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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

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JESSE E. TORRES III and  
JENNIFER ADAMS,

Plaintiffs,

v.

SOPHIE J. TORRES,  
JESSE E. TORRES IV, DEBTMERICA,  
LLC, and DONALD F. TORRES,

Defendants

\*\*\*\*\*

\* C.A. NO. BACV2011-00433

MOTION HEARING

BEFORE THE HONORABLE CHRISTOPHER J. MUSE

APPEARANCES:

For the Plaintiffs:

JESSE E. TORRES III, PRO SE

JENNIFER ADAMS, PRO SE

562 Waquoit Highway

East Falmouth, Massachusetts 02356

For the Defendants:

JEREMY M. CARTER, ESQUIRE

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Barnstable, Massachusetts

Courtroom 2

November 17, 2011

Transcript produced by Approved Court Transcriber Cindy  
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Cindy J. Crowley

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146 Milton Street, Dorchester, Massachusetts 02124

617-436-0398

1 (2:52 p.m.)

2 THE CLERK: Next case, Torres, et al, versus Torres,  
3 docket number 2011-433, defendants' motion to dismiss,  
4 plaintiffs for a mental exam of defendant, plaintiffs to  
5 restrain discussion of case with defendant, plaintiffs to --  
6 ex parte to compel, defendants to dismiss with opposition and  
7 defendant Debtmerica to dismiss. That rounds it out, Your  
8 Honor.

9 THE COURT: We have a motion to continue that's been  
10 denied. Was that the hearing? Motions, all right. Let's go  
11 back.

12 Okay. For the record, shall -- actually we do have a  
13 record. It's being -- it's on? It's on?

14 THE CLERK: We do, Your Honor.

15 THE COURT: Okay. For the plaintiff, please?

16 MR. TORRES: Yes, Your Honor.

17 THE COURT: You're by yourself?

18 MR. TORRES: Yes, sir. Pro se -- well, with the  
19 co-plaintiff Jennifer Adams.

20 THE COURT: Ms. Adams. Okay. And?

21 MR. CARTER: Attorney Jeremy Carter with my partner  
22 Attorney Cindy Nuzzolo for the defendants, Judge.

23 THE COURT: Okay. So you have a motion to dismiss; is  
24 that correct?

25 MR. CARTER: We do.

1 THE COURT: All right. And there's other motions, too.  
2 Am I wrong?

3 MR. CARTER: There are. I think there's only one or two  
4 plaintiffs' motions, Judge.

5 THE COURT: Okay. Who has the motion for the examination?

6 MR. CARTER: That's the plaintiff.

7 THE COURT: Okie dokie. All right. It's your motion.  
8 Why don't you give me some of the fact background that I have  
9 a sense of.

10 MR. CARTER: The motion to dismiss?

11 THE COURT: Yes. I have a sense of what it is, but one of  
12 the essential arguments is that it's a little bit premature,  
13 that the death has not arisen?

14 MR. CARTER: Correct. Judge, I would suggest -- and I'm  
15 going to let Attorney Nuzzolo argue that one because, I would  
16 suggest, if you allow the Sophie Torres motion to dismiss, the  
17 whole stack of cards falls with it because this is essentially  
18 a case where plaintiff, Mr. Torres, is arguing about having a  
19 will with his mother, his mother's will, that he created, that  
20 had her sign giving him all this property.

21 THE COURT: Okay.

22 MR. CARTER: And if -- I would suggest if the Court hears  
23 the argument from the defendant, all the other subsequent  
24 counts disappear because they're all based on the underlying  
25 will and the transfer, the undue -- the interference and the

1 all the other counts go hand in hand basically with the  
2 underlying premise about this will. And with that, I'll let  
3 Attorney Nuzzolo argue.

4 MS. NUZZOLO: In essence, Your Honor, plaintiffs are  
5 basically arguing that Sophie Torres created a will. In  
6 addition to that will, she executed an addendum stating that  
7 she would not revoke the will, that the will would give  
8 certain properties for various reasons within the addendum.

9 Plaintiffs have --

10 THE COURT: Who'd she give that addendum to?

11 MS. NUZZOLO: The addendum was created by the plaintiff  
12 Mr. Torres.

13 THE COURT: No, no. But who'd she give it to?

14 MS. NUZZOLO: I believe she signed it and gave it to her  
15 son, the plaintiff.

16 THE COURT: For safekeeping?

17 MS. NUZZOLO: I'm not sure if she gave him the original or  
18 if she gave him a copy, Your Honor.

19 THE COURT: My point is, ordinarily we have these disputes  
20 resolved in probate court. So the creation of a will by  
21 Sophie was a free and valid -- was a right. Freely, validly  
22 is the question mark I understand. But educate me as to the  
23 soundness of the legal principle that one can, without  
24 consideration, grant a irrevocable will. A will by definition  
25 is revocable.



1 MS. NUZZOLO: I agree with you, Your Honor. A will is  
2 revocable, and a promise to make it not revocable is no  
3 different than the promise to actually create the will. So  
4 where the plaintiff, in essence, has filed a complaint, counts  
5 one through four against Sophie Torres for what he -- what I  
6 would consider an anticipatory breach. He's claiming she's  
7 breached her contract with him to not revoke a will that  
8 provides property to him.

9 THE COURT: Has the will been revoked?

10 MS. NUZZOLO: It is my understanding that a new will has  
11 been created.

12 THE COURT: Is that accurate? When you say, "It's my  
13 understanding," you're representing her.

14 MR. CARTER: She's represented by an estate attorney,  
15 Judge, and it's our understanding that she has created a new  
16 will which prompted this filing of the complaint.

