

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.

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CAROLYN LE BEL, AS EXECUTRIX OF THE
ESTATE OF MARYA LENN YEE,

File Date:

SUMMONS

Plaintiff,

Plaintiff's Address:

101 Clark Street

Brooklyn, New York 11201

-against-

MARY A. DONOVAN and
DONOVAN & YEE, LLP,

Plaintiff designates

New York County

as the place of trial

Defendants.
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The basis of venue is
defendant's residence

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint was not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you.

Dated: New York, New York
December 3, 2010

GALLET DREYER & BERKEY, LLP

By: 

David N. Milner

David S. Douglas

845 Third Avenue
New York, New York 10022
(212) 935-3131

Attorneys for Plaintiff

TO: Mary A. Donovan
Donovan & Yee, LLP
161 Avenue of the Americas
Suite 1201
New York, New York 10013

Donovan & Yee, LLP
161 Avenue of the Americas
Suite 1201
New York, New York 10013

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CAROLYN LE BEL, AS EXECUTRIX OF THE
ESTATE OF MARYA LENN YEE,

Plaintiff,

-against-

MARY A. DONOVAN and
DONOVAN & YEE, LLP,

Defendants.
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Index No.

VERIFIED COMPLAINT

Plaintiff Carolyn Le Bel, as Executrix of the Estate of Marya Lenn Yee, by her attorneys Gallet Dreyer & Berkey, LLP, as and for her Complaint, alleges with personal knowledge as to her own actions, and upon information and belief as to those of others, as follows:

Nature of the Case

1. Marya Lenn Yee's life was tragically taken on December 1, 2008 as a result of a plane crash. Following her untimely death, her former law partner, defendant Mary A. Donovan, has sought to compound the family's tragedy by improperly pocketing for herself the assets of the law firm that Yee had spent much of her professional life building.

2. Through this action, the Executrix of Yee's Estate seeks redress for Donovan's wrongdoing, which is in blatant violation of the terms of the partnership agreement into which Yee and Donovan had entered and the laws of the State of New York. Specifically, plaintiff seeks (1) a declaration that Yee and Donovan's law firm, Donovan & Yee, LLP, dissolved, as a matter of both law and contractual agreement, upon Yee's death; (2) an accounting with respect to Donovan & Yee, LLP; (3) payment

of all monies owed to the Estate by Donovan or Donovan & Yee, LLP; (4) a directive that Yee's name not be used in furtherance of or in connection with Donovan's law practice; and (5) other appropriate legal and equitable relief.

Parties

Plaintiff

3. Plaintiff Carolyn Le Bel is a citizen of the State of New York with a residence in Brooklyn, New York. Plaintiff is the Executrix of the Estate of Marya Lenn Yee, letters testamentary having been issued on January 12, 2009 by the Surrogate's Court for the County of New York.

Defendants

4. Defendant Mary A. Donovan is a citizen of the State of New York with a residence in Brooklyn, New York and a place of business in New York, New York.

5. Defendant Donovan & Yee, LLP ("Donovan & Yee"), is a limited liability partnership established under the laws of the State of New York with a principal place of business in New York, New York.

Operative Facts

6. Yee was, and Donovan is, a lawyer, specializing in the field of intellectual property. Yee and Donovan, together with a third attorney, Bela Amladi, entered into a Partnership Agreement dated as of July 15, 1997 ("Partnership Agreement"), forming a firm then known as Donovan Amladi & Yee, LLP. (A copy of the Partnership Agreement is annexed as Exhibit A.) Amladi left the firm shortly after its formation, and the firm continued under the name Donovan & Yee, LLP, with just two partners, Yee and Donovan, until Yee's tragic death in late 2008.

7. On November 30, 2008, a small plane in which Yee was a passenger crashed in Coalinga, California. Yee died the next day, December 1, 2008, as a result of the injuries that she suffered in that plane crash.

8. Pursuant to the terms of the Partnership Agreement and governing New York State law, Donovan & Yee dissolved upon Yee's death. Specifically, Section 6.8(a) of the Partnership Agreement provides:

Priority Among Provisions. A voluntary dissolution (including any dissolution by law resulting from only one Partner remaining in the Partnership following the death, retirement, expulsion or withdrawal of the other Partner(s)) and termination of the Partnership shall override any of the provisions of this Article VI then in effect. . . .

9. Under New York law, a limited liability partnership is automatically dissolved as a matter of law when there remains only one partner in the partnership, absent contractual agreement to the contrary.

10. Prior to Yee's death, Donovan & Yee had entered into an employment agreement ("Calvaruso Employment Agreement") with one of Donovan & Yee's associates, Andrea Calvaruso, under which Donovan & Yee agreed that Calvaruso would be held out to third parties as a "partner." Calvaruso, however, did not actually become a "partner" of Donovan & Yee in any legal sense, had no rights or obligations of a partner, and continued in all respects to be treated as an employee of Donovan & Yee. For example, the Calvaruso Employment Agreement provides that "Calvaruso shall not be liable for any losses or obligations of [Donovan & Yee] or any accrued expenses, liabilities or contracts of [Donovan & Yee]. . . ." Calvaruso Employment Agreement ¶ 2. Similarly, as a further example, ¶ 4(d) of the Calvaruso Employment Agreement states: "Calvaruso will be treated as an[] Employee of [Donovan & Yee] for tax purposes and

will receive a W-2 during the term of this Agreement.” (A copy of the Calvaruso Employment Agreement is annexed as Exhibit B.)

