

II. FACTUAL SUMMARY

Plaintiff, Jesse Torres, III is the father of Defendant, Jesse Torres, IV, who is the grandson of Defendant, Sophie Torres. In or about April 2009, the Plaintiffs, who are unmarried, induced the Defendant, Sophie Torres (at that time age approximately eighty-eight (88)), to sign a Will which the Plaintiffs drafted. In addition to the Will, the Plaintiffs had the Defendant, Sophie Torres, sign a document entitled Addendum to the Will of Sophie June Torres, Addendum I, Permanent Transfer of Property Rights and has alleged that this is a contract. This document purports to have the Defendant, Sophie Torres, transfer all of her rights in real property to the Plaintiff, Jesse E. Torres, III¹. The Plaintiffs go on to allege that at some point after this Will and document was signed that the Defendant, Sophie Torres, changed her Will and as a result breached a contract that the Plaintiffs allege existed. The Plaintiffs further state that it was certain actions taken by the Defendant, Jesse E. Torres, IV, that caused his grandmother (Sophie Torres) to change her Will.

III. LEGAL ARGUMENT

The subject matter of the Plaintiffs' Complaint concerns a will that the Plaintiffs drafted and had the Defendant, Sophie Torres, sign on or about April 24, 2009. Disregarding suspected circumstances under which this Will was executed and the motives of these specific Parties, the Plaintiffs required that the Defendant, Sophie Torres, sign a document alleging that it was an Addendum to the Will which ostensibly prohibits her from transferring her real property outside of what is contained within this April 24, 2009 will.

The reality of the cause of action is that Massachusetts case law is clear that an enforceable contract to make a will cannot be litigated for breach of contract until such time for performance has arrived, which is at the time of death. See *Johnson v. Starr*, 321 Mass. 566,

¹ No further action was ever undertaken by any Party to effectuate this transfer.

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569 (1947) citing *Daniels v. Newton*, 114 Mass. Vol. 30.

All of the Plaintiffs claims against the Defendant, Jesse E. Torres, IV, stem from this alleged breach of contract. If the Court determines that there is no breach of contract or that the cause of action has not arisen at this time, then the remaining counts against the other Defendants must fail.

Taking into consideration the specific counts against the Defendant, Jesse E. Torres, IV, the Plaintiffs allege in Count V a tortious interference between the Plaintiff, Jesse Torres, III and Defendant, Sophie Torres. Ostensibly, the Plaintiffs represent that since the Defendant, Jesse E. Torres, IV, gave money to his grandmother (Sophie Torres) to help support her, he influenced her in changing her Will. There are no factual statements to reflect this claim thus the allegations do not rise to the level required under this cause of actions. Specifically, the Plaintiffs must assert that the interference by the Defendant, Jesse E. Torres, IV, was unjustified in Plaintiffs existing contractual rights. The Plaintiffs must prove a contract with which the Defendant, Jesse E. Torres, IV, has interfered without justification. Since the Plaintiffs contract is unenforceable until the Defendant, Sophie Torres, dies, interference with such a contract is not actionable.

Count VI is duplicitous with Count V and should be dismissed for that particular reason.

Count VII sets forth a claim that is not recognizable as the captions indicates "malicious intent". The body of the count indicates that Defendant, Jesse E. Torres, IV, undertook "numerous wrongful acts" without specifying what wrongful acts the Defendant, Jesse E. Torres, IV, committed. The statement of a wrongful act does not give rise to a tort enforceable in a lawsuit. In sum, Count VII does not set forth a recognizable cause of action.

Count VIII allegedly states that the Defendant, Jesse E. Torres, IV, acted in concert with others to commit fraud on the Plaintiffs. There are no representations as to what the nature of the

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fraud is, or how the Defendant, Jesse E. Torres, IV, committed fraud. In all averments of fraud, the Plaintiff must state with particularity the circumstances constituting fraud. See **Mass. R.Civ.P. 9 (b); Cohen v. Santoianni, 330 Mass. 187 (1953)**.

Count IX and Count X basically allege similar causes of action in that Defendant, Jesse E. Torres, IV, made statements that were false and it harmed the Plaintiffs. There is no allegations contained within the Complaint as to what these statements are and how the Plaintiffs were damaged. There is no indication as to when these statements were made, where or how. In Count IX and X the Plaintiffs basically alleged the same cause of action. More importantly, the subject matter at hand is really an intra-family dispute. The Defendant, Jesse E. Torres, IV, is the grandson of the Defendant, Sophie Torres, and the son of the Plaintiff, Jesse Torres, III. A party cannot be held responsible for a statement or publication tending to disparage private character, if it is called for by the ordinary experience of social duty or is necessary and proper to enable him to protect his own interest or that of another, provided that it is made in good faith and without a willful design to defame. See **Gassett v. Gilbert, 6 Grey 94 (1856)**.