17 THE COURT: Okay. So you now have a new will and it may  
18 or may not have been validly executed and it may or may not  
19 have various probate claims or defenses to it. So --

20 MR. TORRES: Me, Your Honor? Okay. Yes, sir.

21 Okay. Your Honor, first they are inaccurate as to the  
22 reasons for breach of contract and, secondly, the will was  
23 actually generated for my mother in order to take away from an  
24 existing will of my father of two lots in Florida, and they're  
25 waterfront lots, and give them to my adopted sister.

1 Be that as it may, this issue came to be when -- on the  
2 death of my father. When my dad died, in order to avoid  
3 filing a probate claim against the estate for monies that we  
4 agreed were in excess of \$1,640,000, we entered into a  
5 contract on approximately \$2 million worth of property.

6 THE COURT: With whom?

7 MR. TORRES: My mother and I.

8 THE COURT: And where is the contract?

9 MR. TORRES: The contract is attached as an addendum to  
10 the will and it's filed on my original complaint.

11 Also, Your Honor, the original will --

12 THE COURT: Where is it? I just want to look at it.

13 MR. TORRES: Okay.

14 MS. NUZZOLO: I believe it's referenced as exhibit A to  
15 plaintiffs' complaint, Your Honor.

16 MR. TORRES: Yes, it is.

17 THE COURT: Exhibit?

18 MS. NUZZOLO: Exhibit A.

19 THE COURT: Okay.

20 (Pause.)

21 THE COURT: This agreement is a binding agreement by and  
22 between Jesse Enos Torres III and his natural mother Sophie  
23 dated April 24th. It is intended to be a binding addendum?

24 MR. TORRES: Yes, Your Honor.

25 THE COURT: I've never heard of that.

1 MR. TORRES: Well, it was a family matter.

2 THE COURT: No, no.

3 MR. TORRES: Okay. It is a bind --

4 THE COURT: My family life is irrelevant. My judge and  
5 law life is very important. I've never seen anything like  
6 this. I've never heard of an addendum to a will that's a  
7 contract. I've never heard of it.

8 MR. TORRES: I understand that, but I couldn't find any  
9 reason that it wasn't legal at the time or now, Your Honor.

10 THE COURT: Well, I understand that, but we're still  
11 dealing with whether it's a contract or not.

12 MR. TORRES: Here's what happened, Your Honor, and the  
13 reason for that. As originally there was just going to be a  
14 contract between my mother and myself transferring the  
15 properties over. If you read further, it allowed her to live  
16 her life and do whatever she wanted with the properties while  
17 she was alive.

18 When we wrote the contract, there were things that she  
19 wanted to change in the will that was in full force and  
20 effect. After the contract was written, the addendum, with --  
21 she asked that a will be produced. So I had a copy of Quicken  
22 WillMaker which I used for my will and my neighbors have used  
23 it, and we drafted a new will with her there.

24 THE COURT: There's a problem. Don't you think that's  
25 kind of a problem that you'd be using a computer-generated

1 something for a third person? You drafted a will for your  
2 mother.

3 MR. TORRES: No, Your Honor. I just ran the keyboard.

4 THE COURT: Same thing.

5 MR. TORRES: My mother sat down with me.

6 THE COURT: What do you think lawyers do? We run  
7 keyboards and then we look at it and fill in the blanks and  
8 then we say this is a good will for you, and you get the money  
9 from the client.

10 MR. TORRES: I understand that, Your Honor.

11 THE COURT: So you drafted a will for your mother.

12 MR. TORRES: No, Your Honor. What I did is I entered the  
13 will for her. She actually sat down with me at the computer.  
14 I provided the computer skills just like a secretary. She  
15 read -- the WillMaker just asks one question after another.  
16 She provided all the answers to every single question without  
17 interference or guidance from me. The thing I did with it, I  
18 said, "Here it is. Take it to your attorney." The same  
19 attorney, Catherine Wilson.

20 Now the circumstances that he brings up of being suspect  
21 have been clearly refuted by her next-door neighbors. I  
22 mean this was -- this was all done by my mother for her.

23 THE COURT: The addendum to the will of Sophie June Torres  
24 is a unilateral act by Sophie June Torres.

25 MR. TORRES: Um-hmm.

1 THE COURT: It doesn't permit, in my mind, a contract.  
2 You may have a contract between parties to do certain things,  
3 part of which is to recognize any contributions you may have  
4 made during her lifetime. There are many things that you  
5 could have, but it's not going to be -- have the effect of a  
6 will which is going to be post death disposition of property.  
7 There is no death.

8 MR. TORRES: I understand that totally, Your Honor. And  
9 if you continue, the permanent transfer of property rights  
10 granted at that time, the right to use the property for  
11 business and personal reasons to us which was one of the other  
12 things that went in because the property was in tremendous  
13 disrepair, and we had to expend a tremendous amount of money  
14 and time to fix all the properties at the time. So we  
15 received both permanent -- a permanent and persistent transfer  
16 of the property rights which at minimum as a lifetime tenancy  
17 of the properties --

18 THE COURT: No, it's not.

19 MR. TORRES: -- at the same time.

20 THE COURT: This is where you come in. This is -- I'm not  
21 disparaging Quicken Wills.

22 MR. TORRES: Um-hmm.

23 THE COURT: But there's a lot more involved in all of  
24 this, and when you come in here the last time I had some  
25 pretty smart lawyers do a go-around on the intricacies of 93A.



