

CAUSE NO. 2024-63748

THE ESTATE OF KANELLOS D.
CHARALAMPOUS, THROUGH ITS
COURT APPOINTED ADMINISTRATOR,
CONSTANTINE CHARALAMPOUS,

CONSTANTINE CHARALAMPOUS
and PHILLIP CHARALAMPOUS,
TRUSTEES OF THE KANELLOS D.
CHARALAMPOUS REVOCABLE
TRUST, and

THE CHARALAMPOUS FOUNDATION,
Plaintiffs,

vs.

THE MENDEL LAW FIRM, LP,
STEPHEN A. MENDEL, KATHRYN A.
MENDEL, ROBBIE LEE, MARK EDWIN
KUNIK, M.D., KIMSON HUU CAO, and
BAYLOR COLLEGE OF MEDICINE,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127TH JUDICIAL DISTRICT

**DEFENDANTS THE MENDEL LAW FIRM, LP, STEPHEN A. MENDEL,
AND KATHRYN A. MENDEL'S ANSWER TO
PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants The Mendel Law Firm, L.P., Stephen A. Mendel, and
Kathryn A. Mendel ("Defendants"), and file this their Original Answer and would respectfully
show the Court as follows:

I.
STATEMENT REGARDING TRANSFER OF VENUE

1.1. Defendant Baylor College of Medicine has moved to transfer this action to
Probate Court No. 3 of Harris County, Texas where an action was previously initiated to probate
the will left by Kanellos D. Charalampous. The case is styled as Cause No. 530005; *In re Estate*

of Kanellos D. Charalampous, Deceased, In the Probate Court No. 3 of Harris County, Texas. To the extent necessary, Defendants hereby consent to and join in that transfer request.

II.
GENERAL DENIAL

2.1 Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants deny the material allegations made in Plaintiffs' Original Petition and any petition that may be filed hereinafter by way of amendment or supplement, and demand strict proof thereof by a preponderance of the evidence at trial.

III.
AFFIRMATIVE AND ADDITIONAL DEFENSES

Defendants further assert the following additional and affirmative defenses in the alternative:

3.1. In the alternative, Plaintiffs' claims are barred in whole or in part by a lack of standing. For example, some or all of the Plaintiffs did not have an attorney-client relationship or other contractual relations with the Mendel Law Firm or Stephen Mendel, and no relationship at all with Kathryn Mendel. Therefore, Defendants owe no duty to Plaintiffs, which lack standing in whole or in part.

3.2. In the alternative, Plaintiffs' claims are barred in whole or in part by the attorney immunity doctrine and the absence of privity. For example, the preparation of estate planning documents is the type of professional services that routinely and commonly fall within the services that an attorney would provide and that the Mendel Law Firm does provide, which would thereby provide immunity from liability to the Mendel Law Firm and its agents and employees (including Stephen Mendel and Kathryn Mendel). Consequently, there is no basis to assert a claim of liability whether by way of conspiracy or otherwise against attorneys or those

affiliated with a law firm who are simply discharging traditional legal tasks for which they were hired to do. All Defendants thereby assert immunity on these grounds.

3.3. In the alternative, Plaintiffs' claims for undue influence or lack of testamentary and other capacity, to the extent those claims are being asserted, are barred in whole or in part for failure to state a claim on which relief can be granted. There are no damages for a cause of action for undue influence or lack of capacity. The Supreme Court of Texas recently wrote that "[u]ndue influence itself is not an actionable tort; consequently, damages are not recoverable based solely on an undue-influence finding." *Kinsel v. Lindsey*, 526 S.W.3d 411, 422 n3 (Tex. 2017). Moreover, certain of the Plaintiffs lack standing in trying to expand these claims against attorneys who did not represent them.

3.4. In the alternative, Plaintiffs' claims for conspiracy and aiding and abetting are barred in whole or in part for failure to state a claim on which relief can be granted. Under Texas law, "[i]f the defendant's liability for the alleged underlying tort is foreclosed as a matter of law, there is no claim for conspiracy." *Frankoff v. Norman*, 448 S.W.3d 75, 87 (Tex.App.—Houston [14th Dist.] 2014, no pet.). Moreover, there is no liability on attorneys or their agents for aiding and abetting by performing legal work. Because drafting powers of attorney and estate planning documents is not an illegal act, there is no liability for aiding and abetting, breach of fiduciary duty, or conspiracy.

3.5. In the alternative, Plaintiffs' claims are barred by the impermissible fracturing rule.

3.6. Plaintiffs' claims are barred, in whole or in part, by the doctrine of excuse, legal justification, and good faith.

3.7. Plaintiffs' claims are barred, in whole or in part, because each of the Plaintiffs cannot demonstrate having sustained legally cognizable damages and/or Plaintiffs failed to mitigate damages.

3.8. Plaintiffs' claims may be barred in whole or in part based on the applicable statute of limitations.

3.9. Plaintiffs' claims are barred in whole or in part because the evidence will demonstrate that Defendants made decisions which a reasonably prudent attorney could have made in the same or similar circumstance.

3.10. Plaintiffs' claims are barred in whole or in part because the alleged injuries complained about were caused by the conduct of third-parties over whom Defendants did not exercise control, nor had any right of control.

3.11. Plaintiffs' claims are barred in whole or in part by the doctrine of ratification, estoppel, quasi-estoppel, equitable estoppel, judicial estoppel, acceptance of benefits, and/or waiver.

