

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ORIGINAL FILED  
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LOS ANGELES  
SUPERIOR COURT

HARRY MANSDORF, etc., et.al.

Plaintiffs,

vs.

MICHELE GIACOMAZZA, et.al.

Defendants

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Case No. BC 385946

Statement of Decision

The bench trial of the equitable causes of action in the above-captioned matter commenced on April 28, 2009 and concluded, with various recesses, on May 29, 2009 before the Honorable Charles F. Palmer in Department 33 of this court. Attorneys John C. Torjesen and Paul Orloff appeared on behalf of plaintiffs Harry Mansdorf and the Mansdorf Family Trust. Attorney Michael L. McQueen appeared on behalf of defendants Michele V. Giacomazza, Kathryn Gatto, Joint Venture Corp., Joint Venture, LLC, Malibu Hills Ranch, Inc., Malibu Hills Ranch Corp., and United American Engineering & Development (the "Giacomazza Defendants"). Plaintiff Harry Mansdorf and defendants Michele Giacomazza and Kathryn Gatto each attended the trial.

The court, having heard the testimony and the arguments of counsel and having reviewed the exhibits and legal briefing, finds the following facts by a preponderance of the evidence and makes the following decision and analysis.

## Tentative Decision

Judgment on the Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action is in favor of plaintiffs Harry Mansdorf, individually and as Trustee of the Mansdorf Family Trust and against defendants Michele Giacomazza, Kathryn Gatto, Joint Venture LLC, Joint Venture Corp., Malibu Hills Ranch, Inc., and Malibu Hills Ranch Corp., and United American Engineering & Development.

### Analysis

1. The Mansdorf Family Trust (the "Trust") was established in approximately 1967. Lee Mansdorf ("Lee"), one of four Mansdorf siblings, was the Trustee of the Trust from that time until his death on June 27, 2003. It appears uncontested that the Trust was initially funded with the proceeds of the sale of a portion of the stock in the Mansdorf family aviation business. Over the next approximately 40 years, the Trust, acting through its trustee Lee, acquired and sold real property in various locations in Southern California. Among these properties were (1) multiple parcels of real property located north of Malibu in Ventura County, sometimes referred to as Deer Creek, and generally referred to in this litigation as the "Malibu Properties" and, (2) the Mansdorf family home in Beverly Hills, located on Alta Drive (the "Alta Property"). In addition to the Malibu Properties and the Alta Property, the Mansdorf Family Trust acquired and sold other properties. Among these other properties were approximately 1,000 acres in the San Fernando Valley and property in La Tuna Canyon.

2. The Malibu Properties and the Alta Property are the principal subject of the equitable causes of action in this case. Exhibits 92 through 114 are the recorded deeds which show the acquisition of title to the Malibu Properties by the Trust.

3. On June 27, 2003, Lee died. His brother plaintiff Harry Mansdorf ("Harry") became the trustee of the Trust.

4. The deeds which were admitted into evidence as Exhibits 41, 42, 49, 50, and 52 and are dated January 11, 2005, April 13, 2007, May 17, 2004, May 12, 2006, and December 6, 2004, respectively (collectively, the "Malibu Transfer Deeds"), purport to reflect the transfer of title to the Malibu Properties from the Trust to defendant Malibu Hills Ranch Corporation, a Nevada corporation (Exhibits 41), defendant Malibu Hills Ranch, Inc., a Nevada corporation (Exhibit 42), or defendant Joint Venture Corp, a Nevada corporation (Exhibits 49, 50, and 52). At all relevant times, defendant Michele Giacomazza ("Michele") has owned and controlled each of Malibu Hills Ranch Corporation, Malibu Hills Ranch, Inc., Joint Venture Corp., Joint Venture LLC, and United American Engineering & Development. Michele testified at trial that each of these entities was "basically" him. None of these entities ever had any assets; none of them ever had any corporate meetings.