1 I knew you were here and you were listening. You could've  
2 blocked it out if you wanted. But the law is very complicated  
3 for a lot of reasons. Your mother wrote a will.

4 MR. TORRES: Um-hmm.

5 THE COURT: She wrote a subsequent will. That will will  
6 be probated. The will that she wrote will be probated. You  
7 may have a claim for monies from the estate, and this addendum  
8 that she may have signed may very well give support for some  
9 of the claims you might have. Are you with me on that so far?

10 MR. TORRES: I'm 100 percent, Your Honor.

11 THE COURT: So it's her will. It's her will. If she  
12 chooses to amend her will, she can do so.

13 MR. TORRES: Absolutely. And we're not arguing that, Your  
14 Honor.

15 THE COURT: And she's done it.

16 MR. TORRES: I'm not arguing that she's going to give us  
17 any properties. We don't want the properties.

18 THE COURT: That's not the point.

19 MR. TORRES: She owes me a million six. That's what I  
20 want.

21 THE COURT: That's different.

22 MR. TORRES: That's what our claim is for.

23 THE COURT: That's not what it is, though.

24 MR. TORRES: We claimed a breach of contract for her  
25 changing the will which is clearly stated in the addendum.

1 THE COURT: That's the point. It's not a breach of the  
2 contract. It's not a breach of a contract to change the will.  
3 What you said was on its terms --

4 MR. TORRES: I agree.

5 THE COURT: -- that this is an addendum to the will.

6 MR. TORRES: Agreed, Your Honor.

7 THE COURT: It's meant as an addendum. It's taken from  
8 your Quicken computer.

9 MR. TORRES: No. This was not, Your Honor. This was --

10 THE COURT: Well, whatever.

11 MR. TORRES: This was handwritten.

12 THE COURT: My point is you handwrote it.

13 MR. TORRES: Yes, Your Honor.

14 THE COURT: It's an addendum to the will.

15 MR. TORRES: Yes.

16 THE COURT: She has every right in the world to revoke or  
17 to amend or to codicil or to do anything she wants with her  
18 will.

19 MR. TORRES: Absolutely no agreement --

20 THE COURT: It's not a breach. If it's a will, and that's  
21 what you've called it, it's an addendum to the will. If it is  
22 a will, it's not a contract.

23 MR. TORRES: Your Honor, it has -- if you go onto the next  
24 page of it, there was a reason that the will was used as a  
25 trigger.

1 THE COURT: No. I'm going to tell you again. You can't  
2 use a will as a trigger. You can use a will as a document to  
3 be able to, postmortem, dissolve or distribute any properties  
4 that you own.

5 MR. TORRES: Which we -- that was part of what was there.  
6 But it was -- the will was part of -- the transfer property  
7 rights for tenancy and the actual will were given as part of a  
8 -- us not filing, which was viable to us at the time, a claim  
9 in probate court. She, in order to get us -- to prohibit us  
10 from filing a complaint against my father's estate --

11 THE COURT: How come you don't have a lawyer?

12 MR. TORRES: We are totally out of money because of the  
13 first part of this whole thing, Judge. It's -- I took --

14 THE COURT: No. I'm sorry. I don't mean it that way, and  
15 you're welcome to be here. But what I'm trying to tell you is  
16 it's complicated.

17 MR. TORRES: I agree.

18 THE COURT: Number one, it's a will. Number two, you may  
19 have had a verbal agreement and you may have writings that  
20 evidence that verbal agreement that may or may not be  
21 enforceable. They may or may not be presently enforceable,  
22 but it's not a will. For her to say that I am going to revoke  
23 my implicitly revocable will is -- it's not a revoca -- it's  
24 not an irrevocable trust. It wasn't an agreement. It wasn't  
25 a conveyance. It was by definition a will that is subject to

1 her change.

2 MR. TORRES: We never tried to stop her with this  
3 addendum, Your Honor.

4 THE COURT: So she's done it. So tell me -- tell me where  
5 she could interfere with any of your contractual rights if  
6 she's simply exercising her right under the law to revoke and  
7 rewrite her will?

8 MR. TORRES: It's very clear, Your Honor. What it says is  
9 that if she -- she's allowed to change the will, but if she  
10 did, that all monies owed to me became due and payable.

11 THE COURT: But you're missing it. It's an addendum to  
12 the will.

13 MR. TORRES: Well, it was an independent contract attached  
14 to it.

15 THE COURT: It's not. It's not an independent contract.  
16 It's her will, and she gets to change her mind. It's a will  
17 and an addendum to the will.

18 What you could've done was to write a contract with her,  
19 and it could have been with fair consideration, and it could  
20 written -- been written and agreed to competently, and it  
21 could have expressed the will -- the terms and conditions in a  
22 clear and unambiguous way, and you may or may not have an  
23 enforcement arm against your mother for it.

24 There were ways of secure -- if she says that she owed you  
25 \$1.6 million and she wanted to make sure that you were

1 protected, she could've done something that would've protected  
2 you. There are many things that she could've done to protect  
3 you if that's what her intent was. But if it was her intent  
4 to will the property to you in the first instance and then in  
5 an addendum to do something else, that does not ripen until  
6 the very, very, very last moments -- excuse me. That can be  
7 changed until the very last moments arguably before her death.

