SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA Dept. No. 16

Date: 7/30/2019 Hon. MICHAEL MARKMAN, Judge Ana Liza Tumonong, Clerk

PETER S. BEAGLE,

Plaintiff,

v.

CONNOR FREFF COCHRAN, CONLAN PRESS, INC., AVICENNA DEVELOPMENT CORPORATION, and DOES 1-10,

Defendants.

Case No. RG15794528

STATEMENT OF DECISION

On October 15-18 and November 5-6, 2018, the Court held a bench trial concerning Plaintiff's claims for financial elder abuse, elder abuse based on treatment resulting in mental suffering, fraud, defamation, breach of fiduciary duty, and conversion against Defendant Connor Freff Cochran. Conlon Press, Inc. ("CP") and Avicenna Development Corporation ("Avicenna") are the subject of pending bankruptcy proceedings subject to an automatic stay of litigation. All claims against those entities were bifurcated and were not a part of the trial. Kathleen A. Hunt represented Plaintiff Peter Beagle. Defendant Connor Cochran represented himself. On November 20, 2018, Plaintiff submitted a closing trial brief. On December 4, 2018, Defendant submitted a closing trial brief. On December 11, 2018, Plaintiff submitted a rebuttal. The Court then took the matter under submission.

On February 27, 2019, the Court took the matter out from under submission and issued an order seeking additional information from the parties. As noted in that order, the Court needed further information concerning Plaintiffs' damages contentions, and also concerning the impact of the corporate bankruptcy proceedings involving CP and Avicenna on Mr. Beagle's claims against Mr. Cochran as an individual. The parties provided further information pursuant to that order. The Court took the matter back under submission on April 3, 2019.

On June 21, 2019, the Court issued its tentative statement of decision. Defendant submitted timely objections. The Court's tentative statement of decision ordered further briefing on the question of attorney's fees, which the parties submitted. This is the Court's final Statement of Decision.

I. ORDERS

After considering the evidence and arguments of the parties, the Court:

1. FINDS that Plaintiff proved, by a preponderance of the evidence, his claims against Defendant Cochran individually for:
    a. financial elder abuse (which Plaintiff also characterized as "elder abuse – constructive fraud");
    b. Fraud;
    c. Breach of Fiduciary Duty; and
    d. Defamation (Slander).

2. FINDS that Plaintiff did not prove, by a preponderance of the evidence, his claims against Defendant Cochran individually for:
    a. Elder abuse based on acts resulting in mental suffering; or
    b. Conversion.

3. FINDS that Defendant did not prove, by a preponderance of the evidence, his affirmative defenses (including based on the statute of limitations and laches).

4. AWARDS damages to Plaintiff and against Defendant Cochran individually in the amount of $7,500 for defamation and $325,000 on Plaintiff's remaining claims, for a total judgment of $332,500.

5. FINDS Plaintiff did not prove his claims for punitive damages.

6. After considering on Defendant's objection, the Court further ORDERS Plaintiff to file and serve a noticed motion for reasonable attorney's fees. Plaintiff may wish to file the motion at the conclusion of the case, or in the bankruptcy matter, in order to address the challenges required to allocate time for purposes of a competent lodestar calculation.

7. DIRECTS Plaintiff to prepare a proposed partial judgment within five court days of this Statement of Decision.

II. Impact of the Corporate Bankruptcy Proceedings

All of the defendants in this case are in bankruptcy proceedings. As explained below, Mr. Beagle obtained relief from the automatic stay pending the bankruptcy in Mr. Cochran's individual case but not in the cases against the two corporate defendants here. This Court agreed to bifurcate the case so that trial could proceed on Mr. Beagle's claims against Mr. Cochran as an individual. This Court is ***not*** adjudicating claims against CP or Avicenna – those claims remain subject to the stays in their bankruptcy cases.

In Mr. Cochran's individual bankruptcy case (Case No. 18-40032 RLE (N.D. Cal.)), the bankruptcy court issued an order that explains:

> THIS COURT conducted a hearing ... on the omnibus motion ("Motion") of Movant Peter S. Beagle seeking an order terminating and annulling the automatic stay herein under 11 U.S.C. §§ 1105(a) and 362(d)(1) for cause to allow him to pursue, prosecute and liquidate his claims against the above-captioned debtors in the State Court Action....
>
> 1. The Motion is GRANTED.
> 2. The automatic stay herein is modified to allow Movant to litigate and obtain a final judgment in the State Court Action.
> 3. The objections of creditors and objecting parties Sandbox, LLC and Justin Brunnell are OVERRULED provided, however, that said creditors are entitled to intervene in the State Court Action to the extent allowable under applicable nonbankruptcy law.
> 4. No party may execute on any judgment entered in the State Court Action pending further order of this court.

(Order Granting Omnibus Motion of Creditor Peter S. Beagle For Relief From Automatic Stay For Cause Under 11 U.S.C. § 362(d)(1), filed 3/23/18.) The bankruptcy court lifted the stay with respect to all Defendants.