5. Three of the Malibu Transfer Deeds on their face appear to have been signed on behalf of the Trust by Harry (Exhibits 41, 42, and 50); two appear to have been signed by defendant Michele (Exhibits 49 and 52) as "attorney in fact for Harry Mansdorf", who is identified on those deeds as Trustee of the Mansdorf Family Trust. Harry signed a power of attorney purporting to appoint Michele as his attorney in fact which is dated October 8, 2004 (Exhibit 48). It should also be noted that Exhibit 50 purports to transfer

the property it describes from The Lee Mansdorf Family Trust, as opposed to the Mansdorf Family Trust.

6. The deed which was admitted into evidence as Exhibit 51, dated October 28, 2004 (the "Alta Transfer Deed"), purports to reflect the transfer of title to the Alta Property from the Trust to Joint Venture LLC. The Alta Transfer Deed was signed by Harry on behalf of the Trust. The deed which was admitted into evidence as Exhibit 56, dated August 16, 2006, purports to reflect the transfer of title to the Alta Property from Joint Venture LLC to defendant Kathryn Gatto ("Kathryn"). Exhibit 56 was signed by Kathryn Gato as President of Joint Venture Corp. The notary's acknowledgment indicates Exhibit 56 was signed by Kathryn on August 20, 2006. The deed which was admitted into evidence as Exhibit 57, dated August 17, 2006, purports to reflect the transfer of title of the Alta Property from Kathryn to Kathryn and Michele as joint tenants. Exhibit 57 was signed by Kathryn. The notary's acknowledgement indicates Exhibit 57 was signed by Kathryn on August 20, 2006, the same day as Exhibit 56.

7. On April 13, 2004, Michele, as President of United American Engineering & Development caused to be recorded with the Ventura County Recorder a "Mechanics Lien Claim of Lien" (Exhibit 17) against the Malibu Properties asserting that \$600,000 was due to United American Engineering & Development for labor and services performed on the Malibu Properties (the "\$600,000 Mechanics Lien").

8. On October 4, 2004, Michele, as President of United American Engineering & Development caused to be recorded with the Ventura County Recorder a "Mechanics Lien Claim of Lien" (Exhibit 18) against the Malibu Properties asserting that \$20 million was due to United American Engineering & Development for labor and services

performed on the Malibu Properties (the "20 Million Mechanics Lien"). On December 9, 2004, Michele, as President of United American Engineering & Development caused to be recorded with the Ventura County Recorder a "Mechanics Lien Claim of Lien" (Exhibit 19) against the Malibu Properties asserting that \$95 million was due to United American Engineering & Development for labor and services performed on the Malibu Properties (the "95 Million Mechanics Lien").

9. Prior to Lee's death, Harry had never met Michele. A day or two after Lee's death, Harry was approached by Michele who represented to Harry that he was a friend of Lee's and that Lee owed Michele \$7million and that Michele had an agreement with Lee to transfer the Malibu Properties and the Alta Property to Michele in satisfaction of that debt.

10. In the ensuing months and years, Michele proceeded to pressure, threaten, and intimidate Harry in efforts to get Harry to transfer the Malibu Properties and the Alta Property to Michele. In particular, Michele threatened the lives of Harry, his wife, and his surviving brother and sister. In addition, Michele recorded the \$600,000 Mechanics Lien against the Malibu Properties on April 13, 2004, the \$20 Million Mechanics Lien on October 4, 2004, and the \$95 Million Mechanics Lien on December 9, 2004. These mechanics liens were not authorized under the law and had the effect of applying additional pressure to Harry in that they clouded the title of the Malibu Properties so they could not be sold to generate needed cash for living expenses. Michele also intruded into Harry's life on an almost daily basis, demeaning him and ordering him around.

11. Thereafter, the Malibu Transfer Deeds and the Alta Transfer Deed and the power of attorney appointing Michele as Harry's attorney in fact were executed by Harry or Michele as described in Paragraphs 4 and 5, above.

