son, Mrs. Peterson met defendant
3 Patrick McComb, the son of a family friend. Thereafter, over a period of just a few weeks, McComb
4 was able to convince Mrs. Peterson to begin gifting him large sums of money in a series of transactions
5 totaling approximately \$174,000. McComb is a named defendant in this action, but is in default for
6 failure to answer plaintiff's complaint.

7 10. McComb also convinced Mrs. Peterson, in her capacity as trustee of the Peterson Trust,
8 to refinance Donald's and her residence at 1914 Montgomery in order to generate \$250,000 in cash for
9 an alleged nightclub investment. The loan was made by defendant Investment Management Company.
10 The interest rate was 16% per annum, and the loan fees were 6%, resulting in an Annual Percentage
11 Rate of 18.413%. All net loan proceeds were distributed directly to defendant McComb.

12 Mrs. Peterson's loan from Investment Management Company closed in October, 2002. The
13 Annual Percentage Rate of 18.413% for Mrs. Peterson's loan exceeded by more than eight percentage
14 points the 3.250% interest rate for five-year Treasuries in effect on September 15, 2002, the month
15 immediately preceding the month of Mrs. Peterson's loan.

16 11. At the time of the refinancing of the Peterson home, defendant Jamison represented
17 defendant McComb regarding his purported nightclub project.

18 12. Defendant Jamison also performed legal consulting services for Mrs. Peterson in
19 connection with the refinancing needed to fund defendant McComb's proposed nightclub. Those
20 services included meeting with Mrs. Peterson and defendant McComb at his office on two occasions to
21 discuss the financing of the nightclub investment; locating a source for Mrs. Peterson's loan; discussing
22 Mrs. Peterson's loan with prospective lenders; advising Mrs. Peterson as to lenders and selecting the
23 lender; obtaining, completing and providing Mrs. Peterson's loan application; gathering the documents
24 Mrs. Peterson needed to close the loan, including Donald Peterson's private medical information from
25 the Alzheimer's facility, and transmitting them under cover of his attorney letterhead; communicating
26 with the lender and title company; reviewing loan documents; and then attending the loan closing with
27 Mrs. Peterson.

28 13. At no time did defendant Jamison advise Mrs. Peterson or any of the other participants in

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1 the refinancing that he was not acting as Mrs. Peterson's attorney in performing the services listed
2 above.

3 14. Defendant Jamison represented to the lender, Investment Management Company, that he
4 was Mrs. Peterson's attorney.

5 15. Defendant Jamison received a referral fee of \$4000 from Mrs. Peterson's loan proceeds
6 by prior agreement with the lender.

7 16. At no time did defendant Jamison disclose his referral arrangement with the lender or the
8 \$4000 which he received from the lender to Mrs. Peterson.

9 17. Defendant Jamison also received an additional \$10,000 from Mrs. Peterson's loan
10 proceeds as repayment of a loan he had made to defendant McComb.

11 18. Defendant Jamison did not disclose the \$10,000 loan to Mrs. Peterson.

12 19. Defendant Jamison did not provide Mrs. Peterson with any conflict disclosures or
13 waivers relative to the \$4000 referral fee or \$10,000 loan repayment.

14 20. Defendant Jamison did not refer Mrs. Peterson to separate counsel for the refinancing
15 transaction.

16 21. Defendant Jamison did not review the Peterson Trust instrument to confirm Mrs.
17 Peterson's authority to enter into the refinancing transaction on behalf of the Trust.

18 22. Mrs. Peterson could not afford the loan and defaulted on the first payment, causing
19 Investment Management Company to initiate a foreclosure proceeding against her home. This court
20 stayed that proceeding pending the outcome of this action.

21 23. When Mrs. Peterson defaulted, Investment Management contacted defendant Jamison.

22 24. Defendant Jamison took possession of Mrs. Peterson's will on her death, and did not
23 relinquish possession until plaintiff retained separate counsel.

24 25. Defendant Jamison delivered the will to plaintiff's counsel under cover of
25 correspondence on his attorney letterhead stating it was the only work he had done for Mrs. Peterson.

26 26. While in possession of the will, defendant Jamison contacted plaintiff in an attempt to
27 handle the administration of Mrs. Peterson's estate. In doing so, defendant Jamison represented to
28 plaintiff that he was an attorney who had done work for Mrs. Peterson, and that Mrs. Peterson trusted

1 him.

2 27. At the time of the refinancing transaction, defendant Jamison was aware that Mrs.
3 Peterson was elderly and Donald was incompetent.

4 28. Defendant Jamison never advised Mrs. Peterson of the risks of the nightclub investment
5 or refinancing transaction, nor did he refer her to an accountant or financial advisor for advice.

6 29. Defendant Jamison never advised Mrs. Peterson that the refinancing transaction and its
7 terms were inappropriate for her.

8 30. Plaintiff received a net amount of \$131,667.77 from Investment Management as part of a
9 good faith settlement approved by the court, leaving an unrecovered balance of \$118,332.23.