A short time later, however, third-party creditors moved to convert each of the cases to Chapter 7 proceedings. The bankruptcy court granted the motion.

In the two corporate bankruptcy matters, for Avicenna (N.D. Cal. Bk. No. 18-40029) and CP (N.D. Cal. Bk. No. 18-40030), the bankruptcy trustee filed motions seeking relief (under Rule

60(b)(6) of the Federal Rules of Civil Procedure) from the order granting Mr. Beagle's motion for relief from the automatic stay. The bankruptcy court granted the motions in those cases.

The Court did not, however, re-impose the stay in Mr. Cochran's individual bankruptcy. There, during a hearing on June 19, 2018, the Court told counsel for Mr. Beagle:

> [W]ith regards to this issue of the relief from stay, there was a --- [counsel for Mr. Cochran] had uploaded an order, even though no motion had been filed, seeking to vacate the order for relief that was entered on March 23rd. I'm denying that. Your client is free to proceed against him. If the case is converted, I might reconsider that on some – on an appropriate motion, but right now I'm denying it. We'll upload this order and docket it. So there's no stay in effect.

("Proof of Relief From Stay," filed 3/11/19 pursuant to Order of 2/27/19, at Ex. A [Transcript of Hearing of 6/19/18 in *In re* Cochran, Case No. 4:18-bk-40032-RLE (N.D. Cal. Bk.)] at p. 5:23-6:6; see also pp. 6-8.) The docket sheet for Mr. Cochran's bankruptcy includes an entry concerning the June 19, 2018 hearing. While the next docket entry indicates an order denying the motion (Dkt. No. 69, 6/19/18, Case No. 18-40032 RLE), that is clearly in error both based on the transcript of the June 19, 2018 hearing and the associated image in Pacer, which is not an order signed by the bankruptcy judge but rather some other document signed by Mr. Cochran's counsel.

III. Plaintiff's Claims Against Connor Cochran

This is a tragic and occasionally bitter dispute between a noted author and his former business manager. Plaintiff Peter Beagle is a storyteller. His many works include *The Last Unicorn*, which he published in 1968. In 1982, an animated movie was released based on Mr. Beagle's book. He is a recipient of the prestigious Hugo and Nebula Awards. Born in 1939, Mr. Beagle is an "elder" for purposes of section 15610.27 of the Welfare & Institutions Code.

Connor Cochran works in the entertainment industry. He has been a writer and promoter, and hoped to be a movie producer. Cochran first met Beagle in 2001. He approached Beagle at a book signing as a fan of Beagle's work. The two men discussed the status of the film rights in a number of Beagle's books, and struck up a friendship. Cochran expressed interest in collaborating with Beagle to promote Beagle's work.

The men worked together for several years. Among other things, Cochran worked with Beagle to write a screen treatment for Beagle's *A Fine and Private Place*. Cochran became Beagle's business manager. Over time, Cochran became thoroughly enmeshed in Beagle's career and his private life. Cochran helped Beagle clean up his property. He became the

trustee for Beagle's mother's trust. He helped Beagle with budgeting and paying bills. Cochran also helped Beagle recover his film rights in *The Last Unicorn*.

Cochran persuaded Beagle to form Avicenna in order to monetize Beagle's intellectual property portfolio. According to Beagle, Avicenna was going to be a 50/50 business venture. Both men would transfer their intellectual property to the company. Cochran had apparently been planning to form Avicenna for some number of years before he convinced Beagle to partner with him. A 2006 document, which Cochran called a "pitch" to Beagle, promotes the future Avicenna as a "Connor Cochran Venture." (Exhibit 5235.)

The reality, however, was that Cochran held majority control over Avicenna. Avicenna's Articles of Incorporation were silent concerning corporate control, and Beagle signed off on them with Cochran. (Exhibit 1009.) The first page of Avicenna's Bylaws likewise made it seem like the parties had an equal interest in Avicenna. Paragraph 3 provided for a "single class of common stock." (Exhibit 1010 at 1.) "On formation, Avicenna's stock is owned one half (50%, consisting of 5,000 shares) by Connor Freff Cochran and one half (50%, consisting of 5,000 shares) by Peter S. Beagle." (*Id.*) But, paragraph 4 placed Cochran firmly in charge of the corporation. (*Id.*) He was the President and CEO and the only member of the board of directors. (*Id.* at ¶ 4(a), (b).) He was also the corporate secretary. *Id.* at ¶4(c)(1).) Beagle was the "Chief Creative Officer," and had no seat on the board. (*Id.* at ¶4(c)(2).) In March of 2014, Cochran alone – as the corporate designee for both Avicenna and CP – signed over Beagle's intellectual property rights to CP to use "as necessary." (Exhibit 1011.)

In July of 2014, Cochran persuaded Beagle to engage in a promotional tour for Beagle's work – particularly relating to *The Last Unicorn*. Cochran worked to promote Beagle's books, particularly *The Last Unicorn*, and arranged book-signing opportunities that included a long tour, including at screenings of the movie based on the book and at tables at science fiction and fantasy conventions. The tour was grueling, and involved cross-country travel by both men over several months.