8 MR. TORRES: What about the -- for instance, count two of  
9 the case, the court case?

10 MS. ADAMS: Johnson v. Starr.

11 MR. TORRES: Johnson v. Starr, Your Honor. Johnson v.  
12 Starr set up -- which was argued in his motion some very  
13 interesting arguments on this. One of which was -- in count  
14 one is what he refers to as far as it being an addendum and a  
15 time to perform doesn't come until the death. Count two of  
16 Johnson v. Starr provided -- the Court ruled that the services  
17 -- and in that case it was just a verbal contract -- that were  
18 provided by the plaintiff were fully due and payable and that  
19 those conditions -- because they entered into services which  
20 we'd argue that we not only gave her services, but we also  
21 gave her a -- the benefit of being able to use my father's  
22 whole estate for her benefit, and that under count two that  
23 all the monies that were owed for services quantum meruit were  
24 available to the plaintiffs. Why is it -- I don't see how  
25 that doesn't apply here as well.



1 THE COURT: You're here right now is you don't have an  
2 agreement. You're trying to enforce something else. You're  
3 trying to enforce a will which is by its terms revocable.  
4 You're trying to say that because she said that it was not  
5 going to be revocable that she couldn't change her mind. And  
6 I understand what you thought you were getting. You did it  
7 very inartfully, and you did it without the benefit of getting  
8 -- you used a different vehicle. You used a will.

9 MR. TORRES: The contract can't stand alone. An addendum,  
10 Your Honor, just as a layman, when I looked up the term  
11 "addendum," it's just an attachment to another bod -- another  
12 article.

13 THE COURT: Well, that's again, with all due respect, it's  
14 not the way it is.

15 MR. TORRES: I made a mistake on that then. But the fact  
16 that the contra -- that that addendum does say we're settling  
17 our debt, we're willing to give you services. Everything else  
18 is there. We're going to do the following. We lived up to  
19 everything we said, then the last thing that will happen, and  
20 we've been on the property since this was signed, we've  
21 improved the properties, we've done thousands of hours worth  
22 of work on the properties, we provided thousands of dollars,  
23 we've not gone after my father's estate for a million six.  
24 All these things were done on the basis of this, and it  
25 clearly states that you're free to change your will, but if

1 you do change your will, and she did this under -- with full  
2 knowledge. If you change the will --

3 THE COURT: Did she have a lawyer?

4 MR. TORRES: I'm sorry?

5 THE COURT: Did she have a lawyer?

6 MR. TORRES: It was given to her for a lawyer. It went to  
7 the same attorney that she had --

8 THE COURT: No, no. Did she have a lawyer?

9 MR. TORRES: Yes, she had a lawyer at the time, and it was  
10 the same lawyer that you just brought up her estate. It was  
11 Catherine Wilson. I called Catherine Wilson on this. I've  
12 done everything possible. I said, "Mom, make sure you go.  
13 You've go to" -- there's a sworn affidavit.

14 THE COURT: You drafted the will, not her. Don't tell me  
15 that you just --

16 MR. TORRES: Your Honor, it's Quicken WillMaker. If  
17 you've ever seen it, it's very simple.

18 THE COURT: No. We don't --

19 MR. TORRES: It just asks the question.

20 THE COURT: Well, I got it, but you drafted the will for  
21 her.

22 MR. TORRES: I typed it in, Your Honor. I did not -- I  
23 did not dr - Jenny was there at the time.

24 THE COURT: You electronically, mechanically, drafted the  
25 will for her. She didn't do it herself. You're parsing the

1 words down. You drafted it.

2 MR. TORRES: I don't -- Your Honor, I've been a computer  
3 scientist for 35 years, and I don't agree with that. And I  
4 don't because of the fact that, for example, one of the things  
5 that I do, and I was --

6 THE COURT: No, you don't have to. I'm just trying to  
7 tell you that it's a very small ancillary part of the whole  
8 thing.

9 MR. TORRES: In software law, Your Honor, cogenerators  
10 that actually write stuff, same thing.

11 THE COURT: No, no, no. I just said it's a very ancillary  
12 part of the whole issue that you have in front of me. The  
13 question is whether or not the -- your mother has a right to  
14 change the will and whether that would be a breach of  
15 contract. That's not a breach of contract. It's a right  
16 that's bestowed by our general laws, for one.

17 Number two, --

18 MR. TORRES: I totally agree.

19 THE COURT: -- you may have a claim for services, but it's  
20 not because she -- it's separate and apart. It has nothing to  
21 do with her will or the addendum that she may have filed  
22 because the addendum has been nullified by the third and  
23 subsequent and perhaps a fourth and subsequent will.

24 MR. TORRES: Even though the addendum is -- all the  
25 addendum says is if you change your will, you --

1 THE COURT: No.

2 MR. TORRES: -- owe me the monies.

3 THE COURT: It's not a will then, is it?

4 MR. TORRES: I don't follow that one.

5 THE COURT: You're not part of the will. Don't you  
6 understand that piece? There are no conditional promises in a  
7 will. There are none.

8 MR. TORRES: Are you saying it's because the addendum  
9 is --

10 THE COURT: She can take -- she can decide to give you all  
11 the money tomorrow. She can decide to give you none of the  
12 money tomorrow. She can decide to cut you out of the will,  
13 she could omit you, she could -- she could if you were -- as a  
14 spouse, she could die without a will. A spouse is entitled to  
15 all sorts of benefits when there is no will. A spouse is  
16 entitled to waive the will. It's a very complicated process.  
17 It's very complicated, and the addendum to her will could've  
18 recited that she was going to give everything to the people in  
19 Disneyland, and then a week later, she could've said I'm going  
20 to give everyone to the church down the street, and then the  
21 last will could be I'm going to give it to whoever. That's  
22 what the right of it is. It's not a contract, it's a will.  
23 So you have no rights under the will until the will is being  
24 process -- probated. You have no rights under the will until  
25 it's being probated. You don't, and you can't breach a

1 contract when it's a will. Terms mean something. So if your  
2 mother intended to amend her will by an addendum, a codicil --  
3 that's a term that we use quite frequently -- she has the  
4 right to be able to do it, and she can do it again if she  
5 wants to.