10 CONCLUSIONS OF LAW

11 Before making its ruling regarding its conclusions of law, the court makes the following
12 introductory comments regarding the formation of an attorney-client relationship and the duties of an
13 attorney to his client once that relationship has been formed.

14 First, the relation between attorney and his client is a fiduciary relationship of the very highest
15 character requiring the attorney to put his client's interests before his own and to use reasonable
16 diligence and skill to protect his client from foreseeable financial loss.

17 One of the traditional rolls of an attorney is to consult with clients, to examine the legal and
18 practical consequences of a course of action and then to advise as to a recommended course of action.
19 The depth and scope of an attorney's duty and professional responsibility to a client to a significant
20 degree is dependent on the degree of comprehension and sophistication of the client regarding the matter
21 on which the client is seeking advice and depending upon the attorney. Inversely proportional the less
22 the client is knowledgeable and sophisticated, the greater the duty the attorney has to protect his client.

23 Although an express written contract of employment certainly is preferred, often the attorney-
24 client relationship is informally created. It may even arise from a preliminary consultation by a person
25 seeking advice of an attorney. (See *Miller v. Metzinger* (1979) 91 CA3d 31, 39, 40, 41)

26 If an attorney is consulted concerning an area which he is not qualified, the attorney should
27 either decline the employment and involvement with the client or, with the client's consent, employ
28 competent associate counsel.

1 Before the attorney can receive any benefit from a transaction involving his client, the attorney
2 must show by extrinsic evidence that his client acted with full knowledge of all of the facts connected
3 with the transaction, specifically when the attorney is receiving a benefit.

4 Now, to the specific conclusions of law.

5 1. After reviewing the evidence and applicable law the court concludes that an
6 attorney/client relationship existed between defendant Jamison and Mrs. Peterson with respect to the
7 refinancing transaction. Although there was no written retainer agreement between them, defendant
8 Jamison's conduct in meeting and discussing the loan and nightclub investment with Mrs. Peterson at
9 his law office, recommending prospective lenders for her loan, representing himself to the lender as Mrs.
10 Peterson's attorney, and subsequently performing the services necessary to close the loan created an
11 attorney/client relationship by implication. *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6
12 Cal.3d 176, 181. With defendant Jamison making all of the loan arrangements for her, serving as
13 intermediary between her and the lender and the title company, reviewing loan documents, and
14 accompanying her to the loan closing, (i.e., doing what attorneys for borrowers normally do), Mrs.
15 Peterson had every reason to believe defendant Jamison was protecting her legal interests in the
16 refinancing transaction.

17 2. The court rules that as Mrs. Peterson's attorney, defendant Jamison owed her duties of
18 care and loyalty. The court further rules that he failed to perform those duties to the level of skill and
19 diligence required of California attorneys. Expert evidence in a malpractice suit is conclusive as to the
20 proof of the prevailing standard of skill and learning in the locality, and of the propriety of particular
21 conduct by the attorney in particular instances. *Lysick v. Walcom* (1968) 258 Cal.App.2d 136, 156. In
22 that regard, plaintiff offered the expert testimony of Boyd S. Lemon, Esq., who opined that defendant
23 Jamison breached the standard of care required of California attorneys in the following instances: He
24 failed to give any advice to Mrs. Peterson with respect to the terms of the egregious terms of the loan,
25 the availability of other loans with far better terms, and that paying such an exorbitant interest rate and
26 points to simply get the loan faster was not for her benefit. He failed to give any advice about the risks
27 of the loan that she was undertaking. He failed to conduct any due diligence investigations as to the
28 legitimacy and appropriateness of the nightclub investment. He failed to insure that the funds would

1 actually be used for the nightclub, and that the investment that had a reasonable probability of a return
2 and not a loss of the funds. He made no inquiry into whether Mrs. Peterson could afford to make the
3 payments on the loan. Finally, and perhaps most significantly, he made no inquiry into whether Mrs.
4 Peterson, in her capacity as co-trustee of the Peterson Trust, had the authority to bind the Trust to the
5 refinancing transaction without the consent of Donald as co-trustee. The court finds Mr. Lemon's
6 testimony conclusive as to defendant Jamison's breach of his standard of care.

7 3. Mr. Lemon further opined that defendant Jamison breached his fiduciary duty of loyalty
8 to Mrs. Peterson by simultaneously representing defendant McComb in the refinancing transaction in
9 violation of Rule of Professional Conduct 3-310, subsections (b) and (c), and by obtaining an
10 undisclosed personal financial interest in the transaction in the form of the \$4000 referral fee and
11 \$10,000 loan repayment in violation of both Rule 3-300 and Rule 3-310 (b)(4). The court finds Mr.
12 Lemon's testimony conclusive as to defendant Jamison's breach of his fiduciary duty of loyalty.