During the tour, the relationship between the two men began to deteriorate. Cochran began speaking ill of Beagle to Beagle's friends and family. Cochran stated that he believed Beagle had serious mental issues, including dementia, and had an alcohol problem. Based at least in part on Cochran's input, family members initiated an effort to have Beagle placed in a conservatorship; ultimately, that effort failed.

In his November 24, 2015 Complaint, Mr. Beagle alleged fifteen claims – thirteen were alleged against Mr. Cochran. On October 24, 2017, the Court granted judgment on the pleadings on Plaintiff's claim for physical elder abuse. On December 11, 2017, Mr. Beagle

dismissed his claim for involuntary dissolution against Avicenna. Mr. Beagle's other claims remain pending.

Plaintiff went to trial on six of his claims: Elder abuse based on "constructive fraud," by which Plaintiff appears to mean financial elder abuse (Second Cause of Action); elder abuse by acts resulting in mental suffering (Third Cause of Action); fraud (Fifth Cause of Action); defamation (Sixth and Seventh Causes of Action (based on libel and slander)); breach of fiduciary duty (Eighth Cause of Action); and conversion (Twelfth Cause of Action).

Plaintiff's remaining claims overlap with his claims against the corporate entities, which are in bankruptcy. As a result, those claims were bifurcated and not tried. Plaintiff withdrew any request to rescind his agreement to form Avicenna as a remedy for constructive fraud (or any other claim). (Amendment to Claim for Damages by Plaintiff, filed 3/19/19.)

A. Elder Abuse Based on "Constructive Fraud"

Plaintiff's Second Cause of Action alleges "Elder Abuse – Constructive Fraud." (Complaint, filed 11/24/15, at 9-11.) He alleges this claim as distinct from his First Cause of Action, captioned "Elder Abuse – Financial." (*Id.* at 5-9.) That said, there appears to be no meaningful distinction with respect to the legal basis for the claim. (See Plaintiff's Closing Br., filed 11/21/18, at 2.) As the Court noted in connection with Defendant's Motion for Judgment on the Pleadings, while Plaintiff could have pleaded these causes of action as a single claim, the fact that Plaintiff's complaint parses out "constructive fraud" as a separate theory of injury is immaterial. (Order, 10/24/17, at 2.)

California's Elder Abuse Act is intended "to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect." (Delaney v. Baker (1999) 20 Cal. 4th 23, 33.) It provides "enhanced remedies to encourage private, civil enforcement of laws against elder abuse and neglect." (Bounds v. Superior Court (2014) 229 Cal. App. 4th 468, 478.) "The proscribed conduct includes financial abuse. The financial abuse provisions are, in part, premised on the Legislature's belief that in addition to being subject to the general rules of contract, financial agreements entered into by elders should be subject to special scrutiny." (Id.)

"Financial abuse" occurs "when a person or entity does any of the following:

> (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(Welf. & Inst. Code § 15610.30(a).) "A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." (Welf. & Inst. Code § 15610.30(b).)

"'Undue influence' means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity." (Welfare & Inst. Code § 15610.70.)

In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

(2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

(A) Controlling necessaries of life, medication, the victim's interactions with others, access to information, or sleep.

(B) Use of affection, intimidation, or coercion.

(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

(*Id.*)

Enhanced damages are available in elder abuse cases. "Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs." (Welf. & Inst. Code § 15657.5.)

Beagle proved by a preponderance of the evidence that Cochran's machinations led directly to the transfer Beagle's intellectual property to Avicenna. Cochran thereby assisted Avicenna in taking Beagle's intellectual property (which, the Court finds, after applying standard principles of statutory construction, falls under the rubric of property protected under the Welfare and Institutions Code).

The Court finds that Cochran assisting in taking Beagle's intellectual property was for a wrongful use and with the intent to defraud Beagle. To better understand why, a few comments concerning Cochran's demeanor at trial are in order. Cochran presents as an extremely intelligent, articulate, overly-aggressive hustler and pitch-man. Cochran's written work product attempting to promote Beagle's work is written as Cochran speaks – with a flair for the dramatic that is at best loosely based in truth. As but one example, Cochran prepared pitch materials for Beagle purporting to estimate the value of Beagle's intellectual property exceeding $15 billion. (Ex. 5235.) While Beagle's work is certainly valuable, and Beagle likely found the idea in Cochran's pitch that it was worth that much money to be pretty flattering, there is nothing that might suggest his intellectual property is worth that figure. Cochran also began holding himself out as a specialist in handling business affairs for older authors.

Cochran's work with Beagle unquestionably made Cochran Beagle's fiduciary. Cochran served as Beagle's business manager for many years. The testimony made clear that the two men shared an important friendship. The Court was convinced that Cochran really did believe he had Beagle's best interests in mind when working for Beagle. Cochran was convinced that he needed to take care of Beagle's finances, rationing cash and paying bills, and to otherwise help Beagle with day-to-day tasks (most of which involved money).

