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SEÁN SWEENEY AND THE ESTATE OF JAMES
JOYCE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CAROL LOEB SHLOSS,

Plaintiff,

v.

SEÁN SWEENEY, in his capacity as
trustee of the Estate of James Joyce, and
THE ESTATE OF JAMES JOYCE,

Defendants.

Case No. CV 06-3718 JW HRLx

DEFENDANTS' OBJECTIONS AND
MOTION TO STRIKE PORTIONS
OF THE DECLARATION OF CAROL
LOEB SHLOSS, PORTIONS OF THE
DECLARATION OF DAVID S.
OLSON, EXHIBITS A, P, R AND T
TO THE DECLARATION OF
CAROL LOEB SHLOSS, AND
EXHIBITS 2, 3, 4 AND 5 TO THE
DECLARATION OF ROBERT SPOO

Date: January 22, 2007
Time: 9:00 a.m.
Judge: The Honorable James Ware

1 Pursuant to Civil Local Rule 7-5, Rule 56 of the Federal Rules of Civil Procedure and
2 Rules 401, 402, 403, 408, 602, and 802 of the Federal Rules of Evidence, Defendants Seán
3 Sweeney and the Estate of James Joyce (“Defendants”) hereby object and move to strike portions
4 of the Declaration of Carol Loeb Shloss (“Shloss”) filed in Support of Plaintiff’s Opposition to
5 Defendants’ Motion to Dismiss (“Shloss Declaration”), portions of the Declaration of David S.
6 Olson filed in Support of Plaintiff’s Opposition to Defendants’ Motion to Dismiss (“Olson
7 Declaration”), Exhibits A, P, R and T to the Shloss Declaration, and Exhibits 2, 3, 4 and 5 to the
8 Robert Spoo Declaration filed in Support of Plaintiff’s Opposition to Defendants’ Motion to
9 Dismiss (“Spoo Declaration”) for the following reasons:

10 Civil Local Rule 7-5(b) provides “[a]n affidavit or declarations may contain only facts,
11 must conform as much as possible to the requirements of [Federal Rule of Civil Procedure] 56(e),
12 and must avoid conclusions and argument.” Federal Rule of Civil Procedure 56(e) requires
13 opposing affidavits to be made on personal knowledge, set forth specific facts that would be
14 admissible in evidence, and show that the affiant is competent to testify to the matters stated
15 therein. Fed. R. Civ. Proc. 56(e); see also *Columbia Pictures Indus. Inc. v. Prof’l Real Estate*
16 *Investors, Inc.*, 944 F. 2d 1425 (9th Cir. 1991) (finding the affidavit did not satisfy the
17 requirements of Fed. R. Civ. P. 56(e) because it was not based on personal knowledge). A
18 declaration not in compliance with Civil Local Rule 7-5(b), including the requirements of Federal
19 Rule Civil Procedure 56(e), may be stricken in whole or in part. Civil L.R. 7-5(b); see also *Block*
20 *v. City of Los Angeles*, 253 F.3d 410, 418-419 (9th Cir. 2001) (holding district court abused its
21 discretion in admitting affidavit that was not based on the personal knowledge of the affiant when
22 it was clear the affiant was not personally involved in the facts alleged); *Davenport v. M/V New*
23 *Horizon*, 2002 U.S. Dist. LEXIS 26811, at *7-8 (N.D. Cal. 2002) (striking portions of the
24 declaration which are not based on the declarant’s personal knowledge). Defendants object and
25 submit that the following specific portions of the Shloss Declaration should be stricken and
26 disregarded:

- 27 1. Defendants object to and request that paragraph 6 of the Shloss Declaration with
28 respect to the phrase, “[a]gainst her will and the will of James Joyce, her mother,

1 Nora, and her brother, Giorgio, committed Lucia to a mental hospital when she
2 was 25..." be stricken pursuant to Civil Local Rule 7-5(b) on grounds that the
3 affiant lacks personal knowledge to make such an assertion in violation of Rule
4 56(e) of the Federal Rules of Civil Procedure, Civil Local Rule 7-5(b) and Rule
5 602 of the Federal Rules of Evidence, and the statement is irrelevant (F.R.E. 401,
6 402, 403) and speculative. The event described in the phrase above took place
7 around 1932. Shloss did not perceive this event, nor did she personally speak to
8 James Joyce, Nora, Giorgio (George) or Lucia regarding this event. Shloss, a
9 complete stranger to the persons mentioned, does not allege that she learned
10 about the event from others who perceived the event or were themselves a part of
11 the event. Shloss makes no mention of how she came to form this belief. Thus,
12 this phrase is a legally unsupportable speculation, not the result of Shloss's
13 personal knowledge, and it is therefore irrelevant. See Block, 253 F.3d at 418-
14 419.

