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FILED
LOS ANGELES SUPERIOR COURT

AUG 18 2008

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Paul Sanchez
BY PAUL SANCHEZ, DEPUTY

Attorneys for Defendants
NEIL DEKTER, MORRIS M.
MEDAVOY, LARRY J. DRESSLER
and AVRA DOUGLAS

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 DEBORAH BRANDO, an individual,

13 Plaintiff,

14 vs.

15 NEIL DEKTER, MORRIS M. MEDAVOY,
16 LARRY J. DRESSLER, AVRA DOUGLAS,
17 and DOES 1 to 10, inclusive,

18 Defendants.

Case No. BC384484

**NOTICE OF RULING/ORDER RE
DEFENDANTS' DEMURRERS TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Hon. Yvette M. Palazuelos, Presiding
Hearing Location: Department 28
Hearing Date: August 18, 2008
Hearing Time: 8:45 a.m.

Original Complaint Filed: January 28, 2008

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

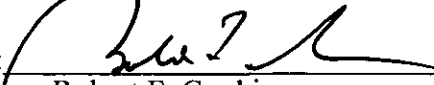
1 TO THE PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 2, 2008, the Court issued a tentative ruling/order
3 (attached hereto as Exhibit A) with respect to Defendants' Demurrers ("Demurrers") to
4 Plaintiff's Second Amended Complaint ("SAC"). The hearing on the Demurrers that was
5 originally calendared for July 2, 2008, was continued to August 18, 2008, at 8:45. At that time,
6 the Court heard additional argument from the Parties and ruled that the July 2, 2008, tentative
7 ruling/order would be the final order of the Court.

8 In the August 8, 2008, final order the Court SUSTAINED the Demurrers to the SAC as to
9 the First Cause of Action for Professional Negligence, the Second Cause of Action for Fraud and
10 Deceit, and the Fourth Cause of Action for a Constructive Trust, all with 20 days leave to amend.
11 The Court OVERRULED Defendants' Demurrers to the SAC as to the Third Cause of Action for
12 an Accounting and the Fifth Cause of Action for Declaratory Relief. Additionally, the Court set a
13 Case Management Conference in the above referenced matter for October 27, 2008 at 8:45 a.m.

14
15 DATED: August 18, 2008

16 WINSTON & STRAWN LLP

17 By: 

18 Robert F. Gookin
19 Attorney for Defendants
20 NEIL DEKTER, MORRIS M.
21 MEDAVOY, LARRY J. DRESSLER
22 and AVRA DOUGLAS
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEBORAH BRANDO,)	Case No.: BC384484
)	
Plaintiff,)	[TENTATIVE]
)	
vs.)	
)	
NEIL DEKTER et al.,)	RULINGS/ORDERS
)	
Defendants.)	
)	
)	

Defendants' Demurrer to Second Amended Complaint (SAC) is SUSTAINED in part and OVERRULED in part, with 20 days leave to amend.

Defendants' Demurrer to SAC is SUSTAINED as to the first, second and fourth causes of action, with 20 days leave to amend, and OVERRULED as to the third and fifth causes of action (accounting and declaratory relief).

EXIT A ✓

1 Defendants' request for judicial notice of the Decree of
2 Annulment of Marriage is GRANTED.

3 Defendants' Motion to Strike is DENIED.

4 Court sets an OSC re: filing of third amended complaint
5 and case management conference for _____,
6 2008, 8: 45 a.m., Dept. 28. All counsel are ordered to appear.

7 I.

8 INTRODUCTION

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

21 Defendants demur to all causes of action. Defendants argue
22 that Plaintiff lacks standing for the first, third, fourth, and
23 fifth causes of action. Further, Defendants argue that
24 Plaintiff fails to state sufficient facts for the remaining
25 causes of action. Defendants argue that Christian Brando was

1 not a beneficiary of the Estate and that his interest in the
2 Trust terminated upon his death. Further, Defendants argue that
3 the probate court previously determined that Plaintiff lacked
4 standing regarding the will. (Referring to case number
5 BP086759.)