At a certain point, however, the evidence reflects that Cochran allowed his role as the trusted advisor to get the better of him. He crossed the line from business manager to over-paternalistic friend, exercising a surprising degree of control over Beagle's finances and, in effect, Beagle's life. His own testimony reveals that he had convinced himself that controlling Beagle was in Beagle's best interests because he viewed Beagle as a spendthrift (and Beagle

viewed himself that way). He also convinced himself that only he could rescue Beagle and transform Beagle's works into an intellectual property mega-estate. And, Cochran convinced himself, he should benefit accordingly.

According to Beagle, Cochran withheld the Avicenna Bylaws from Beagle prior to the formation of the company and then for years afterward, when Cochran was acting both as part of Avicenna and also individually as Beagle's business agent. Cochran denies this, and testified that he did provide Beagle with a copy of the Bylaws. Cochran had Beagle execute documents that plainly transferred extremely valuable intellectual property (though perhaps not nearly as valuable as Cochran's sales pitches implied) to Avicenna.

The Court does not make findings concerning whether Avicenna itself is liable for wrongfully taking Beagle's intellectual property; corporate liability must be analyzed distinctly from Cochran's individual liability, and those issues are subject to the bankruptcy stay.

As noted above, Cochran estimated Beagle's intellectual property had an astronomical value. But, Beagle was not compensated for transferring his IP to Avicenna beyond receiving a partial ownership interest in the company. While Beagle may have received some short-term benefit (though even that is unclear), the evidence reflects that the net impact to Beagle was a substantial financial harm.

Beagle contends that Cochran misled Beagle about their respective ownership interests in Avicenna, and the degree of control that they would have over the corporation. While Beagle thought he would have equal control over the venture, the papers drawn up at Cochran's request placed Cochran in complete control over Avicenna. Beagle argues that Cochran intended to deceive Beagle all along; the trial testimony reflected that Cochran even prepared pitch materials calling Avicenna "a Connor Cochran Venture."

Under California law, the statute of limitations for an elder abuse claim is four years. (Welf. & Inst. Code § 15657.7.) The parties formed Avicenna in 2008. Beagle did not file this lawsuit until November 24, 2015. Beagle invokes the discovery rule to argue that he only discovered the abuse relating to the formation of Avicenna much later.

Beagle proved the applicability of the discovery rule by a preponderance of the evidence. Among other evidence, the Court credits the testimony of Steve Morang, an expert in fraud detection and investigation. Beagle's age and disposition made it exceptionally easy for Cochran to arrange a business deal that, if successful, would have been extremely beneficial to Cochran but would have left Beagle entirely at Cochran's whim with respect to remuneration. By the time Cochran was orchestrating the transfer of intellectual property to Avicenna, Beagle had already turned his finances over to Cochran as Beagle's business manager. The Court believed Beagle's testimony that Cochran did not show Beagle the

Avicenna Bylaws, and never discussed their respective ownership interests in the company with Beagle. Even if Cochran's testimony is credited and Beagle had access to the Bylaws, the evidence reflects that Cochran obscured the true nature of the deal he was arranging to transfer Beagle's intellectual property into a company that Cochran fully controlled.

Beagle also proved by a preponderance of the evidence elder abuse by Cochran in transferring sums from Cochran's mother's trust. Beagle had made Cochran the trustee. It appears that at least several thousand dollars (the exact amount is unclear) were transferred out of the trust for Cochran's use and benefit.

B. Elder Abuse By Acts Resulting in Mental Suffering

Plaintiff's Third Cause of Action alleges abuse based on "treatment ... with resulting ... mental suffering." (Welf. & Inst. Code § 15610.07(a)(1).) Plaintiff refers to this claim as akin to intentional infliction of emotional distress. (Closing Br., filed 11/21/18, at 6.) The Court is unaware of law that equates a claim under section 15610.07 with intentional infliction of emotional distress claim. The Court will nevertheless evaluate this claim based on the legal standards for intentional infliction of emotional distress and separately based on the Court's understanding of section 15610.07.

First, Plaintiff has not proven a claim for intentional infliction of emotional distress. Specifically, Plaintiff did not show that Cochran's outrageous conduct – directed at Plaintiff himself – was taken with "the intention of causing, or reckless disregard of the probability of causing, emotional distress." (*See Christensen v. Superior Court* (1991) 54 Cal. 3d 868, 903.) In order to be "outrageous," the conduct "must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id.* [quoting *Davidson v. City of Westminster* (1982) 32 Cal. 3d 197, 209].) Cochran's financial mismanagement, and his expressions of concern to Beagle's friends and relatives for Beagle's mental health and use of alcohol, do not rise to the level required by California law for an intentional infliction of emotional distress claim.