- 15 2. Defendants object to and request that paragraph 7 of the Shloss Declaration with
16 respect to the phrase, "[p]eople have destroyed documents about Lucia Joyce for
17 over sixty years, apparently due in large part to the stigma that previous
18 generations attached to young women who had suffered emotional trauma" be
19 stricken pursuant to Civil Local Rule 7-5(b) because the affiant lacks personal
20 knowledge to make this assertion in violation of Rule 56(e) of the Federal Rules
21 of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the Federal Rules of
22 Evidence, and this statement is irrelevant (F.R.E. 410, 402, 403) and speculative.
23 Shloss could not possibly know other "people's" reasons and motives for
24 destroying the documents in their possession. Shloss fails to offer any evidence
25 demonstrating that this statement is based upon her own perceptions, and not
26 merely based upon her speculation about the motives of others. Thus, this phrase
27 is merely the result of Shloss's conjecture and speculation, and it is therefore
28 irrelevant.

- 1 3. Defendants object and request that paragraph 7 of the Shloss Declaration with
2 respect to the phrase, “[b]ecause James Joyce wrote about Lucia in various
3 creative and imaginative ways in *Finnegans Wake*...” be stricken pursuant to
4 Civil Local Rule 7-5(b) because the affiant lacks personal knowledge of this
5 assertion in violation of Rule 56(e) of the Federal Rules of Civil Procedure, Civil
6 Local Rule 7-5(b) and Rule 602 of the Federal Rules of Evidence, and this phrase
7 is irrelevant (F.R.E. 410, 402, 403) and speculative. Shloss could not possibly
8 know that James Joyce wrote about Lucia in *Finnegans Wake*. Shloss offers no
9 evidence that James Joyce stated that he wrote about Lucia in *Finnegans Wake*.
10 Thus, this phrase is merely a result of Shloss’s speculation and is therefore
11 irrelevant.
- 12 4. Defendants object and request that paragraph 29 of the Shloss Declaration with
13 respect to the phrase “[a]mong other things, Mr. Joyce pointedly informed Mr.
14 Glusman that he wished FSG to know that he had never lost a lawsuit. He also
15 stated that he was sending FSG copies of all his correspondence with me” be
16 stricken pursuant to Civil Local Rule 7-5(b) because the affiant lacks personal
17 knowledge of this event in violation of Rule 56(e) of the Federal Rules of Civil
18 Procedure, Civil Local Rule 7-5(b) and Rule 602 of the Federal Rules of
19 Evidence. Shloss was not present for or a part of the conversation between
20 Stephen James Joyce and Mr. Glusman. Shloss had no opportunity to perceive
21 the statements attributed to Mr. Glusman and Mr. Joyce, and as such, the affiant
22 lacks personal knowledge.
- 23 5. Defendants object and request that paragraph 45 of the Shloss Declaration with
24 respect to the phrase, “[d]espite the valid fair use defense of my book as it was
25 originally written...” be stricken pursuant to Civil Local Rule 7-5(b). No court
26 has ruled that Shloss’s fair use defense of her book is valid. Thus, this phrase
27 contains a legal conclusion in violation of Rule 56(e) of the Federal Rules of
28 Civil Procedure; see also *Fukuoka v. Morning Star Cruises, Inc.*, 2006 U.S. Dist.

1 LEXIS 60666, at *20-24 (D. Haw. 2006) (refusing to admit statements contained
2 in the declaration that amounted to legal conclusions).

- 3 6. Defendants object and request that paragraph 52 of the Shloss Declaration with
4 respect to the phrase referring to James Joyce's 1922 edition of *Ulysses*, "this
5 particular edition is in the public domain in the United States" be stricken
6 pursuant to Civil Local Rule 7-5(b) on the ground that this phrase contains a legal
7 conclusion. *Id.*
- 8 7. Defendants object and request that paragraph 52 of the Shloss Declaration with
9 respect to the phrase "[b]ecause Milly was based in many ways on Joyce's
10 daughter, Lucia..." be stricken pursuant to Civil Local Rule 7-5(b) on grounds
11 that the affiant lacks personal knowledge to make this statement in violation of
12 Rule 56(e) of the Federal Rules of Civil Procedure, Civil Local Rule 7-5(b) and
13 Rule 602 of the Federal Rules of Evidence. This statement is also irrelevant
14 (F.R.E. 410, 402, 403) and speculative. Shloss offers no evidence as to how she
15 knows James Joyce based the character of Milly on Lucia. Shloss does not
16 reference any statements by James Joyce that confirm that the character of Milly
17 was based on his daughter Lucia Joyce. Thus, this statement is improperly based
18 on Shloss's speculation regarding James Joyce's writings and not from her
19 personal knowledge.
- 20 8. Defendants object and request that paragraph 55 of the Shloss Declaration with
21 respect to the phrase "he decided he would attack me by threatening my
22 employer, Stanford University, as well" be stricken pursuant to Civil Local Rule
23 7-5(b) because, aside from being blatantly false, the affiant lacks personal
24 knowledge to make this statement in violation of Rule 56(e) of the Federal Rules
25 of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the Federal Rules of
26 Evidence. Shloss does not and could not know Stephen James Joyce's reasons or
27 motives when he contacted Stanford University, and thus, could not know that
28 "he decided" to attack her by "threatening her employer." Shloss offers no

1 evidence as to how she formed this belief or any facts that support this statement
2 apart from her own speculation. Thus, Shloss's statement is merely conjecture
3 and speculation regarding Stephen James Joyce's motives and is therefore not
4 based upon personal knowledge.

