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JS-6

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

FRANKLIN R. FRALEY, JR., an individual and d/b/a FRALEY & ASSOCIATES,

Plaintiff,

Vs.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, a Connecticut corporation; FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC., a Wisconsin corporation; and DOES 1-10,

Defendants.

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, a Connecticut corporation; FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC. a Wisconsin corporation,

Third-Party Plaintiffs,

Vs.

DRITA KESSLER, an individual; DK ART PUBLISHING, INC., a California corporation,

Third-Party Defendants.

CASE NO. 2:18-cv-00722-AB-JPR
[Assigned to Hon. André Birotte Jr.]

~~PROPOSED~~ JUDGMENT FOR DEFENDANTS/THIRD-PARTY PLAINTIFFS TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA AND FIDELITY AND GUARANTY INSURANCE UNDERWRITERS, INC. ON (1) FIRST SUPPLEMENTAL COMPLAINT BY PLAINTIFF FRANKLIN R. FRALEY JR. D/B/A FRALEY & ASSOCIATES AND (2) THIRD-PARTY COMPLAINT AGAINST DRITA KESSLER AND DK ART PUBLISHING, INC.

Hearing Date: June 7, 2019
Time: 10:00 a.m.
Courtroom: 7B

Complaint Filed: January 29, 2018

1 The following motions came on regularly for hearing on June 7, 2019 in
2 Courtroom 7B of the above-entitled Court, the Honorable André Birotte Jr.
3 presiding: (1) Motion for Partial Summary Judgment On The First Supplemental
4 Complaint by Plaintiff Franklin R. Fraley, Jr. d/b/a Fraley & Associates
5 (“Plaintiff”); (2) Motion for Summary Judgment Or, In the Alternative, Partial
6 Summary Judgment by Defendant/Third-Party Plaintiff Travelers Property Casualty
7 Company of America (“Travelers”); (3) Motion for Summary Judgment Or, In the
8 Alternative, Partial Summary Judgment by Defendant/Third-Party Plaintiff Fidelity
9 and Guaranty Insurance Underwriters, Inc. (“Fidelity”); and (4) Travelers’ and
10 Fidelity’s Motion for Default Judgment Against Third-Party Defendants Drita
11 Kessler (“Kessler”) and DK Art Publishing, Inc. (“DK Art”).

12
13 **A. Plaintiff’s First Supplemental Complaint**

14 After consideration of the points and authorities, declarations and evidence
15 filed by the parties in support of and in opposition to Plaintiff’s Motion for Partial
16 Summary Judgment and the Motions by Travelers and Fidelity for Summary
17 Judgment Or, In The Alternative, Partial Summary Judgment, as well as oral
18 argument concerning said motions, the Court finds (1) there is no triable issue of
19 material fact as to the counts for conversion, intentional interference with
20 contractual relationship, intentional interference with prospective economic
21 advantage and aiding and abetting fraudulent transfers alleged against Travelers and
22 Fidelity in Plaintiff’s operative First Supplemental Complaint and (2) Travelers and
23 Fidelity are both entitled to judgment as a matter of law in their favor and against
24 Plaintiff on the First Supplemental Complaint, as set forth in the Court’s written
25 Order Granting Defendants’ Motions for Summary Judgment and Motion for Entry
26 of Default dated June 24, 2019 (Dkt. No. 120) (“Order”).

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT**
2 Plaintiff take nothing from Travelers, and that Plaintiff’s action against Travelers be
3 dismissed with prejudice.

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT**
5 Plaintiff take nothing from Fidelity, and that Plaintiff’s action against Fidelity be
6 dismissed with prejudice.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT**
8 Travelers and Fidelity shall recover costs from Plaintiff by post-judgment bill of
9 costs.

10 **JUDGMENT IS HEREBY ENTERED** for Defendant Travelers Property
11 Casualty Company of America and against Plaintiff Franklin R. Fraley, Jr. d/b/a
12 Fraley & Associates with respect to each of the causes of action alleged by Plaintiff
13 in the First Supplemental Complaint against Travelers.

14 **JUDGMENT IS HEREBY ENTERED** for Defendant Fidelity and
15 Guaranty Insurance Underwriters, Inc. and against Plaintiff Franklin R. Fraley, Jr.
16 d/b/a Fraley & Associates with respect to each of the causes of action alleged by
17 Plaintiff in the First Supplemental Complaint against Fidelity.

18

19 **B. Third-Party Complaint By Travelers And Fidelity**

20 After consideration of the points and authorities, declarations and evidence
21 filed by the parties in support of the Motion for Default Judgment Against Kessler
22 and DK Art by Travelers and Fidelity, the Court finds (1) there is no triable issue of
23 material fact as to the claims for express contractual indemnity and declaratory relief
24 alleged by Travelers and Fidelity in the Third-Party Complaint against Kessler and
25 DK Art and (2) Travelers and Fidelity are both entitled to judgment as a matter of
26 law in their favor and against Kessler and DK Art, jointly and severally, as set forth
27 in the Order.

28

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** Drita
2 Kessler and DK Art Publishing, Inc., jointly and severally, shall pay Travelers
3 Property Casualty Company of America and Fidelity and Guaranty Insurance
4 Underwriters, Inc. a total of \$217,406.42 as damages consisting of attorney’s fees
5 and costs incurred by Travelers and Fidelity from February 21, 2018 to the date of
6 this Judgment in relation to this action commenced by Plaintiff.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT** Drita
8 Kessler and DK Art Publishing, Inc., jointly and severally, shall pay Travelers
9 Property Casualty Company of America and Fidelity and Guaranty Insurance
10 Underwriters, Inc. post-judgment interest on the unpaid principal amount of this
11 Judgment, \$217,406.42, from the date of entry of this Judgment until paid in full at
12 the rate of 1.952% as required by 28 U.S.C. §1961 based on the date of this
13 Judgment.

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT**
15 (1) Drita Kessler and DK Art Publishing, Inc., jointly and severally, shall pay
16 Travelers Property Casualty Company of America and/or Fidelity and Guaranty
17 Insurance Underwriters, Inc. additional damages for attorney’s fees and costs
18 incurred by Travelers and/or Fidelity after the date of this Judgment in relation to
19 any appeal of this Judgment by Plaintiff, if any, and (2) the Court shall retain
20 jurisdiction of this action for the sole ministerial purpose of calculating the amount
21 of such additional damages sustained by Travelers and Fidelity after the date of this
22 Judgment, if any.


23 **JUDGMENT IS HEREBY ENTERED** for Third-Party Plaintiff Travelers
24 Property Casualty Company of America and against Third-Party Defendants Drita
25 Kessler and DK Art Publishing, Inc. with respect to each of the causes of action
26 alleged by Travelers in the Third-Party Complaint against Kessler and DK Art.

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JUDGMENT IS HEREBY ENTERED for Third-Party Plaintiff Fidelity and Guaranty Insurance Underwriters, Inc. and against Third-Party Defendants Drita Kessler and DK Art Publishing, Inc. with respect to each of the causes of action alleged by Fidelity in the Third-Party Complaint against Kessler and DK Art.

Dated: July 23, 2019

By: 

Hon. André Birotte Jr.
United States District Judge