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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUN 08 2012

John A. Clarke, Executive Officer/Clerk
BY ________, Deputy
Shaunya Wesley

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL JUDICIAL DISTRICT

JANICE M. McCLANAHAN Plaintiff, vs. HAROLD MANSDORF, individually and as Trustee of the Mansdorf Family Revocable Trust also known as the Mansdorf Family Trust; MILDRED MANSDORF, NORMAN MANSDORF and DOES 1 through 50, inclusive Defendants	Case No.: BC363659 **BY FAX** **PLAINTIFF JANICE M. McCLANAHAN'S OPPOSITION TO DEFENDANT HARRY MANSDORF, INDIVIDUALLY AND AS TRUSTEE OF THE MANSDORF FAMILY REVOCABLE TRUST'S MOTION TO SET ASIDE ALL VOID ORDERS AND JUDGMENTS IN THE CASE BASED UPON LACK OF JURISDICTION OF THE COURT AND PLAINTIFF'S EXTRINSIC FRAUD UPON THE COURT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF WENDY K. MARCUS AND TIMOTHY B. SOTTILE IN SUPPORT THEREOF; EXHIBITS A-F;** **REQUEST FOR SANCTIONS UNDER C.C.P. §1008(d) and C.C.P. §127.8 AGAINST DEFENDANT MANSDORF AND HIS COUNSEL** **DATE: June 21, 2012** **TIME: 9:00 a.m.** **DEPT: 1**

06/08/12

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8 Witkin Cal.Proc.5th (2008) Attack, §230, p. 840. — 9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion represents Defendant's most recent, improper attempt to overturn the valid default judgment that was entered against Mansdorf and in favor of Plaintiff Janice McClanahan on January 23, 2008. Defendant waited several days short of two years when he first filed a Motion under C.C.P. 473(d) to set aside the judgment. The Motion was denied on March 15, 2010. Both the default judgment and the denial of Defendant's belated motion to set it aside were the subject of an appeal. The judgment and the denial of Defendant's motion were affirmed on appeal on October 21, 2011. No further appeals were pursued by Defendant and the remittitur was issued on December 21, 2011. Most recently, Defendant presented these exact same issues on May 8, 2012 in an Ex Parte application to set aside the judgment in Department 51 which was denied. This Motion has been brought in violation of C.C.P. 1008 in that it seeks to have that decision reconsidered in another department of the same Court and fails to make the mandatory disclosure required by C.C.P. §1008(b). This case is pending in Department 51, yet Defendant, in an effort to judge-shop, has filed his latest motion in Department 1. This Motion should be sent back to Department 51 for determination. Defendant and his counsel should be sanctioned pursuant to C.C.P. sections 1008 and 127.8.

II. PROCEDURAL HISTORY

Despite being represented by counsel at all stages in the litigation, Defendant waited almost two years, until January 21, 2010, to attempt to set aside the judgment, which the Court rejected. Defendant claimed that the service by publication was invalid and that he was not personally served with the summons and complaint.

On March 15, 2010, after considering the pleadings and arguments of counsel, the trial court denied the motion. The Court found that the service of the summons and complaint by personal and substituted service, and service of the statement of damages via publication, were proper. The Court also found that the Motion was untimely, as Mansdorf could not show that his delay in filing the Motion was reasonable. (See Exhibit A, Notice of Ruling).

After Mansdorf appealed the Court's ruling, the Appellate Court upheld and affirmed the judgment in McClanahan v. Mansdorf, B224466, on October 21, 2011 (a copy of which is attached hereto as Exhibit B). Mansdorf, fully represented by counsel at this stage as well, chose not to pursue any further appeals.

Mansdorf's attempts to set aside the judgment, however, did not end there. In 2012, Defendant began filing a series of *Ex Partes* in renewing his attempts to set aside the judgment[1]. He initially filed the *Ex Parte* in Department 51 on May 8, 2012 (a copy of the minute order is attached hereto as Exhibit C), and the Motion was denied. Mansdorf then set another *Ex Parte* for Department 1 on May 22, 2012, but it was rejected by the clerk in Department 1 because the case is pending in Department 51. Defendant was informed by the clerk that Department 1 is an administrative assignment department and does not hear substantive motions on cases already assigned to a courtroom such as this one. (See Sottile Dec., ¶ 2).