6 Further, Defendants seek to strike various portions of the
7 SAC, particularly those allegations related to the claim for
8 loss of consortium and Plaintiff's prayer for injunctive relief.
9

10 Plaintiff argues that sufficient facts have been pled and
11 that she has standing because she stands in Christian Brando's
12 shoes as assignee to his rights under the will and the trust.
13 Plaintiff argues that the probate court's ruling has no res
14 judicata effect because that case involved different parties and
15 different facts.

16 Plaintiff argues that her claim for loss of consortium is
17 proper because the law of Nevada should be applied and the
18 marriage, even though annulled, was not void ab initio.

19 II.

20 DISCUSSION

21 A. Demurrer

22 A demurrer for sufficiency tests whether the complaint
23 states a cause of action. Hahn v. Mirda (2007) 147 Cal.App.4th
24 740, 747. When considering demurrers, courts read the
25 allegations liberally and in context. Taylor v. City of Los

1 Angeles Dept. of Water and Power (2006) 144 Cal.App.4th 1216,
2 1228. In a demurrer proceeding, the defects must be apparent on
3 the face of the pleading or via proper judicial notice.

4 Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994;
5 Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2006)

6 ¶7:8. The function of a demurrer is to test the legal
7 sufficiency of a complaint but not the truthfulness of the
8 allegations. Donabedian v. Mercury Ins. Co. (2004) 116
9 Cal.App.4th 968, 994.

10
11 1. Standing

12 A complaint filed by a party who lacks standing is subject
13 to demurrer. Cloud v. Northrop Grumman Corp., 67 Cal. App. 4th
14 995, 1004 (Cal. Ct. App. 1998). The rationale for such a
15 demurrer is that the party named as plaintiff is not the real
16 party in interest and there is a defect or misjoinder of
17 parties. Code Civ. Proc. § 430.10 (d).

18 In this case, although Plaintiff does not purport to be a
19 beneficiary of the trust or will, Plaintiff alleges that
20 "Plaintiff is the assignee of the rights and claims of Christian
21 Brando, her ex-spouse, in the estate and trust of Marlon Brando,
22 pursuant to a confidential court executed between her and
23 Christian Brando." SAC, ¶ 6.

24 Defendants allege that Christian Brando was not a
25 beneficiary to the estate and that his interest in the trust

1 terminated upon his death. However, no copy of the will or
2 trust documents are appended to the SAC and all allegations in
3 the complaint are to be treated as true. Thus, from the face of
4 the complaint, Plaintiff has standing to bring her claims.

5 2. Professional Negligence

6 Defendants argue the SAC fails to allege sufficient facts
7 showing that Neil Dekter owed Plaintiff a duty of care or that
8 his alleged negligence proximately caused her injury. The SAC
9 alleges that Neil Dekter, a notary, breached his professional
10 duty by notarizing instruments whose signatures he had not
11 witnessed. SAC, ¶ 12. However, Plaintiff has not indicated how
12 this conduct caused her injury. Therefore, the demurrer is
13 sustained, with 20 days leave to amend.
14

15 3. Fraud and Deceit

16 The elements of a cause of action for fraud are: (1)
17 misrepresentation; (2) knowledge of falsity (or "scienter"); (3)
18 intent to defraud (induce reliance); (4) justifiable reliance;
19 and, (5) resulting damage. Charnay v. Cobert (2006) 145
20 Cal.App.4th 170, 184; Small v. Fritz Companies, Inc. (2003) 30
21 Cal. 4th 167, 173. Fraud must be pled with specificity. Cadlo
22 v. Owens-Illinois, Inc., 125 Cal.App.4th 513, 519 (2004).
23

24 The SAC alleges that Defendants made misrepresentations
25 intended to prevent Plaintiff from discovering the alleged
forgery. When pleading a cause of action for fraud, the

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1 complaint should set forth facts showing "how, when, where, to
2 whom, and by what means the representations were tendered."
3 Lazar v. Sup. Ct., (1996) 12 Cal.4th 631, 645. In this case, the
4 SAC sets forth no specific facts indicating the nature and
5 content of the alleged misrepresentations.

