

NO. _____

JESSICA VICKERY

VS

**RONALD KRIST, ROY MEASE
AND RICHARD MORRISON**

§ **IN THE DISTRICT COURT**
§
§
§ _____ **JUDICIAL DISTRICT**
§
§
§
§ **HARRIS COUNTY, TEXAS**

ORIGINAL PETITION

This lawsuit seeks damages and a declaratory judgment to determine whether Plaintiff is obligated to pay a percentage of monthly annuity payments to Defendants.

1. Discovery Level

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

2. Parties

This suit is brought by Jessica Vickery, Plaintiff.

Defendants are Ronald Krist, Roy Mease and Richard Morrison.

Defendant Ronald Krist can be served process at 14 Waterford Oaks Lane, League City, Texas 77565.

Defendant Roy Mease can be served process at 4008 Vista Road, #101A, Pasadena, Texas 77504.

Defendant Richard Morrison can be served process at 45 Woodstone Square, Austin, Texas 78703.

4. Jurisdiction

The amount in controversy is within the jurisdictional limits of this Court.

5. *Venue*

Venue is proper in Harris County pursuant to Tex. Civ. Pract. & Rem. Code Sec. 15.002(a) because: (1) Harris County is the county in which all or a substantial part of the events or omissions giving rise to the claim occurred and (2) Harris County is the county of Defendant, Roy Mease's residence at the time the cause of action accrued. Pursuant to Sec. 15.005, venue is proper in Harris County because venue is proper as to one defendant, therefore the court also has venue of all the defendants in all claims or actions arising out of the same transaction, occurrence, or series of transactions or occurrences.

6. *Background Facts*

6.1 Plaintiff, Jessica Vickery, is the daughter of Glenn Vickery and Helen Vickery. This lawsuit arises from the 1992 divorce of Glenn and Helen Vickery and one of the more extraordinary tales of marital fraud in the history of Texas Courts. Justice Hecht dissented from the Texas Supreme Court's denial of a petition for review in the Vickery case and he summarized the facts of the divorce and subsequent bill of review and fraud lawsuit:

....Mr. Vickery, an attorney, misrepresented to his wife that they needed to divorce to protect their community estate from liability to a former client suing him for malpractice. When Mrs. Vickery balked, her husband enlisted a friend from law school days, Dianne Richards, to initiate divorce proceedings on behalf of Mrs. Vickery but without her consent. Richards also filed an answer and cross-petition for Mr. Vickery. A few weeks later the plaintiff in the malpractice case offered to settle with Mr. Vickery within the limits of his insurance coverage, but he did not disclose that offer to his wife. Instead, he insisted on proceeding with the divorce on the pretext of protecting the community estate and preserving his relationship with Mrs. Vickery and their nine-year-old daughter. Reluctantly acquiescing, Mrs. Vickery agreed to a divorce decree that gave her \$1.1 million (about 7.5%) of the \$14.6 million community estate. The balance of the estate was either given to Mr. Vickery or left undivided (the decree is vague). The couple's principal residence, a ranch where Mrs. Vickery and her daughter were living, was Mr. Vickery's separate property, although the community had a reimbursement claim that was not addressed in the decree. The decree thus did little to accomplish Mr. Vickery's stated purpose in the divorce, to remove community property from the reach of a potential judgment creditor, although Mrs. Vickery may not have realized this at the time. Within six months, Mr. Vickery demanded that Mrs. Vickery agree to a nunc pro tunc decree that included a metes and bounds property description for the residence omitted from the original decree. Mrs. Vickery acceded. The next day Mr. Vickery retained a lawyer to have his former wife evicted from the residence. Shortly after Mrs. Vickery was served with process, Mr. Vickery married one of her best friends.

Realizing at last the depth of her former husband's deception, Mrs. Vickery attempted to negotiate a redivision of their community estate, but without success. Mrs. Vickery then filed the present action for a bill of review setting aside the divorce decree, a different division of the community estate, and actual and punitive damages from Mr. Vickery and attorney Richards. The jury found Mr. Vickery liable for fraud and breach of fiduciary duty and assessed Mrs. Vickery's damages at \$6.7 million for loss of marital property and \$1.3 million mental anguish, plus \$1 million punitive damages. The jury also found that Richards' breach of fiduciary duty caused Mrs. Vickery a \$100,000 loss of marital property and \$350,000 in mental anguish damages. The district court rendered judgment: setting aside the prior divorce decree as having been obtained through fraud extrinsic to the proceeding; dividing the \$14.6 million community estate \$8.5 million (58%) to Mrs. Vickery and \$6.1 million (42%) to Mr. Vickery; awarding Mrs. Vickery \$1.3 million mental anguish damages, \$1.5 million prejudgment interest, and \$1 million punitive damages against Mr. Vickery; and awarding Mrs. Vickery \$350,000 in unspecified damages against Richards. Mrs. Vickery elected to receive the larger share of the estate awarded by the court rather than the \$6.7 million for loss of marital property found by the jury.