12. At trial, Michele testified that the basis for his claim that he is the rightful owner of the Malibu Properties and the Alta Property was a purported agreement in the early or mid-1970's between Lee and Michele to become partners in the development of the Malibu Properties and that Lee was to give Michele a 50% ownership interest in the Malibu Properties as consideration for Michele's efforts on behalf of the purported partnership. At trial, Michele also testified that Lee had obtained a \$7 million loan using unidentified real property owned by Michele as collateral and that Michele lost his property when Lee defaulted on the loan. No documentation of this transaction was offered by Michele or admitted into evidence.

13. Based on the evidence admitted at trial, the court's observations of Michele while testifying, the testimony of other witnesses, Michele's apparent difficulties in recalling key details in events, the inconsistencies in his testimony, and the inconsistencies between his testimony and that of other witnesses and various documents, the court found Michele not to be a credible witness. As a result, the court finds that there was no partnership agreement between Lee and Michele whereby Lee agreed to give Michele a 50% interest or any interest in any of the properties held by the Trust. Among the bases for this determination are the following:

--Michele was only able to describe a few things of relatively little value which he had done on behalf of the purported partnership over the nearly thirty years it purportedly existed and was generally unable to recall any specific details of his efforts.

--None of Michele's asserted efforts on behalf of the purported partnership appears to have been substantial, to have substantially advanced the interests of the partnership, or to have produced any significant benefit to the purported partnership.

--Credible third-party witnesses, including Gin Wong and Richard Purcell, who were intimately involved in working with Lee over a long period of time on the development of the Malibu Properties had never heard Lee mention Michele and never met Michele prior to Lee's death.

--Harry testified that Lee had never mentioned Michele to him and Harry, himself, had never met Michele prior to Lee's death.

--There were multiple inconsistencies in Michele's testimony at trial as to the dates various events occurred, including, among other things, when his purported agreement with Lee was entered into and what its terms were.

--Michele offered no credible explanation for why none of the Malibu Properties or the Alta Property was transferred to Michele during the approximately thirty years that the purported partnership existed, prior to Lee's death.

--There was a paucity of evidence concerning the expertise, skills, or background of Michele in the development of real property which would explain why Lee would have given Michele a fifty percent ownership interest in the Malibu Properties and the Alta Property for no financial consideration.

14. Civil Code section 1575 defines undue influence as follows:

"Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress."

15. "Undue influence...is a shorthand legal phrase used to describe persuasion which tends to be coercive in nature, persuasion which overcomes the will without convincing the judgment. [Citation omitted] The hallmark of such persuasion is high pressure, a pressure which works on mental, moral, or emotional weakness to such an extent that it approaches the boundaries of coercion." *Odorizzi v. Bloomfield School District* (1966) 246 Cal.App.2d 123, 130-131.

16. Based upon the evidence admitted at trial, the court's observations of Harry while testifying, and the testimony of other witnesses, the court found Harry to be a more credible witness than Michele.

17. The court finds that the execution of the Malibu Transfer Deeds, the Alta Transfer Deed, and the Power of Attorney by Harry to be the result of undue influence exerted upon Harry by Michele through threats, misrepresentations, intimidation, bullying, and fraud and that the transfers of the Malibu Property and the Alta Property were without adequate consideration and must be rescinded and unwound.

18. The court further finds that there is no legal or factual basis for the liens imposed by the \$600,000 Mechanics Lien, the \$20 Million Mechanics Lien, or the 95 Million Mechanics Lien and that they must be cancelled.

19. Defendants have asserted that Harry and the Trust are barred by the doctrines of judicial estoppel and equitable estoppel from asserting that the transfers of the Malibu Properties and the Alta Property were invalid or improper based upon the positions taken by Harry or the Trust in connection with three matters: (1) a “protest” of proposed adjustments regarding the estate tax to be paid in connection with the Estate of Norman Mansdorf ( see Exhibit 596) (the “Estate Tax Protest”); (2) a declaration signed by Harry which was filed in support of a motion to dismiss in *Lee Mansdorf, et.al. v. Michele Giacomazza, et.al.*, Case No. BC366206 of the Los Angeles Superior Court (See Exhibit 520) (the “Motion to Dismiss”), and , (3) deposition testimony of Harry in a case pending in the Ventura County Superior Court referred to in this trial as the “Cingular Wireless” case.

