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RESULT: The court granted the defendants' motion for summary judgment and dismissed the case with prejudice.

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## TORTS

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### ELDER ABUSE

Fraud, Breach of Fiduciary Duty

VERDICT: \$234,750.

CASE/NUMBER: Cynthia J. Benkert, Trustee of the Carol R. Wallis Trust, Carol R. Wallis v. Bekki Lynn Davis, Tracy Wood, Stacie Wood, United Realty-Real Estate and Investing Group, UMG Group Inc. / 30200800101329.

COURT/DATE: Orange Superior / July 23, 2009.

JUDGE: Hon. Randell L. Wilkinson.

ATTORNEYS: Plaintiff - Christina L. Geraci, Gregory M. Lee, Anthony F. Geraci (Geraci Law Firm, Irvine).

Defendant - John M. Siciliano (Law Offices of John M. Siciliano, Temecula); Kathleen A. Moreno (Law Office of Kathleen A. Moreno, Long Beach).

FACTS: Carol Wallis was the trustee of a trust that owned the residence in which she had resided for 43 years, at 9022 Regatta Drive in Huntington Beach. In September 2007, it came to the attention of Wallis' granddaughter, Cynthia Benkert, that Wallis, who was then 88 years old, was being abused by her daughter (Benkert's mother). Seeking to remove her mother from the home she shared with Wallis, Benkert requested the assistance of Tracy Wood. Benkert did so by arranging to have Wood evict her mother and remodel the home to make it habitable.

Wood estimated that the cost of the remodel would be around \$30,000. However, Wood later increased that estimate to \$100,000. To pay for the remodel, Wallis borrowed \$140,000, secured by a deed on the residence, from Schouleman Enterprises (Schouleman). The proceeds of the loan went directly to Wood. In order to payoff the \$140,000 loan, Wallis needed to refinance the residence. Wallis, as trustee, "sold" the property to Bekki Davis, Benkert's domestic partner, for \$800,000.

Davis took out a loan to finance the purchase, which was handled by United Realty-Real Estate and Investing Group Inc. (United) and UMG Group Inc. (UMG). The proceeds of the loan were used to pay the existing mortgage on the home (approximately \$200,000), broker and transaction

fees associated with the sale (approximately \$100,000), and the \$140,000 construction loan. This left \$262,000 left over which went to the trust.

After the completion of the sale, Davis threw Benkert out of their home and Wood came to live with Davis. Davis refused to transfer the property back to the trust. Davis, then, cashed a check for \$160,000 from Wallis' account. Wallis and Benkert filed suit against Wood, Davis, United, and UMG for elder abuse, fraud, breach of fiduciary duty, Business & Professions Code violations, and constructive trust.

PLAINTIFFS' CONTENTIONS: The plaintiffs alleged that Davis and Wood had secretly begun a relationship and had used their personal relationship with Wallis to manipulate her to their own economic benefit. They alleged it was Wood who convinced Wallis to obtain the construction loan from Schouleman.

The plaintiffs further alleged that the additional \$40,000 that Wood borrowed was for alleged fees. In fact, the plaintiffs claimed, Wood spent only \$11,000 on the remodeling project. The plaintiffs also claimed that Wood recommended that the property be sold to Davis, for refinancing purposes only, because Davis had better credit and could obtain better refinancing terms. They claimed that Davis assured them she would return the property to the trust after the refinance.

The plaintiffs further alleged that United and UMG claimed unreasonable and fraudulent broker and legal fees, totaling \$83,000, even though neither is a licensed attorney. They alleged that Wood's wife, Stacie Wood, participated in the scheme by notarizing Wallis' signature on the pertinent documents.

The plaintiffs finally alleged that, after the \$262,000 of the refinance was given to Wallis, Davis urged Wallis to give her a blank check. Davis then, they claimed, withdrew \$160,000 from Wallis' bank account.

DEFENDANT'S CONTENTIONS: Davis claimed that, in fact, she had to make a \$160,000 down payment for the purchase of the residence. She further claimed that she had been making \$5,000 monthly payments on the mortgage. Davis alleged that she made these payments while Wallis resided in the home. Wallis, she claimed, refused to pay any rent. Davis claimed that she offered to return the residence to the trust if Wallis

and/or Benkert agreed to purchase it back and repay her the mortgage payments.

DAMAGES: The plaintiffs sought to recover \$800,000 for the price of the home, \$140,000 for the construction loan, \$48,000 for real estate commissions, \$35,000 in legal costs associated with the sale, \$8,270 in additional property taxes, \$160,000 which they allege was stolen, and punitive damages.

RESULT: The jury found that Davis, Wood, United, and UMG were all liable for elder abuse; Wood, United, and UMG were each liable for breach of fiduciary duty and unlawful and deceptive business practices; Wood and UMG were both liable for unlicensed contracting.

The jury ordered Davis to pay \$80,000 in compensatory damages, Wood to pay \$36,000 in compensatory damages and \$25,000 in punitive damages, United to pay \$24,000 in compensatory damages and \$1,000 in punitive damages, and UMG to pay \$68,750 in compensatory damages.

FILING DATE: Jan. 14, 2008.

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## TORTS

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### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Mishandling of Corpses

VERDICT: Defense.

CASE/NUMBER: Judith Flannery, Patrick Flannery, Kelly Flannery, David Flannery v. SCI California Funeral Services Inc. / CV030502.

COURT/DATE: San Joaquin Superior / Sept. 29, 2009.

JUDGE: Hon. Carter P. Holly.

ATTORNEYS: Plaintiff - Charles A. Pacheco, Gil Somera (Pacheco & Somera, Sacramento).

Defendant - John A. Mason (Gurnee & Daniels, LLP, Roseville).

FACTS: Decedent Henry Flannery died on June 10, 2006, survived by four family members, the plaintiffs. The decedent did not leave written instructions as to how he wanted his body disposed of. The plaintiffs had stated that the decedent expressed a wish to be cremated, since he had a fear of burial as a result of his fighting in Vietnam. SCI California Funeral Services Inc. (SCI) made arrangements for the decedent's remains to be cremated and returned to his widow.

On June 16, SCI realized it had mistaken the decedent's remains for another, and had buried the decedent's remains two days earlier by accident. SCI immediately