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SEÁN SWEENEY AND THE ESTATE OF JAMES
JOYCE
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 CAROL LOEB SHLOSS,

14 Plaintiff,

15 v.

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

18 Defendants.
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Case No. CV 06-3718 JW HRLx

**SUBSTITUTE EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF CAROL LOEB
SHLOSS, 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 31, 2007

Time: 9:00 a.m.

Judge: The Honorable James Ware

1 Defendants Seán Sweeney and the Estate of James Joyce (“Defendants”) submit their
2 Substitute Evidentiary Objections in place of the Objections and Motion to Strike filed on January
3 8, 2007.¹ Pursuant to Civil Local Rule 7-5, Rule 56 of the Federal Rules of Civil Procedure and
4 Rules 401, 402, 403, 408, 602, and 802 of the Federal Rules of Evidence, Defendants hereby
5 object to portions of the Declaration of Carol Loeb Shloss (“Shloss”) filed in Support of
6 Plaintiff’s Opposition to Defendants’ Motion to Dismiss (“Shloss Declaration”), portions of the
7 Declaration of David S. Olson filed in Support of Plaintiff’s Opposition to Defendants’ Motion to
8 Dismiss (“Olson Declaration”), Exhibits A, P, R and T to the Shloss Declaration, and Exhibits 2,
9 3, 4 and 5 to the Declaration of Robert Spoo filed in Support of Plaintiff’s Opposition to
10 Defendants’ Motion to Dismiss (“Spoo Declaration”) for the following reasons:

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

27 ¹ Other than the modification to the title of this document and deletion of the “request to
28 strike” language, Defendants’ Evidentiary Objections are identical in all respects to its earlier-
filed Objections and Motion to Strike.

- 1 1. Defendants object to paragraph 6 of the Shloss Declaration with respect to the
2 phrase, “[a]gainst her will and the will of James Joyce, her mother, Nora, and her
3 brother, Giorgio, committed Lucia to a mental hospital when she was 25...” on
4 grounds that the affiant lacks personal knowledge to make such an assertion in
5 violation of Rule 56(e) of the Federal Rules of Civil Procedure, Civil Local Rule
6 7-5(b) and Rule 602 of the Federal Rules of Evidence, and the statement is
7 irrelevant (F.R.E. 401, 402, 403) and speculative. The event described in the
8 phrase above took place around 1932. Shloss did not perceive this event, nor did
9 she personally speak to James Joyce, Nora, Giorgio (George) or Lucia regarding
10 this event. Shloss, a complete stranger to the persons mentioned, does not allege
11 that she learned about the event from others who perceived the event or were
12 themselves a part of the event. Shloss makes no mention of how she came to
13 form this belief. Thus, this phrase is a legally unsupportable speculation, not the
14 result of Shloss’s personal knowledge, and it is therefore irrelevant. *See Block*,
15 253 F.3d at 418-419.
- 16 2. Defendants object to paragraph 7 of the Shloss Declaration with respect to the
17 phrase, “[p]eople have destroyed documents about Lucia Joyce for over sixty
18 years, apparently due in large part to the stigma that previous generations
19 attached to young women who had suffered emotional trauma” because the
20 affiant lacks personal knowledge to make this assertion in violation of Rule 56(e)
21 of the Federal Rules of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of
22 the Federal Rules of Evidence, and this statement is irrelevant (F.R.E. 410, 402,
23 403) and speculative. Shloss could not possibly know other “people’s” reasons
24 and motives for destroying the documents in their possession. Shloss fails to
25 offer any evidence demonstrating that this statement is based upon her own
26 perceptions, and not merely based upon her speculation about the motives of
27 others. Thus, this phrase is merely the result of Shloss’s conjecture and
28 speculation, and it is therefore irrelevant.

