

ESTTA Tracking number: **ESTTA479201**

Filing date: **06/20/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055169
Party	Defendant John G. Sampatakakos, Anthony G. Sampatakakos, Helen Surprenant, Claire S. Paicopolos and James G. Sampas
Correspondence Address	JOHN G SAMPATAKAKOS 2 STEVENS STREET LOWELL, MA 01851 UNITED STATES mavoltchenko@duanemorris.com, AJFitzpatrick@duanemorris.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Maxim A. Voltchenko
Filer's e-mail	mavoltchenko@duanemorris.com, AJFitzpatrick@duanemorris.com
Signature	/mav/
Date	06/20/2012
Attachments	motion_to_dismiss.pdf ( 78 pages )(7074908 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re JACK KEROUAC PAUL BLAKE, JR.,	)	
	)	
	)	
Petitioner,	)	Registration No. 3,127,012
	)	
v.	)	Cancellation No. 92055169
	)	
JAMES G. SAMPAS, et al,	)	
	)	
Registrants.	)	
	)	

---

**REGISTRANTS' MOTION TO DISMISS PETITION TO CANCEL**

**I. INTRODUCTION**

This proceeding concerns the mark "JACK KEROUAC." Registrants are the beneficiaries of the estate of Stella Kerouac, the widow of the late author Jack Kerouac. Stella Kerouac, in turn, inherited assets relating to her late husband, both under Florida law and from Jack Kerouac's mother/her mother-in-law Gabrielle Kerouac.

Petitioner was Jack Kerouac's nephew and Gabrielle Kerouac's grandson. He contends that he (rather than Stella Kerouac) is the heir to Gabrielle Kerouac's estate, and hence that he is a co-owner of assets relating to Jack Kerouac. This very issue was previously litigated between these same parties in Florida probate court. In 2004, the Florida probate court entered judgment in favor of Registrants, on the basis of an applicable Florida statute of limitations. Accordingly, as explained herein, the Petition to Cancel is barred by the doctrine of *res judicata*, as well as by that same Florida statute. Furthermore, Petitioner has pled his contention of fraud in an entirely conclusory fashion, without any of the required particularity.

Thus, Registrants respectfully request that the Petition to Cancel be dismissed with prejudice.

## II. STATEMENT OF UNDISPUTED FACTS

### A. The Individuals Involved In This Matter

The following is a listing of the individuals involved in this matter, and an explanation of their respective roles:

PERSON:	ROLE:
Jack Kerouac	The noted American author.
Gabrielle Kerouac	Jack Kerouac's mother, and the sole legatee under Jack Kerouac's will.
Stella Kerouac (nee Sampas)	Jack Kerouac's wife at the time of his death, and his widow.
Jan Kerouac	Jack Kerouac's daughter (by his second wife Joan Haverty).
Paul Blake, Jr.	Jack Kerouac's nephew, and Gabrielle Kerouac's grandson; the Petitioner in this matter.
Registrants	Stella Kerouac's siblings; the legatees under her will; and the Respondents in this matter.

### B. The Wills Of Jack Kerouac, Gabrielle Kerouac, And Stella Kerouac

Jack Kerouac passed away in Florida in 1969. *See* Exhibit A, Petition for Revocation of Probate of Purported Will<sup>1</sup>, at ¶ 6. In his will, Jack Kerouac left his estate to his mother, Gabrielle Kerouac. *See* Exhibit B, Last Will and Testament of Jean Kerouac a/k/a Jack Kerouac, at 1.

<sup>1</sup> As explained in Section II(C) hereof, in 1996 Petitioner adopted and re-alleged the factual allegations in Exhibit A. Thus, Petitioner cannot now dispute those facts.

Following Jack Kerouac's death, his widow Stella Kerouac (nee Sampas) elected to take a dower share of his estate under Florida law, amounting to one-third of his estate. *See* Exhibit A, at ¶ 7.

After Jack Kerouac's death, Stella Kerouac lived with and cared for Gabrielle Kerouac in Florida. Gabrielle Kerouac passed away in Florida in 1973. *Id.* at ¶ 8. Her will provided that Gabriella Kerouac's entire estate was left to Stella Kerouac. *See* Exhibit C, Last Will and Testament of Gabrielle A. Kerouac, at 1. Gabrielle Kerouac's estate was closed in 1975. *See* Exhibit D, Florida probate court Order dated July 24, 2009, at 4.

Stella Kerouac passed away in Florida in 1990. *See* Exhibit A, at ¶ 18. In her will, Stella Kerouac left her estate to Registrants, her siblings. *See* Exhibit E, Last Will and Testament of Stella Kerouac, at 1-4. On November 14, 1990, the Florida probate court entered an Order of Final Discharge, providing that Stella Kerouac's "estate is declared to be fully administered and is closed." *Id.* at 6.

**C. The Florida Probate Court Proceedings, Which Resulted In Entry Of Judgment Against Petitioner And In Favor Of Respondents (Registrants)**

In 1994, Jan Kerouac filed a petition in Florida probate court in connection with Gabrielle Kerouac's estate, in which she alleged that Gabrielle Kerouac's will had been forged (the "Florida Probate Proceeding"). *See* Exhibit A. The respondents in the Florida Probate Proceeding were Stella Kerouac's siblings (i.e. Registrants) and Paul Blake, Jr. (i.e. Petitioner in this matter). *Id.* In her petition, Jan Kerouac sought, *inter alia*, a declaration that she "is the true owner of all property once belonging to the estate of Jack Kerouac, and passed by Gabrielle Kerouac to Stella Sampas." *Id.* at 9.

In 1996, Paul Blake, Jr. filed a counterclaim and cross-claim in the Florida Probate Proceeding, in which he essentially re-alleged the allegations of Jan Kerouac's petition. *See*

Exhibit F, Answer, Affirmative Defenses, Counterclaim and Cross-Claim of Paul G. Blake, Jr., at 1-2. Paul Blake, Jr. alleged that he “is entitled to one third (1/3) of the assets of the Estate of Gabrielle Kerouac,” and prayed for “the same relief as that sought in the original Petition.” *Id.* In that same year, Jan Kerouac passed away (*see* Exhibit D, at 1), and the executor of her estate dismissed her claims against Stella Kerouac’s siblings with prejudice (*see* Exhibit G, Voluntary Dismissal With Prejudice). Thereafter, the Florida Probate Proceeding continued as between Paul Blake, Jr., on the one hand, and Registrants, on the other hand.

After several years of litigation, Registrants moved for summary judgment, on the basis that Paul Blake, Jr.’s claim was barred by an applicable statute of limitations, Fla. Stat. § 733.710. In 2004, the Florida probate court granted that motion and entered judgment in favor of Registrants and against Paul Blake, Jr. (the “2004 Florida Judgment”) (copy attached as Exhibit H). The 2004 Florida Judgment provided as follows:

2. The Court has determined that any claim against any assets or property which were inherited or received by any of the SAMPAS respondents [i.e. Registrants] through the Estate of Stella Sampas Kerouac, Deceased, is barred by the provisions of the Florida Statute, § 733.710 (1989).

3. Final Judgment is hereby entered in favor of [the Sampas respondents] and against Respondent PAUL BLAKE, JR., on any and all such claims . . . . Accordingly, the Sampas Respondents . . . are dismissed with prejudice.

Exhibit H, at ¶¶ 2-3 (capitalization in original).

**D. Petitioner’s Contention That He Is A Co-Owner Of The Trademark Rights At Issue**

Following the 2004 Florida Judgment, Paul Blake, Jr. continued to prosecute his petition in the Florida probate court (notwithstanding that there was no adverse party). In 2009, the

Florida probate court found that the signature on Gabrielle Kerouac's will had been forged.<sup>2</sup> See Exhibit D.

On the basis of that 2009 decision, Paul Blake, Jr. now contends that he is an intestate heir of Gabrielle Kerouac, and hence that he is a co-owner of the trademark rights at issue in this proceeding. This is evident from the substantive allegations in his Petition to Cancel Registration:

4. As the Petitioner indicated in his Requests for Reconsideration dated April 15, 2011 in response to the Examining Attorney's Final Office Actions, the Petitioner is the nephew of Jack Kerouac, and court proceedings invalidating the will of Jack Kerouac's mother and sole heir, Gabrielle Kerouac, as having been forged, confirm that the Petitioner is a co-owner of a share of his property, including the pertinent trademarks and related intellectual property rights, through Jack's mother and sister, who was the applicant's mother. (Relevant documents confirming the Petitioner's claim were submitted with the Petitioner's Request for Reconsideration and are a matter of record).

5. As a result, the Registrants' claim in their application that they had exclusive rights in the JACK KEROUAC mark and that no other person had the right to use the mark in commerce was not true. The registration was thus obtained fraudulently and is subject to cancellation pursuant to Trademark Act Section 14(3).

Petition to Cancel Registration, at ¶¶ 4-5.

---

<sup>2</sup> Registrants do not concede or admit that the signature on Gabrielle Kerouac's will was forged. The 2009 Florida probate decision has no preclusive or binding effect on Registrants, because the 2004 Florida Judgment had been entered in their favor, and they had been dismissed from the Florida Probate proceeding, five years earlier. However, this issue does not need to be addressed or decided here, because of the *res judicata* effect of the 2004 Florida Judgment, as explained herein.

### III. LAW AND ARGUMENT

#### A. A Motion To Dismiss Is The Appropriate Procedural Approach To Address *Res Judicata* And Statute Of Limitations

Courts routinely dismiss actions under Fed. R. Civ. P. 12(b)(6) based upon *res judicata* or statutes of limitations. *See, e.g., Brotherhood of Locomotive Engineers and Trainmen Cmtee. of Adjustment CSX Transportation Northern Lines v. CSX Transportation, Inc.*, 522 F.3d 1190 (11<sup>th</sup> Cir. 2008) (affirming dismissal of action under Fed. R. Civ. P. 12(b)(6) on basis of statute of limitations); *Amadasu v. The Christ Hospital, et al.*, 514 F.3d 504 (6<sup>th</sup> Cir. 2008) (affirming dismissal of action under Fed. R. Civ. P. 12(b)(6) on basis of *res judicata*); *Austin v. Downs, Rachlin & Martin, et al.*, 270 Fed. Appx. 52 (2<sup>nd</sup> Cir. 2008) (same); *see also* 5C Wright & Miller, *Federal Practice and Procedure Civil 3d* § 1360 (2004, and April 2012 supp.). Thus, Registrants' motion is the appropriate procedural approach to address the issues of *res judicata* and statute of limitations.

