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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

2018-168592-CK

JUDGE MARTHA D. ANDERSON

CHRISTINE LEONARD,

Plaintiff,

Case No. 18- -CK

Hon.

vs.

**ELMORE LEONARD, INC.,
PETER LEONARD, and
THE ELMORE LEONARD
JR. TRUST (U/A 11/06/87),**

Defendants.

Geoffrey S. Wagner (P70839)
GIARMARCO, MULLINS & HORTON, P.C.
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COMPLAINT

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in this Complaint.

Plaintiff, Christine Leonard, by and through her attorneys, GIARMARCO, MULLINS & HORTON, P.C., states the following in support of her Complaint:

THE PARTIES, JURISDICTION & VENUE

1. Plaintiff, Christine Leonard ("Christine"), is resident of the County of Oakland, State of Michigan.
2. Defendant, Elmore Leonard, Inc. ("ELI"), conducts business in the County of Oakland, State of Michigan.

3. Defendant, Peter Leonard ("Peter"), is a resident of the County of Oakland, State of Michigan; he is also Co-Trustee of the Elmore Leonard, Jr. Trust.
4. Defendant, the Elmore Leonard, Jr. Trust (the "Trust"), conducts business in the County of Oakland, State of Michigan.
5. This Court has jurisdiction over this matter because the amount in controversy is greater than \$25,000.00 and, moreover, because Plaintiff is also seeking equitable and declaratory relief.
6. Venue is proper in this Court pursuant to MCL 600.1621(a) and/or (b).

GENERAL ALLEGATIONS

7. This is a contract/tort action brought by Plaintiff, Christine Leonard, against Defendants, ELI, Peter Leonard and the Elmore Leonard, Jr. Trust.
8. On or about December 6, 2012, Christine divorced her late-husband, Elmore Leonard, Jr. ("Elmore").
9. On or about August 20, 2013, Elmore passed away.
10. Pursuant to the Settlement Agreement in Christine and Elmore's divorce case, ELI agreed to guaranty Elmore's various monetary-obligations to Christine; copies of the Settlement Agreement and Guaranty Agreements are not attached because they are in the possession of Defendants.
11. The Guaranty Agreement states, in pertinent part, that:

Christine will have a ***right to demand performance*** (and [ELI] will have an obligation to honor such demand) ***upon the occurrence of an Event of Default under the Settlement Agreement*** that is not cured within any applicable cure or grace period.

(*Id.* at ¶ 13) (emphasis added).¹

¹ The Guaranty Agreement also contains a forum-selection clause requiring any/all suits arising under same to be filed in the Oakland County Circuit Court. (*Id.* at ¶ 12).

12. On or about February 20, 2014, Defendants sold Elmore's Archives (i.e., 150 banker's boxes of manuscripts, unpublished-stories, etc.) to the University of South Carolina for the sum of \$1,150,000.00.
13. Under the parties' Settlement Agreement, Christine is entitled to receive 21.25% of the revenue derived from any/all "literary works, manuscripts, drafts, and other intellectual property" of Elmore and/or ELI.
14. The Settlement Agreement also places express restrictions on the transfer of income-producing assets (e.g., The Archives), *viz. any/all transfers require Christine's prior written consent.*
15. Christine did not consent to the sale/transfer of the Archives to the University of South Carolina, nor for that matter did Defendants ever inform her of same.
16. When Christine finally learned of the sale/transfer, she requested that Defendants pay her 21.25% of the resultant proceeds, in accordance with the provisions of the Settlement Agreement.
17. At or around this same time, Christine also discovered that, in August of 2013, Peter Leonard secretly arranged to have the Archives transferred from Elmore/ELI's name to that of the Elmore Leonard, Jr. Trust ("the Trust"). This transfer was:
 - a. Done without the prior written consent of Christine; and
 - b. Intended to deprive Christine of her rightful share of the Archives-related proceeds.²

² Christine has an express contractual right to 21.25% of the *Elmore/ELI's* revenue; however, there is no such relationship between her and the *Trust*. Ultimately, the purpose of this surreptitious transfer was to "end run" the operative provisions of the Settlement Agreement, which plainly would have required a substantial payment to Christine if Elmore and/or ELI (i.e., as opposed to the Trust) had effectuated the transfer of the Archives to the University of South Carolina in 2014.

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18. To date, Defendants have refused to comply with Christine's demand/request for payment of 21.25% of the proceeds from the sale/transfer of the Archives.
19. As a direct and proximate result of Defendants' actions, Plaintiff has suffered the damages described *infra* in this Complaint.