Instead of filing his Motion in Department 51, Defendant filed it and noticed it for hearing in Department 1 again. This Motion is an improper attempt at requesting reconsideration of Defendant's failed *Ex Parte* that was denied on May 8, 2012, in violation of C.C.P. §1008.

[1] Mansdorf has also attempted to upset the valid judgment by filing a complaint in Federal Court, entitled Mansdorf v. Moriarty et al, USDC Case No. CIV12-1339-DDP. McClanahan is currently awaiting the Court's decision on her Motion to Dismiss based upon *Res Judicata*, set for July 23, 2012.

Mansdorf's prior ex parte application was styled as an "ex parte application to set aside order for publication, default, and default judgment as void (C.C.P. Sec. 473 (d))". The current motion is seeking essentially the same relief. It is an improper re-run of the previous *Ex parte*, this time filed in a different Department of the same court. Mansdorf is required to bring this application in Department 51 before Judge Khan – the Judge who denied the last *Ex parte* application and whose earlier decision to deny Defendant's motion to set aside the judgment was affirmed on appeal. Instead, Mansdorf is now engaging in improper judge shopping. This Motion fails to comply with C.C.P. §1008 because it fails to make the disclosures mandated by §1008(b). Thus, pursuant to C.C.P. §1008(d), Defendant's violation is punishable as contempt and with sanctions as allowed by C.C.P. §127.8.

Further, the Court in Department 51 denied the *Ex Parte* also on the basis that the Court of Appeals had already affirmed and upheld the judgment. In its ruling on May 8, 2012, the Court held that it "decided similar issues on 3/15/10, and the Court of Appeal has affirmed the judgment as made. "The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned." *In Re Anna S.* (2010) 180 Cal.App.4th 1489, 1499. "[T]he trial court is revested with jurisdiction of the case, but only to carry out the judgment as ordered by the appellate court." *People v. Dutra* (2006) 145 Cal.App.4th 1359, 1366." (See Exhibit C).

III. FACTUAL HISTORY

The following describes a brief factual history of the case, which arises from the wrongdoings of Defendant Harold Mansdorf[2] individually and as trustee of the Mansdorf's Family

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[2] Defendant contends for the first time that he was erroneously sued as Harold Mansdorf and that his real name is "Harry". Nevertheless, when Mr. Mansdorf was served with the summons and complaint, he identified himself to the process server as "Harold" Mansdorf. Moreover, he does not dispute that Harold

Revocable Trust (hereinafter, collectively "Defendant"). The Defendant's brother, Lee Mansdorf, died and left a sizeable estate to be administered by the Defendant. Lee Mansdorf had transferred a valuable piece of real property (hereinafter, "the Property") to Plaintiff, but had not informed her of that fact. After Lee's death, the defendant fraudulently convinced Plaintiff that the property was worthless, and tricked her into conveying it to him for no value.

Plaintiff filed her Complaint on December 18, 2006 alleging causes of action for Fraud, Breach of Fiduciary Duty and Intentional Infliction of Emotional Distress. The complaint basically alleges that Defendant misled, tricked and concealed various truths from the Plaintiff in an eventually successful effort to get her to sign a grant deed transferring the Property left to her by Lee Mansdorf over to Defendant.