6 MR. TORRES: But does she have the right, Your Honor, to  
7 fraudulently make an agreement and avoid -- she wouldn't have  
8 had the properties to begin with --

9 THE COURT: I don't think --

10 MR. TORRES: -- had I filed a complaint in probate.

11 THE COURT: I don't think you're paying close attention to  
12 what I'm saying.

13 MR. TORRES: I am, Your Honor.

14 THE COURT: Your action does not spring from an addendum.  
15 Now let's see what the rest of it says. The motion to dismiss  
16 is all counts?

17 MR. CARTER: Yes, Judge. Different defendants but they go  
18 to all counts. The Sophie Torres motion to dismiss, she's  
19 only naming the first four.

20 MR. TORRES: Actually she's named in one other and one  
21 other by mistake. I believe it 17 or 18.

22 THE COURT: Plaintiffs' verified motion to restrain  
23 certain parties from discussing the case or the plaintiffs  
24 with the defendant?

25 MR. CARTER: That was already ruled on, Judge. That's not



1 before the Court today.

2 THE COURT: It says motion, that's why -- oh, I'm sorry.  
3 Next one. Hearing.

4 MR. TORRES: I'm sorry? Which one?

5 THE COURT: No, I'm sorry. That's fine. It's been  
6 resolved?

7 MR. CARTER: Yes.

8 THE COURT: Okay.

9 MR. TORRES: How was that resolved? I don't remember  
10 that.

11 MR. CARTER: It was denied. In your favor.

12 THE COURT: What is the --

13 MR. TORRES: Oh, okay.

14 THE COURT: Who's looking now -- are we having a mental  
15 examination?

16 MR. TORRES: It's not going to -- well, that is relevant  
17 to the other cases, Your Honor.

18 THE COURT: Excuse me?

19 MR. TORRES: It is relevant to the --

20 THE COURT: I want to see what we have here.

21 MR. TORRES: Okay.

22 THE COURT: Who brought that? That's your motion?

23 MR. TORRES: The --

24 MS. NUZZOLO: It's plaintiffs' motion, Your Honor.

25 MR. TORRES: Yes. That's my motion, Your Honor. Our

1 motion, excuse me.

2 THE COURT: Is that pending?

3 MR. CARTER: It is.

4 THE COURT: Okay. All right. I'm going to get back to  
5 that in second. What is your position generally, and then  
6 I'll get back into detail.

7 MR. CARTER: Judge, my position generally is that this  
8 whole complaint stems from a family dispute. Mr. Torres is  
9 claiming that he deserves these five or six properties that  
10 his mother owned, has always owned with her husband, and as a  
11 result, he believes -- in theory he believes that his son has  
12 conspired with the -- with his mother to have her change the  
13 will.

14 THE COURT: Okay.

15 MR. CARTER: And that's really the whole crux of the --

16 THE COURT: And why would you want a mental examination?

17 MR. TORRES: To find out if she was capable at the time,  
18 Your Honor, --

19 THE COURT: Of what?

20 MR. TORRES: -- of making a decision to breach the will.

21 This goes back -- he --

22 THE COURT: To make a decision to do what? To write a new  
23 will?

24 MR. TORRES: To write a new will and to evict us from the  
25 property (indiscernible at 3:16:27 -- garbled speech).

1 THE COURT: How old is your mother?

2 MR. TORRES: She's 90, and she's as sane as I am, Your  
3 Honor, and I've got -- again, there's a ton of (indiscernible  
4 at 3:16:32 -- garbled speech).

5 MR. CARTER: So why does he want the medical exam?

6 MR. TORRES: Actually, I was going to say on that, Your  
7 Honor, that's why I brought it. I'm happy to drop that now  
8 because it's there.

9 THE COURT: It's dropped. It's dropped, and we won't talk  
10 about it again.

11 MR. TORRES: Okay.

12 THE COURT: So let's go back to the other matters. It's  
13 your position -- let me go back to the original complaint.  
14 Let's go over it.

15 Count one of it's resolved favorably to the defendant you  
16 say, Mr. Carter, will necessarily resolve --

17 MR. CARTER: The entire.

18 THE COURT: Okay. I'm just trying to -- it's a very long  
19 complaint by the way.

20 MR. TORRES: It's 11 years.

21 THE COURT: What?

22 MR. TORRES: Going on for 11 years, Your Honor.

23 THE COURT: I said it's a long complaint.

24 MR. TORRES: Yeah. Well, there's a lot of documents for  
25 11 years, sir.

1 THE COURT: Count one. So it's your position, Mr. Carter,  
2 that count one ought to be dismissed for the reasons that we  
3 discussed; is that right?

4 MR. CARTER: Correct.

5 THE COURT: Okay. Let's assume that that it was  
6 dismissed. Let's assume that it was. They have a breach of  
7 contract of the farmhouse. Walk me through that. So this  
8 would be the same contract that was allegedly breached and so,  
9 therefore, do you agree with that?