20. Judicial estoppel applies when “(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” *Jackson v. County of Los Angeles* (1997) 60 Cal.App.4<sup>th</sup> 171, 183.

21. “A party may invoke equitable estoppel to prevent his opponent from changing positions if (1) he was an adverse party in the prior proceeding; (2) he detrimentally relied upon his opponent’s prior position; and (3) he would now be prejudiced if a court permitted his opponent to change positions.” *Jackson v. County of Los Angeles, supra*, 60 Cal.App.4<sup>th</sup> at 183 (quoting and relying upon *Precluding*

*Inconsistent Statements: The Doctrine of Equitable Estoppel* (1986) 80 Nw. U. L.Rev 1244, 1248-49.

22. With respect to the Estate Tax Protest, judicial estoppel does not apply because the evidence at trial was that the Internal Revenue Service did not adopt the position asserted by Harry and the Trust in that proceeding. David Roth, the tax lawyer who represented the Norman Mansdorf estate testified that Harry and the Trust were unsuccessful in convincing the Internal Revenue Service to adopt the position as to which Michele seeks to invoke judicial estoppel. Equitable estoppel does not apply to the Estate Tax Protest because Michele was not an adverse party in the matter. He was not a party at all.

23. With respect to the Motion to Dismiss, judicial estoppel does not apply because the evidence at trial established that the positions taken in Harry's declaration were the result of Michele's fraud and undue influence, including Michele's threats against Harry and Harry's wife, his misrepresentations regarding Lee's agreement to give him a 50 % interest in the real property owned by the Trust, and the recording of mechanic's liens on the Malibu Properties. Moreover, the positions taken in Harry's declaration were not "totally inconsistent" with his testimony at trial.

24. With respect to the Motion to Dismiss, equitable estoppel does not apply because Michele was not an adverse party to Harry from the time Harry became aware of the litigation and filed the Motion to Dismiss. Indeed, the Motion to Dismiss sought, among other things, the dismissal of the action as to Michele, something definitely in his interest.

25. With respect to Harry's deposition testimony in the Cingular Wireless case, Michele has failed to establish the factual basis for judicial estoppel. There is insufficient showing that Harry was successful in asserting any position in the Cingular Wireless case or even what the issues in that case are. There is no evidence that that litigation has been completed or that the court in which it is pending has rendered any final rulings or that it adopted Harry's position or accepted it as true.


26. With respect to Harry's deposition testimony in the Cingular Wireless case, Michele has failed to establish the factual basis for equitable estoppel. There is no showing that Michele was an adverse party in the prior proceeding; there is no showing that Michele detrimentally relied upon Harry's position in the Cingular Wireless case, or that Michele would be prejudiced if Harry was permitted to change his position.

27. Based on the foregoing, the court declares and determines that as to the Giacomazza Defendants, the Trust is the rightful holder of title to the Malibu Properties and the Alta Property and that each of the Giacomazza Defendants is declared to have no estate, right, title or interest in the Malibu Properties or the Alta Property. The Malibu Transfer Deeds and the Alta Transfer Deed are ordered cancelled. The Malibu Transfer Deeds and the Alta Transfer Deed are ordered rescinded. The \$600,000 Mechanics Lien, the \$20 Million Mechanics Lien, and the \$95 Million Mechanics Lien are each ordered cancelled. The court further finds and orders that each of the Giacomazza Defendants are constructive trustees with respect to each of the Malibu Properties and the Alta Property and the benefits derived from such properties which each may hold and that an accounting is appropriate to determine the extent of such benefit and to trace any proceeds of such properties.

The Clerk shall give notice by U.S. Mail

IT IS SO ORDERED.

Dated: August 3, 2009



Charles F. Palmer  
Judge of the Superior Court