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FILED  
LOS ANGELES SUPERIOR COURT  
OCT 28 2008  
JOHN A. ... CLERK  
BY DELIA RODRIGUEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

11	DEBORAH BRANDO,	)	Case No. : BC384484
		)	
12	Plaintiff,	)	
		)	
13	vs.	)	
		)	
14	NEIL DEKTER et al.,	)	RULINGS/ORDERS
		)	
15	Defendants.	)	
		)	
16		)	
		)	

18 Defendants' Demurrer to the Third Amended Complaint is  
19 OVERRULED.

20 Defendants' Answer concurrently filed with the Demurrer is  
21 deemed filed and served this day.

22 Court sets a case management conference for  
23 12.3, 2008, 8:45 a.m., Dept. 28. All counsel are  
24 ordered to appear and to file case management statements five  
25 court days before the hearing.

1 Deborah Brando ("Plaintiff") commenced action against Neil  
2 Dekter, Morris M. Medavoy, Larry J. Dressler, and Avra Douglas  
3 ("Defendants"). Plaintiff's third amended complaint ("TAC")  
4 alleges causes of action for: (1) professional negligence; (2)  
5 fraud and deceit, conspiracy; (3) accounting; (4) constructive  
6 trust/loss of consortium; and (5) declaratory relief. Plaintiff  
7 alleges that she is the assignee of the rights of Christian  
8 Brando, her former husband, in the Marlon Brando Trust and  
9 Estate. Plaintiff alleges that a forged codicil to Marlon  
10 Brando's will caused her injury and that Defendants as trustees  
11 and executors knew about and concealed the forgery.  
12

13 This Court previously sustained Defendants' demurrer to the  
14 first, second, and fourth causes of action, with leave to amend.

15 Defendants' demurrer to the first, second, and fourth  
16 causes of action. Defendants argue that Plaintiff fails to  
17 state sufficient facts because the cause of action for  
18 negligence fails to plead causation; the cause of action for  
19 fraud is not pled with sufficient specificity; and the cause of  
20 action for constructive trust fails to identify any property  
21 that should be the subject of the trust. Defendants ask that  
22 the demurrer to these causes of action be sustained without  
23 leave to amend because Plaintiff has been afforded an ample  
24 opportunity to plead these causes of action, yet has failed to  
25 do so.

1 Plaintiff's opposition argues that the complaint  
2 sufficiently alleges all causes of action and that the demurrer  
3 is without merit.

4 A. Applicable Law - Demurrer

5 A demurrer for sufficiency tests whether the complaint  
6 states a cause of action. Hahn v. Mirda (2007) 147 Cal.App.4th  
7 740, 747. When considering demurrers, courts read the  
8 allegations liberally and in context. Taylor v. City of Los  
9 Angeles Dept. of Water and Power (2006) 144 Cal.App.4th 1216,  
10 1228. In a demurrer proceeding, the defects must be apparent on  
11 the face of the pleading or via proper judicial notice.

12 Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4<sup>th</sup> 968, 994;  
13 Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2006)  
14 ¶7:8. The function of a demurrer is to test the legal  
15 sufficiency of a complaint, but not the truthfulness of the  
16 allegations. Donabedian v. Mercury Ins. Co. (2004) 116  
17 Cal.App.4<sup>th</sup> 968, 994.

18 B. Professional Negligence

19 Defendants argue the TAC fails to allege sufficient facts  
20 showing that Neil Dekter's purported negligence proximately  
21 caused Plaintiff injury. The TAC alleges that Neil Dekter, a  
22 notary, breached his professional duty by notarizing instruments  
23 whose signatures he had not witnessed. TAC, ¶ 13. Plaintiff  
24 has added allegations that were absent from the SAC. For  
25

1 example, Plaintiff newly alleges that: "Plaintiff did, in fact,  
2 rely upon Defendant's notarization of said amendment to the  
3 trust, and the codicil." TAC, ¶ 11. Both the SAC and the TAC  
4 allege that Plaintiff was injured by the forged will because she  
5 vacated real property and settled her legal dispute with  
6 Christian Brando. Id. The newly added allegation creates a  
7 causal connection between the Dekter's conduct and the injury  
8 alleged, e.g. that Plaintiff would not have relied on the will  
9 had it not been notarized. Thus, the allegations made are  
10 sufficient to withstand demurrer.

11  
12 C. Fraud and Deceit

13 The elements of a cause of action for fraud are: (1)  
14 misrepresentation; (2) knowledge of falsity (or "scienter"); (3)  
15 intent to defraud (induce reliance); (4) justifiable reliance;  
16 and, (5) resulting damage. Charnay v. Cobert (2006) 145  
17 Cal.App.4<sup>th</sup> 170, 184; Small v. Fritz Companies, Inc. (2003) 30  
18 Cal. 4th 167, 173. Fraud must be pled with specificity. See  
19 Cadlo v. Owens-Illinois, Inc., 125 Cal.App.4<sup>th</sup> 513, 519 (2004).

20 The TAC alleges that Defendants made misrepresentations  
21 intended to prevent Plaintiff from discovering the alleged  
22 forgery. When pleading a cause of action for fraud, the  
23 complaint should set forth facts showing "how, when, where, to  
24 whom, and by what means the representations were tendered."