10 MR. TORRES: The farmhouse. No.

11 THE COURT: Do you understand what I'm doing?

12 MR. TORRES: Yes, I do, Your Honor.

13 THE COURT: What I'm saying is that if they're successful,  
14 and I'm not making that ruling yet, but if they were -- if the  
15 Court were to find that count one should be dismissed, that it  
16 was -- that as a matter of law, she could not be found to have  
17 breached her own will. That's the way I'm couching it.

18 MR. TORRES: Agreed, Your Honor, counts one through four  
19 will all be dependent on that.

20 THE COURT: Okay. So --

21 MR. TORRES: However --

22 THE COURT: No, no. I just want to --

23 MR. TORRES: Okay. Okay.

24 THE COURT: -- work through it.

25 MR. TORRES: Okay.

1 THE COURT: So that's one through four. Now then we have  
2 -- are we here for five, six? Are we working on those as  
3 well?

4 MR. TORRES: Um-hmm.

5 MR. CARTER: Yep.

6 THE COURT: Tortious interference. So if the Court makes  
7 a finding at one, how could you be tortuously interfering with  
8 a contract if there's no --

9 MR. TORRES: This brings up a very interesting point, Your  
10 Honor. All the rest of the complaints go back to when I was  
11 down in Mexico as a guest of the Mexican government to bring a  
12 corporation for a new technology I had. When we were there, I  
13 found out unfortunately about some very heavy criminal  
14 activities involved my family and the uncle, who, by the way,  
15 everything you see, if you allow me to go on, and I'm going to  
16 show you that we've got documentation on this.

17 THE COURT: No. I'm here because I have other people that  
18 want to get their cases heard as well, and I just can't do it  
19 like that.

20 MR. TORRES: Okay.

21 THE COURT: What I need to do is to have you responsive to  
22 my question, and my question is, is -- again, is the  
23 contractual relationship that you're referencing in the  
24 previous 148 paragraphs, were those that sounded in a contract  
25 between you and your mother --



1 MR. TORRES: Yes.

2 THE COURT: -- to the Court?

3 MR. TORRES: They absolutely should stand, Your Honor,  
4 because she would --

5 THE COURT: Why does it stand independent of it?

6 MR. TORRES: Because she never would have breached the --  
7 or she never would've changed her will had it not been for the  
8 specific interference of my son and uncle.

9 THE COURT: Except for one very important thing. It's not  
10 a contract so it's not to be tortious interference. So if one  
11 were to go out, if one were to stay, it sounds like the rest  
12 of them could. If one were to go out, it looks to me count  
13 five of necessity should be going out as well because you  
14 can't be tortuously interfering with a contract if there was  
15 no contract.

16 Then we have deliberate interference as to defendants  
17 Jesse, Erica --

18 MR. CARTER: Judge, I think that's duplicitous with the  
19 fifth count.

20 THE COURT: It may be. It may be, but I'm just going  
21 through them if you don't mind. And that seems to be wholly  
22 dependant upon whether it may be duplicative or not, but it  
23 doesn't -- it -- that appears to go out if one goes out, it  
24 appears to stay in if one stays in.

25 Malicious intent. So the defendants Jesse and Donald

1 Torres with the support of Debtmerica, LLC, did conspire. And  
2 what did they conspire to do, change the will?

3 MR. TORRES: In that case, yes, Your Honor. They change  
4 -- they conspired to have my mother -- if it was alienation of  
5 affection, Judge, I know that's no longer legal in Mass. that  
6 would be exactly what it was. They conspired to get her to  
7 change.

8 THE COURT: Alienation of affections is a heart balm  
9 statute that we used to have when a woman or a man left their  
10 spouse for another.

11 MR. TORRES: Okay. Then I stand corrected, Your Honor.

12 THE COURT: There's no spouses here; right? Okay.

13 MR. TORRES: What they did is that none of these things --  
14 there would have no problem with any of the will, and the  
15 properties that are deteriorating right now because of their  
16 acts would have been repaired, rented, everything would've  
17 been fine had it not been for the specific interference of  
18 Donald Torres and my son, and that was done with monies that  
19 was not -- and it's part of a repeating pattern, Your Honor,  
20 that chases through two countries.

21 THE COURT: But if your mother was competent to change her  
22 will --

23 MR. TORRES: Um-hmm.

24 THE COURT: If your mother was competent to change her  
25 will, how does any of this affect that decision? By the way,

1 ordinarily you wouldn't even know what's in the will.

2 MR. TORRES: I know because she told me, and at the  
3 time --

4 THE COURT: But ordinarily you wouldn't know, and tomorrow  
5 afternoon, she could change it again.

6 MR. TORRES: Absolutely.

7 THE COURT: She could give everything back to you, and you  
8 wouldn't know about it until her death.

9 MR. TORRES: I understand that, Your Honor.

10 THE COURT: Conspiracy to commit fraud.

11 MR. TORRES: Um-hmm.

12 THE COURT: What was that? If she was competent to write  
13 this will as you just said --

14 MR. TORRES: Because one's competent, Your Honor, if  
15 they're using -- if there's an attempt of a threat or  
16 extortion which there was in this case --

17 THE COURT: She has to bring a claim against them.

18 MR. TORRES: You know, she's not going to bring a -- the  
19 part that's difficult here is that she's not going to bring a  
20 claim against her family members.

21 THE COURT: You don't understand what I just said. We  
22 protect people from coercive behavior from others.

23 MR. TORRES: Um-hmm.

24 THE COURT: The alleged victim is the one that brings it  
25 forward. The alleged victim has to say I was put in fear and

1 I was told I had to do something or they attempted to make me  
2 do something, they attempted to get my money, they attempted  
3 to make me sign something.

