

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

8	KZSA BROADCASTING, INC, A)	
9	California corporation; DIAMOND)	2:10-cv-01213-GEB-EFB
10	BROADCASTING, a California)	
11	corporation,)	
12)	
13	Plaintiffs,)	<u>ORDER GRANTING AND DENYING IN</u>
14)	<u>PART DEFENDANT'S MOTION TO</u>
15	v.)	<u>STRIKE REFERENCES TO TRUSTEE</u>
16)	<u>OF NON-EXISTENT TRUSTS AND</u>
17	IMMACULATE HEART RADIO)	<u>DENYING DEFENDANT'S MOTION TO</u>
18	EDUCATIONAL BROADCASTING, INC,)	<u>DISMISS</u> *
19	a California non-profit)	
20	corporation, DOUGLAS M. DAGGS,)	
21	SUCCESSOR TRUSTEE, OF THE SYLVIA)	
22	DELLAR TRUST, DOUGLAS M. DAGGS,)	
23	SUCCESSOR TRUSTEE OF THE DELLAR)	
24	FAMILY TRUST, WEST AUCTIONS,)	
25	INC, GREAT AMERICAN MOVERS, INC:)	
26	Roes 1-10,)	
27)	
28	Defendants.)	

Defendant Douglas M. Daggs, Successor Trustee of the Sylvia Dellar Survivor's Trust ("Defendant") moves to strike references to two trusts named in the First-Amended Complaint under Federal Rule of Civil Procedure ("Rule") 12(f), arguing they do not exist; therefore, all references to them are immaterial. Defendant moves in the alternative for an order dismissing the action against him in any capacity other

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 than as the Successor Trustee of the Sylvia Dellar Survivor's Trust
2 under Rule 12(b).

3 I. LEGAL STANDARD

4 Under Rule 12(f) "any redundant, immaterial, impertinent or
5 scandalous matter" may be stricken from a pleading. "[T]he function of
6 a 12(f) motion to strike is to avoid the expenditure of time and money
7 that must arise from litigating spurious issues by dispensing with those
8 issues prior to trial." Bowman v. Associates Home Equity Service, No.
9 CIV-S-06-0463 DFL EFB PS, 2008 WL 906276, at *4 (E.D. Cal. March 31,
10 2008) (quotation omitted).

11 When deciding a motion to strike, "the court views the
12 pleading under attack in the light most favorable to the pleader."
13 Estate of Manzo v. County of San Diego, No. 06cv60 BTM (WMC), 2009 WL
14 559832, at *3 (S.D. Cal. March 3, 2009) (citation omitted). Further,
15 "[t]he grounds for a motion to strike must appear on the face of the
16 pleading or upon a matter judicially noticed by the court." Id.
17 (citation omitted). "Motions to strike are generally not granted unless
18 it is clear that the matter to be stricken could have no possible
19 bearing on the subject matter of the litigation." LeDuc v. Kentucky
20 Cent. Life Ins. Co., 814 F. Supp. 820, 830 (1992).

21 II. DISCUSSION

22 Plaintiffs name five defendants in the First-Amended
23 Complaint, including: Douglas M. Daggs, successor trustee of the Sylvia
24 Dellar Trust; and Douglas M. Daggs, successor trustee of the Dellar
25 Family Trust. (Pls.' First Am. Complaint.) Defendant argues all
26 references to these two trusts should be stricken from the First-Amended
27 Complaint because:
28

1 [T]here has never been a trust entitled "SYLVIA
2 DELLAR TRUST" and Mr. Daggs has never been a
trustee to a trust so named.

3 In addition, while there had existed a trust
4 entitled "THE DELLAR FAMILY TRUST," that trust has
5 been wound down. That trust no longer exists.
Perhaps most importantly, Mr. Daggs has never been
a trustee to a trust so named.

6 As set forth below and in Exhibit 1 hereto,
7 The Dellar Family Trust was created by Mr. and Mrs.
8 Dellar. The assets of The Dellar Family Trust were
9 automatically rolled into The Sylvia Dellar
10 Survivor's Trust following the death of Mr. Dellar.
Ultimately, Mr. Daggs became the successor trustee
of The Sylvia Dellar Survivor's Trust upon the
death of Mrs. Dellar.

11 The proper defendant is DOUGLAS M. DAGGS,
12 SUCCESSOR TRUSTEE TO THE SYLVIA DELLAR SURVIVOR'S
TRUST.

13 (Def.'s Mot. to Strike ("Mot."), 2:10-11.)

14 Plaintiffs "do not oppose an order correcting the name of
15 Defendant 'The Sylvia Dellar Trust' to . . . 'The Sylvia Dellar
16 Survivor's Trust'[,]" conceding "[it is] the intended and correct
17 party." (Pls.' Opp'n to Mot. to Strike ("Opp'n") 2:26-27, 3:13-14.)
18 Plaintiffs state they offered to stipulate to substitute the correct
19 party, but Defendant refused. (Opp'n 2:15-18.) Plaintiffs oppose
20 striking references to the Dellar Family Trust, however, arguing "[this]
21 is a motion asserting factual allegations" without evidentiary support,
22 and "the motion seeks relief based upon a factual dispute," which is
23 inappropriate at the pleadings stage. (Opp'n 2:3-8.)

24 Plaintiffs allege in the First-Amended Complaint that the
25 "Dellar Family Trust" is the record owner and landlord of the real
26 property at issue in this action. (Pls.' First Am. Compl. ¶¶ 3, 11.)
27 Although Defendant contends the Dellar Family Trust "no longer exists,"
28 his argument is not supported by any evidence, which can properly be

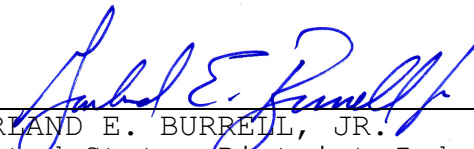
1 considered when deciding his motion to strike. Therefore, Defendant's
2 motion to strike all references to the "Dellar Family Trust" is denied.
3 Defendant's alternative motion to dismiss is denied for the same
4 reasons. See Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir.
5 2001) (quotations and citation omitted) ("As a general rule, a district
6 court may not consider any material beyond the pleadings in ruling on a
7 Rule 12(b)(6) motion.").

8 However, since the parties agree that "The Sylvia Dellar
9 Trust" is not a proper defendant in this action, all references to
10 "Douglas M. Daggs, Successor Trustee to the Sylvia Dellar Trust" and the
11 "Sylvia Dellar Trust" are stricken from the First-Amended Complaint.

12 **III. CONCLUSION**

13 For the stated reasons, Defendant's motion to strike is
14 granted and denied in part, and Defendant's alternative dismissal motion
15 is denied. Plaintiffs are granted fourteen (14) days from the date on
16 which this order is filed to file a Second Amended Complaint to add
17 Douglas M. Daggs, Successor Trustee to the Sylvia Dellar Survivor's
18 Trust as a defendant.

19 Dated: September 20, 2010

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GARLAND E. BURRELL, JR.
United States District Judge
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