- 1 3. Defendants object to paragraph 7 of the Shloss Declaration with respect to the
2 phrase, “[b]ecause James Joyce wrote about Lucia in various creative and
3 imaginative ways in *Finnegans Wake*...” because the affiant lacks personal
4 knowledge of this assertion in violation of Rule 56(e) of the Federal Rules of
5 Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the Federal Rules of
6 Evidence, and this phrase is irrelevant (F.R.E. 410, 402, 403) and speculative.
7 Shloss could not possibly know that James Joyce wrote about Lucia in *Finnegans*
8 *Wake*. Shloss offers no evidence that James Joyce stated that he wrote about
9 Lucia in *Finnegans Wake*. Thus, this phrase is merely a result of Shloss’s
10 speculation and is therefore irrelevant.
- 11 4. Defendants object to paragraph 29 of the Shloss Declaration with respect to the
12 phrase “[a]mong other things, Mr. Joyce pointedly informed Mr. Glusman that he
13 wished FSG to know that he had never lost a lawsuit. He also stated that he was
14 sending FSG copies of all his correspondence with me” because the affiant lacks
15 personal knowledge of this event in violation of Rule 56(e) of the Federal Rules
16 of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the Federal Rules of
17 Evidence. Shloss was not present for or a part of the conversation between
18 Stephen James Joyce and Mr. Glusman. Shloss had no opportunity to perceive
19 the statements attributed to Mr. Glusman and Mr. Joyce, and as such, the affiant
20 lacks personal knowledge.
- 21 5. Defendants object to paragraph 45 of the Shloss Declaration with respect to the
22 phrase, “[d]espite the valid fair use defense of my book as it was originally
23 written....” No court has ruled that Shloss’s fair use defense of her book is valid.
24 Thus, this phrase contains a legal conclusion in violation of Rule 56(e) of the
25 Federal Rules of Civil Procedure; see also *Fukuoka v. Morning Star Cruises, Inc.*,
26 2006 U.S. Dist. LEXIS 60666, at *20-24 (D. Haw. 2006) (refusing to admit
27 statements contained in the declaration that amounted to legal conclusions).
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- 1 6. Defendants object to paragraph 52 of the Shloss Declaration with respect to the
2 phrase referring to James Joyce's 1922 edition of *Ulysses*, "this particular edition
3 is in the public domain in the United States" on the ground that this phrase
4 contains a legal conclusion. *Id.*
- 5 7. Defendants object to paragraph 52 of the Shloss Declaration with respect to the
6 phrase "[b]ecause Milly was based in many ways on Joyce's daughter, Lucia..."
7 on grounds that the affiant lacks personal knowledge to make this statement in
8 violation of Rule 56(e) of the Federal Rules of Civil Procedure, Civil Local Rule
9 7-5(b) and Rule 602 of the Federal Rules of Evidence. This statement is also
10 irrelevant (F.R.E. 410, 402, 403) and speculative. Shloss offers no evidence as to
11 how she knows James Joyce based the character of Milly on Lucia. Shloss does
12 not reference any statements by James Joyce that confirm that the character of
13 Milly was based on his daughter Lucia Joyce. Thus, this statement is improperly
14 based on Shloss's speculation regarding James Joyce's writings and not from her
15 personal knowledge.
- 16 8. Defendants object to paragraph 55 of the Shloss Declaration with respect to the
17 phrase "he decided he would attack me by threatening my employer, Stanford
18 University, as well" because, aside from being blatantly false, the affiant lacks
19 personal knowledge to make this statement in violation of Rule 56(e) of the
20 Federal Rules of Civil Procedure, Civil Local Rule 7-5(b) and Rule 602 of the
21 Federal Rules of Evidence. Shloss does not and could not know Stephen James
22 Joyce's reasons or motives when he contacted Stanford University, and thus,
23 could not know that "he decided" to attack her by "threatening her employer."
24 Shloss offers no evidence as to how she formed this belief or any facts that
25 support this statement apart from her own speculation. Thus, Shloss's statement
26 is merely conjecture and speculation regarding Stephen James Joyce's motives
27 and is therefore not based upon personal knowledge.
- 28

- 1 9. Defendants object to paragraph 65 of the Shloss Declaration with respect to the
2 phrase “I was aware that Mr. Joyce and the Joyce Estate caused author Brenda
3 Maddox to delete the epilogue from her book *Nora: The Real Life of Molly*
4 *Bloom* (Houghton Mifflin, 1988), which discussed Lucia Joyce and her medical
5 condition and institutionalization. When Mr. Joyce and the Estate learned of that
6 epilogue, they threatened to withdraw all permissions previously granted to
7 Maddox to use any of James Joyce’s or his wife Nora’s materials. Maddox
8 eventually entered into an agreement the terms of which prevented Maddox and
9 her descendants from ever publishing the epilogue. Another contractual term
10 barred Maddox from criticizing Stephen Joyce or the Estate...” on the 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, and the statements are speculative.
14 Shloss was not party to any negotiations or contract between Stephen James
15 Joyce, the Estate of James Joyce and Brenda Maddox. In fact, Shloss offers no
16 evidence supporting her assertions. See *Block*, 253 F.3d at 418-419.
- 17 10. Defendants object to paragraph 7 of the Olson Declaration with respect to the
18 phrase, “[i]t soon became apparent, however, that a mutually acceptable
19 resolution of the dispute was not possible because the Estate continued to demand
20 the removal of particular material to which it objected. Some of the material to
21 which the Estate objected appeared in the Website as it existed in 2005, and some
22 of the material to which the Estate objected appeared in the portions added to the
23 Website in the summer of 2006...” because the affiant impermissibly refers to
24 statements made during settlement negotiations in violation of Rule 408 of the
25 Federal Rules of Evidence. Fed. R. Evid. 408 (stating “[e]vidence of conduct or
26 statements made in compromise negotiations is [] not admissible”); see also Fed.
27 R. Civ. P. 56 (e) (requiring affiants to set forth facts admissible in evidence).
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11. Defendants object to Exhibit A to the Shloss Declaration 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.
12. Defendants object to Exhibit P to the Shloss Declaration 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.
13. Defendants object to Exhibit R to the Shloss Declaration 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.
14. Defendants object to Exhibit T to the Shloss Declaration 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.
15. Defendants object to Exhibit 2 to the Spoo Declaration 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.
16. Defendants object to Exhibit 3 to the Spoo Declaration 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.
17. Defendants object to Exhibit 4 to the Spoo Declaration 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 Exhibit 5 to the Spoo Declaration 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.

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Dated: January 23, 2007

Respectfully submitted,

JONES DAY

By: _____/s/
Maria K. Nelson

Counsel for Defendants
SEÁN SWEENEY AND THE ESTATE OF
JAMES JOYCE