Plaintiff had been in a personal romantic relationship with Lee Mansdorf, for approximately 20 years until his death on June 27, 2003. Throughout their relationship, Lee Mansdorf told Plaintiff that upon his demise Plaintiff would be financially taken care of, but he was silent as to the details. After Lee Mansdorf's death, Plaintiff inquired of Harold Mansdorf about any financial provisions that were made for her in Lee Mansdorf's will. Harold Mansdorf indicated there was no will nor anything left for Plaintiff, except that Lee Mansdorf had deeded her a **worthless** piece of vacant land that had **no value**. The defendant then requested that she transfer the Property to him in order to wind up his deceased brother's affairs and estate. Plaintiff, trusting Harold Mansdorf, transferred the Property to him on December 22, 2003 **for nothing.**

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and "Harry" Mansdorf are one in the same person. In fact, on many documents, including the Trust, Mansdorf is referred to as "Harold" and "Harry" in the same document. See Exhibits D-E. In other documents, Mansdorf is referred to as "Harry aka Harold". See Exhibit F.

Plaintiff learned in March 2006 from another friend of Lee Mansdorf that Harold Mansdorf's representations were untrue and that the Property had substantial value.

McClanahan brought suit against Mansdorf and the Trust and received a default judgment on January 23, 2008 for twelve million dollars against Harold Mansdorf (One million in economic damages; one million in non-economic damages; and ten million in punitive damages). This judgment was entirely affirmed by the California Court of Appeal on October 21, 2011 and Mansdorf was represented by counsel throughout all of these proceedings. Mansdorf chose not to pursue further appeals and a remittitur was issued on December 21, 2011.

IV. SUMMARY OF ARGUMENT

Defendant again seeks to set aside the default judgment against him pursuant to C.C.P. § 473(d), despite the fact that this judgment has been affirmed and upheld by the Court of Appeal. Defendant's attempts to overturn the judgment have been brought, and rejected, on several occasions, including in the Court of Appeal. Defendant and his counsel are now in violation of C.C.P. 1008 and should be sanctioned for their conduct and their continued misuse of the judicial system.

Defendant's other arguments are also unavailing. He now contends that he was not properly served because he is "Harry" and not "Harold", a pointless distinction which, if it was ever an issue, was waived or adversely decided against Defendant on appeal.

Second, the Court has proper "subject matter" jurisdiction over Mansdorf. The Los Angeles Superior Court is a court of general jurisdiction which properly exercised personal jurisdiction over the Defendant. Defendant was properly served. He was a resident of Los Angeles County, a fact that he did not dispute on appeal. The contention that the Court did not have "subject matter" jurisdiction over him has no legal support.

Third, Defendant's newly minted claims of extrinsic fraud have no merit. Plaintiff denies the fraudulent allegations made against her; however, regardless of their purported merits, all of the matters that Defendant raises are ones that could have been litigated in the initial superior court case during which he was at all times represented by counsel and are therefore "intrinsic" as opposed to "extrinsic" and do not support voiding the judgment as a matter of law.

A. Defendant's Motion Fails to Comply With C.C.P. §1008(b) and Defendant Should Be Sanctioned Pursuant to C.C.P. §1008(d) For Such Non-Compliance

California Code of Civil Procedure, Section 1008(d) allows sanctions against a party or their attorney who violates this section, or, more specifically, brings the same motion without new facts, circumstances or law. C.C.P. 1008(e) states "**This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion**, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section."

C.C.P. section 1008(b) provides, in relevant part, "A party who originally made an order which was refused in whole or part, or granted conditionally or on terms, may make a subsequent application for the same order upon new or different facts, circumstances or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown...".

C.C.P. section 1008(d) provides that "**a violation of this section may be punished as a contempt and with sanctions as allowed by Section 128.7.** In addition, an order made contrary to this section may be revoked by the judge or commissioner who made it, or vacated by a judge of the court in which the action or proceeding is pending."

Defendant has failed to make the mandatory disclosures, required by C.C.P. §1008(b) when bringing this motion and has noticed it in the wrong department in a transparent effort to judge shop. This conduct should not be condoned. Defendant has repeatedly brought this Motion, in one version or another, since 2010. His Motion to Set Aside the Judgment was denied by the Court in Department 51 in 2010, and that decision was affirmed on appeal on October 21, 2011 and a remittitur issued on December 21, 2011. Defendant's subsequent Ex Parte to Set Aside the Judgment was also denied by the same Court in Department 51 on May 8, 2012. Now, Defendant seeks to have essentially the same Motion heard in a different courtroom in the Los Angeles Superior Court in the hopes of a different result. Plaintiff is entitled to be reimbursed for the reasonable value of legal fees incurred in having to oppose this improper motion. For this reason, Plaintiff is requesting sanctions against Defendant and his counsel in the amount of $7950.00, which represents the legal fees incurred in having to defend against this Motion, as described in the Declaration of Wendy K. Marcus, attached hereto.