4 MR. TORRES: May I, Your Honor --

5 THE COURT: It's not you, it's them that had to have that  
6 fear.

7 MR. TORRES: I wasn't aware of that, Your Honor. What I'd  
8 like is that -- is it possible to withdraw my withdrawal of my  
9 motion for mental exam? Because I don't think --

10 THE COURT: No, no. I'm not going to get -- I'm doing  
11 these now. Where was the slander? What was the false  
12 statement and who published it?

13 MR. TORRES: They were made here and in Mexico --

14 THE COURT: Where?

15 MR. TORRES: -- and in California.

16 THE COURT: Where? Go back to the -- what did Jesse say?

17 MR. TORRES: Jesse said -- oh, I have it on one of the  
18 other documents, Your Honor.

19 THE COURT: Well, tell me what he said. You must know if  
20 it's --

21 MR. TORRES: Oh, about everything, Your Honor. He said  
22 that his father was no good, that his father had to take it --

23 THE COURT: He said you were no good?

24 MR. TORRES: Yeah. That he didn't act like a man. What  
25 was the other (indiscernible at 3:24:03 -- garbled speech)?

1 MS. ADAMS: Stand on his own two feet.

2 MR. TORRES: Oh, he doesn't stand on his own two feet, and  
3 numerous other acts, and this has been ongoing not just with  
4 my mother, but with a lot of neighbors down in California,  
5 and --

6 THE COURT: The least of the issues right now. And  
7 defamation comes out of the same?

8 MR. TORRES: Yes, Your Honor.

9 THE COURT: And intentional infliction of emotional  
10 distress comes from that as well?

11 MR. TORRES: Yes, Your Honor.

12 THE COURT: Title 18 comes from that as well?

13 MR. TORRES: Yes, Your Honor. Well, that -- no. Actually  
14 title 18, those charges start to get into, Your Honor,  
15 attempts at extortion and death threats.

16 THE COURT: Against whom?

17 MR. TORRES: Donald Torres.

18 THE COURT: Against whom?

19 MR. TORRES: Donald Torres.

20 MS. ADAMS: Against us.

21 MR. TORRES: Oh, against us. I'm sorry, Your Honor. I  
22 thought -- I mixed it up.

23 THE COURT: How would he try to extort from you?

24 MR. TORRES: When I went down to Mexico right after the  
25 dot com crash, I -- they -- he and his son had done some work



1 on the house and I started pulling away --

2 THE COURT: But how are they going to coerce defendant to  
3 breach the contract again?

4 MR. TORRES: How did he -- what they did, Your Honor, is  
5 they -- my son and I had a falling out.

6 THE COURT: No, no.

7 MR. TORRES: I disavowed him.

8 THE COURT: Sir, no.

9 MR. TORRES: How did they do it? Okay.

10 THE COURT: My point, listen. You're not -- I apologize.  
11 I'm not making myself clear.

12 They violated it by coercing Sophie to breach your  
13 contract. So if there was no contract and she chose to write  
14 out her own will, that has to fail.

15 MR. TORRES: Couldn't that be simply rewritten, Your  
16 Honor, to --

17 THE COURT: No.

18 MR. TORRES: No?

19 THE COURT: No, it's not. I'm telling you, we're here to  
20 sort out your multiple counts.

21 MR. TORRES: Um-hmm.

22 THE COURT: One of my functions for these kinds of cases  
23 is to be a gatekeeper of sorts. So far I'm seeing that all of  
24 this is wholly dependent upon what happened with the addendum.

25 MR. TORRES: Just the fact that she --

1       THE COURT: Except for the fact that your son was saying  
2 bad things about you. I'd love to be able to make a ruling in  
3 your favor, write it out and hand it to all my children  
4 because they're fresh to me all the time. So if I could just  
5 -- if I was able to give you the relief you want, I'll be --  
6 I'll be -- I'm in your shoes. I'll slap injunctions on my  
7 daughter as quick as a New York minute, so.

8       MR. TORRES: Your Honor, it's a little different when  
9 Hell's Ang -- when they bring in Hell's Angels to threaten  
10 your life.

11       THE COURT: That's not what you said. You said that you  
12 -- your son was saying that you were a bad dad, you don't  
13 stand on your own two feet.

14       MR. TORRES: No, no. I thought were ahead on the new --  
15 the other, --

16       THE COURT: No, that's what I was saying about the  
17 slander.

18       MR. TORRES: -- the RICO conspiracy counts.

19       THE COURT: I was talking about the slander.

20       MR. TORRES: Oh, I'm sorry. I thought we jumped ahead to  
21 the RICO.

22       THE COURT: I was talking about the slander.

23       MR. TORRES: Okay. No, the slander's different. Oh, I'm  
24 sorry. Then yes I understand what you're saying, Your Honor.

25       THE COURT: I'm trying to help you along with this. You

1 understand you might have some claims against your mother or  
2 possibly against the estate. You might, --

3 MR. TORRES: Um-hmm.

4 THE COURT: -- but not this way.

5 (Pause.)

6 THE COURT: Count nine is for slander, you have to plead  
7 with particularity. Now here's the story. Ms. Adams and  
8 Mr. Torres, let me just tell you how I view it right now. I  
9 find that every one of those -- every one of those -- every  
10 one of those counts except for the slander which has problems  
11 and I suggested to you a little bit too facetiously, I take  
12 everything that you're saying seriously, but I was trying to  
13 make a point that people can say things about others, children  
14 about their parents, and just because they say something  
15 that's unflattering, it doesn't mean that the words themselves  
16 will amount to a legally enforceable cause of action. That's  
17 what I meant by that.

