

VERDICTSEARCH CALIFORNIA

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SANTA CLARA COUNTY

NEGLIGENT MISREPRESENTATION

Breach of Contract — Trusts and Estates

Estate, caregiver and bank disputed decedent's inheritance

VERDICT **\$2,789,658**

ACTUAL **\$976,380**

CASE James Walsh and Michael Wood
as Executors of the Estate of
Laurence Lusk Moore v. Greater
Bank N.A., formerly known as
Bank of Petaluma, No. 1-06-CV-
060061

COURT Superior Court of Santa Clara
County,
San Jose, CA

JUDGE Brian Walsh

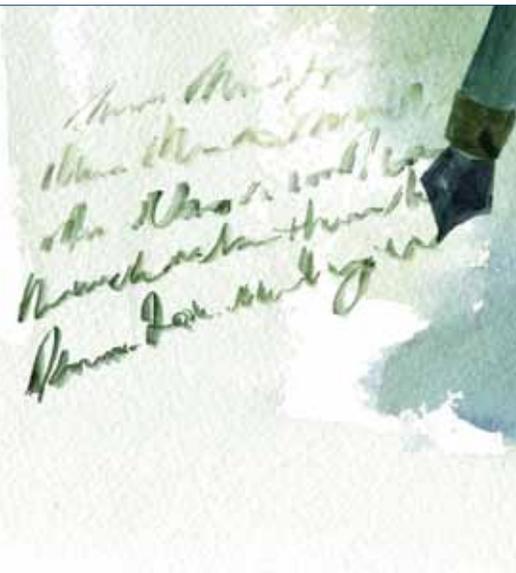
DATE 10/14/2008

PLAINTIFF
ATTORNEY(S) **Shelley A. Kramer**, Freitas,
McCarthy,

MacMahon, & Keating, LLP,
San Rafael, CA

DEFENSE
ATTORNEY(S) **Barbara A. Cray**, Law Offices of
Barbara Cray, Redwood City, CA

FACTS & ALLEGATIONS In March 2003, Laurence
Lusk Moore, 73, a longtime Bank of Petaluma depositor



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who was in bad health, requested that his niece and caregiver, Marsha Moore, be added to his checking account so that she could sign checks for him. Bank personnel construed the request as an instruction to add Marsha as the joint owner of the checking and savings accounts—which included the right of survivorship—and prepared replacement signature cards for that purpose. Because Laurence was too sick to go to the bank, the cards were sent home with Marsha and were signed by Laurence.

On April 1, Marsha returned the cards to the bank, which changed the accounts to joint accounts with no further confirmation.

On April 28, Laurence died, and Marsha claimed ownership of the entire \$9 million on deposit in the checking and savings accounts.

The disputed money was ordered frozen by court order, and the estate and Marsha litigated over the money's ownership. Marsha claimed that Laurence promised to leave her money in his will, but failed to do so.

The estate and Marsha agreed to a settlement pursuant to which Marsha received approximately \$2.3 million, the estate waived recovery of \$281,000 taken by Marsha from the checking account, and the remaining \$6.4 million was paid to the estate.

The estate then sued the Bank of Petaluma, alleging negligence in preparing, handling, and implementing the cards; negligent misrepresentation; and breach of contract for changing account ownership based on cards that Laurence signed inadvertently or by mistake, contrary to his true intentions.

The estate alleged that the language changing ownership was not prominent or easily discovered, that the bank did nothing to highlight important new terms, and that Laurence reasonably relied on the bank to send paperwork for authorized check signer only.

The estate also argued that the cards were signed by Laurence with no observation or explanation by

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bank employees, that Laurence never told anyone of any change in his account ownership or any intention to benefit Marsha, that there were no bank statements showing joint status of accounts, and that if Marsha had obtained the entire amount, it would have bankrupted the estate, defeated bequests to family pursuant to the will, raised taxes, and destroyed Laurence's longstanding trust and estate plans for charity.

The bank argued that most people who ask for others to be added to their accounts intend to add them as joint owners.

The bank also argued that the cards were signed by Laurence, and the bank was entitled to rely upon his signature in changing ownership.

INJURIES/DAMAGES The estate requested \$3.5 million for the amount paid in settlement with Marsha and \$496,000 in costs and attorney fees incurred in related litigation.

The bank demanded a defense verdict.

RESULT The jury found that the bank was partially negligent, but that Laurence was 65 percent at fault and awarded \$2,789,658.08.

After liability apportionment, the estate received \$976,380.33.

Counsel for the estate reported that a refusal of jury instructions concerning a duty of heightened attention to vulnerability of elders might have been critical to the outcome.

DEMAND \$1,950,000 (CCP 998)
OFFER \$125,000

TRIAL DETAILS Trial Length: 16 days
Trial Deliberations: 3 days
Jury Composition: 3 male,
9 female

PLAINTIFF EXPERT(S) **Tom Tarter**, bank policies & procedures, Sherman Oaks, CA

DEFENSE EXPERT(S) **Lloyd Cunningham**, handwriting analysis, Alamo, CA

Jodi Pratt, bank policies & procedures, Aptos, CA

Gail Rickards, bank policies & procedures, Oakland, CA

POST-TRIAL Counsel for the estate moved for a new trial and JNOV.

EDITOR'S NOTE This report is based on information that was provided by lawyers from both sides.

—Joseph Falso