Financial Elder Abuse Claim Based on Unauthorized Account Withdrawals Not Allowed to Proceed Against Bank

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One of the categories of cases we report on in this blog are those involving claims of financial elder abuse. The financial elder abuse statute, California Welfare and Institutions Code section 15610.30 et seq., states that financial abuse of an elder "occurs when a person or entity . . . [t]akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both," or assists in doing so. The statute also includes a one-way fee-shifting provision (section 15657.5), which states that in a successful elder financial abuse case the court "shall award to the plaintiff reasonable attorney's fees and costs."

On October 29, 2010, in *Dec. v. E-Loan*, the California Court of Appeal (First Appellate District, Division Two) issued an unpublished decision involving a plaintiff's unsuccessful effort to plead a financial elder abuse claim against Wells Fargo Bank and E-Loan. The facts were simple. A woman alleged that her son established an E-Loan account in her name, transferred into it $40,000 of her money taken from a Wells Fargo account, and then withdrew the money without her consent. She sought recovery of the $40,000 from Wells Fargo, alleging a violation of section 15610.30 et seq.

In upholding the trial court's order sustaining the defendants' demurrer, the Court of Appeal ruled that the case could not go forward on conclusory allegations of defendants' having taken, commingled, concealed, or retained plaintiff's funds. Facts supporting these allegations needed to be alleged, and plaintiff came up empty. Moreover, plaintiff was unable to allege facts showing that defendants acted with an intent to defraud that defendants retained the funds for a "wrongful use." If anything, the decision indicates that those entities which are unknowingly involved in a purported financial elder abuse scheme should not face liability under section 15610.3 et seq.