6 Defendants also argue that this cause of action is barred
7 by the probate court's ruling that the statute of limitations
8 barred her claims for fraud under the probate code. However,
9 the probate court determined that her claim for revocation of
10 probate was time barred. Therefore, there is no *res judicata*
11 effect on her present claim for fraud.
12

13 Nevertheless, the demurrer to this cause of action is
14 sustained, with 20 days leave to amend, for failure to plead
15 fraud with specificity.

16 4. Accounting

17 Defendants argue that the cause of action for accounting is
18 uncertain. However, demurrers for uncertainty are strictly
19 construed because discovery can be used for clarification and
20 apply where defendants cannot reasonably determine what issues
21 or claims are stated. Khoury v. Maly's of Cal., Inc. (1993) 14
22 Cal.App.4th 612, 616; Weil & Brown, Civ. Pro. Before Trial (The
23 Rutter Group 2006) ¶7:85. Here, the SAC sets forth sufficient
24 facts to place Defendants on notice.
25

1 Further, for the reasons outlined above, the SAC alleges
 2 sufficient facts to establish that Plaintiff has standing to
 3 bring this cause of action.

4 Therefore, the demurrer to this cause of action is
 5 overruled.

6 5. Constructive Trust

7 The elements for a cause of action for constructive trust
 8 are: (1) wrongful act (underlying claim incorporated into the
 9 cause of action); (2) specific, identifiable property or
 10 property interest, or excuse for inability to describe it; (3)
 11 plaintiff's right to the property; and (4) defendant has title
 12 thereto. Stansfield v. Starkey (1990) 220 Cal.App.3d 59, 76;
 13 Dabney v. Philleo (1951) 38 Cal.2d 60, 68; Michaelian v. State
 14 Comp. Ins. Fund (1996) 50 Cal. App. 4th 1093, 1114; Douglas v.
 15 Sup. Ct. (1989) 215 Cal.App.3d 155, 160; Signal Hill Aviation
 16 Co. v. Stroppe (1979) 96 Cal.App.3d 627, 638-39; Weiss v. Marcus
 17 (1975) 51 Cal.App.3d 590, 600; Civil Code § 2224; 5 Witkin, Cal.
 18 Pro. (4th ed. 1997) Pleadings §796. But see PCO, Inc. v.
 19 Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP
 20 (2007) _ Cal.App.4th _, _, 2007 WL 1241095, *8. (constructive
 21 trust is a remedy); Glue-Fold, Inc. v. Slutterback Corp. (2000)
 22 82 Cal. App. 4th 1018, 1023 (constructive trust is a remedy);
 23 Embarcadero Mun. Improvement Dist. v. County of Santa Barbara
 24 (2001) 88 Cal.App.4th 781, 793; Stansfield v. Starky (1990) 220
 25

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1 Cal.App.3d 59, 76; 4 Witkin, Cal. Pro. (4th ed. 1997) Pleading
2 §796.

3 In this case, the SAC fails to indentify the property over
4 which she seeks imposition of a constructive trust. Further, as
5 the demurrer to her cause of action for fraud has been sustained
6 and because constructive trust is a remedy sought in connection
7 with that fraud, the demurrer to this cause of action is
8 sustained as well, with 20 days leave to amend.

9
10 6. Declaratory Relief

11 Defendants argue that Plaintiff lacks standing, and that
12 she has not sufficiently alleged the existence of an actual
13 controversy. For the reasons outlined above, Plaintiff has
14 standing to assert this claim.

15 Defendants argue that the SAC fails to adequately allege an
16 actual controversy because it simply seeks to have this Court
17 declare Plaintiff's rights with respect to the codicil to the
18 will and therefore the Plaintiff is merely seeking to circumvent
19 the probate court's ruling. However, the SAC seeks that this
20 Court determine whether Defendants could bind Plaintiff to the
21 confidentiality agreement contained in the codicil, and
22 additionally, the impact that this would have on her settlement
23 agreement with Christian Brando. SAC, ¶ 29. Therefore, it
24 appears that Plaintiff is alleging that an actual controversy
25 exists regarding her settlement agreement with Christian Brando.