#### B. Mr. Blake's Petition To Cancel Is Barred By *Res Judicata*

Under the doctrine of *res judicata* or claim preclusion, "a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action." *Jet, Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1856 (Fed. Cir. 2000) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n. 5, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)). *See also Orouba Agrifoods Processing Company v. United Food Import*, Cancellation No. 92050739, 2010 TTAB LEXIS 441, 97 U.S.P.Q.2d 1310 (December 28, 2010).

This proceeding involves the same parties – Paul Blake, Jr. and Stella Kerouac's siblings – as the Florida Probate Proceeding that resulted in the 2004 Florida Judgment. Furthermore, this proceeding and the Florida Probate Proceeding (a) are based upon and arise out of the same facts, namely those concerning Gabrielle Kerouac's will, and (b) involve the same cause of

action, namely Mr. Blake's contention that Gabrielle Kerouac's will was invalid, and that consequently her estate passed not to Stella Kerouac but instead to him as intestate heir.

Paul Blake, Jr.'s claim against Registrants has previously been adjudicated on the merits. In 2004, as noted above, the Florida probate court entered judgment against Mr. Blake and in favor of Registrants. In the 2004 Florida Judgment, the probate court specifically held that Mr. Blake's claim against Registrants concerning property they had inherited from Stella Kerouac was barred by a Florida statute:

The Court has determined that any claim against any assets or property which were inherited or received by any of the SAMPAS respondents through the Estate of Stella Sampas Kerouac, Deceased, is barred by the provisions of the Florida Statute, § 733.710 (1989).

Exhibit H, at ¶ 2.

Thus, the 2004 Florida Judgment bars Petitioner's petition to cancel, which involves the same parties and the same cause of action as the previous Florida Probate Proceeding.

**C. Mr. Blake's Petition To Cancel Is Barred By The Applicable Florida Statute Of Limitations**

Stella Kerouac was the sole beneficiary named in Gabrielle Kerouac's purportedly forged will. *See* Exhibit C. In turn, following Stella Kerouac's death, Registrants as the beneficiaries under her will inherited assets pertaining to Jack Kerouac. *See* Exhibit E. Stella Kerouac passed away in Florida, and her estate was admitted to probate and administered in that state. Paul Blake, Jr. now asserts a claim to assets that passed through Stella Kerouac's estate to Registrants as beneficiaries.

In these circumstances, the pertinent statute of limitations is Fla. Stat. § 733.710, which provides as follows:

Limitations on claims against estates.—

(1) Notwithstanding any other provision of the code, 2 years after the death of a person, neither the decedent's estate, the personal representative, if any, nor the beneficiaries shall be liable for any claim or cause of action against the decedent, whether or not letters of administration have been issued, except as provided in this section.

This is the same statute upon which summary judgment was entered in the Florida Probate Proceeding, and it is equally applicable in this proceeding. Paul Blake, Jr.'s claim is one against Stella Kerouac, who was the sole beneficiary of Gabrielle Kerouac's purportedly invalid will and who therefore inherited the assets and rights at issue. But Stella Kerouac passed away in 1990 (*see* Exhibit A, at ¶ 18), and her estate was closed in that same year (*see* Exhibit E, at 6). Accordingly, the two-year limitations period under Fla. Stat. § 733.710 ran in 1992, and the beneficiaries of Stella Kerouac's estate – i.e. Registrants – cannot be liable to Petitioner for his claim.

**D. Petitioner Has Failed To State A Claim That Registrants' Registration Was Obtained Fraudulently**

**1. Applicable Legal Standards Under Fed. R. Civ. P. 8 And 12(b)(6)**

A claim must be dismissed if the claimant fails to state claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). In *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), the Supreme Court held that “a plaintiff's obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 555 (citation omitted).

In *Ashcroft v. Iqbal*, the Supreme Court held that the “decision in *Twombly* expounded the pleading standard for ‘all civil actions.’” *Ashcroft v. Iqbal*, 556 U.S. 662, at 684, 129 S. Ct. 1937, at 1953 (2009). In *Ashcroft*, the Court also explained as follows:

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.

Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.

556 U.S. at 678-679, 129 S. Ct. at 1949-50 (emphasis added, internal citations omitted).

**2. Petitioner's Cancellation Pleading Is Legally Deficient On Its Face Because it Provides Little, If Any, Particular Facts**

A party seeking cancellation must plead and prove two elements: (1) that it has standing; and (2) that there are valid grounds for canceling the registration. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945 (Fed. Cir. 2000) (emphasis added). In doing so, however, “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” are not enough. *Twombly*, 550 U.S. at 555. Indeed, the tribunal is not required to accept as true legal conclusions re-cast as factual allegations. *Ashcroft*, 556 U.S. at 678, 129 S. Ct. at 1949-50. Unfortunately, in this case, Petitioner has offered nothing more than conclusory legal statements, unsupported by any underlying facts. This is hardly surprising, because the allegations are entirely baseless.

---

To the extent that Petitioner intends to set forth a claim in paragraphs 4 and 5 that Registrants committed fraud by making allegedly false averments in the declaration in support of their application for the JACK KEROUAC mark, such claim is legally insufficient and inadequate as a matter of law.

Generally, fraud in procuring or maintaining a trademark registration occurs when an applicant for registration or a registrant in a declaration of use or a renewal application knowingly makes specific false, material representations of fact in connection with an

application to register or in a post-registration filing with the intent of obtaining or maintaining a registration to which it is otherwise not entitled. *See In re Bose Corp.*, 580 F.3d 1240, 91 U.S.P.Q.2d 1938 (Fed. Cir. 2009). Because intent is a required element to be pleaded for a claim of fraud, allegations that a party made material representations of fact that it "knew or should have known" were false or misleading are insufficient. *See id.*

A plaintiff claiming that the declaration or oath in a defendant's application for registration was executed fraudulently, in that there was another use of the same or a confusingly similar mark at the time the oath was signed, must allege particular facts which, if proven, would establish that:

- (1) there was in fact another use of the same or a confusingly similar mark at the time the oath was signed;
- (2) the other user had legal rights superior to applicant's;
- (3) applicant knew that the other user had rights in the mark superior to applicant's, and either believed that a likelihood of confusion would result from applicant's use of its mark or had no reasonable basis for believing otherwise; and
- (4) applicant, in failing to disclose these facts to the U.S. Patent and Trademark Office ("PTO"), intended to procure a registration to which it was not entitled.

---

*Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 U.S.P.Q.2d 1203, 1205 (TTAB 1997).

Assuming for the sake of argument Petitioner could (which he cannot) establish that he had rights to the JACK KEROUAC mark and his rights were (are) superior to Registrants' (the first and second elements of the fraud claim), Petitioner has failed to plead particular facts sufficient to establish the third and fourth elements of the claim. Petitioner has failed to allege that Registrants, at the time of filing their application, knew that Petitioner had rights in the mark

superior to Registrants', and either believed that a likelihood of confusion would result from Registrants' use of their mark or had no reasonable basis for believing otherwise; and that Registrants, in so failing to disclose, intended to procure a registration to which they were not entitled.

Petitioner's entire allegations as to the basis for his cancellation claim, which is premised solely on alleged Registrants' fraud, are as follows:

4. As the Petitioner indicated in his Requests for Reconsideration dated April 15, 2011 in response to the Examining Attorney's Final Office Actions, the Petitioner is the nephew of Jack Kerouac, and court proceedings invalidating the will of Jack Kerouac's mother and sole heir, Gabrielle Kerouac, as having been forged, confirm that the Petitioner is a co-owner of a share of his property, including the pertinent trademarks and related intellectual property rights, through Jack's mother and sister, who was the applicant's mother. (Relevant documents confirming the Petitioner's claim were submitted with the Petitioner's Request for Reconsideration and are a matter of record).

5. As a result, the Registrants' claim in their application that they had exclusive rights in the JACK KEROUAC mark and that no other person had the right to use the mark in commerce was not true. The registration was thus obtained fraudulently and is subject to cancellation pursuant to Trademark Act Section 14(3).

These allegations are nothing more than legal conclusions re-cast as factual allegations.

---

As such, the Board need not accept them as true. *Ashcroft v. Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949-50. In fact, Petitioner's allegation that "Registrants' claim in their application that they had exclusive rights in the JACK KEROUAC mark and that no other person had the right to use the mark in commerce was not true" is plainly false. As explained above, the 2004 Florida Judgment cleared Registrants' rights in the Jack Kerouac estate including the post mortem rights and rights in the JACK KEROUAC trademark. However, even if Petitioner's allegations in paragraphs 4 and 5 of the petition *were* true, they are still inadequate as the matter of law.

On March 29, 2005, Registrants signed the following declaration in support of their application for registration of the JACK KEROUAC mark:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

See the document "Application" in the file history of Registration No. 3,127,012.

At the time of signing the declaration, on March 29, 2005, Registrants believed that they were the exclusive owners of the mark at issue. Registrants received a decision on March 16, 2004 confirming their rights in the assets of Jack Kerouac including post mortem rights of publicity and the rights to the name and trademark JACK KEROUAC. They continued to believe to be the successors of all the assets of the Jack Kerouac estate including the trademark rights throughout the entire registration process (until the registration was granted on August 8, 2006). Registrants' good faith belief is sufficient. See 6 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §31:77, at 31-176, 177 (4<sup>th</sup> ed. 2012) ("if applicant has a good faith belief that it is the senior user, then the oath cannot be fraudulent"); *Maid to Order of Ohio, Inc. v. Maid-to-Order, Inc.*, 78 U.S.P.Q.2d 1899, 1909 (TTAB 2006) ("no fraud found where applicant had no "clear knowledge" that another company had the right to use the mark").

Because Registrants had reasonable grounds to believe (and did believe) that they were the sole rightful owners of the JACK KEROUAC mark (and they still do now), their application could not be fraudulent. Accordingly, Petitioner's pleading is deficient and should be dismissed.<sup>3</sup>

**3. Petitioner's Cancellation Pleading Is Legally Deficient Because Petitioner Did Not And Cannot Plead That Registrant Had Intent To Commit Fraud On The PTO**

Petitioner has failed to and cannot plead facts sufficient to infer Registrants' intent to commit fraud on the PTO. A pleading of fraud on the USPTO must also include an allegation of intent. *In re Bose*, 91 USPQ2d at 1939-1940. Moreover, although Rule 9(b) permits intent to be alleged generally, the pleadings must allege sufficient underlying facts from which a court may reasonably infer that a party acted with the requisite state of mind. *Exergen Corp. v. Wal-Mart Stores Inc.*, 575 F.3d 1312, 91 USPQ2d 1656, 1670 (Fed. Cir. 2009), *Asian and Western Classics B.V. v. Selkow*, 92 USPQ2d 1478 (TTAB 2009).