Second, the language of section 15610.07 is directed at "treatment" causing "mental suffering." Beagle has not proven this claim by a preponderance of the evidence. He fails to point to specific acts of mistreatment by Cochran directed to Beagle himself. Evidence relating to Beagle's isolation from friends and family cannot be traced back to "treatment" of Beagle by Cochran. There is no indication in the case law that "treatment" consists of acts directed toward others rather than to the elder himself. At most, Beagle presented testimony relating to his family's efforts (led by Plaintiff's younger daughter, Kalisa Beagle) to place him under conservatorship. (See Exhibit 1066.) Cochran, however, did not file for a conservatorship of Beagle. According to Plaintiff's son, Dan Beagle, the family believed the true purpose of the conservatorship was apparently to save Plaintiff from his then-girlfriend, who they believed was

troubled, was physically harming Beagle, and had placed Beagle in an untenable financial position and was harming him. Both Dan and Kalisa Beagle testified that Cochran did not inspire them to seek the conservatorship.

Cochran appears to have taken on a central role in managing Beagle's funds, initially at Beagle's request. But the evidence does not indicate that Cochran's behavior relating to administering those funds triggered mental suffering for Beagle. Additionally, Beagle was apparently transferring funds at an alarming rate to his then-girlfriend, which Beagle would alternatively say she was using to visit a clinic or to gamble, or else would deny that he had made entirely. These transactions make it difficult to lay the cause of Beagle's mental anxiety at Cochran's feet.

The Court also notes that evidence relating to Beagle's "mental suffering" was inconclusive. For example, Elizabeth Soloway testified that Beagle was inappropriately isolated because mail was consistently going through Cochran. She pointed to Exhibit 1037, but failed to note that this exhibit was really fan mail – something that one might actually expect a legitimate entertainment business manager would handle.

C. Fraud

Beagle's fraud claim really turns on the issue of fraudulent concealment as well as affirmative fraud. Specifically, Beagle testified that Cochran affirmatively misled him concerning their respective ownership interests in Avicenna. He also testified that Cochran failed to disclose the Bylaws to Beagle, which would have established that Cochran controlled the company rather than the two parties sharing an ownership interest in its assets (Cochran contests this, and testified that he did provide a copy of the Bylaws to Beagle). Beagle further explained that he was not aware of payments being made to Avicenna relating to Beagle's intellectual property – including a $100,000 payment made by ITV in connection with the resolution of a dispute concerning rights in *The Last Unicorn* film.

The law applies an affirmative duty of disclosure in situations involving a confidential relationship between the parties. (*See Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal. App. 3d 1324, 1332; *Lingsch v. Savage* (1963) 213 Cal. App. 2d 729, 737-38.) Here, Cochran was Beagle's fiduciary. Cochran placed himself in control of most (if not all) of Beagle's assets and served as Beagle's business manager. What is more, immediately before forming Avicenna, Cochran was acting as Beagle's business partner in the corporate formation effort. His affirmative representations concerning the parties' respective shares of the future business were false when made. Cochran testified that he did indeed provide a copy of the Bylaws to Beagle. But, there is no evidence to corroborate the theory. Even if Cochran had disclosed the Bylaws to Beagle, and Beagle lost them or does not recall, Cochran's affirmative statements to

Beagle concerning their equal relationship in the Avicenna venture would constitute actionable fraud.

As noted above, Beagle's testimony that he did not find out the truth about the parties' respective ownership interests in Avicenna until he filed suit was highly credible. The discovery rule therefore operated to toll the statute of limitations here.

D. Defamation (Slander)

Beagle claims that Cochran defamed him by making false statements to friends, business associates, and family. These included statements that Beagle had a "loss of mental capacity" and "drinks far more than he admits." For example, Marilyn Abbey testified Cochran said Beagle had an alcohol problem and expressed concerns that he might be suffering dementia. Cindy Hutchins, an acquaintance of Beagle (and a fan of his work) testified that Cochran suggested Beagle might suffer from dementia. Brian Heard, who did business with Beagle, testified that Cochran told him at some point that Beagle was "not in charge of his mental faculties" and "could not be trusted." He expressed that Beagle had dementia, and said that someone with dementia could never be trusted with a screenplay (at the time, Beagle was slated to write a screenplay for one of his earlier books). Cochran also told Beagle's children that something was "wrong" with Beagle, and he had "memory and comprehension problems that go well beyond anything that can be ascribed to just age." (Ex. 1074.)

Not only are these statements hurtful, particularly coming from a fiduciary and someone who Beagle considered a close friend, but a reasonable person could well conclude that Cochran is implying provable assertions of fact. (*See Hawran v. Hixson* (2012) 209 Cal. App. 4th 256, 289.) Cochran was saying that Beagle has a drinking problem and dementia. Further, in his email of July 20, 2015 with Beagle's friends and family, Cochran wrote that his statements questioning Beagle's mental faculties were "observation, not opinion." (Ex. 1074.)

