

Superior Court of the State of California  
County of Orange  
TENTATIVE RULINGS FOR DEPARTMENT NAME  
**HON. COMMISSIONER ANDERSON**

**Date: 01/21/2025**

Court Room Rules and Notices

#	Case Name	Tentative
1	Sarvak - Trust (01367131)	<p style="text-align: center;"><b>MOTION TO STRIKE (ROA 168)</b></p> <p>Respondents Bradford J. Sarvak and Stephen E. Sarvak (collectively, "Respondents") move to strike certain portions of the First Amended Petition ("FAP") filed by Petitioner Brian Sarvak ("Petitioner") on 5/14/24.</p> <p>The motion to strike is <b>DENIED as moot</b> in light of the court's ruling on the Demurrer.</p>
2	Sarvak - Trust (01367131)	<p style="text-align: center;"><b>DEMURRER (ROA 165)</b></p> <p>Respondents Bradford J. Sarvak and Stephen E. Sarvak (collectively, "Respondents") demurrer to each cause of action in the First Amended Petition ("FAP") filed by Petitioner Brian Sarvak ("Petitioner") on 5/14/24.</p> <p>Respondents' Demurrer to the First Cause of Action is SUSTAINED with leave to amend.</p> <p>Respondents' Demurrer to the Second Cause of Action is SUSTAINED with leave to amend.</p> <p>Respondents' Demurrer to the Third Cause of Action is SUSTAINED with leave to amend.</p> <p>Respondents' Demurrer to the Fourth Cause of Action is SUSTAINED with leave to amend.</p> <p>Respondents' demurrer to the Fifth Cause of Action is OVERRULED as moot.</p> <p>Respondents' demurrer to the Sixth Cause of Action is SUSTAINED without leave to amend in part and SUSTAINED with leave to amend in part.</p> <p><b><u>First and Second Causes of Action to Invalidate Trust Instruments</u></b></p>

The First Cause of Action seeks to invalidate the First Amendment to the Trust signed on 9/14/16 ("First Amendment"). The Second Cause of Action seeks to invalidate the 9/9/22 Restatement of Trust ("9/9/22 Restatement"). Both causes of action allege that the trust instrument is invalid due to "undue influence, incapacity, cognitive issues, diagnosed memory issues consistent with dementia, duress, and/or mistake." (FAP, ¶¶ 46 and 52.) In short, the FAP seeks to invalidate the First Amendment and 9/9/22 Restatement based on undue influence and lack of capacity.

The FAP alleges that at the time the First Amendment was signed by Decedent Phyllis A. Sarvak ("Decedent"), Decedent was 81 years old and had been diagnosed with "cognitive issues consistent with Dementia." (FAP, ¶ 17.) It alleges that the First Amendment was notarized by a long-time employee of Respondent who was conflicted and biased and may not have witnessed the signing at all. (Id. at ¶¶ 17 and 48.) No facts are alleged to support these allegations. The FAP alleges that the First Amendment was "clearly drafted by, or on behalf of" Respondents, but it alleges no facts concerning the drafting of the First Amendment. (Id. at ¶ 17.)

The FAP alleges in conclusory fashion that Decedent executed the First Amendment and the 9/9/22 Restatement while suffering from undue influence by Respondents and that she did not understand or know the terms of the First Amendment. (Id. at ¶¶ 17 and 19.) No facts are pleaded to support these conclusions.

The FAP also alleges a presumption of undue influence by stating that Respondents "had a confidential relationship with Settlor, actively participated in procuring the changes, and receive an undue benefit under its terms." (Id. at ¶¶ 47 and 53.) No facts are pleaded regarding the procurement of the changes to Decedent's estate plan.

Based on the foregoing, the FAP does not plead *facts* sufficient to state a cause of action to invalidate the First Amendment or 9/9/22 Restatement based on incapacity. "The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act." (Prob. Code § 811(d).) The FAP fails to allege any facts concerning the Decedent's deficient mental condition at the time she executed the First Amendment, nor does it allege any correlation between her mental deficiencies and the acts in question. (See Prob. Code § 811(a).)

As a statutory claim, Elder Financial Abuse must be pled with particularity. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal. App. 4th 396, 410.) The FAP fails to allege undue influence by Respondents with the requisite specificity.

Welfare and Institutions Code section 15610.70 provides, as follows:

(a) "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. 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 necessities 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.

Here, the FAP alleges that Respondents are the Decedent's sons and that they had some control over certain of Decedent's assets at times. However, the FAP does not allege any facts demonstrating that Respondents actively procured the trust instruments. It does not allege any actions or tactics used by Respondents to pressure Decedent to execute the trust instruments, aside from the use of a "conflicted and biased notary" for the First Amendment. The FAP does not allege any facts, other than long-term employment, to indicate that the notary was conflicted or biased. Further, a trust instrument does not need to be notarized to be valid.