3.12. Defendants deny that all conditions precedent necessary for Plaintiffs to recover have occurred. Defendants further assert that the predicate to any tort claims must be a purported invalidation of the testamentary documents in question.

3.13. Defendants are entitled to abate the proceedings pending resolution of the Harris County probate issues regarding testamentary capacity and the propriety of various testamentary documents in a court of appropriate jurisdiction (a Harris County probate court). To the extent this proceeding is seen as an improper splitting of causes of action, Defendants hereby object and assert that such splitting of causes of action would be improper.

3.14. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by the election of remedies doctrine.

3.15. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by the contort doctrine and economic loss rule.

3.16. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by the entire fairness test and where applicable, the business judgment rule.

3.17. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by the reasonable reliance on professionals.

3.18. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part to the extent equity is being sought, by the existence of adequate remedies that would be legally available at law in the event meritorious claims existed. Defendants would further assert the defense of laches and unclean hands.

3.19. Defendants affirmatively plead that to the extent Plaintiffs do not prevail on a declaratory judgment act claim, then Defendants reserve the right to seek attorneys' fees.

3.20. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by Chapter 33 and comparative responsibility to the extent any liability would be found to exist as to these Defendants.

3.21. Defendants would further hereby invoke the doctrine of offset, credit, and to the extent any settlements are reached, an appropriate settlement credit or an election between submission of issues and credit.

3.22. Defendants affirmatively plead that Plaintiffs' claims are barred in whole or in part by the cap on punitive damages found at Tex. Civ. Prac. & Rem. Code § 41.008 et. seq.

Defendants also affirmatively plead the limit on interest found at Tex. Fin. Code § 304.003 et. seq.

IV.
VERIFIED DENIAL

4.1. Defendants assert that some or all of the Plaintiffs do not have the legal capacity to sue in the manner in which it has done so or asserted, and that some or all of the Plaintiffs are not entitled to recover in the capacity in which they have sued. To the extent a will contest is filed in a court of proper jurisdiction, Defendants assert there would be another suit pending which may involve the same or similar claims or issues.

V.
AMENDMENT

Defendants respectfully reserve the right at this time to amend this Answer after it has had the opportunity to more closely investigate these claims as is its right and privilege under the Texas Rules of Civil Procedure and the laws of the State of Texas.

VI.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that upon final trial and hearing hereof Plaintiffs take nothing, and that Defendants receive all relief to which they may show themselves to be justly entitled, both in law and at equity.

Respectfully submitted,

Martin, Disiere, Jefferson & Wisdom, L.L.P

/s/ Dale Jefferson

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STEPHEN A. MENDEL, AND
KATHRYN A. MENDEL**

Unofficial Copy Office of Marilyn Burgess District Clerk

CERTIFICATE OF SERVICE

I hereby certify that service of this instrument was made in accordance with the Texas Rules of Civil Procedure on the 28th day of October 2024.

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/s/ Dale Jefferson

Dale Jefferson

THE ESTATE OF KANELLOS D.
CHARALAMPOUS, THROUGH ITS
COURT APPOINTED ADMINISTRATOR,
CONSTANTINE CHARALAMPOUS,

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IN THE DISTRICT COURT OF

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and PHILLIP CHARALAMPOUS,
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HARRIS COUNTY, TEXAS

THE CHARALAMPOUS FOUNDATION,
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BAYLOR COLLEGE OF MEDICINE,

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Defendants.

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127TH JUDICIAL DISTRICT

STATE OF TEXAS

§

COUNTY OF HARRIS

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§

VERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Stephen A. Mendel, as a Defendant in this case, who after being by me duly sworn upon his oath deposed and said the following:

1. I am over the age of 18 and of sound mind. The facts stated in this verification are true and correct and based upon my personal knowledge as counsel for Kanellos Charalampous and as owner of the Mendel Law Firm, LP.
2. I have reviewed paragraph 4.1 of Defendants The Mendel Law Firm, LP, Stephen A. Mendel, and Kathryn A. Mendel's Answer to Plaintiffs' Original Petition. The facts and assertions made in paragraph 4.1 are true and correct.
3. Defendants assert that some or all of the Plaintiffs do not have the legal capacity to sue in the manner in which has been done or asserted, and that some or all of the Plaintiffs are

not entitled to recover in the capacity in which they have sued. To the extent a will contest is filed in a court of proper jurisdiction, Defendants assert there would be another suit pending which may involve the same or similar claims or issues.

4. Further Affiant Sayeth Not.

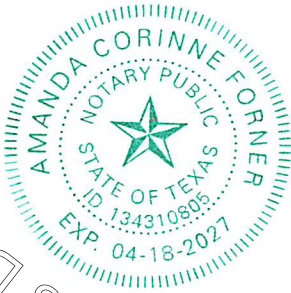


Stephen A. Mendel
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this 28 day of Oct,
2024.



Notary Public in and for the State of Texas



Unofficial Copy Office of Mariynn Burgess District Clerk

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Paula Jameson on behalf of Dale Jefferson

Bar No. 10607900

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Envelope ID: 93650682

Filing Code Description: Answer/ Response / Waiver

Filing Description: Defendants The Mendel Law Firm, LP, Stephen A.

Mendal, and Kathryn A. Mendel's Answer to Plaintiffs' Original Petition

Status as of 10/28/2024 3:51 PM CST

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