Beagle has established by at least a preponderance of the evidence that Cochran's oral statements that Beagle had dementia were false, and that Cochran knew they were false when made. Dr. Brian Richardson credibly testified that Beagle did not have dementia and was competent. (See also Exhibits 1026, 1066.) Cochran's testimony concerning Beagle's faculties in 2015 and earlier focused on changes in Beagle's behavior. At that point in time, however, Beagle was pushing back on Cochran's management and behavior. Cochran's testimony focused on Beagle's generalized lack of memory, or Beagle's use of storytelling in a way that made it seem like Beagle was describing facts. It did not support any inference relating to dementia.

Beagle did not establish defamation by a preponderance of the evidence with respect to generalized statements concerning Beagle's "mental faculties," and Cochran's "lack of trust" in Beagle. These were generalized opinions rather than inferences of verifiable fact.

Cochran's statements regarding Beagle's memory in general, rather than his statements concerning dementia, appear to have been based on fact; they are not actionable. Cynthia Myers credibly testified about Beagle's bad memory. The Court itself observed Beagle's challenges relating to memory during his testimony at trial. As a result, the Court cannot credit as conclusive Dr. Richardson's general testimony that Beagle did not appear to have memory problems when examined. (See also Exhibit 1066 [noting "mild" memory impairment.])

Additionally, Beagle has an observable tendency to state things as fact even when he cannot recall the event(s) on which they are based. Cochran noted that this happened on a number of occasions, including in situations where he appeared to be presenting as fact stories about an encounter with Angela Landsbury during voice-overs for *The Last Unicorn* movie that never happened. The Court observed Beagle mixing up events in his testimony on more than one occasion during the course of the trial.

E. Breach of Fiduciary Duty

Cochran's fiduciary duty is not based on Beagle's decision to allow Cochran to help exploit intellectual property rights, including by transferring rights to Avicenna. The Court is mindful that "fiduciary obligations are not necessarily created when one party entrusts valuable intellectual property to another for commercial development in exchange for the payment of compensation contingent on commercial success." (*City of Hope Nat'l Med. Center v. Genentech, Inc.* (2008) 43 Cal. 4th 375, 391.)

Here, however, the evidence at trial left no question that the parties shared a long-term confidential relationship that created a fiduciary duty. Cochran became Beagle's business manager shortly after they met in 2001. The parties testified consistently that Cochran had thoroughly inserted himself in Beagle's life. Among other things, Cochran did budgeting for Beagle, and rationed money to him as though it were a parent administering an allowance for a child. Beagle also made Cochran the trustee for his deceased mother's trust.

The evidence at trial also left no question that Cochran's duties as a fiduciary operated independently from the parties' relationship based on Avicenna. Cochran served as Beagle's agent separately and independently from his work for the corporation.

Cochran obtained an unfair advantage as a result of his work as Beagle's fiduciary. Among other things, Cochran transferred a substantial amount of money to himself to pay personal expenses. At trial, Cochran offered no justification for his use of his fiduciary

relationship to exercise these unfair advantages. (*See Brown v. Halbert* (1969) 271 Cal. App. 2d 252, 266-67; *Credit Managers Ass'n v. Superior Court* (1975) 51 Cal. App. 3d 352, 361.)

F. Conversion

In order to prevail on a claim for conversion, Plaintiff must prove "(1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) Money cannot be the subject of conversion unless there is a specific, identifiable sum involved. (*See Kim v. Westmore Partners Inc.* (2011) 201 Cal. App. 4th 267, 284.) Beagle points to the transfer of his intellectual property to Avicenna and the loss of his interest in The Rebecca S. Beagle Trust to Cochran's control as the property converted by Cochran.

Plaintiff failed to prove conversion of either category of property by a preponderance of the evidence. First, the transfer of intellectual property to Avicenna involves potential conversion by Avicenna – not by Cochran. Cochran can and should have disclosed the Bylaws for Avicenna to Beagle at the time they formed the corporation (Cochran testified that he in fact did so), but the failure to disclose the Bylaws or to fully discuss the parties' respective ownership interests in the company does not amount to conversion of Beagle's intellectual property. The Court cannot adjudicate Beagle's theory of conversion against Avicenna given the stay pending bankruptcy.

Second, Beagle himself assisted in making Cochran the trustee of The Rebecca S. Beagle Trust. There is no indication that Cochran gained that role as a result of fraud or elder abuse. While developments since that time certainly make Cochran appear less than worthy of Beagle's trust, Beagle does not point to any specific action taken by Cochran to convert the trust corpus. Additionally, Beagle fails to provide evidence of a specific, identifiable sum converted from The Rebecca S. Beagle Trust. While he does reference a withdrawal, likely by Cochran, of $8,350, it remains entirely unclear whether some portion of that money was given to Beagle or used on Beagle's behalf or at his request at the time.

IV. Affirmative Defenses

Cochran asserts a number of affirmative defenses, none of which find support in the evidence. The Court discusses the statute of limitations defense, and discovery rule issues, above (primarily in the context of the elder abuse claim). The analysis is applicable across the various claims at trial.