Overall, the FAP does not sufficiently plead a cause of action to invalidate the First Amendment or the 9/9/22 Restatement based on incapacity or undue influence. Thus, Respondents' demurrer is **sustained with leave to amend** as to the First and Second Causes of Action.

### **Third Cause of Action for Financial Elder Abuse**

This demurrer raises the novel issue of whether the continuing tort doctrine applies to a cause of action for financial elder abuse. Petitioner concedes that many of the alleged acts of financial elder abuse occurred many years prior to the commencement of this action. He claims, nonetheless, that all of the alleged acts of financial elder abuse are timely pled because the last act of financial elder abuse was the procuring of the Decedent's execution of the Restatement on 9/9/22.

The continuing tort doctrine holds that, "where a tort involves a continuing wrong, the statute of limitations does not begin to run until the date of the last injury or when the tortious acts cease." (*Pugliese v. Superior Court (Pugliese)* (2007) 146 Cal.App.4th 1444, 1452, citing *Birschtein v. New United Motor Manufacturing, Inc.* (2001) 92 Cal.App.4th 994, 1003.)

In *Pugliese*, the appellate court for the second district held that the continuing tort violation applied to domestic violence actions. However, the court noted that the applicable statute specifically stated that the "the time for commencement of the action shall be the later of . . . three years *from the date of the last act of domestic violence by the defendant against the plaintiff.*" (Code Civ. Proc. § 340.15, emphasis added.) In contrast, Welfare and Institutions Code section 15657.7 provides that an action for financial elder abuse "shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse."

The court is not aware of any California case applying the continuing tort doctrine to torts of elder abuse and neither party sufficiently briefed the issue in connection with this demurrer.

Nonetheless, the court need not decide such issue at this juncture because, as stated above, Petitioner has not adequately pled that the 9/9/22 Restatement (that was executed within the limitations period) was procured by undue influence.

On the facts alleged, Petitioner has standing to bring the action for financial elder abuse as a beneficiary of the trust and as an interested person, albeit such standing will ultimately depend upon the court's finding that the First Amendment and 9/9/22 Restatement are invalid.

Respondent's demurrer is **sustained with leave to amend** as to the third cause of action.

#### **Fourth Cause of Action for Breach of Trust**

The FAP does not allege any facts demonstrating that either of the Respondents have breached their fiduciary duties as trustee. The FAP refers to Respondent Brad J Sarvak as "current purported trustee" and refers to Respondent Stephen E. Sarvak as "prior purported trustee," but it does not state when each became trustee, nor does it state facts concerning any actions they have taken as trustee.

Respondent's demurrer is **sustained with leave to amend** as to the fourth cause of action.

#### **Fifth Cause of Action for Reimbursement of Legal Fees and Costs**

As all parties recognize, the fifth "cause of action" for reimbursement of legal fees and costs is, in fact, a remedy, not a cause of action. Petitioner acknowledges that the FAP requests the same relief in the prayer for relief.

The court, on its own motion, **strikes the 5th Cause of Action.** (Code Civ. Proc. § 436(b).) The court is not striking the request for reimbursement as a prayer for relief. To be clear: No part of this ruling prohibits Petitioner from seeking reimbursement of legal fees and costs in an appropriate manner before or after trial.

The demurrer to the fifth cause of action is **overruled as moot.**

#### **Sixth Cause of Action for Quiet Title**

The FAP alleges that the Laguna Nigel Property is currently titled in the name of Respondent Brad J. Sarvak ("Brad") as trustee of the Trust. The FAP does not dispute that the Property belongs to the Trust. Instead, the FAP asserts that Brad is not the "rightful trustee" and requests that title be transferred to the Decedent as Trustee.

		<p>So long as title to the Property is in the name of the trustee of the Trust, title and possession belong to the Trust, not to the trustee. The powers of a trustee are not personal to the trustee but are rather inherent in the office of trustee. (<i>Moeller v. Superior Court</i> (1997) 16 Cal.4th 1124, 1131.) Brad is currently filling the office of trustee, but it is the Trust, not Brad, that has title to and possession of the Property.</p> <p>The Property is and will remain an asset of the Trust, regardless of whether Petitioner succeeds to remove Brad as trustee. Thus, there is no stated cause of action to quiet title.</p> <p>To the extent the cause of action seeks to cancel the deed of trust to Cornerstone, it must be amended to allege facts sufficient to state a cause of action for cancellation of deed under Civil Code section 3412.</p> <p>The demurrer to the Sixth Cause of Action is <b>sustained without leave to amend</b> to the extent such cause of action seeks to quiet title to the Laguna Nigel Property.</p> <p>To the extent Petitioner seeks to cancel the deed of trust to Cornerstone, such cannot be accomplished through a quiet title action. Moreover, Petitioner has not pled sufficient facts for a cause of action for cancellation of instrument. (See Civ. Code § 3412.) To the extent the FAP seek a cause of action for cancellation of instrument, the demurrer is <b>sustained with leave to amend</b>.</p> <p>Counsel for moving parties is ordered to give notice.</p>
3		
4		