1 Procedurally, a demurrer must be overruled if an actual
2 controversy is alleged, even if plaintiffs are not entitled to a
3 judgment in their favor. Ludgate Ins. Co. v. Lockheed Martin
4 Corp. (2000) 82 Cal.App.4th 592, 606; Farmers Ins. Exchange v.
5 Zerin (1997) 53 Cal. App. 4th 445, 460 ("Strictly speaking, a
6 demurrer is not an appropriate weapon to attack a claim for
7 declaratory relief inasmuch as the plaintiff is entitled to a
8 declaration of its rights, even if adverse."); Weil & Brown,
9 Civ. Pro. Before Trial (The Rutter Group 2006) ¶7:42.11.
10

11 Therefore, the demurrer to this cause of action is
12 overruled.

13 B. Motion to Strike

14 The grounds for a motion to strike are that the pleading
15 has irrelevant, false or improper matter, or has not been drawn
16 or filed in conformity with laws. CCP §436. The grounds for
17 moving to strike must appear on the face of the pleading or by
18 way of judicial notice. CCP §437; Weil & Brown, Civ. Pro.
19 Before Trial (The Rutter Group 2006) ¶7:168.

20 First, Defendants argue that the first cause of action for
21 professional negligence should be stricken because it does not
22 conform to CRC Rule 312, in that it fails to identify the party
23 or parties to whom it is directed. However, the allegations in
24 the complaint make clear to which Defendants the cause of action
25 is directed.

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1 Second, Defendants argue that the cause of action for loss
2 of consortium should be stricken because the marriage was
3 annulled in 2005 and therefore the marriage is void ab initio.
4 Defendants request that this Court take judicial notice of the
5 Decree of Annulment and the court grants the request.

6 Plaintiff argues that Nevada law should apply, and that in
7 Nevada, the annulment does not void the marriage ab initio, but
8 rather the annulment is effective as of the date of decree. The
9 "right to a decree of nullity is governed by the law which
10 determines the validity of the marriage," and Nevada law asserts
11 that an annulment is effective from the time of decree. Estate
12 of Gosnell, 63 Cal. App. 2d 38, 40 (Cal. App. 1944) (finding
13 that a California Court was not permitted to find that a
14 marriage was void from its inception because Nevada law provides
15 that the marriage will be void from the date of decree of
16 annulment).

17
18 Therefore, because the decree was not entered until June
19 15, 2005, the motion to strike the allegations related to the
20 loss of consortium claim is denied.

21 Lastly, Defendants seek to strike Plaintiff's prayer for
22 injunctive relief as improper. However, Defendants provided
23 little to no briefing for why this claim for relief was not
24 justified. Therefore, the motion to strike is denied.

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III.

CONCLUSION

Based upon the foregoing, the court orders that:

1) Defendants Demurrer to Second Amended Complaint (SAC) is sustained in part and overruled in part, with 20 days leave to amend.

2) Defendants Demurrer to SAC is sustained as to the first, second and fourth causes of action, with 20 days leave to amend, and overruled as to the third and fifth causes of action (accounting and declaratory relief).

3) Defendants request for judicial notice of the Decree of Annulment of Marriage is granted.

4) Defendants' Motion to Strike is denied.

5) Court sets an OSC re: filing of third amended complaint and case management conference for _____,

2008, 8: 45 a.m., Dept. 28. All counsel are ordered to appear.

MOVING PARTY TO GIVE NOTICE TO ALL PARTIES.

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

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IT IS SO ORDERED.

DATED: July 2, 2008

YVETTE M. PALAZUELOS
JUDGE

8/18/08

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, Los Angeles, CA 90071-1543. On August 18, 2008, I served the within document:

NOTICE OF RULING/ORDER RE DEFENDANTS' DEMURRERS TO PLAINTIFF'S SECOND AMENDED COMPLAINT

[] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.

[X] On August 18, 2008, I sent such document(s) from facsimile machine 213-615-1750. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 213-615-1750 which confirms said transmission and receipt.

[] by causing the document(s) listed above to be delivered via overnight delivery (Federal Express) to the person(s) at the address(es) set forth below.

Greg J. Venturi
Attorney-at-Law
1533 1/2 Centinela Avenue
Santa Monica, CA 90404
Fax: 310.821.0960

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 16, 2008, at Los Angeles, California.

[Handwritten Signature]
Karin Reinhart

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543