Cochran's laches defense lacks evidentiary support for similar reasons. Simply put, the evidence reflects that the equities do not favor a laches defense. Further, the U.S. Supreme

Court observed in *Petrella v. Metro Goldwyn-Mayer*, 134 S. Ct. 1962, 1973 (2014), "laches is a defense developed by courts of equity; its principal application was, and remains, to claims of an equitable cast for which the Legislature has provided no fixed time limitation." Here, however, statutes of limitations apply to the claims asserted at trial, and the evidence reflects that the discovery rule applies to toll them.

Cochran asserts a "set off" defense. At trial, however, Cochran failed to present sufficient evidence concerning the expenses he seeks to set off.

V. Damages

The question of damages is unusually challenging in this case as a result of the pending bankruptcies of Avicenna and CP. Rescission of the agreement to form Avicenna is not possible, and Plaintiff has disclaimed it as a remedy. Nor is this Court in a position to transfer Beagle's intellectual property back to him, since that is an asset of Avicenna and therefore is a remedy only available through the bankruptcy court.

One possible measure of damages for the elder abuse claim, as well as for the fraud and breach of fiduciary duty claims, might have been awarding the fair market value of the Beagle intellectual property portfolio immediately prior to the transfer to Avicenna, less funds received by Beagle from the exploitation of the portfolio in the intervening years. Perhaps due to the pendency of claims against the corporate entities, however, Beagle presented no expert testimony or other evidence concerning the reasonable value of his intellectual property in 2008, before he transferred it to Avicenna at Cochran's urging.

The Court is therefore left with limited evidence from which to calculate damages as to Cochran individually. Plaintiff introduced a hodge-podge of hundreds of pages of bank records for Avicenna, CP, and for his mother's trust (over which Beagle had made Cochran the trustee). (Exhibits 1001-1003.) He also introduced tax records relating to Avicenna. (Exhibit 1016.) At trial, Michael Heard, an expert in the entertainment industry, testified about the bank statements. He had worked with both parties in connection with *The Last Unicorn* properties. He was also a fact witness (as noted above, Heard testified about Cochran's statements concerning Beagle's mental health).

Heard is not a forensic accountant, but he nevertheless was asked to create a "forensic accounting report." He had volunteered to prepare the report because Plaintiff otherwise could not afford for one to be prepared. Heard's report purports to itemize what Heard believed to be numerous "highly unlikely business expenses" – basically amounting to fraudulent transfers of funds by Cochran to himself and that benefitted him exclusively. (Exhibit 1024.) For example, he identified upwards of $50,000 in purchases from Amazon. He found transactions for payments to Weight Watchers, for gym memberships, personal trainers,

pet food, scuba diving, Bed Bath & Beyond, gasoline expenses, and horseback riding. All told, Heard estimated $801,000 in payments that were "highly unlikely" to be for a business purpose and that appeared to only benefit Cochran. Heard also found approximately $75,000 in cash withdrawals from Avicenna accounts, $77,000 from CP, $46,000 from the Beagle Trust, and $41,000 directly deposited into Cochran's personal account. Cochran admitted that he used a bank account for "Connor Cochran, Inc." as a personal account.

During Cochran's capable cross-examination, however, it became clear that Heard had made numerous unwarranted assumptions concerning a distressingly large number of the transfers she had tried to call into question. For example, Heard testified that he found a record of $17,800 in payments to a private school in the Philippines without any business purpose behind it. Based on the testimony of David Roudebush, Plaintiff's old acquaintance, the school involved was "Fountain International School," which Roudebush owned, and the payment related to a transaction involving *Last Unicorn* rights.

An item flagged as a "vacation" in Ireland was, in reality, a business trip taken to negotiate back Beagle's film rights in *The Last Unicorn*. Gasoline expenses, according to Cochran, related to the 60,000 miles in road trips taken to promote Beagle's work. The Amazon purchases were books purchased over a ten-year period in connection with Beagle's promotions (where he would sign and then resell books). Heard also appeared to sweep in revenues from CP in his analysis, to which it became clear Heard had no idea whether Beagle was entitled. Another significant error was Heard's inclusion of a $300,000 loan from a company called Sandbox. Heard appeared to have flagged this as an expense. All told, Cochran's testimony that roughly $70,000-$100,000 a year was making its way to Beagle in various ways may have been accurate.

Heard conceded that while he "sometimes does" forensic accounting, he really is not a forensic accountant and is not a member of any forensic accounting association. He noted that he was operating with incomplete records, and that there might be explanations for items that he had noted as "highly unlikely" to be for business purposes. While cross-examination sought to highlight that Heard might have a potential financial benefit if Beagle prevailed in this lawsuit, it appeared to the Court that Heard's analysis was simply careless, and based on a woefully incomplete set of documents – due primarily to Defendants' all-too-effective stone-walling in discovery – rather than affirmatively attempting to mislead.