It is surmised, that the Plaintiffs claims goes to the fact that the Defendant, Jesse E. Torres, IV, statements disparaging his father to his grandmother. A family relationship acts as a conditional or qualified privilege.

Count XI sets forth a claim for intentional infliction of emotional distress. The elements of the tort of infliction of emotional distress are: a) an intentional act, b) amounting to extreme and outrageous conduct, c) causing severe emotional distress to another, d) by one not privileged to do so. **Restatement, 2nd Torts**. As to the type of conduct which will give rise to a cause of action the Courts in the Commonwealth have held such conduct must be "beyond all possible bounds of decency" and "utterly intolerable in a civilized community." See **George v. Jordan**

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Marsh, Co., 359 Mass. 244, 245 (1971). There are no allegations made of what type of conduct was committed by the Defendant, Jesse E. Torres, IV, to cause injury to the Plaintiffs. The cause of action for intentional infliction of emotional distress requires that the Defendants actions be without privilege. **Sullivan v. Birmingham, 11 Mass. App. Ct. 359 (1981).** Statements that were made and circumstances rendering them absolutely privileged under the law of defamation cannot form the basis of a claim for intentional infliction of emotional distress, since the privilege which protects one from liability for defamation would be of little value if the individual were subject to liability under a different tort theory. **Correlias v. Viveiros, 410 Mass. 314 (1991).** Since there are no specific statements alleged, it can only be inferred that the Plaintiffs are complaining about the Defendant, Jesse E. Torres, IV, speaking with his grandmother about the Plaintiff, Jesse E. Torres, III. Family communications are privileged and therefore no claim for emotional distress should be allowed.

The Plaintiffs in the within action, have simply set out multiple theories for the same parent cause of action. There is simply no alleged facts to warrant this cause of action, as there has been no outrageous conduct set forth.

Counts XII, XV, XVI, XVII and XVIII allege violations of Federal Law. The Plaintiffs should have filed within the United States District Court. However, if the Court concedes that it has jurisdiction pursuant to the ruling in **Tafflin v. Levitt, 493 U.S. 455 (1990)** then the Defendant, Jesse E. Torres, IV, simply asserts that the claims made under **18 U.S.C. §1962** fail to state a cause of action for which relief can be granted.

Specifically, the RICO Statute (**18 U.S.C. §1962**) sets forth that "it shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has

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participated within the meaning of §2, Title U.S. Code, to use or invest, directly or indirectly any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in or the activities of which affect, interstate or foreign commerce". See §18 U.S. Code A, §1962.

In the present case, the Plaintiffs are alleging that the Defendant, Jesse E. Torres, IV, along with the Co-Defendant, Donald Torres, conspired to violate this section. There is no statement or allegations made within the Complaint indicating that Jesse E. Torres, IV, received any "income" directly or indirectly and therefore, this claim must fail. The allegation in the within Complaint is that Defendant, Jesse E. Torres, IV, has used money to influence his grandmother to breach the alleged contract she had with the Plaintiff, Jesse Torres, III.

The Defendant, Jesse E. Torres, IV, asserts that Count XII alleges a violation of §18 U.S. Code A, §2422 entitled coercion and enticement. A review of that statute (attached hereto as Exhibit A) indicates that it is inapplicable to the within subject matter of this case. That statute talks about coercing an individual to engage in prostitution. Since this statute does not apply, this count must be dismissed.

In regards to Count XVII which alleges that the Defendant, Jesse E. Torres, IV, and Co-Defendant, Donald Torres, conspired to violate federal statute listed in the Complaint as 18 U.S. C. 19.373. Defendant believes that this is not a valid statute as listed, and if in fact, misstated, and the Superior Court had jurisdiction over this matter, it would be duplicitous with Count XI.

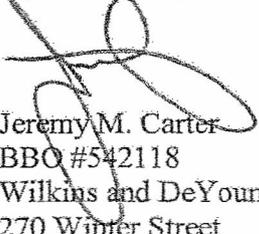
Count XIX alleges that the Defendant, Jesse E. Torres, IV, conspired to violate the federal statute listed in the Complaint as 18 U.S.C. 19.373 but does not indicate who he conspired with to commit this violation. Defendant, Jesse E. Torres, IV, asserts that this Honorable Court does not have jurisdiction over Counts XVII and XIX.

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IV. CONCLUSION

For the foregoing reasons, Defendant, Jesse E. Torres, IV, respectfully requests that this Honorable Court dismiss all claims against the Defendant, Jesse E. Torres, IV.

Respectfully submitted,
Jesse E. Torres, IV
By his attorney



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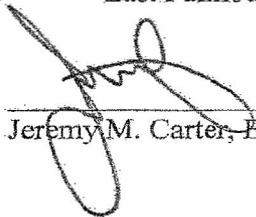
Dated: September 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Memorandum of Law has been sent via first class mail, postage prepaid this 14 day of September, 2011 to the Plaintiffs:

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