Vickery v. Vickery, 999 S.W.2d 342, 343-344 (Tex., 1999)(Justice Hecht dissenting).

6.2 In the Bill of Review/Fraud case, Helen Vickery was represented primarily by three attorneys: Ronald Krist, Roy Mease and Richard Morrison, the Defendants in this lawsuit. Defendants apparently charged Helen Vickery a 45% contingent fee for their legal work in her family law case. **It is not clear if there was a written contract or assignment and apparently Defendants cannot now find a copy of the purported contract.** It is also not clear how much Helen Vickery ended up recovering on her damage award or how much of that recovery was paid to Defendants.

6.3 One marital asset that was awarded to Helen Vickery as a result of the Bill of Review of the divorce was an annuity. The court of appeals decision attached to Justice Hecht's dissent quoted above said this about that particular annuity:

....In her seventh amended petition, Helen sought a partition of undivided assets that were not discussed or divided in the divorce decree. One of these assets was an annuity that paid approximately \$35,000 a month. The monthly check was made payable to both Glenn and Helen. In a 1992 deposition, Glenn stated he was claiming the entire annuity for himself. However, in February 1994, he filed a "Clarification and Supplementation of Deposition Testimony," in which he stated, "I do not have and never have had ownership or control over the annuity itself."

At trial, Glenn's attorney, Raborn, mentioned the annuity in opening argument

and the following exchange occurred:

Ms. Raborn: [Helen] has placed herself in the position she finds herself in. And I'm not saying that it is a bad position at all because I think the evidence is going to show that she is going to have half of the annuity for the rest of her life -- that is, income of \$250,000 for the rest of her life a year [sic].

Mr. Krist [counsel for Helen]: If I may, just for a point of clarification: Is that a judicial admission that Helen is entitled to one-half of the annuity, in open court?

Ms. Raborn: Your Honor, we have had a clarification of the deposition on file for months.

Mr. Krist: I'm asking you if this is a judicial admission.

Ms. Raborn: Absolutely it is. Never been in contest from our standpoint and they know it.

After opening argument, the issue of the annuity again came up when the trial court asked the attorneys for a stipulation regarding whether the annuity was an issue in the case. Raborn told the trial court that because of a "misunderstanding in terms of depositions," Glenn filed a sworn "clarification of the deposition." She reiterated that Helen was entitled to one-half of the annuity. Krist noted that the "clarification" affidavit contradicted Glenn's deposition testimony that he was entitled to all of the annuity, and that he intended "to impeach the dickens out of Glenn Vickery with reference to the position that they're now taking."

Vickery v. Vickery, 999 S.W.2d 342, 350 (Tex., 1999)

6.4 In the Bill of Review, Helen was awarded 100% of the annuity. That annuity now pays \$77,771.88 per month and it increases 3% each year. The annuity was not awarded in the original divorce and it was an undivided asset that the trial court in the Bill of Review/Fraud case had the authority to divide. At the start of trial, as set forth above, Glenn Vickery agreed that Helen Vickery was entitled to 50% of the annuity. The court awarded Helen Vickery 100% of the annuity. However, the attorneys (Defendants) charged Helen Vickery a 45% contingent fee on each monthly payment she received from the annuity. Given that Helen was already going to get 50% of the annuity (because of her ex-husband's stipulation), the attorneys took 45% and so their efforts at best got Helen Vickery 5% more of the annuity than her ex-husband agreed she should receive. The 45% contingent fee charged on the annuity awarded to Helen Vickery was charged in a matter that was 100%

family law, not tort law, as the division of an asset previously not awarded in a divorce is a purely family law matter. Contingent fees are usually not charged in family law matters.