Defendant also argues that the judgment should be set aside because it is void. As argued in the sections above, this contention is without merit, and was considered and denied by the appellate court. In fact, the Court of Appeal rejected this same argument in its October 21, 2011 ruling wherein Mansdorf contended that the time limits in C.C.P. 473.5 did not apply because the judgment was facially invalid. The Court found that the judgment was not invalid on this ground, that Mansdorf was "actively engaged and represented by counsel in other lawsuits in 2008", and that there was "substantial evidence that Mansdorf's delay in filing was unreasonable", making the motion time barred for purposes of 473.5. (See Exhibit B). This same argument was most recently rejected when the Court ruled on Defendant's Ex Parte application to set aside the judgment on May 8, 2012.

B. The Entered Judgment of January 23, 2008, Was Not Void, as Defendant Was Personally Served With the Summons and Complaint, and Was Also Served by Publication with the Statement of Damages, Which the Court of Appeal Affirmed Constituted Valid Service

The Defendant's initial argument is that the judgment is void and should be set aside under C.C.P. § 473(d). More specifically, Defendant contends that the judgment against him is void because he disputes being served with the Summons and Complaint. However, this issue has already been decided and rejected by both the trial court and the court of appeal.

The trial court, bound by the law of the case doctrine, denied Defendant's May 8, 2012 Ex Parte on these grounds. "The order of the reviewing court is contained in its remittitur, which defines the scope of the jurisdiction of the court to which the matter is returned." *In Re Anna S.* (2010) 180 Cal.App.4th 1489, 1499.

Here, the Court of Appeal determined that service was valid and proper. The service of the summons and complaint were not an issue, and the statement of damages, served by publication, was determined to be valid. (See Exhibit B, pages 5 and 11).

C. Mansdorf Was Subject to the General Jurisdiction of the Court

Mansdorf contends that the judgment is void because the Court lacked subject matter jurisdiction. This contention is without merit. In particular, the main case cited to by Defendant, *Varian Medical Systems*, is inapposite. In that case, the Supreme Court found that the trial court lacked jurisdiction of the matter while the case was stayed on appeal. See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196-197. Defendant's cite to *Brown* likewise adds no substance to his contentions. In that case, the appellate court found that the trial court had concurrent jurisdiction with the WCAB, and that the court had the jurisdiction to determine its own jurisdiction. See *Brown v. Desert Christian Ctr.* (2011) 193 Cal.App.4th 733, 740.

In this case, Defendant Mansdorf was clearly subject to the Los Angeles County Superior Court's jurisdiction. Each superior court has *general* subject matter jurisdiction, meaning that it can adjudicate any and all cases brought before it. (See California Rutter Guide, Civil Procedure Before Trial, Chapter 3:3.) This is unlike a federal district court which is a court of limited jurisdiction. A federal district court's jurisdiction is limited to diversity and federal question cases. In contrast, The California Superior Court has general subject matter jurisdiction over all cases, save for a few limited civil cases, none of which apply here. Defendant is a resident of Los Angeles County, a fact which Defendant does not dispute. He has asserted no facts, other than his contentions about improper service which have been repeatedly rejected by the trial court and the appellate court, which would demonstrate why he believes that the court did not have jurisdiction when it clearly did.

Defendant's convoluted argument regarding judicial disqualification is equally without merit. The jurisdiction that a judge exercises is vested in the Court, not in the judge personally. See *Leonard Carder, LLP v. Pattern, Faith & Sanford* (2010) 189 Cal.App.4th 92, 99. The case cited to by Defendant, *Rosso Holdings,* involved the disqualification of a judge due to bias, rendering his decisions invalid. See *Rosso Holdings, Inc. v. Bank of America* (2007) 149 Cal.App.4th 1353, 1361-1362. It has no factual or legal relationship to this case. Mansdorf attempts to rely on that case to support his circular proposition that because he does not like the judge's decision, the judge is therefore disqualified. This is plainly not the law.