Here, Petitioner's allegations in Paragraphs 4 and 5 of the Petition which state that "the Registrants' claim [of] exclusive rights in the JACK KEROUAC mark and that no other person had the right to use the mark in commerce was not true.... The registration was thus obtained fraudulently" are insufficient to infer Registrants' intent to commit fraud on the PTO. *See, e.g., Asian and Western Classics* ("allegations which state that 'registrant knew or should have

---

<sup>3</sup> To assert his rights in the JACK KEROUAC mark, Petitioner relies solely on the "court proceedings invalidating the will of Jack Kerouac's mother and sole heir, Gabrielle Kerouac, as having forged, and allegedly confirming that Petitioner is a co-owner of a share of his property, including the pertinent trademarks" ("the Florida probate decision"). Petition, ¶ paragraph 4. The Florida probate decision is dated July 24, 2009. Therefore, the "fact" of "co-ownership" could have become known to Registrants only on or after July 24, 2009, i.e., more than four years after they signed the declaration and almost three years after the PTO granted the registration at issue. Therefore, assuming for the sake of argument Registrants were required to disclose Petitioner's alleged "co-ownership" to the PTO, they could not reasonably disclose this "fact" to the PTO during the prosecution of their application. Thus, Petitioner's alleged fraud claim fails as a matter of law. Moreover, this is the deficiency that Petitioner cannot cure by amending his pleading. Therefore, this Petition should be dismissed.

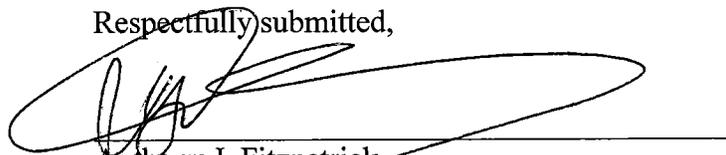
known...’ are insufficient to infer respondent’s intent to commit fraud on the PTO”). Petitioner has pled no facts in support of his allegations that Registrants committed fraud on the PTO when they filed their application in 2005 and obtained their registration in 2006. Petitioner has failed to state, much less discuss, the elements of the alleged fraud claim. Petitioner’s allegations (in particular, those in Paragraphs 4 and 5) are mere legal conclusions set in the form of factual allegations. These allegations do not meet the pleading standards required by the Supreme Court in *Twombly* and *Ashcroft*, and specifically elaborated by the Federal Circuit in *Bose* for fraud on the PTO in trademark cases. Accordingly, Petitioner has no legally cognizable grounds for his petition to cancel the JACK KEROUAC registration. Because the claim of fraud is the sole ground for the Petition, the pleading is deficient on its face and cannot be cured, the Petition should be dismissed, with prejudice.

**IV. CONCLUSION**

For the foregoing reasons, Registrants respectfully request that Petitioner's Petition to Cancel be dismissed, with prejudice.

Date: June 20, 2012

Respectfully submitted,



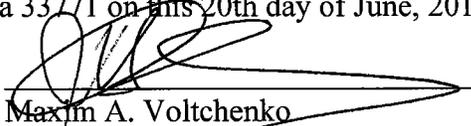
Anthony J. Fitzpatrick  
Duane Morris LLP  
100 High Street, Suite 2400  
Boston, MA 01210  
Tel.: (857) 488-4220  
Fax: (857) 488-4201  
Email: [ajfitzpatrick@duanemorris.com](mailto:ajfitzpatrick@duanemorris.com)

Maxim A. Voltchenko  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103-4196  
Tel.: (215) 979 1823  
Fax: (215) 979 1020  
Email: [mavoltchenko@duanemorris.com](mailto:mavoltchenko@duanemorris.com)

*Attorneys for Registrants*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the REGISTRANTS' MOTION TO DISMISS PETITION TO CANCEL was mailed by prepaid first class mail to Applicant's counsel of record, David R. Ellis, 3233 East Bay Drive, Suite 101, Largo, Florida 33771 on this 20th day of June, 2012.



Maxim A. Voltchenko  
Duane Morris LLP  
30 South 17th Street  
Philadelphia, PA 19103-4196  
Tel.: (215) 979 1823  
Fax: (215) 979 1020  
Email: mavoltchenko@duanemorris.com

*Attorney for Registrants*

## **EXHIBIT A**

---

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC, DECEASED

JAN KEROUAC,

Petitioner,

v.

ANTHONY G. SAMPATAKAKOS, HELEN  
S. SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, PAUL  
BLAKE, JR.,

Respondents.

Case No. 73-4767-3E

RECEIVED  
PROBATE DEPT.

MAY 16 1994

KARLENE E. BAYLOR  
Clerk Circuit Court

PETITION FOR REVOCATION OF PROBATE OF PURPORTED WILL

Petitioner, JAN KEROUAC, petitions this Court as follows:

FACTUAL ALLEGATIONS

1. Petitioner JAN KEROUAC is a resident of Albuquerque, New Mexico. Petitioner is an heir-at-law, the grand-daughter of Gabrielle Kerouac, deceased. As further explained below, Petitioner claims a right to certain property of the estate of Gabrielle Kerouac in that the will purportedly executed by Gabrielle Kerouac on February 13, 1973 was forged and/or invalid.
2. Gabrielle Kerouac had no other children alive at the time of her death, nor a surviving spouse. As an heir-at-law of the will, JAN KEROUAC has a beneficial interest in the property of the Estate of Gabrielle Kerouac.
3. Respondents ANTHONY G. SAMPATAKAKOS, HELEN S. SUPRENANT, JOHN SAMPATAKAKOS, CLAIRE S. PAICOPOLOS, MICHAEL G. SAMPAS, and

JAMES G. SAMPAS (hereinafter collectively referred to as the "Putative Heirs") are individuals, and purported heirs to the Estate of Stella Sampas Kerouac (hereinafter "Stella Sampas"), deceased.

4. Respondent PAUL BLAKE, JR., was and is the grandson of decedent Gabrielle Kerouac. Respondent PAUL BLAKE, JR., is named as a respondent in this action because he is the only other potential intestate heir of the Gabrielle Kerouac estate.

5. The address of Respondent PAUL BLAKE, JR. is presently unknown to Petitioner JAN KEROUAC, despite diligent efforts by Petitioner to locate PAUL BLAKE, JR. Petitioner will seek leave of this Court to amend the Petition if his location becomes known. Caroline Blake, the mother of PAUL BLAKE, JR., and the daughter of Gabrielle Kerouac, also died before Gabrielle Kerouac.

6. On October 21, 1969, Petitioner's father, Jack Kerouac, aka Jean Kerouac, died in the County of Pinellas, State of Florida, leaving his entire estate to his mother, Gabrielle Kerouac through a will probated in the State of Florida, Court of the County Judge, Pinellas County, Case No. 60,232. JAN KEROUAC's mother, Joan Haverty, had divorced Jack Kerouac prior to his death.

7. It was Jack Kerouac's clearly expressed intent that if his mother died before him, his third wife, Stella Sampas, would not share in his estate, but instead it would be given to his nephew, Paul Blake, Jr. Despite his intentions, Stella Sampas elected to take a dower's share of the estate of Jack Kerouac, amounting to a one third interest in the estate. Jack Kerouac's relationship with

Stella Sampas was very poor, as was the relationship between Stella Sampas and Gabrielle Kerouac.

8. Gabrielle Kerouac died on October 12, 1973 in the County of Pinellas, State of Florida, purportedly leaving all of the personal belongings of Jack Kerouac which she then owned, including royalties, his personal writings, notebooks, personal effects, furnishings and home, to Stella Kerouac. At the time of her death, Gabrielle Kerouac was a resident of the County of Pinellas, State of Florida.

9. The instrument by which Gabrielle Kerouac left all of these items to Stella Sampas was a forged and/or invalid will. The forged and/or invalid will was filed on November 15, 1973, with the Clerk of the Circuit Court, County of Pinellas, State of Florida, Probate Division, and admitted to probate in Case No. 73-4767-3E, on November 15, 1973. The Court appointed Stella Sampas as the Executrix of the will.

10. Gabrielle Kerouac had no other, earlier executed will.

11. No one attempted to notify JAN KEROUAC that she was a potential heir of the estate of Gabrielle Kerouac. At the time Gabrielle Kerouac died, Stella Sampas was appointed the executrix of the estate. Stella Sampas knew or should have known the Gabrielle Kerouac will purportedly leaving the estate of Jack Kerouac to Stella Sampas was forged and/or invalid, and knew or should have known JAN KEROUAC was an heir-at-law of the estate of Gabrielle Kerouac, yet failed to make any attempt to contact, locate, or give notice of the probate of the estate to JAN KEROUAC.

12. Stella Sampas, as the Executrix of the Estate of Gabrielle Kerouac, consistently hid from the public, generally, and from Petitioner JAN KEROUAC, specifically, the true value of the estate left by Gabrielle Kerouac. For example, in the probate of the estate of Gabrielle Kerouac, the estate was initially valued at only \$10,000, although its true value was considerably higher.

13. On June 9 1971, Gabrielle Kerouac had filed a lawsuit for partition against Petitioner JAN KEROUAC, Stella Sampas, and the Estate of Jack Kerouac, regarding the home in which she lived, whose address was 5169 10th Avenue North, St. Petersburg, FL, legally described as Disston Ridge Estates, Lot 16, Plat Book 58, Page 62, Public Records of Pinellas County, Florida. The partition action, filed in the Circuit Court for the State of Florida, County of Pinellas, Circuit Civil Case No. 28,704, alleged that Gabrielle Kerouac was the owner of the home. In that action, Gabrielle Kerouac was represented by George Saltsman, attorney. In connection with the settlement of that litigation, JAN KEROUAC signed a deed of trust on March 28, 1972, deeding away any and all interest she might have had to the home. In the course of the litigation, she was located in Santa Fe, New Mexico, for the purpose of getting her to sign the deed.

14. George Saltsman also represented Stella Sampas as the Executrix of the estate of Gabrielle Kerouac. Despite the fact the same attorney was involved in both proceedings, and Stella Sampas, through her attorney George Saltsman, had knowledge of the whereabouts of JAN KEROUAC, absolutely no attempt to locate,

contact or give notice to JAN KEROUAC was made in the probate of the estate of Gabrielle Kerouac.

15. Between the time of Gabrielle Kerouac's death in 1973, and the time JAN KEROUAC discovered Gabrielle Kerouac had supposedly left her estate to Stella Sampas, Petitioner JAN KEROUAC was an alcoholic, incapacitated by the heavy use of alcohol. Petitioner JAN KEROUAC had been abandoned by her father in infancy, and became an alcoholic at a young age, until 1992, when she was forced to give up drinking after losing her kidney function. She has, as a result, suffered severe memory loss, loss of her kidney function, and other damaging physical and psychological consequences.