25 Lazar v. Sup. Ct., (1996) 12 Cal.4<sup>th</sup> 631, 645. The Court

1 previously sustained Defendants' demurrer to this cause of  
2 action because it was not pled with sufficient particularity.

3 Plaintiff's TAC newly alleges:

4 Plaintiff is not apprised of the facts  
5 involving said Fraud, as are defendants, but  
6 is informed and believes: 1) who - each of  
7 the defendants 2) what - conspired in  
8 forging the signature of Marlon Brando, and  
9 concealing the fact of the forgery 3) when -  
10 just prior to the death of Marlon Brando 4)  
11 where - at Marlon Brando's estate on  
12 Mulholland Drive 5) why - to be able to  
13 control a multi-million dollar estate, and  
14 to profit therefrom (TAC, ¶ 15).

15  
16 Although these newly alleged facts are somewhat vague, they  
17 address this Court's concerns by providing more details to  
18 apprise Defendants of the allegations against them.

19 D. Constructive Trust

20 The elements for a cause of action for constructive trust  
21 are: (1) wrongful act (underlying claim incorporated into the  
22 cause of action); (2) specific, identifiable property or  
23 property interest, or excuse for inability to describe it; (3)  
24 plaintiff's right to the property; and (4) defendant has title  
25 thereto. Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 76;

1 Dabney v. Philleo (1951) 38 Cal.2d 60, 68; Michaelian v. State  
2 Comp. Ins. Fund (1996) 50 Cal. App. 4th 1093, 1114; Douglas v.  
3 Sup. Ct. (1989) 215 Cal.App.3d 155, 160; Signal Hill Aviation  
4 Co. v. Stroppe (1979) 96 Cal.App.3d 627, 638-39; Weiss v. Marcus  
5 (1975) 51 Cal.App.3d 590, 600; Civil Code § 2224; 5 Witkin,  
6 Cal. Pro. (4<sup>th</sup> ed. 1997) Pleadings §796. But see PCO, Inc. v.  
7 Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP  
8 (2007) \_ Cal.App.4th \_, \_, 2007 WL 1241095, \*8.(constructive  
9 trust is a remedy); Glue-Fold, Inc. v. Slautterback Corp. (2000)  
10 82 Cal. App. 4th 1018, 1023 (constructive trust is a remedy);  
11 Embarcadero Mun. Improvement Dist. v. County of Santa Barbara  
12 (2001) 88 Cal.App.4<sup>th</sup> 781, 793; Stansfield v. Starky (1990) 220  
13 Cal.App.3d 59, 76; 4 Witkin, Cal. Pro. (4<sup>th</sup> ed. 1997) Pleading  
14 §796.  
15

16 Defendants argue that the TAC fails to identify the  
17 property over which Plaintiff seeks imposition of a constructive  
18 trust because the complaint only alleges that Plaintiff is  
19 entitled to certain amounts of money. Defendants argue that a  
20 constructive trust is not an appropriate remedy for the recovery  
21 of money. "To create a constructive trust, there must be a res,  
22 an 'identifiable kind of property or entitlement in defendant's  
23 hands.' The United States Supreme Court recently said that a  
24 constructive trust requires 'money or property identified as  
25 belonging in good conscience to the plaintiff [which can]

1 clearly be traced to particular funds or property in the  
2 defendant's possession.' Korea Supply Co. v. Lockheed Martin  
3 Corp. (2003) 29 Cal. 4th 1134, 1150 (citations omitted).

4 Further, this Court's primary justification for previously  
5 sustaining the demurrer to this cause of action was that the  
6 cause of action for fraud had not been sufficiently pled.  
7 Because the fraud cause of action is sufficiently pled, so too  
8 is this one.

9 Based upon the foregoing, the court orders that:

10 1) Defendants' Demurrer to Third Amended Complaint is  
11 overruled.

12 2) Defendants' Answer concurrently filed with the Demurrer  
13 is deemed filed and served this day.

14 3) Court sets a case management conference for  
15 \_\_\_\_\_, 2008, 8:45 a.m., Dept. 28. All counsel are  
16 ordered to appear and to file case management statements five  
17 court days before the hearing.

18 MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

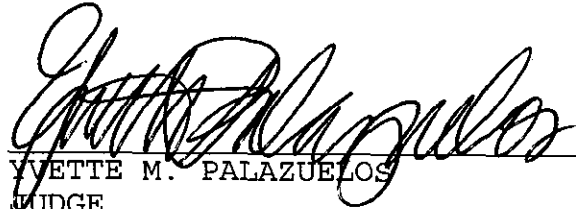
19 NON-COMPLIANCE WITH ANY ORDER HEREIN SHALL EXPOSE THE NON-  
20 COMPLIANT PARTY AND/OR COUNSEL TO ANY AND ALL SANCTIONS  
21 AUTHORIZED BY LAW.

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IT IS SO ORDERED.

DATED: October 28, 2008

  
YVETTE M. PALAZUELOS  
JUDGE

REC-2008-10-28-14