13 4. The court rules that the terms of the Peterson Trust clearly did not allow Mrs. Peterson to
14 enter into the refinancing transaction without Donald's consent, which she did not obtain nor did
15 defendants McComb and Jamison obtain such consent.

16 5. In a transactional malpractice case, the plaintiff must show that but for the alleged
17 malpractice, it is more likely than not that plaintiff would have obtained a more favorable result. *Viner*
18 *v. Sweet* (2004) 117 Cal.App.4th 1218, 1224. It is also a corollary rule that the attorney's negligence
19 need not be the sole cause of the damage. *Ishamel v. Millington* (1966) 241 Cal.App.2d 520, 529.
20 Applying these principles to the present case, the court rules it more likely than not that had defendant
21 Jamison either reviewed the Trust instrument, or referred Mrs. Peterson to competent trust counsel for
22 that purpose, he or such separate counsel would have discovered Donald's consent was required, and the
23 refinancing transaction would not have occurred since Donald was incompetent, and the trust expressly
24 prohibited Mrs. Peterson from acting on his behalf.

25 6. The court rules it more likely than not that had defendant Jamison performed his duties to
26 Mrs. Peterson by advising her of the risks of the loan, and its inappropriateness, the refinancing
27 transaction would not have occurred.

28 7. The court rules it more likely than not that had defendant Jamison disclosed his personal

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1 financial incentive to close the loan, and referred Mrs. Peterson to separate counsel as required, the
2 refinancing transaction would not have occurred.

3 8. The court rules defendant Jamison's negligent conduct forced plaintiff to act in the
4 protection of the Peterson's interests by defending Investment Management's foreclosure proceeding
5 against their Montgomery Road home, and pursuing recovery of the \$250,000 refinancing proceeds.
6 Accordingly, plaintiff is entitled to recover, as damages wrongfully caused by defendant Jamison's
7 improper actions, compensation for the reasonably necessary loss of time, attorney fees, and other
8 expenditures thereby suffered or incurred. *Sooy v. Peter* (1990) 220 Cal.App.3d 1305; *Prentice v. North*
9 *Am. Title Guar. Corp.* (1963) 59 C2d 618.

10 9. The court rules plaintiff has established by a preponderance of the evidence that the
11 undisclosed \$4,000 defendant Jamison received from the refinancing transaction was taken and secreted
12 by him for a wrongful purpose in violation of the financial elder abuse provisions of Welf. & Inst. Code
13 15610.30(a)(1).

14 10. Defendant McComb is found to have committed financial elder abuse on Mrs. Peterson
15 and her husband. The court rules plaintiff has established by a preponderance of the evidence that
16 defendant Jamison knowingly aided and abetted defendant McComb's abusive scheme to take and
17 appropriate \$250,000 from Mr. and Mrs. Peterson in violation of the financial elder abuse provisions
18 Welf. & Inst. Code 15610.30(a)(2).

19 11. The court rules plaintiff is entitled to reasonable attorney fees and costs for defendant
20 Jamison's acts of financial elder abuse under Welf. & Inst. Code 15657.5(a).

21 12. The court declines to award punitive damages. Evidence of a defendant's net worth is a
22 prerequisite to a punitive damages award (*Adams v. Murakami* (1991) 54 Cal.3d 105, 109), and there
23 was no evidence offered during the course of trial as to either of the defendant's net worth. A
24 defendant's net worth is important because the purpose of punitive damages is to punish and deter, not
25 to financially destroy the defendant. Therefore, plaintiff is not entitled to punitive damages.


26 IT IS ORDERED AND ADJUDGED THAT:

27 Plaintiff CRAIG WOOD, AN INDIVIDUAL IN HIS CAPACITY AS SUCCESSOR TRUSTEE
28 OF THE PETERSON LIVING TRUST, DATED MAY 4, 1990, PERSONAL REPRESENTATIVE OF

1 THE ESTATE OF MERLE A. PETERSON, AND AGENT FOR DONALD M. PETERSON have and
 2 recover from DEFENDANT PATRICK McCOMB AND DEFENDANT EDDIE B. TAMISON, jointly
 3 and severally the following:

- 4 1. Damages in the sum of \$122,322.23.
- 5 2. Attorney fees and costs according to proof.

6 Dated: May 26, 2006

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 11 FREDERICK H. BYSSHE
 12 Judge of the Superior Court
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

Case No. SC036168

Wood v. McComb

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On

~~MAY 26 2006~~, I served the following document described as:

TENTATIVE STATEMENT OF DECISION

by placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:

Thomas M. Roth
Attorney at Law
280 E. Thousand Oaks Blvd. Suite A
Thousand Oaks, CA 91360

Daniel Noveck
Attorney at Law
11500 West Olympic Blvd., Suite 360
Los Angeles, CA 90064

I am "readily familiar" with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Ventura, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated and executed at Ventura, California on MAY 26 2006

MICHAEL D. PLANET, Superior Court
Executive Officer and Clerk

By: Pam Kessler
Judicial Secretary

DECLARATION OF MAILING