16. Petitioner JAN KEROUAC had no notice of the probate of the estate of Gabrielle Kerouac, or, indeed, of the death of Gabrielle Kerouac. The first time JAN KEROUAC became aware that Gabrielle Kerouac had executed a will in which she supposedly left everything to Stella Sampas was in December, 1993.

17. Despite the fact she knew in December, 1993, that Gabrielle Kerouac had allegedly left everything to Stella Sampas, Petitioner JAN KEROUAC did not know that the will by which Stella Sampas had acquired the estate was forged until she received the written opinion of an expert on April 19, 1994.

18. The property of the estate of Jack Kerouac has passed from Stella Sampas to her relatives upon her death on February 10, 1990. At the time of her death, Stella Sampas was a resident of the County of Pinellas, State of Florida. Therefore, the Putative

Heirs ANTHONY G. SAMPATAKAKOS, HELEN S. SUPRENANT, JOHN SAMPATAKAKOS, CLAIRE S. PAICOPOLOS, MICHAEL G. SAMPAS, and JAMES G. SAMPAS, are named as proper respondents in this action.

19. The most recent known addresses for the above Putative Heirs are as follows:

- (a) ANTHONY G. SAMPATAKAKOS, 83 Sawyer Avenue, Dracut, MA, 01826;
- (b) HELEN S. SUPRENANT, 83 Sawyer Avenue, Dracut, MA, 01826;
- (c) JOHN SAMPATAKAKOS, 2 Stevens Street, Lowell, MA, 01851;
- (d) CLAIRE S. PAICOPOLOS, 59 Kilby Street, Woburn, MA, 01801;
- (e) MICHAEL G. SAMPAS, deceased, heirs unknown at this time;
- (f) JAMES G. SAMPAS, 4715 Trent Court, Chevy Chase, MD, 20815.

20. Although Stella Sampas has passed away, the property of the estate of Jack Kerouac is, for the most part, still in the hands of the beneficiaries of the will executed by Stella Sampas by which she purportedly gave all her belongings to the Putative Heirs.

21. Stella Sampas executed a will which was probated in the State of Florida, County of Pinellas, Circuit Court, Probate Division, Case No. 90-2387-ES4. The will was admitted to probate on April 25, 1990, and the Order of Final Discharge issued November

14, 1990. Petitioner JAN KEROUAC was never given notice of the probate of this estate.

22. The property which Stella Sampas purportedly passed by way of her will is, for the most part, identifiable tangible property.

23. The Putative Heirs, and more specifically Respondent John Sampatakakos, have sold, and are continuing to sell, irreplaceable invaluable property which once belonged to Jack Kerouac, including personal notebooks, original manuscripts of books, paintings, apparel, and other property. Such property is being sold because of its significant value, since Jack Kerouac is now considered one of the greatest American writers of the 20th Century.

24. Because of the irreplaceable nature of the property being sold, Petitioner, who is the true owner of such property, will be irreparably harmed if sales of property that once belonged to Jack Kerouac are allowed to continue.

COUNT ONE  
(FORGED WILL)

25. Petitioner incorporates and realleges Paragraphs 1 through 24 of this Petition as though fully set forth herein.

26. When she supposedly executed the will, Gabrielle Kerouac was in such poor health, having suffered from a stroke on September 9, 1966, she was unable to actually sign anything, she was not of a sound disposing mind or body, and she was unable to understand the meaning and effect of a will.

27. The will supposedly executed by Gabrielle Kerouac was, in fact, never signed by her, but instead her signature was forged.

28. Petitioner has been damaged in that she has lost all of her rights to the property of her father, Jack Kerouac, which was passed by the forged and/or invalid will from Gabrielle Kerouac to Stella Sampas. The value of such property is presently unknown to Petitioner, although Petitioner is informed and believes, and on that basis alleges, that the value of the property exceeds \$1,000,000.00.

29. Petitioner has been further damaged in that irreplaceable property of the estate of Jack Kerouac has been sold and continues to be sold by the Putative Heirs, to collectors and private dealers. Petitioner cannot possibly be made whole by money damages; Petitioner's father's personal property is invaluable to her.

COUNT TWO  
(INVALID WILL)

30. Petitioner incorporates and realleges Paragraphs 1 through 24, 28 and 29 of this Petition as though fully set forth herein.

31. The witnesses to the will supposedly executed by Gabrielle Kerouac did not actually witness the signing of the will, but instead signed as witnesses outside of the presence of Gabrielle Kerouac. The witnesses signed as witnesses even though they neither witnessed the signature, nor were ever told by Gabrielle Kerouac she had signed the will.

---

WHEREFORE PETITIONER JAN KEROUAC PRAYS AS FOLLOWS:

1. That probate of the will of Gabrielle Kerouac be revoked, and that probate be denied;

2. For a constructive trust in which all the property of the Estate of Gabrielle Kerouac be placed, under the control and management of a receiver chosen by Petitioner or appointed by this Court;

3. For a declaration that Petitioner JAN KEROUAC is the true owner of all property once belonging to the estate of Jack Kerouac, and passed by Gabrielle Kerouac to Stella Sampas through the fraudulent will;

4. For an order that all property whose origin can be traced back to the Estate of Jack Kerouac and that was passed by Gabrielle Kerouac to Stella Sampas by the fraudulent will, and presently held by any of the Putative Heirs, be held in trust for Petitioner;

5. For an order that all property whose origins can be traced back to the estate of Gabrielle Kerouac be ordered turned over by Putative Heirs to Petitioner as her personal property;

6. That the Court re-open the probate of the Estate of Gabrielle Kerouac and allow Petitioner to demonstrate that the will was forged;

7. That the Court issue a preliminary and permanent injunction, prohibiting Respondents from selling, encumbering or otherwise impairing the value of any property known to have belonged to Jack Kerouac, and to have passed from him to Gabrielle Kerouac;

~~8. For an accounting of the value of the property of the estate;~~

~~9. For all consequential damages suffered by Petitioner in an~~

amount to be proven at trial;

10. For interest on the value of the property

11. For costs of the suits incurred herein;

12. For such other and further relief as the Court deems just

and proper.

Dated: May 13, 1994

---

Thomas A. Brill,  
 Admitted Pro Hac Vice,  
 Attorney for Jan Kerouac,  
 Petitioner  
 (805) 922-3735  
 California Bar #125356




---

LINDA R. ALLAN  
 CO-COUNSEL  
 ATTORNEY FOR JAN KEROUAC  
 400 COREY AVE. SUITE 200  
 ST. PETERSBURGH, FL 33706  
 FL BAR # 327021  
 SPN # 248798

## Verification

I, Jan Kerouac, declare, that I am the Petitioner in this action. I have read the foregoing Petition for Revocation of Probate of Purported Will and know its contents. The matters stated therein are true and correct to the best of my own knowledge, except for those matters based upon records and documents, or based upon my information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 11th day of May, 1994.

  
Jan Kerouac, Declarant

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: ESTATE OF  
GABRIELLE KEROUAC, Deceased;

JAN KEROUAC,  
Petitioner,

vs.

Case No. 73-4767-3E

ANTHONY G. SAMPATAKAKOS, HELEN  
S. SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, PAUL  
BLAKE, JR.,

Respondents.

---

FORMAL NOTICE

TO: ANTHONY G. SAMPATAKAKOS  
83 - SAWYER AVENUE  
DRACUT, MA 01826

HELEN S. SUPRENANT  
83 - SAWYER AVENUE  
DRACUT, MA 01826

JOHN SAMPATAKAKOS  
2 - STEVENS STREET  
LOWELL, MA 01851

CLAIRE S. PAICOPOLOS  
59 - KILBY STREET  
WOBURN, MA 01801

ESTATE OF MICHAEL G. SAMPAS  
C/O BETTY SAMPAS  
30 - WEEKS STREET  
LACONIA, NH 03246

JAMES G. SAMPAS  
4715 - TRENT COURT  
CHEVY CHASE, MD 20815

YOU ARE HEREBY NOTIFIED that a Petition for Revocation of  
Probate of Purported Will, has been filed in this court, a true  
copy of which accompanies this notice. You are required to serve  
written defenses on the undersigned within 20 days after service of  
this notice, exclusive of the day of service, and to file the

original of the written defenses with the Clerk of the above Court either before service or immediately thereafter. Failure to serve written defenses as required may result in a judgment or order for the relief demanded in the pleading or motion, without further notice.

Executed this 14<sup>th</sup> day of June, 1994.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Certified U.S. Mail to the above individuals, this 14<sup>th</sup> day of June, 1994.



LINDA R. ALLAN, ESQUIRE  
ALLAN & SHIPP  
400 Corey Avenue, Suite 200  
St. Petersburg Beach, FL 33706  
(813) 367-6660  
SPN #248798  
Fla. Bar #327621  
Attorney for Petitioner

**EXHIBIT B**

---

1986 281146

LAST WILL AND TESTAMENT

OF 60232

JEAN KEROUAC

FILED  
FOR RECORD  
OCT 24 1969  
CLERK OF COURT  
ST. PETERSBURG, FLORIDA

I, JEAN KEROUAC, a/k/a Jack Kerouac, of St. Petersburg, Pinellas County, Florida, being of sound mind and memory and it being my intention and purpose to dispose of all of my property of every description which I may own at the time of my death, or which I may have the power to dispose of by Will, and not being under undue influence of any character whatsoever, do hereby make, publish and declare this to be my Last Will and Testament, revoking all former Wills and Codicils by me at any time heretofore made.

FIRST: I direct that all my just debts and funeral expenses be paid as soon as possible out of the principal of my estate.

SECOND: I give, devise and bequeath all of the rest, residue and remainder of my estate, real, personal or mixed, of which I may die seized or possessed, or to which I may be entitled at the time of my death, to my beloved mother, GABRIELLE A. KEROUAC, absolutely.

THIRD: In the event my beloved mother, GABRIELLE A. KEROUAC, predeceases me, then I give, devise and bequeath all of the rest, residue and remainder of my estate, as hereinabove defined, to my nephew, PAUL E. BLAKE, JR., of Mountain View, Alaska and of the United States Air Force (79245387) Lackland Air Force Base, Texas.

FOURTH: I nominate, constitute and appoint CITIZENS NATIONAL BANK of St. Petersburg, Florida, Executor of this my Last Will and Testament. I vest my said Executor with full power and authority to deal with my property, real or personal, as it deems necessary and proper in order to carry out my intentions as herein expressed and to do every other act and

*Jean Kerouac*  
Page One of Two Pages

BRYSON  
&  
PATTERSON  
Attorneys at Law  
P. O. Box 1000  
St. Petersburg,  
Florida 33701

4456-1117

thing necessary or proper to complete administration of this Will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and identified the foregoing page and this page of my Will by signing my name at the end of said page and at the end of this Will on the 4th day of September, A. D. 1969.