11. Accordingly, upon Yee’s death on December 1, 2008, Donovan & Yee dissolved as a matter of law, as Donovan was the only remaining partner.

12. Section 6.8(b) of the Partnership Agreement provides:

Continuation of the Partnership. The death, retirement, disability, withdrawal or expulsion of any Partner shall not cause the dissolution of the Partnership, unless following such death, retirement, disability, withdrawal or expulsion only one Partner shall remain in the Partnership and no additional Partner shall be admitted within (90) days following such death, retirement, disability, withdrawal or expulsion.

13. Section 6.8(b) is ineffective under the circumstances presented here, as, by its express terms, Section 6.8(a) takes priority and mandates that the dissolution by operation of law that occurred upon Yee’s death overrides any of the other provisions of Article VI of the Partnership Agreement.

14. In any event, no additional Partners were admitted to Donovan & Yee within ninety days of Yee’s death.

15. Donovan has failed and refused to acknowledge the dissolution of Donovan & Yee. To the contrary, she has continued to act as if Donovan & Yee remains an ongoing entity.

16. Financial statements that Donovan has provided to plaintiff indicate that, as of December 31, 2008, Donovan & Yee had Partners’ Capital of \$415,520.00. The actual Partners’ Capital might very well be a sum greater than that amount, as Donovan tried to deceive plaintiff by providing multiple, conflicting versions of what were

purported to be Donovan & Yee's financial statements. The financial statements, moreover, fail to conform to accounting standards.

17. Donovan has failed and refused to acknowledge that, given the dissolution of Donovan & Yee, the Estate is entitled to receive one-half of the assets of the firm (including accounts receivable and work-in-progress) as of December 1, 2008, less any accrued liabilities as of such date and any direct expenses incurred in dissolving Donovan & Yee.

18. Donovan has failed to cause the Estate to be paid the monies to which the Estate is entitled under the terms of the Partnership Agreement and New York law effecting the dissolution of Donovan & Yee, an amount that is not less than one half of the \$415,520.00 amount of Partners' Capital indicated in the financial statements provided to plaintiff, i.e., \$207,760.00.

19. Despite repeated requests that Donovan cease use of Yee's name, Donovan has improperly sought to trade and profit on Yee's good will and reputation by continuing to use Yee's name in Donovan's current firm and marketing materials.

20. Following Yee's death, Donovan improperly and prematurely cancelled the medical insurance covering Yee, including coverage for medical treatment and services rendered while Yee was still alive, resulting in the Estate unnecessarily being charged for such medical expenses.

21. Donovan's actions left plaintiff with no choice but to commence this action.

FIRST CAUSE OF ACTION
(Breach of Contract)

22. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 21 above as if fully set forth herein.

23. Yee fully and faithfully performed any and all obligations under the Partnership Agreement.

24. Donovan's conduct as described above constitutes material and substantial breaches of Donovan's contractual obligations to Yee and her Estate. Donovan's actions additionally violate the duty of good faith and fair dealing that attaches to all agreements.

25. As a direct and proximate result of Donovan's actions in breach of her contractually-related duties, the Estate has been damaged in an amount to be determined at trial, but in any event not less than \$207,760.00, plus interest, for which Donovan is liable.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

26. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 25 above as if fully set forth herein.

27. As Yee's partner, Donovan owed Yee the highest fiduciary obligations of utmost good faith and fair dealing, to which Donovan's own self-interest was to be subordinated. Through her actions, Donovan violated such obligations.

28. Donovan's conduct has been intentional, wanton, willful, malicious, and in gross and reckless disregard of the Estate's rights.

29. By reason of the foregoing, Donovan is liable for the damages that the Estate has suffered as a result of Donovan's actions, the amount of such damages to be

determined at trial, but in any event not less than \$207,760.00, plus punitive damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Unjust Enrichment, Money Had and Received, and Constructive Trust)

30. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 29 above as if fully set forth herein.

31. By engaging in the conduct described above, defendants have unjustly enriched themselves at the expense of the Estate, and have retained money and property that rightfully belongs to Estate, and that defendants have no right to, and cannot in equity and good conscience, retain.

32. By reason of defendants' unjust enrichment at the expense of the Estate, defendants are jointly and severally liable to plaintiff for the damages that the Estate has suffered as a result of defendants' actions, in an amount to be determined at trial, but in any event not less than \$207,760.00, and the Court should award that amount to plaintiff and establish a constructive trust in favor of the Estate in that amount, plus interest, plus the amount of plaintiff's costs and expenses in this action.