18 Everything depends upon -- every one of those depends upon  
19 the finding that I must make on whether this is a contract.  
20 So I'll let you sum up, and then since it's your motion, you  
21 can sum up, and then I'll hear from you summing up again. And  
22 I use the word "sum up" deliberately.

23 MR. TORRES: I understand, Your Honor.

24 THE COURT: Okay. Counsel?

25 MS. NUZZOLO: Your Honor, our argument is that there is no

1 contract. There was a will that was created, and that Sophie  
2 Torres has a right to change that will time and time again  
3 throughout her lifetime so long as she is competent with  
4 testamentary capacity.

5 Even if that addendum is deemed a contract in any way,  
6 shape or form, the performance on that does not come until the  
7 time of death. So to pursue counts for breach of contract are  
8 inappropriate and cannot be claimed at this time. It is  
9 basically an anticipatory breach of contract which can not be  
10 claimed until the time of performance. Time of performance  
11 has not arrived. Therefore, the claims are not ripe. There  
12 is no cause of action at this time.

13 THE COURT: You said it much nicer than I did.

14 MS. NUZZOLO: Thank you, Your Honor.

15 THE COURT: What do you say? Because that's the narrowest  
16 issue.

17 MR. TORRES: That issue? If it's not found to be a  
18 contract, Your Honor, then I would say that you have no choice  
19 but to rule in their favor.

20 However, Your Honor, there's one last thing in the  
21 complaint and that is the ability to amend. And what I'd like  
22 leave to do is to amend the complaint to include, which is the  
23 most relevant to me, the 1,600,000 plus or minus dollars that  
24 are owed to me and to amend the complaint to include a  
25 mechanic's lien or, for lack of a better term, a complaint for

1 the services that we rendered on the properties.

2 THE COURT: Well, I'm not going to deny or grant it right  
3 now.

4 MR. TORRES: Um-hmm.

5 THE COURT: I'm not going to do that. It's separate and  
6 apart from this. You have to plead. You heard me, I don't  
7 mean to be say lecturing, but I'm trying to advise different  
8 folks that courts by constitutional imperative are welcoming  
9 venues for people to come in to get their things resolved.  
10 Defendants, the other party, are required to come in, but it  
11 doesn't mean that we're going to be unfair to them. So when  
12 you bring a complaint, you have to be prepared to make sure  
13 that it sticks.

14 MR. TORRES: I understand, Your Honor.

15 THE COURT: What you're suggesting -- and I'm just not  
16 going to sort out exactly what legal remedies you might have  
17 in the future because I alluded to them. I'm not sure whether  
18 or not it should be by an amendment. I'm not going to tell  
19 you you can't move to amend, but I'm going to today permit you  
20 to amend. It's done by a -- it's done. It's done by motion,  
21 and --

22 MR. TORRES: May I ask one just question, Your Honor?

23 THE COURT: No. And the other part of it is that you have  
24 a valid claim for services rendered and for monies spent and  
25 for obligations created. You're going to have to find a way



1 to fairly state those claims and to prosecute them correctly.

2 MR. CARTER: Judge, just on that point alone, that  
3 wouldn't apply. Those services rendered claim under any kind  
4 of a theory wouldn't apply to Debtmerica and Jesse Torres IV.

5 THE COURT: Again, I don't know. I'm here. What I'm  
6 saying is I'm going to take this entire case, I'm going to  
7 find out where the one stands. If it stands up then subject  
8 to some pruning down the road then all of them stand.

9 MR. TORRES: Yes, Your Honor.

10 THE COURT: And if one does not stand then all of them go,  
11 and I'm going to dismiss slander as not being actionable  
12 because it's not properly plead. It's not plead with  
13 particularity for the Court to be able to review it to  
14 determine whether facially it's a kind of actionable speech or  
15 writing that would have the requisite damage claim. And  
16 there's -- it's so many things that one looks at in the  
17 statement itself, as to whether or not it's opinion, et  
18 cetera, et cetera, et cetera.

19 So that's what I'm going to do. I'm going to take the  
20 matter under advisement, and it sounds like -- it sounds like  
21 that you ought to find a way to get an attorney to find out  
22 exactly what you have in terms of any obligations that your  
23 mother might have presently or upon her death, but not through  
24 this vehicle unless -- unless the -- unless one stands. If  
25 one stands, we'll see you back in the pretrial conference. If

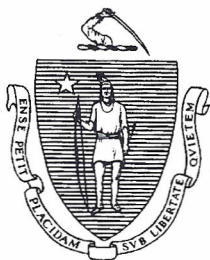
1 it doesn't, that's the end of the case so far as I'm  
2 concerned.

3 MR. TORRES: Yes, Your Honor.

4 THE COURT: All right?

5 MR. TORRES: Thank you very much.

6 (End of proceeding.)  
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JUDGE: Christopher J. Muse RECORDING DATE: November 17, 2011

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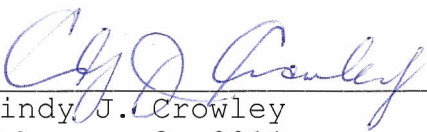
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## CERTIFICATION

I, Cindy J. Crowley, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me of the Barnstable Superior Court proceedings in the above-entitled matter.

I, Cindy J. Crowley, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Cindy J. Crowley, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

  
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February 3, 2011  
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