Jean Kerouac (SEAL)  
Jean Kerouac a/k/a Jack Kerouac

The foregoing instrument was signed, sealed, published and declared by JEAN KEROUAC, a/k/a Jack Kerouac, as his Last Will and Testament in the presence of us, the undersigned who at his special instance and request, do attest as witnesses after said Testator signed his name thereto and in his presence and in the presence of each other the 4th day of September, A. D. 1969.

Jack Morgan

447 3rd Ave N  
St. Petersburg, Florida

William S. ...

3556 117th St N  
St. Petersburg, Florida

Robert ...

6019-27th Ave N  
St. Petersburg, Florida

BRYSON & PATTERSON  
ATTORNEYS AT LAW  
100 N. 10th Street  
ST. PETERSBURG, FLORIDA 33705

106 1449

PETITION FOR PROBATE OF WILL

In the County Judge's Court of  
Pinellas County, State of Florida

IN RE: THE ESTATE OF  
JEAN KEROUAC a/k/a JACK KEROUAC  
Deceased

60232

FILED  
FOR RECORD  
OCT 24 1969  
*[Signature]*

Your Petitioner... CITIZENS NATIONAL BANK of St. Petersburg, Florida

3100 Central Avenue, St. Petersburg, Florida

and whose post office address is P. O. Box 11208 St. Petersburg, Florida 33733

say, I that to the best of my knowledge, information and belief that

1. Jean Kerouac a/k/a Jack Kerouac died in  
St. Petersburg Florida on the 21 day of October, 1969

at the age of 47 years and at the time of his death the said decedent was then and there  
deceased in St. Petersburg, Florida

and owned an estate which consists of Real Estate in  
County, Florida, of the approximate value of \$ and Personal Property which is

briefly described as: Savings account, First Federal Savings and Loan  
Association of St. Petersburg \$3900.00; contract for sale of  
property in Hyannis Port, Mass \$4300.00, unknown amount of residuals  
in sale of books, etc.

of the aggregate estimated value of \$ That the total approximate value of  
such estate, both Real and Personal, is estimated to be \$

2. The respective NAMES, AGES and RESIDENCES of the SURVIVING SPOUSE and of the  
HEIRS-AT-LAW of said decedent, INCLUDING THE BIRTHDATE OF ANY LISTED MINOR HEIR, so  
far as known to the Petitioner, and their respective relationships to the said decedent, are as follows:  
Stella Kerouac, 5169 10th Avenue North, St. Petersburg, Florida,  
spouse, over age of 21 years  
Janet Kerouac, daughter, 18 years of age, address unknown

HC 488-2-1450

I, said Decedent died leaving a LAST WILL AND TESTAMENT dated the 4 day of September, 19 69,

which instrument... published and declared by the said decedent to be his Last Will and Testament... when... the said decedent, was at least eighteen years of age, in the presence of Fred L. Bryson, Dallas D. Hani and Helen C. Mowary

as attending witnesses, and in and by such instrument... CITIZENS NATIONAL BANK OF St. Petersburg, Florida was nominated as... Executor... thereof.

I, Petitioner... believe... that the said writing... offered herewith for probate... is the True Last Will and Testament of the said Decedent.

WHEREFORE, petitioner... pray... that the said writing... be admitted to probate in this Court, as and for the Last Will and Testament of the said decedent and that Letters Testamentary be granted to Citizens National Bank of St. Petersburg as the Executor of the said Decedent.

CITIZENS NATIONAL BANK OF St. PETERSBURG

By *Robert W. Town, Jr.* Robert W. Town, Jr. Vice President and Trust Officer

*Fred L. Bryson* (Signature of Attorney) Fred L. Bryson Bryson and Patterson 347 Third Avenue North St. Petersburg, Florida 33701 (Type Name and Address of Attorney)

State of FLORIDA County of PINELLAS

The above named ROBERT W. TOWN, JR., Vice President and Trust Officer of Citizens National Bank of St. Petersburg being by me, on this 7 day of October, 1969, Solely sworn, say... that the above and foregoing Petition, by him subscribed, is true.



*Robert W. Town, Jr.* Notary Public Notary Public, State of Florida at Large. My Commission Expires August 30, 1970.

301 515

( IN THE COUNTY JUDGE'S COURT  
( IN AND FOR PINELLAS COUNTY  
( IN PROBATE - § 60,232

IN THE MATTER OF THE )  
ESTATE OF JEAN KEROUAC, )  
AKA JACK KEROUAC, DECEASED)

FILED  
FOR RECORD  
DEC 16 1969  
COUNTY JUDGE  
PINELLAS COUNTY, FLORIDA  
JAMES J. HENNING

INVENTORY

Your Petitioner was appointed as Executor  
of the Estate of Jean Kerouac, aka Jack Kerouac  
on October 24, 1969 and submits herewith an inventory of the  
assets belonging to said Jean Kerouac  
which have thus far come into its possession:

Check in the amount of \$90.00  
Unknown value of residuix in sale of books and related literary works \$1.00  
Total inventory known of at this time \$91.00

Dated at St. Petersburg, Florida, this 10th day of December

19 69

CITIZENS NATIONAL BANK OF ST. PETERSBURG,  
FLA., as Executor of Estate of Jean Kerouac, dec'd.  
By John F. Cadigan, Jr.  
JOHN F. CADIGAN, JR., Trust Officer



## **EXHIBIT C**

---

73-4767-2E

FILED  
FOR RECORD  
NOV 15 1973  
HAROLD MULLENDORE  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
Deputy Clerk

LAST WILL AND TESTAMENT

of

GABRIELLE A. KEROUAC

KNOW ALL MEN BY THESE PRESENTS:

That I, GABRIELLE A. KEROUAC, a resident of and domiciled in St. Petersburg, Pinellas County, Florida, being of sound and disposing mind and memory, do hereby make, publish and declare this my Last Will and Testament, hereby revoking and rendering void any and all wills and codicils thereto by me at any time heretofore made.

FIRST

I direct that my Executrix, hereinafter named, shall first pay and discharge any and all debts and expenses of my last illness and funeral as soon as practicable after my death.

SECOND

I give, devise and bequeath all of my estate, both real and personal and wherever situate, to my daughter-in-law, STELLA S. KEROUAC to be hers absolutely and in fee simple.

THIRD

I nominate and appoint my daughter-in-law, STELLA S. KEROUAC as Executrix of my Last Will and Testament, giving and granting unto my said Executrix full power and authority to sell and dispose of all or any part of my estate as she in her sole and absolute discretion may deem best. I excuse my Executrix from furnishing any bond for the performance of her duties.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13<sup>th</sup> day of February, 1973.

Gabrielle A. Kerouac (SEAL)  
Gabrielle A. Kerouac



OFF REC 38 RS 2187

CATION WITNESS TO WILL

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
NO. 73-4767-3E

IN RE: THE ESTATE OF

GABRIELLE A. KEROUAC

Deceased

FILED  
FOR RECORD  
NOV 15 1973  
HAROLD MULLENDORF  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
Deputy Clerk

BEFORE ME, the undersigned Deputy Clerk of the Circuit Court of Pinellas County, Florida, personally appeared Norman Rene Baraby and Clifford A. Larkin

who, being by me duly sworn, say that they were personally present as subscribing and attesting witness with

who were also present as subscribing and attesting witness and then and there saw the above named Decedent, GABRIELLE A. KEROUAC, Deceased,

subscribe her name to the certain paper writing exhibited as and for her Last Will and Testament, and that the said Decedent did then and there, in the presence of the said NORMAN RENE BARABY and CLIFFORD A. LARKIN

and the Affiant, freely and voluntarily publish and declare such paper writing to be her Last Will and Testament. That the said witnesses did then and there, at the special instance and request of said Decedent, and in her presence, and in the presence of each other, subscribe their names thereto as attesting witnesses, and the said Affiant further swear that they verily believe, the said paper writing, so subscribed, published, declared and attested as aforesaid, is the true Last Will and Testament of the said Decedent.

Norman Rene Baraby  
Norman Rene Baraby  
Clifford A. Larkin  
Clifford A. Larkin

SWORN TO AND SUBSCRIBED before me on this 14th day of November 1973

HAROLD MULLENDORF  
Clerk of the Court  
By: [Signature]  
Deputy Clerk

OFF REC 38 2188

PETITION FOR PROBATE OF WILL

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION

NO. 73-4967-3E

IN RE: THE ESTATE OF

GABRIELLE A. KEROUAC

Deceased

Your Petitioner, Stella S. Kerouac

FILED  
FOR RECORD  
NOV 15 1973  
HAROLD MCLENDON  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
D. C. ... Deputy Clerk

whose residence is 5169 10th Avenue North, St. Petersburg, Florida

and whose post office address is Same

say that to the best of her knowledge, information and belief that:

1. Gabrielle A. Kerouac died at  
St. Petersburg, Florida on the 12 day of October, 1973  
at the age of 80 years and at the time of her death the said decedent was then and there  
domiciled in St. Petersburg, Pinellas County, Florida

and owned an estate which consists of Real Estate in Pinellas  
County, Florida, of the approximate value of \$ none and Personal Property which is  
briefly described as: Royalties from writings

of the aggregate estimated value of \$ 10,000.00 That the total approximate value of  
such estate, both Real and Personal, is estimated to be \$ 10,000.00

2. The respective NAMES, AGES and RESIDENCES of the SURVIVING SPOUSE and of the  
HEIRS-AT-LAW of said decedent, INCLUDING THE BIRTHDATE OF ANY LISTED MINOR HEIR, so  
far as known to the Petitioner, and their respective relationships to the said decedent, are as follows:

No living children

3. Said Decedent died leaving a LAST WILL AND TESTAMENT dated the 13 day of February, 1973

which instrument... published and declared by the said decedent to be her Last Will and Testament when she, the said decedent, was at least eighteen years of age, in the presence of Clifford A. Larkin and Norman Rene Bazaby

as attesting witnesses, and in and by such instrument... Stella S. Kerouac w. ss. nominated as Executrix thereof.

4. Petitioner... believes that the said writing... offered herewith for probate is the True Last Will and Testament of the said Decedent.

WHEREFORE, petitioner... prays that the said writing... be admitted to probate in this Court, as and for the Last Will and Testament of the said decedent and that Letters Testamentary be granted to her, Stella S. Kerouac as the Executrix of the said Decedent.

Signature of Attorney: RILEY, SCHOWE AND SALTSMAN, Plaza Quarter - 2935 First Avenue North, St. Petersburg, Florida 33713

Signature of Petitioner: Stella S. Kerouac, Petitioner

(Type Name and Address of Attorney) State of Florida, County of Pinellas

The above named Stella S. Kerouac being by me, on this 6th day of Nov., 1973, first duly sworn, says that the above and foregoing Petition, by her subscribed, is true.