FOURTH CAUSE OF ACTION

(Accounting)

33. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 32 above as if fully set forth herein.

34. Yee's death, the terms of the Partnership Agreement, and operation of New York law effected a dissolution of Donovan & Yee as of December 1, 2008, the date of Yee's death.

35. Plaintiff is entitled to a full and proper accounting with respect to the finances and affairs of Donovan & Yee as of the December 1, 2008 date of Yee's death.

36. Plaintiff has duly and repeatedly made demand of Donovan for such an accounting and access to Donovan & Yee's books and records for purposes of such accounting, but Donovan has failed and refused to provide such accounting and access.

37. As to this claim, plaintiff has no adequate remedy at law.

38. Plaintiff is entitled to a full and proper formal accounting from Donovan as to the financial condition of Donovan & Yee as of December 1, 2008, and all monies owed to the Estate, including a directive ordering Donovan to deliver to plaintiff for her review and that of her legal and financial advisors all books and records belonging to or relating to the affairs of Donovan & Yee as of December 1, 2008, including but not limited to all books and records concerning Partners' Capital, accounts receivable, work-in-progress, and all other assets as of that date, as well as a schedule of monies received by Donovan & Yee since December 1, 2008.

FIFTH CAUSE OF ACTION
(Declaratory Relief)

39. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 38 above as if fully set forth herein.

40. Plaintiff contends that Donovan & Yee dissolved, as a matter of contractual agreement and law, upon Yee's death on December 1, 2008. Donovan, in contrast, denies the dissolution of Donovan & Yee.

41. A justiciable controversy within the meaning of New York Civil Practice Law and Rules § 3001 exists between plaintiff and Donovan. Plaintiff therefore requests that the Court declare the rights of the parties under the Partnership Agreement and New

York law, including that Donovan & Yee dissolved upon Yee's death on December 1, 2008.

SIXTH CAUSE OF ACTION
(Injunctive Relief)

42. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 41 above as if fully set forth herein.

43. Defendants have no legal, equitable, contractual, or other right to continued or further use of Yee's name or image in connection with Donovan's legal practice.

44. The Court should issue a preliminary and permanent injunction prohibiting Donovan from any continued or further use of Yee's name or image in furtherance of or in connection with Donovan's law practice.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment:

1. On the First Cause of Action, awarding against Donovan the damages that the Estate has suffered as a result of defendant's actions, the amount of such damages to be determined at trial, but in any event not less than \$207,760.00, plus interest.

2. On the Second Cause of Action, awarding against Donovan the damages that the Estate has suffered as a result of defendant's actions, the amount of such damages to be determined at trial, but in any event not less than \$207,760.00, plus punitive damages in an amount to be determined at trial.

3. On the Third Cause of Action, awarding against defendants, jointly and severally, the damages that the Estate has suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event not less than

\$207,760.00, and establishing a constructive trust in favor of the Estate in that amount, plus interest, plus the amount of plaintiff's costs and expenses in this action.

4. On the Fourth Cause of Action, ordering that defendants immediately provide plaintiff a full and proper accounting as to the financial condition of Donovan & Yee as of December 1, 2008, and all monies owed to the Estate, including ordering that defendants deliver to plaintiff for her review and that of her legal and financial advisors all books and records belonging to or relating to the affairs of Donovan & Yee as of that date, including but not limited to all books and records concerning Partners' Capital, accounts receivable, work-in-progress, and all other assets as of that date, as well as a schedule of monies received by Donovan & Yee since December 1, 2008.

5. On the Fifth Cause of Action, declaring the rights of the parties under the Partnership Agreement and New York law, including that Donovan & Yee dissolved upon Yee's death on December 1, 2008.

6. On the Sixth Cause of Action, issuing a preliminary and permanent injunction prohibiting Donovan from any continued or further use of Yee's name in furtherance of or in connection with Donovan's law practice.


7. Awarding to plaintiff interest and her costs and expenses in this action, including attorneys' fees.

8. Awarding to plaintiff such other and further relief as the Court deems just and proper.

Dated: New York, New York
December 3, 2010

GALLET DREYER & BERKEY, LLP

By:



David N. Milner
David S. Douglas

845 Third Avenue
New York, New York 10022
(212) 935-3131

Attorneys for Plaintiff

VERIFICATION

DAVID S. DOUGLAS, an attorney duly admitted to practice in the Courts of this State, affirms under penalty of perjury that:

I am a member of the firm of Gallet Dreyer & Berkey, LLP, attorneys for plaintiff in this action. I have read the foregoing Complaint and know the contents thereof, and, upon information and belief, I believe them to be true based upon conversations with certain individuals and review of certain documents. The reason that I and not plaintiff have made this Verification is that plaintiff is located in a county other than that in which her attorneys maintain their office.

Dated: New York, New York
December 3, 2010



DAVID S. DOUGLAS

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SUMMONS AND VERIFIED COMPLAINT

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Attorneys for Plaintiff