6.5 Defendants, Helen Vickery's former attorneys, were paid by Helen Vickery at least \$6.5 million as 45% of the annuity payments from 1995 through 2017 when Helen Vickery died. Each month when Helen Vickery received her monthly annuity check, she would faithfully mail 45% of each payment to her former lawyers as follows:

Ronald Krist	25%
Richard Morrison	50%
Roy Mease	25%

6.6 Helen Vickery died on December 23, 2017. Plaintiff, Jessica Vickery, was the beneficiary on the annuity contract issued by MetLife, and so Jessica Vickery began to receive monthly annuity payments in January 2018. In December 2017, shortly before Helen Vickery died, Plaintiff and others met with Defendant, Ronald Krist. Krist at that meeting and later phone calls told Jessica Vickery she should make arrangements to pay Defendants 45% of the annuity payments once Jessica Vickery started receiving the payments. Immediately after Helen Vickery died, Ronald Krist and his secretary began to constantly call Jessica Vickery about the imperative need for her to send 45% of the annuity payments to the lawyers. Krist's secretary constantly sent text messages to Jessica Vickery about the annuity payments. Krist had Jessica Vickery drive to his office as part of Krist's efforts to convince MetLife to distribute 45% of the annuity payments directly to the lawyers. Krist also persuaded Jessica Vickery to sign a document for MetLife directing them to not withhold income taxes from the annuity payments and falsely represented that MetLife wanted her to sign the form. Krist attempted to get Jessica Vickery to authorize MetLife to send her total annuity payments directly to Krist and to authorize Krist to pay the lawyers and then send the balance to Jessica Vickery.

6.7 Plaintiff, Jessica Vickery, paid Defendants approximately \$435,776.16 until a lawyer for MetLife questioned whether she owed any part of the annuity payments to the lawyers. Jessica Vickery consulted independent counsel and stopped sending payments to Defendants in January 2019.

6.8 Defendants have written Jessica Vickery and her lawyer demanding that Jessica Vickery continue to pay them 45% of each annuity payment she receives and demanding 45% of payments since January 2019.

7. *Claim for Damages: Fraud*

Defendant, Ronald Krist, on his own behalf and acting as an agent for the other Defendants, made a false and material misrepresentation to Plaintiff which Defendants knew was false. Alternatively, Defendants made the false representation recklessly without knowledge of the truth. The false representation made to Plaintiff was that Plaintiff, as a beneficiary of the annuity, owed 45% of her monthly annuity payments to Defendants. Defendants made the representation with the intent that Plaintiff rely on it. Plaintiff relied on the representation and suffered injury. Plaintiff paid Defendants approximately \$435,776.16 from January 2018 through January 2019 because she believed their representations that she owed them 45% of her monthly payments. Plaintiff seeks judgment for the amount she has paid Defendants and interest. Plaintiff seeks the recovery of these payments made to Defendants:

Ronald Krist	\$108,944.04
Richard Morrison	\$217,888.08
Roy Mease	\$108,944.04

8. *Request for Declaratory Judgment*

Petitioner seeks a declaratory judgment to determine: (1) if Plaintiff owes Defendants 45% of her monthly annuity payments in the past or future; (2) whether the purported contingent fee contract and/or assignment between Helen Vickery and Defendants existed and, if it did, whether the agreement is a valid, enforceable contract binding on Plaintiff, the beneficiary of the annuity; and (3) whether the fees Defendants charged Helen Vickery, including 45% of the monthly annuity payments were legal, reasonable or unconscionable and whether Helen Vickery or the annuity beneficiary (Plaintiff) even owed 45% of any annuity payments to Defendants. Plaintiff demands proof that there ever was a valid, enforceable written contract or assignment between Helen Vickery and Defendants and she contends that any such agreement, if it existed, constituted a breach of fiduciary duty and imposed a fee on the client that was excessive, unreasonable and unconscionable, at least as to the annuity. Plaintiff also contends that any agreement between Helen Vickery and Defendants, even if it existed and was enforceable, is not binding on Plaintiff, who was a child at the time and was a beneficiary of the annuity.

This court is requested to declare the rights, status, and other legal relations of the parties pursuant to Tex. Civ. Pract. & Rem. Code Sec. 37.001 et seq. The justiciable controversy between the parties should be resolved by the court to avoid future disputes. The Court should award Plaintiffs attorney's fees, expert fees and court costs against Defendants pursuant to the Declaratory Judgment Act.

7. *Request for Relief*

Plaintiff requests that citations and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition. Plaintiff requests damages, attorney's fees, expenses, costs, and interest as requested above. Plaintiff requests general relief.

Respectfully submitted,

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Unofficial Copy Office of Marilyn B. Enos, Clerk