5 9. Defendants object and request that paragraph 65 of the Shloss Declaration with
6 respect to the phrase "I was aware that Mr. Joyce and the Joyce Estate caused
7 author Brenda Maddox to delete the epilogue from her book *Nora: The Real Life*
8 *of Molly Bloom* (Houghton Mifflin, 1988), which discussed Lucia Joyce and her
9 medical condition and institutionalization. When Mr. Joyce and the Estate
10 learned of that epilogue, they threatened to withdraw all permissions previously
11 granted to Maddox to use any of James Joyce's or his wife Nora's materials.
12 Maddox eventually entered into an agreement the terms of which prevented
13 Maddox and her descendants from ever publishing the epilogue. Another
14 contractual term barred Maddox from criticizing Stephen Joyce or the Estate..."
15 be stricken pursuant to Civil Local Rule 7-5(b) on the grounds that the affiant
16 lacks personal knowledge to make this statement in violation of Rule 56(e) of the
17 Federal Rules of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the
18 Federal Rules of Evidence, and the statements are speculative. Shloss was not
19 party to any negotiations or contract between Stephen James Joyce, the Estate of
20 James Joyce and Brenda Maddox which should therefore be stricken. In fact,
21 Shloss offers no evidence supporting her assertions. See Block, 253 F.3d at 418-
22 419.

23 10. Defendants object to and request that paragraph 7 of the Olson Declaration with
24 respect to the phrase, "[i]t soon became apparent, however, that a mutually
25 acceptable resolution of the dispute was not possible because the Estate continued
26 to demand the removal of particular material to which it objected. Some of the
27 material to which the Estate objected appeared in the Website as it existed in
28 2005, and some of the material to which the Estate objected appeared in the

1 portions added to the Website in the summer of 2006...” be stricken pursuant to
2 Civil Local Rule 7-5(b) because the affiant impermissibly refers to statements
3 made during settlement negotiations in violation of Rule 408 of the Federal Rules
4 of Evidence. Fed. R. Evid. 408 (stating “[e]vidence of conduct or statements
5 made in compromise negotiations is [] not admissible”); see also Fed. R. Civ. P.
6 56 (e) (requiring affiants to set forth facts admissible in evidence).

7 11. Defendants object to and request that Exhibit A to the Shloss Declaration be
8 stricken pursuant to Civil Local Rule 7-5(b) because the documents are
9 inadmissible hearsay (F.R.E. 802) to the extent that the statements in the
10 documents are offered for the truth of the matters asserted therein.

11 12. Defendants object to and request that Exhibit P to the Shloss Declaration be
12 stricken pursuant to Civil Local Rule 7-5(b) because the documents are
13 inadmissible hearsay (F.R.E. 802) to the extent that the statements in the
14 documents are offered for the truth of the matters asserted therein.

15 13. Defendants object to and request that Exhibit R to the Shloss Declaration be
16 stricken pursuant to Civil Local Rule 7-5(b) because the documents are
17 inadmissible hearsay (F.R.E. 802) to the extent that the statements in the
18 documents are offered for the truth of the matters asserted therein.

19 14. Defendants object to and request that Exhibit T to the Shloss Declaration be
20 stricken pursuant to Civil Local Rule 7-5(b) because the documents are
21 inadmissible hearsay (F.R.E. 802) to the extent that the statements in the
22 documents are offered for the truth of the matters asserted therein.

23 15. Defendants object to and request that Exhibit 2 to the Spoo Declaration be
24 stricken pursuant to Civil Local Rule 7-5(b) because the documents are
25 inadmissible hearsay (F.R.E. 802) to the extent that the statements in the
26 documents are offered for the truth of the matters asserted therein.

27 16. Defendants object to and request that Exhibit 3 to the Spoo Declaration be
28 stricken pursuant to Civil Local Rule 7-5(b) because the documents are

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inadmissible hearsay (F.R.E. 802) to the extent that the statements in the documents are offered for the truth of the matters asserted therein.

17. Defendants object to and request that Exhibit 4 to the Spoo Declaration be stricken pursuant to Civil Local Rule 7-5(b) because the documents are inadmissible hearsay (F.R.E. 802) to the extent that the statements in the documents are offered for the truth of the matters asserted therein.

18. Defendants object to and request that Exhibit 5 to the Spoo Declaration be stricken pursuant to Civil Local Rule 7-5(b) because the documents are inadmissible hearsay (F.R.E. 802) to the extent that the statements in the documents are offered for the truth of the matters asserted therein.

Dated: January 8, 2007

Respectfully submitted,

Jones Day

By: _____ /s/
Maria K. Nelson

Counsel for Defendants
SEÁN SWEENEY AND THE ESTATE OF
JAMES JOYCE