

Term 

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

JESSE E. TORRES, THIRD, & another [\[FN1\]](#) vs. SOPHIE J. TORRES & others.  
[\[FN2\]](#)

←12-P-524→

*MEMORANDUM AND ORDER PURSUANT TO RULE 1:28*

Jesse E. Torres, III, commenced this action, pro se, in July, 2011, against his mother, Sophie Torres, [\[FN3\]](#) seeking to enforce an agreement with Sophie for her to leave certain real property to Jesse in her will; and against various family members in tort for interfering with Jesse's agreement and expectancy. Concluding that Massachusetts law prohibits a claim for anticipatory breach of a contract to make a will, a Superior Court judge dismissed Jesse's claims on summary judgment, and he now appeals, again pro se. Jesse argues that the judge improperly interpreted the agreement Jesse made with Sophie, and that he has a valid claim of breach of contract entitling him to a trial. In his complaint, Jesse asserted that Sophie breached her contractual obligation in their agreement by creating a new will. [\[FN4\]](#) The purported contract permits Sophie to sell or finance the properties during her life to benefit her well-being, and any proceeds not used by her shall become Jesse's upon her death. As consideration for receiving the properties, Jesse relinquishes any claim against Sophie or her estate for services rendered or monies loaned to her as long as the terms and conditions of the contract are 'fully complied with.' 'If any of these provisions are violated, any monies and interest . . . will become fully due and payable.'

This action purports to raise several questions of first impression, namely whether we recognize contracts not to revoke a will, and whether an action for breach of such a contract is premature until the death of the testator, as in an action to make a will. These are significant questions that may have broad implications. However, because we conclude that it is unnecessary to decide them in this case, as a matter of judicial prudence we decline to do so. It is undisputed that Jesse has available to him now a viable action in quantum meruit. Because the contract specifies that Jesse's damages will be the very monies and interest he loaned to his parents, whether the litigation is denominated a contract action or an action in quantum meruit, the merits and, if Jesse is successful, the relief, will be identical. We think the prudent course is to vacate the judgment and allow the suit to go forward, but solely as an action in quantum meruit. [\[FN5\]](#) The judgment is vacated, and the case is remanded to the Superior Court for further proceedings consistent with this memorandum and order.

*So ordered.*

By the Court (Cypher, Rubin & Wolohojian, JJ.),

Entered: October 30, 2013.

[FN1.](#) Jennifer J. Adams.

[FN2.](#) Jesse E. Torres, IV; Debtamerica, LLC; and Donald F. Torres.

[FN3.](#) We refer to the parties by their first names to avoid confusion.

[FN4.](#) These facts taken from the verified complaint are properly considered in the summary judgment record. Jesse has not pressed any argument on appeal with respect to the other counts of the complaint.

[FN5.](#) Given the context in which it was made, we do not interpret Jesse's declination of the judge's invitation to pursue a quantum meruit claim as a waiver of that claim.

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