Signature of Notary Public: My Commission Expires March 27, 1974

LETTERS TESTAMENTARY

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
NO. 73-4767-3E

IN RE ESTATE OF:

GABRIELLE A. KEROUAC

Deceased.

FILED  
FOR RECORD  
NOV 15 1973  
HAROLD MULLENDORF  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
Deputy Clerk

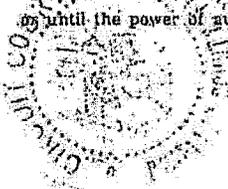
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Gabrielle A. Kerouac  
late of the County aforesaid, died on the 12th day of October  
A. D. 19 73, leaving her Last Will and Testament which,  
having been satisfactorily proven, was, on the 15th day of November, A. D. 19 73,  
duly admitted to probate and record in this Court. And as by said Last Will and Testament  
it appears that Stella S. Kerouac  
was named therein as executrix thereof; and the said Stella S. Kerouac

having prayed the Court to grant Letters Testamentary thereon to  
her as such executrix and having, in due form of law, taken the prescribed oath, and  
performed all other acts necessary to her legal qualification as such executrix

NOW THEREFORE, KNOW YE, That I, RICHARD A. MILLER one of the  
Circuit Judges in and for the County aforesaid, by virtue of the power and authority by law in me  
vested, do hereby declare the said STELLA S. KEROUAC  
duly qualified by the laws of said  
State to act as executrix of said Last Will and Testament with  
full power, by the provisions of law and by virtue of these presents, to administer all and singular the  
goods, chattels, rights and credits of said Gabrielle A. Kerouac  
and to ask, demand, sue for, recover and receive the same; to pay the debts in which the said  
Gabrielle A. Kerouac  
stood bound, so far as the assets shall extend and the law direct, and duly entitled to have and hold, for  
the purposes directed in and by the said Last Will and Testament  
all the estate of said Gabrielle A. Kerouac  
during the legal continuance of her administration, until the same shall expire by virtue of the pro-  
visions of said Last Will and Testament  
until the power of authority hereby granted shall be duly revoked according to law.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of  
the Circuit Court of the County aforesaid, at Clearwater, this 15th  
day of November, A. D. 19 73.



Richard A. Miller  
Circuit Judge

IN THE CIRCUIT COURT FOR  
PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
NO. 73-4767-3

IN RE: THE ESTATE OF

GABRIELLE A. KEROUAC

Deceased - ~~XXXXXXXXXXXXXXXXXXXX~~

AMENDED  
INVENTORY

FILED  
FOR RECORD  
APR 29 1975  
HAROLD MULLENBACH  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
Deputy Clerk

TO THE HONORABLE JUDGES OF SAID COURT:

Now comes

AS THE Executrix OF THE ESTATE OF Gabrielle A. Kerouac

and makes and files this inventory of the above styled estate in accordance with the provisions of RULE 5.250 of the RULES OF PROBATE AND GUARDIANSHIP PROCEDURE, to-wit:

(REQUIREMENTS DIFFER RE: RESIDENT AND NON-RESIDENT DECEDENTS OR WARDS)  
(SEE INSTRUCTIONS ON REVERSE SIDE FOR GUIDANCE)

REAL ESTATE WITH BRIEF DESCRIPTION, LOCATION AND APPROXIMATE VALUE OF EACH PARCEL:

None

PERSONAL PROPERTY WITH BRIEF DESCRIPTION AND APPROXIMATE VALUE:

Royalties on literary works of Jack Kerouac, deceased;  
value pursuant to Federal Estate Tax Return filed \$53,280.00

Copy Furnished  
DEPARTMENT OF REVENUE  
Tallahassee, Florida 32304

*Ph. S. Sartorius*  
Attorney

Respectfully submitted

*Stella S. Kerouac*

Personal Representative or Guardian

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
NO. 73-4767-3E

IN RE ESTATE OF:

GABRIELLE A. KEROUAC

Deceased

FILED  
FOR RECORD  
MAY 23 1975  
HAROLD ARLINGDOMS  
CLERK CIRCUIT COURT  
PROBATE DIVISION  
CLERK

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, Stella S. Kerouac, as executrix  
of the estate of Gabrielle A. Kerouac, deceased,  
has filed evidence satisfactory to the undersigned Judge that distribution has  
been made according to law, and has prayed the Court for a Final Discharge as such  
executrix, and it appearing to the Court that  
the said Stella S. Kerouac  
has satisfactorily discharged all the duties required of her by law as such  
executrix and performed all acts necessary to  
her Final Discharge.

NOW THEREFORE, KNOW YE, That I, C. RICHARD LEAVENGOOD, one of  
the Circuit Judges in and for said County aforesaid, by virtue of the power and author-  
ity by law in me vested, do hereby declare the said Stella S. Kerouac  
duly discharged by the laws of the said  
State as such executrix of the estate of  
Gabrielle A. Kerouac, deceased, and that  
~~and that she is hereby discharged from the date hereof.~~  
~~xxxxxxx~~

Witness my name as Circuit Judge aforesaid, at Clearwater, Pinellas County,  
State of Florida, this 23rd day of May, 1975.

[Signature]  
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
No. 73-4767-3E

STATE OF FLORIDA,  
PINELLAS COUNTY

SS GABRIELLE A. KEROUAC

I, the undersigned Deputy Clerk of the Circuit Court in and for Pinellas County, Florida, do hereby certify that the above and foregoing constitutes a true and correct Photostatic copy of  
LAST WILL AND TESTAMENT OF GABRIELLE A. KEROUAC, DECEASED; PETITION FOR PROBATE OF WILL; LETTERS TESTAMENTARY ISSUED TO STELLA S. KEROUAC AS PERSONAL REPRESENTATIVE IN THE ESTATE OF GABRIELLE A. KEROUAC, DECEASED; AMENDED INVENTORY; ORDER OF FINAL DISCHARGE IN THE ESTATE OF GABRIELLE A. KEROUAC, DECEASED.

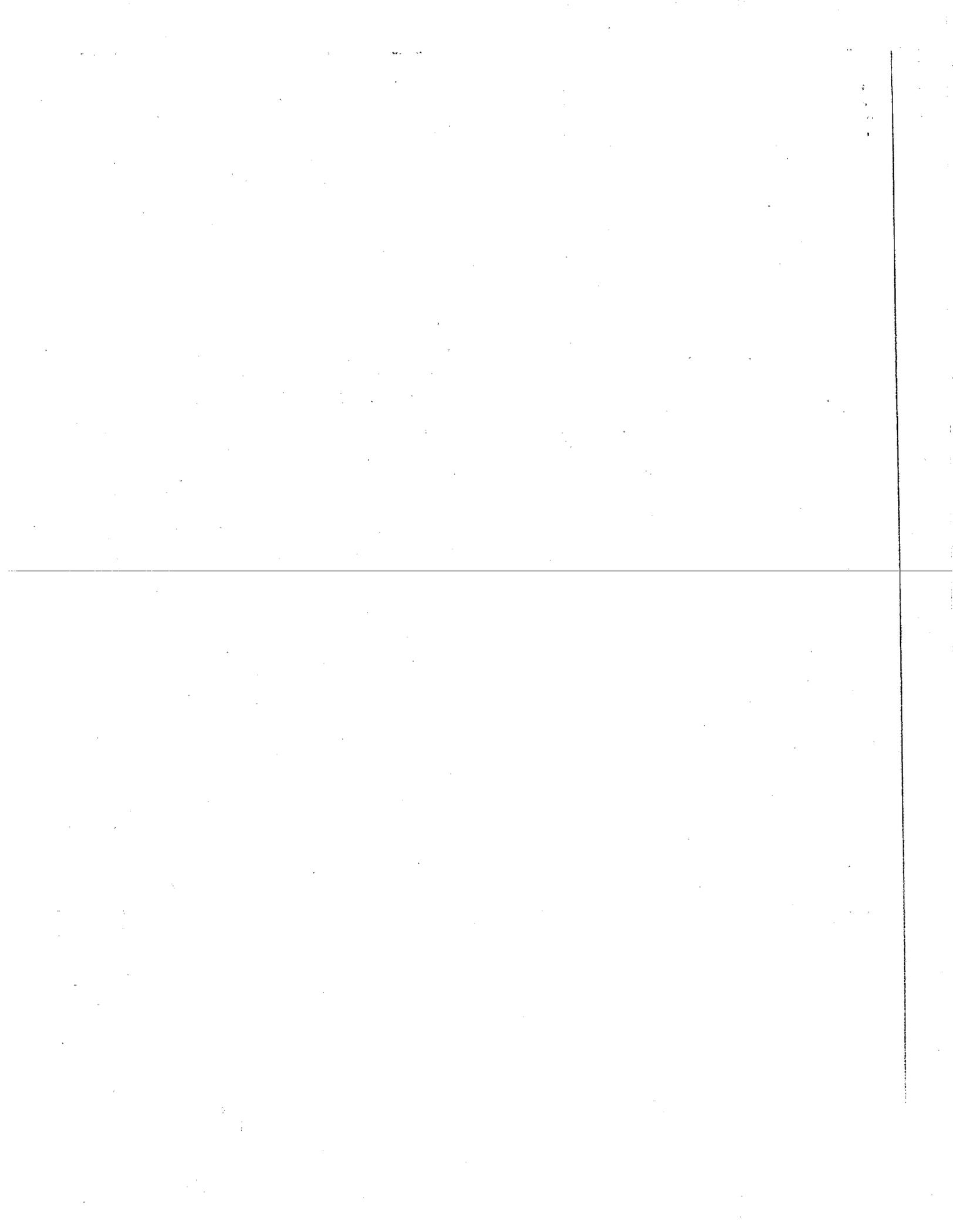
as the same now appears of record and among the files of said Court.

~~And do further certify that said:~~

IN WITNESS WHEREOF, I have hereunto set my hand and the official  
seal of said Court at Clearwater, Florida, this 2<sup>nd</sup> day of February  
A.D. 19 83.