COUNT I
BREACH OF GUARANTY AGREEMENT
(ELI, Only)

20. Plaintiff restates all prior paragraphs as if fully set forth.
21. At all relevant times, Christine fully performed her obligations under the Settlement and Guaranty Agreements.
22. ELI, on the other hand, materially breached the terms of the Settlement and Guaranty Agreements in each of the following ways:
 - a. Transferring the Archives to the Trust in August of 2013, without Christine's prior written consent;
 - b. Transferring the Archives to the University of South Carolina in February of 2014, without Christine's prior written consent; and
 - c. Refusing to pay Christine 21.25% of the proceeds from the sale/transfer.
23. Christine has notified ELI's counsel that his client is in default of the Settlement and Guaranty Agreements.
24. In addition, Christine has complied with any/all necessary pre-suit requirements arising under the Agreements.
25. As a direct and proximate result of Defendant's multiple breaches, Plaintiff has suffered and will continue to suffer damages, including but not limited to the following:
 - a. 21.25% of the proceeds from the sale/transfer of the Archives;
 - b. Loss of use of the aforementioned proceeds; and

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- c. Costs, interest, attorney fees, and any/all other damages as may be discovered during this litigation.

COUNT II
UNJUST ENRICHMENT
(All Defendants)

- 26. Plaintiff restates all prior paragraphs as if fully set forth.
- 27. It would be unjust and inequitable for Defendants to retain 100% of the proceeds from the sale/transfer of the Archives.
- 28. Plaintiff has no adequate remedy at law.

COUNT III
TORTIOUS INTERFERENCE WITH A BUSINESS
EXPECTANCY/RELATIONSHIP
(Peter Leonard and The Trust, Only)

- 29. Plaintiff restates all prior paragraphs as if fully set forth.
- 30. On or about August 20, 2013, Peter Leonard arranged to have the Archives transferred from Elmore/ELI to the Elmore Leonard, Jr. Trust. ("the Trust").
- 31. This transfer was done without the prior written consent of Christine.
- 32. At all relevant times, Peter Leonard had direct knowledge of the business-relationship between Christine and Elmore/ELI and, in particular, Christine's right to receive 21.25% of the revenue generated by Elmore/ELI.
- 33. Peter Leonard intentionally interfered with the aforementioned business relationship – and did so with malice – by:
 - a. Transferring the Archives to the Trust without Christine's prior written consent;
 - b. Selling the Archives to the University of South Carolina without Christine's prior written consent; and

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c. Generally speaking, engaging in a covert effort/campaign to deprive Christine of her rightful share of the Archives-related proceeds.

34. Peter Leonard's actions were taken to further his own personal motives, with no benefit to ELI, and to deprive Christine of her rightful property.
35. At all relevant times, Peter Leonard's actions were performed in his individual capacity, and also in his capacity as Co-Trustee of the Trust.
36. As a direct and proximate result of Defendants' tortious interference, Christine has suffered the damages set forth *supra* in this Complaint.

COUNT IV
DECLARATORY RELIEF
(All Defendants)

37. Plaintiff restates all prior paragraphs as if fully set forth.
38. A justiciable controversy exists between Plaintiff and Defendants regarding numerous issues, including but not limited to the following:
- a. The transfer of the Archives to the Trust without Christine's prior written consent;
 - b. The sale/transfer of the Archives to the University of South Carolina without Christine's prior written consent; and
 - c. Defendants' refusal to pay Christine 21.25% of the proceeds from the sale/transfer, pursuant to the parties' Settlement Agreement and/or Guaranty Agreement.
39. This Court has the authority to grant declaratory relief under MCL 600.605 and MCR 2.605.
40. Accordingly, Plaintiff requests a declaration from this Court finding that:

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- a. The transfer of the Archives to the Trust in August of 2013, without Christine's prior written consent, violated the transfer-restriction provisions in the parties' Settlement Agreement;
- b. The transfer of the Archives to the University of South Carolina in February of 2014, without Christine's prior written consent, violated the transfer-restriction provisions in the parties' Settlement Agreement;
- c. Defendants' refusal to pay Christine 21.25% of the Archives-related proceeds is a violation of the payment/support provisions in the parties' Settlement Agreement; and
- d. Finally, as a direct and proximate result of Defendants' violation(s) of the Settlement Agreement, ELI is liable to Christine for her share of the sale-proceeds under operative provisions of the Guaranty Agreement.

RELIEF REQUESTED

Plaintiff requests that this Court enter a judgment in her favor in excess of \$25,000.00, together with costs, interest, and any other relief that this Court deems just and equitable under the circumstances.

Respectfully Submitted,

GIARMARCO, MULLINS & HORTON, P.C.

By: /s/ Geoffrey S. Wagner

Geoffrey S. Wagner (P70839)
Attorney for Plaintiff

Dated: September 19, 2018