The Court will award damages to Plaintiff of $325,000 on the Elder Abuse, Breach of Fiduciary Duty, and Fraud claims against Cochran as an individual. This sum is based on the Court's review of the evidence and particularly the expenditures as to which Plaintiff established by a preponderance of the evidence were for Cochran's personal benefit. The Court has obviously not included sums relating to the Amazon purchases, the Ireland business

trip, and the payments to the Fountain International School. Nor has it included sums that appear to have been used to pay for Beagle's residence.

The Court rejects Heard's testimony concerning revenues as a basis for damages. Heard's conclusions concerning revenues were unreliable. Further, using revenue as a basis for damages as against Cochran individually would be inappropriate, since those amounts are not really tied to the claims at issue.

Beagle has not proven his claim for punitive damages. In addition to failing to provide adequate evidence concerning the requirements of malicious action or oppression, the Court lacks any information concerning Cochran's financial condition.

Beagle seeks reasonable attorney's fees incurred in litigating his financial elder abuse/"constructive fraud" claim. Pursuant to the Court's orders with its tentative statement of decision, Beagle submitted briefing and a declaration of counsel on the question of fees. Cochran objected to those materials as insufficient to support an award of fees, and asked for the opportunity to have formal briefing and a hearing on the issue.

Reasonable attorney's fees are available on a successful claim for financial elder abuse. (Welf. & Inst. Code § 15657.5.) The Court determines a reasonable attorney's fee through the lodestar method. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 646 [affirming application of lodestar method to FEHA fee awards].) The lodestar is "the basic fee for comparable legal services in the community[.]" (*Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132.) The lodestar figure is determined on the basis of the "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Id.* at 1131-32.)

The lodestar does not include unreasonable amounts. (*Id.*) The Court is required to carefully review counsel's billing entries, because "inefficient or duplicative efforts [are] not [entitled] to compensation." (*Id.*) This means the Court has the discretion to disallow time claimed for inefficient work, work on unrelated matters, or overly vague entries. (*See Christian Research Institute v. Alnor* (2008) 165 Cal. App. 4th 1315, 1325.)

Plaintiff's submissions on the issue of fees left unanswered questions for purposes of making a lodestar calculation. Most importantly, Plaintiff failed to perform any allocation concerning the time incurred in litigation relating to the trial claims here. It is also unclear how Plaintiff carved out time spent in connection with litigating against the corporate entities from Plaintiff's hours calculation. On the one hand, attorney's fees are normally a joint and several obligation incurred by multiple defendants. (*See Friends of the Trails v. Blasius* (2000) 78 Cal. App. 4th 810, 838.) On the other hand, it is an abuse of discretion and "eminently unfair to tag" a defendant with a substantial portion of attorney's fees incurred by the plaintiff in litigating

issues that were solely relevant only to other defendants. (*Heppler v. J.M. Peters Co.* (1999) 73 Cal. App. 4th 1265, 1297.) That concerned is heightened here as a result of the pending bankruptcies.

Plaintiff must submit competent evidence for the Court to perform a lodestar calculation, and it must include a detailed breakdown of time spent on this matter by task, not simply in the aggregate. Fee invoices, redacted to protect the attorney-client privilege where necessary, would be helpful in that regard.

If Plaintiff wishes to pursue fees at this stage against Cochran personally, and if Plaintiff believes he can present evidence that will resolve the Court's concerns, then Plaintiff should file and serve a noticed motion seeking reasonable attorney's fees. Plaintiff may instead elect to file such a motion at the conclusion of the case, or in connection with the various bankruptcies, in order to better address the time allocation issues that will need to be resolved in order to perform a competent lodestar calculation.

Beagle did not prove economic damages relating to defamation. Damages are therefore limited to damages for harm to reputation, or shame, mortification, or hurt feelings. Given Beagle's testimony, and given general testimony throughout the trial relating to the generalized non-economic harm to reputation, as well as shame, mortification, and hurt feelings, the Court awards $7,500 as damages against Cochran individually.

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EXHIBITS

All exhibits and other materials, including transcripts of deposition and administrative records that were offered in evidence or otherwise presented at trials or hearings in civil, family, or probate matters will be returned at the conclusion of trial or hearing to the custody of the offering party. *See* Cal. Code Civ. Proc. § 1952. In this matter, the Court shall retain all exhibits and other materials, including transcripts of deposition and administrative records that were offered in evidence, until the expiration of the appeal period; however, the Court further advises that the litigants are responsible for removing all exhibits and other material offered in evidence or otherwise presented by you during the trial in this matter upon the expiration of the time for appeal. The Court further orders that, should the submitting party not remove the above materials within thirty days from the expiration of the time for appeal, the Court shall destroy the materials without further notice.

IT IS SO ORDERED.

July 30, 2019

Michael M. Markman
Judge, Superior Court of California
Alameda County

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG15794528
Case name: Beagle vs Cochran

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **Statement of Decision** filed on July 30, 2019 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 30, 2019.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: _____
Ana Liza Tumonong
Deputy Clerk

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