KARLEEN F. De BLAKER  
Clerk of the Court

By: *[Signature]*  
Deputy Clerk



## **EXHIBIT D**

---

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION  
CASE NO. 73-4767-ES-003**

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC

---

**ORDER**

**THIS CAUSE** came on for trial before the court sitting without jury on April 1, 2009. The matter to be heard originated as a Petition for Revocation of Probate of Purported Will filed on May 16, 1994 by Jan Kerouac as Petitioner. It was subsequently pled as a Cross-Claim by Paul Blake, Jr. Ms. Kerouac passed this life on June 5, 1996. Before the court were Bill Wagner, Esquire and Allan Wagner, Esquire, attorneys for Paul Blake, Jr. ("Petitioner"); and Elaine McGinnis, Esquire, the court appointed Administrator ad Litem. At the outset, the Administrator ad Litem moved to dismiss this action on the grounds it was barred by Florida Statutes Section 95.031 (Statute of Repose). After hearing argument of counsel, the court took the Motion to Dismiss under advisement. The trial then proceeded with the testimony of witnesses and extensive documentary evidence following which the court heard excellent closing arguments from well-prepared attorneys. In this proceeding the Court is presented with the task of deciding whether or not Gabrielle Kerouac signed the will dated February 13, 1973, which bears her name and which was

many years ago submitted for probate in this Circuit. Although this case originally presented a wide variety of issues for decision by the Court, all but the single issue of fraud upon the court have been resolved by Court rulings, summary judgment, or by settlement between other interested parties.

This matter was last before the Court for trial on October 13, 2004. On the day before trial, a Sampas relative filed a Motion to Intervene and for appointment of an Administrator ad Litem which was heard on the morning of trial. After hearing argument on the motion, the Court denied the Motion to Intervene, finding that the proposed interveners had no standing and no legal interest in the matter, relying on *Kissoon v. Araujo* 849 So 2d 426 (Fla 1<sup>st</sup> DCA 2003). The Court continued the trial pending the appointment of an Administrator ad Litem. The Court thereafter appointed Elaine McGinnis, Esquire, as the Administrator ad Litem and thereafter scheduled this matter for trial.

The single question for the court to decide is whether or not the Court has been presented with a forged Will for probate. Thus, the issue for the Court's determination is whether, by clear and convincing evidence, the signature on the Will of Gabrielle Kerouac dated February 13, 1973 and submitted after her death to probate in November of 1973 is a forgery.

Petitioner presented two live witnesses, Edward Klots, a board certified internal medicine and pulmonary specialist physician, and Ronald Rice, a certified forensic profiler and document examiner. Petitioner also introduced into evidence testimony via deposition of Clifford Larkin, Jan Kerouac, Petitioner, James G. Sampos, George

Saltsman, Honorable Fred Bryson, Gerald Nicosia, Elizabeth G. Watley, Charles E. Saunders, Wilberton Abneu, Robert Detweiler, Matthew Martin, Joan Sapp, Martha Mayo, Edward Klotz, M.D. and Ronald Rice. The court also received into evidence the resume of Mr. Rice's company and a condensed transcript and concordance prepared by Atkinson-Baker Court Reporters (Petitioner's Exhibit 11). The court also took judicial notice of an appellate opinion from the State of New Mexico in the case of *Nicoste v. Lash* with a service date of September 18, 1998.

This has been a long and arduous case for all concerned. The court has taken a little longer to render its opinion due to the complexity of the sale issue and the good work performed by counsel. Having reviewed its notes, the evidence and the law, the court now makes the following findings of fact and conclusion of law.

Turning first to the Motion to Dismiss the Petition for Revocation of Probate of Purported Will based on the 12-year Statute of Repose governing actions for fraud, Florida Statutes Section 95.031 (2008) provides:

(2)(a) An action founded upon fraud under s 95.11(3), including constructive fraud, must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s 95.11(3), but in any event an action for fraud under s 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.

Florida Statutes Section 95.11 (2008) provides:

Actions other than for recovery of real property shall be commenced as follows: ...

(3) Within four years.—

...

(j) A legal or equitable action founded on fraud.

...

(p) Any action not specifically provided for in these statutes.

The testator died in 1973, and her Will, which had purportedly been executed on February 13, 1973, was admitted to probate on November 15, 1973. On May 23, 1975, the Estate of Gabrielle Kerouac was closed and the Personal Representative was discharged. The original Petition for Revocation of Probate of Purported Will was filed on May 16, 1994 and Judge Thomas E. Penick, Jr, entered an Order Granting Motion to Dismiss in Part and Denying Motion to Dismiss in Part on May 26, 1995. He granted the dismissal of Count II on lack of notice, but denied dismissal of Count I on forgery. He held that the estate could be reopened on the sole issue of fraud on the court, finding that the action was not barred by either Section 733.901, Florida Statutes (i.e., discharge of Personal Representative bars action against him), or by Florida Rule of Civil Procedure 1.540(b) (i.e., relief from judgment barred after one-year period). See *Payette v Clark*, 559 So.2d 630 (Fla. 2d DCA 1990) and *Van Dusen v South East First National Bank*, 478 So.2d 82 (Fla. 3d DCA 1985).

The Administrator ad Litem does not disagree with Judge Penick's ruling, and in fact agrees the claim of forgery is a "fraud upon the court." She contends, however, that although Judge Penick found that the claim was timely because fraud starts running from the time it is discovered (April 1994, according to the allegations in the original petition), there was no indication that the Statute of Repose was considered as a basis for dismissing the claim, even though it "invokes a twelve-year limitations period regardless of discovery".

Petitioner Paul Blake, Jr, filed his counterclaim and cross-claim on September 26, 1996, in which he essentially realleged the allegations of the original Petition for Revocation of Probate of Purported Will. The Administrator ad Litem is not disputing the procedural stance of the case, except to point out that because Petitioner admitted in deposition that he was aware of the death of Gabrielle Kerouac and that she did not leave him anything, it was evident that Petitioner was on notice of the admittance of the Will to probate and of the contents of the Will and that he made no effort to object to the proceedings. While the Court disagrees with the Administrator ad Litem's conclusion that Petitioner's deposition statements mean that he was on notice of the Will being probated and of the contents of the Will, the Court does agree with her that the threshold issue is the applicability of the Statute of Repose.

Unlike the affirmative defense of statute of limitations which is procedural, statutes of repose are substantive statutes that may prevent the accrual of a cause of action where the final element necessary for its creation occurs beyond the time period established

by the statute. See generally *Houck Corporation v New River, Ltd, Pasco*, 900 So.2d 601 (Fla. 2d DCA 2005).

In probate proceedings, the substantive law in effect at the date of the decedent's death is the correct law to be applied. See *May v Illinois National Insurance Co*, 771 So.2d 1143, 1150, fn 7 (Fla. 2000), finding that the 1991 version of FS 733.710, a statute of repose, was applicable because the decedent died in 1991. See also, *In re Estate of Faskowitz*, 941 So.2d 390, 393, fn 1 (Fla. 2d DCA 2006); *Sage v Sage*, 515 So.2d 1324 (Fla. 2d DCA 1987).

When enacted, the Statute of Repose for fraud provided as follows:

Actions for products liability and fraud under s 95.11(3) must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s 95.11(3), but in any event within 12 years after the date of delivery of the completed product to its original purchaser or within 12 years after the date of the commission of the alleged fraud, regardless of the date the defect in the product or the fraud was or should have been discovered. [Ch. 74-382, Laws of Fla.]

The Statute of Repose contained in Florida Statutes Section 95.031<sup>1</sup> did not exist at the time the will was executed, at the time of

---

<sup>1</sup> The Third District Court of Appeal recounted the history of this statute of repose in *Kish v A W Chesterton Company*, 930 So.2d 704, 708, fn 7 (Fla. 3d DCA 2006), as follows:

FS 95.031(2)(a), when first enacted provided for a twelve year state of repose for both products liability and fraud claims. See Ch. 74-382, Laws of Fla. This provision was amended in 1986 to eliminate the products liability state of repose, but specifically retained the statute of repose for fraud. Ch. 86-272, § 2, Laws of Fla. At that time, the Legislature declined to adopt that portion of a bill introduced in the state senate that

the testator's death, or when the will was admitted to probate. The Statute of Repose became effective on January 1, 1975, but contained the following language on retroactivity:

Any action that will be barred when this act becomes effective and that would not have been barred under prior law may be commenced before January 1, 1976, and if it is not commenced by that date, the action shall be barred.

The language on retroactivity was codified as a separate statute, Section 95.022, Florida Statutes, and was later repealed effective June 20, 2000.

Basically, the current fraud Statute of Repose is very similar to the Statute of Repose when originally enacted. Case law interpreting the fraud Statute of Repose of any date would therefore be applicable. Although there has been considerable litigation on the products liability Statute of Repose, there have been few cases on the fraud Statute of Repose. In those cases, the Statute of Repose has been upheld<sup>2</sup>.

---

would have eliminated the twelve year statute of repose applicable to fraud claims as well. See Fla. S. Comm. On Com., CS/SB 821 (May 26, 1986). In 1990, the Legislature reenacted the fraud statute of repose without change. Finally in 1999, the Legislature amended section 95.031 to reenact a statute of repose for products liability, but again chose not to change the statute of repose for fraud. Although the Legislature exempted late manifesting injuries from the products liability of repose and additionally tolled that statute of repose where concealment was involved, it did not add similar provisions to the fraud statute of repose.

<sup>2</sup> See *Kish v A W Chesterton Co*, 930 So.2d 704 (Fla. 3d DCA 2006)(fraud statute of repose barred state fraud claims related to concealment of effects of asbestos, where there was a reasonable alternative provided for redress, and court did not apply a delayed manifestation exception to it as it had in the products liability statute of repose); *Puchner v Bache Halsey Stuart, Inc*, 553 So.2d 216 (Fla. 3d DCA 1989) (any fraud committed by plaintiff's stockbroker more than 12 years before the fraud claim was filed was barred by statute of repose); *Armbrister v Roland International Corp*, 667 F.Supp. 802 (DC Fla MD 1987) (Common law fraud claim involving sale of Florida real estate was governed by FS 95.031(2) and court found that there was no pervasive reason for the statute to be treated as invalid as applied to actions for fraud).

Petitioner in this case, however, takes the position that because the fraud alleged here is extrinsic fraud – a fraud upon the court, Florida Statutes Section 95.031(2) is inapplicable. Florida Statutes Section 95.031 is limited to legal and equitable actions, while here, Petitioner alleges, the filing of a forged will prevented the Court from recognizing decedent died intestate and thereby prevented the Court from requiring notice to the intestate heirs, including Petitioner. Since this action is brought pursuant to Florida Rule of Civil Procedure 1.540(b) based on extrinsic fraud, it is alleged that there is no time limit in which to bring such a case. Petitioner suggests that to subject the claim of extrinsic fraud to the Statute of Repose would impinge unconstitutionally on the court's rulemaking authority. Petitioner relies on the following cases:

---

In *DeClaire v Yohanan*, 453 So.2d 375 (Fla. 1984), the court recognized Rule 1.540(b) does not limit the power of a court to entertain an independent action to set aside a judgment or decree for fraud on the court. The court stated, "Therefore, the rule clearly preserves the equitable remedy of an independent action where extrinsic fraud is established." The court further noted that if the definitions of extrinsic or intrinsic fraud were to be changed, it should be achieved through the rule-making process.