D. <u>There Is No Extrinsic Fraud Or Mistake, And Plaintiff Is Barred From Re-Litigating Any Claims Of Intrinsic Fraud Or Mistake</u>

Defendant's allegations are nothing more than yet another attack on the final judgment. There is a policy favoring finality of judgment. 8 Witkin Cal.Proc.5th (2008) Attack, §230, p. 840.

The prevailing rule is that a judgment may be upset only when the fraud is extrinsic, as distinguished from intrinsic. Fraud is only extrinsic "where the defrauded party was deprived of the opportunity to present their claim or defense to the court." *See In Re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1068-1069. Things that can be considered extrinsic fraud include conduct such as preventing a party from joining the proceedings, failing to serve a party or give notice, and convincing another party not to obtain counsel. *Id.*

Conversely, fraud is intrinsic if a party has been given notice of an action, has not been prevented from participating therein, and has had the opportunity to present their case and protect themselves from fraud or mistake but have unreasonably failed to do so. *Id.* The appellate decision affirming the trial court's judgment concluded that Mansdorf had proper notice of the underlying action and failed to defend the action and that default judgment was properly entered and ought not to be disturbed. (See Exhibit B, page 12).

All of the allegations that Defendant now makes regarding Plaintiff's "fraud", including supposed discrepancies in the parcel of land, the date of death of Mansdorf's sister, and the alleged language in Lee Mansdorf's will are all items that could have been brought to the attention of the Court in the first instance. They are therefore not "extrinsic" fraud for purposes of overturning a final judgment. Nor can these allegations be considered a fraud on the court. "Fraud upon the court is only established when extrinsic factors have prevented one party to the litigation from presenting his or her case." *Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1110. That is not the case here. Moreover, at all times the Defendant was represented by counsel.

During the time he chose not to litigate the case in the trial court, failed to answer the complaint and instead defaulted, chose to embark on settlement discussions, failed to set aside the default or the default judgment, appealed and lost, Mansdorf was represented by counsel. "When a party was represented by counsel, any fraud will usually be intrinsic." *In Re Marriage of Stevenot* at 1070. Thus, the allegations of fraud Mansdorf is now attempting to assert against McClanahan are matters encompassed within the lawsuit brought by McClanahan against Mansdorf which has been conclusively adjudicated in favor of McClanahan and against Mansdorf. Mansdorf had an adequate opportunity to pursue these allegations during the pendency of that case in the trial court and during his appeal, but declined to do so. Had Mansdorf actively litigated the case, any instances of alleged fraud relating to the underlying real property transaction would have been discovered. Mansdorf cannot now attempt to allege what is essentially "intrinsic fraud" in an attempt to disturb a final judgment.

Because the fraud is not extrinsic, Mansdorf cannot now overturn the judgment. His allegations of intrinsic fraud will not make the judgment void. To warrant any relief, the alleged fraud must have brought about the entry of judgment "by lulling the movant into sacrificing his opportunity to present a defense." *Hopkins v. Carley & Gens* (2011) 200 Cal.App.4th 1401, 1416. Mansdorf had an opportunity to defend the matter, but chose not to. He cannot now attempt to label these allegations "extrinsic fraud" to disturb the final judgment.

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V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the court deny Defendant's motion to set aside all void orders and judgment and that the court enter sanctions against Defendant Mansdorf and his counsel in favor of Janice McClanahan in the amount of $7950 pursuant to C.C.P. §127.8 and C.C.P. §1008(d) for their failure to comply with C.C.P. §1008(b).

Dated: June 8, 2012

LAW OFFICES OF TIMOTHY B. SOTTILE

By: WKM

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Attorney for Plaintiff
JANICE M. McCLANAHAN

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