In *Payette v Clark*, 559 So.2d 630 (Fla. 2d DCA 1990), because the issue was one of fraud upon the court, petitioner was permitted to reopen her uncle's probate even though the personal representative had been discharged, the petitioner had not been a party to the probate proceedings, the probate had not included adversary proceedings, and more than a year had passed. Compare, *Estate of*

*Clibbon*, 735 So.2d 487 (Fla. 4<sup>th</sup> DCA 1998). The applicability of the statute of repose, however, was not addressed.

In *Arrieta-Gimenez v Arrieta-Negron*, 551 So.2d 1184 (Fla. 1989), a daughter, 23 years later, challenged a consent judgment based on fraudulent misrepresentations made regarding the extent of her father's estate. Although the issue of whether the fraud statute of repose applied in such a circumstance was presented, the issue was not answered because the court found that the misrepresentations constituted intrinsic fraud rather than extrinsic fraud and could not be addressed beyond the one-year time limitation of Rule 1.540(b).

In *Bank One, National Association v Batronie*, 884 So.2d 346, 348 (Fla. 2d DCA 2004), at footnote 1, the Court noted that a claim for extrinsic fraud, also known as fraud upon the court, may be brought at any time as an independent action challenging the final judgment.

Although the courts have recognized that the purpose of a Statute of Repose is to protect against stale claims, fading memories and missing witnesses (see *Kish, supra*, at p 707), when there is an issue of fraud upon the court, there are other policies in play. For example, as Petitioner suggests, the probate court has inherent power and jurisdiction to revoke probate decrees, notwithstanding that such decrees are considered to be in the nature of judgments in rem. That power may be exercised where justice clearly requires it, as where, after probate of a will a later will or codicil is discovered, newly discovered evidence show that the probated will was forged, or that its probate was procured by fraud. In such instances, courts have inherent power over their own process to prevent abuse, oppression

and injustice and to protect their own jurisdiction. See *Padgett v Padgett's Estate*, 318 So.2d 484 (Fla. 1<sup>st</sup> DCA 1975), citing *State v Byington*, 168 So.2d 164 (Fla. 1<sup>st</sup> DCA 1964).

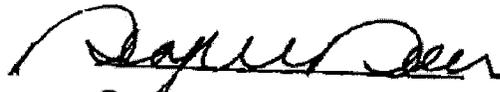
Therefore, since it is the Court's rule-making authority and its inherent power that permitted the estate to be reopened, this Court finds that the Statute of Repose does not prohibit this action, and accordingly, the Motion to Dismiss is denied.

Turning now to the requested revocation of probate, Gabrielle Kerouac was not a well woman when her purported will was signed by her or someone else in 1973. As early as 1970, she required 24-hour a day assistance (deposition of George Sampos). There is nothing to suggest she improved thereafter other than she had a firm handshake and there was arguably nothing to prevent her from signing her name. (other depositions) However, Dr. Klotz testified at trial that in his opinion she did not have the physical ability to sign in the condition it was signed. She could only move her hand and scribble her name. She would have lacked the coordination to affix that signature. The court is required by law to use a clear and convincing standard in determining these matters. However, even if the criminal standard of beyond all reasonable doubt was the requirement, the result would certainly be the same. Clearly, Gabrielle Kerouac was physically unable to sign the document dated February 13, 1973 and, more importantly, that which appears on the Will dated that date is not her signature. The court does not have to decide who in fact signed her name on the document. It is enough that Gabrielle Kerouac did not herself sign it. Based thereupon, it is

**ORDERED AND ADJUDGED** that the Administrator ad Litem's Motion to Dismiss is Denied. It is further

**ORDERED AND ADJUDGED** that the document bearing date of February 13, 1973 and admitted into probate herein as the last will and testament of Gabrielle Kerouac is a forgery and accordingly the Cross-Claim of Paul Blake, Jr. to revoke this probate herein is hereby granted.

**DONE AND ORDERED**, In chambers in Clearwater, Pinellas County, Florida this 24 day of July, 2009.



George W. Greer  
Circuit Court Judge

**TRUE COPY**

Copies furnished to:  
Elaine McGinnis, Esquire  
Bill Wagner, Esquire

## **EXHIBIT E**

---

LAST WILL AND TESTAMENT  
OF

STELLA S. KEROUAC

KNOW ALL MEN BY THESE PRESENTS:

THAT I, STELLA S. KEROUAC, a resident of and domiciled in Pinellas County, Florida, being of sound and disposing mind and memory, do make, publish and declare this my Last Will and Testament, hereby revoking and rendering void any and all Wills and Codicils thereto by me at any time heretofore made.

FIRST

I direct that my Personal Representative, hereinafter appointed, shall first pay and discharge any and all debts and expenses of my last illness and funeral as soon as practicable after my death.

SECOND

I give, devise and bequeath my home at 9159 - 10 Avenue North, St. Petersburg, Florida to my brother, ANTHONY G. SAMPATAKAKOS, my brother, JOHN SAMPATAKAKOS, and to my sister, HELEN S. SURPRENANT, together with all furnishings, fixtures and equipment contained therein, to be theirs absolutely and in fee simple.

THIRD

I give, devise and bequeath all of my interest in the real property located at Two Stevens Street, Lowell, Massachusetts, to my brothers ANTHONY G. SAMPATAKAKOS and JOHN SAMPATAKAKOS, to be theirs absolutely and in fee simple.

s/ Stella S. Kerouac  
STELLA S. KEROUAC

FOURTH

I give, devise and bequeath to my brother, ANTHONY G. SAMPATAKAKOS, all of my interest and property rights that I have including the copyright property and any and all publishing contracts in the following books written by my late husband, JACK KEROUAC:

"ON THE ROAD"  
"DHARMA BUMS"  
"SCRIPTURES OF THE GOLDEN ETERNITY"  
"A YEAR IN OUR LAND"  
"ORIGINS OF THE BEAT GENERATION"

FIFTH

I give, devise and bequeath to my brother, JOHN SAMPATAKAKOS, all of my interest and property rights that I have including the copyright property and any and all publishing contracts in the following books written by my late husband, JACK KEROUAC:

"SCATTERED POEMS"  
"BOOK OF DREAMS"  
"OLD ANGEL MIDNIGHT"  
"THE SUBTERRANEANS"  
"SATORI IN PARIS"  
"MEXICO CITY BLUES"  
"VISIONS OF CODY"

SIXTH

I give, devise and bequeath to my sister, HELEN SURPRENANT, all of my interest and property rights that I have including the copyright property and any and all publishing contracts in the following books written by my late husband,

JACK KEROUAC:

"DR. SAX"  
"LONESOME TRAVELER"  
"VISIONS OF GERARD"  
"MAGGIE CASSIDY"  
"TRESTESSA"  
"PIC"  
"BIG SUR"

s/ Stella S. Kerouac  
STELLA S. KEROUAC

SEVENTH

I give, devise and bequeath to CLAIRE S. PAICOPOLOS, all of my interest and property rights that I have including the copyright property and any and all publishing contracts in the following books written by my late husband, JACK KEROUAC:

"DESOLATIONS ANGELS"  
"VANITY OF DULUOZ"  
"THE TOWN & THE CITY"  
"TRIP-TRAP"  
"HEAVEN AND POEMS"

EIGHTH

All the rest, residue and remainder of my estate, wherever situated, I give, devise and bequeath to my surviving brothers and sister, to be theirs absolutely and in fee simple, share and share alike.

NINTH

I nominate and appoint my brother, ANTHONY G. SAMPATAKAKOS, as Personal Representative of my estate, giving and granting unto my said Personal Representative full power and authority to sell and dispose of all or any part of my estate as he in his sole and unrestricted discretion may deem best. I further excuse my Personal Representative from furnishing bond in the administration of my estate.

In the event my brother should not be able to serve in this capacity, in his place and stead and with the same powers, I hereby nominate and appoint my Nephew, CHARLES PAICOPOLOS as alternate Personal Representative. I further excuse my alternate Personal Representative from furnishing bond in the administration of my estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18 day of July, 1983.

s/ Stella S. Kerouac  
STELLA S KEROUAC

Signed, sealed, declared and published by STELLA S. KEROUAC, as her Last Will and Testament in the presence of us, the undersigned, who at her special instance and request, do attest and have hereunto set forth their names thereto and in her presence of us, the undersigned, who at her special instance and request, do attest and have hereunto set forth their names and addresses as witnesses, after the said Testatrix has signed her name thereto and in her presence and in the presence of each other this 18 day of July, 1983.

s/ George S. Saltsman ADDRESS: 8970 "B" Park Boulevard  
Seminole, Florida 33547

s/ Margaret Ann Mignone ADDRESS: 5155 - 10 Avenue North  
St. Petersburg, Florida 33710

STATE OF FLORIDA )  
COUNTY OF PINELLAS )

We, STELLA S. KEROUAC, GEORGE S. SALTSMAN and

MARGARET ANN MIGNONE, the Testatrix and witnesses respectively,

whose names are signed to the foregoing instrument, being first duly sworn, do hereby declare to the undersigned officer that the Testatrix signed the instrument as her Last Will and Testament and that she signed voluntarily and that each of the witnesses in the presence of the Testatrix, at her request, and in the presence of each other, signed the Will as a witness and that to the best of the knowledge of each witness, the Testatrix was at that time eighteen years or more of age, of sound mind and under no constraint or undue influence.

s/ Stella S. Kerouac  
STELLA S. KEROUAC

s/ George S. Saltsman  
Witness

s/ Margaret Ann Mignone  
Witness

Subscribed and acknowledged before me by STELLA S. KEROUAC, the  
Testatrix and subscribed and sworn to before me by GEORGE S. SALTSMAN  
and MARGARET ANN MIGNONE, witnesses, on this 18 day of July,  
1983.

s/ Denise A. Fisk  
NOTARY PUBLIC

My Commission Expires:

June 2, 1987

INST # 90-309092

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, PINELLAS COUNTY, FLORIDA  
PROBATE DIVISION

IN RE: ESTATE OF

STELLA S. KEROUAC

CASE NO: 90-2387-ES-004

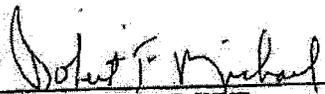
Deceased

ORDER OF FINAL DISCHARGE

This Court having received evidence that the above estate has been properly distributed and that claims of creditors have been paid or otherwise disposed of, it is therefore, upon consideration,

ADJUDGED that the personal representative is discharged and the surety on the personal representative's bond, if any, is released from further liability on the bond and the estate is declared to be fully administered and is closed.

ORDERED at Clearwater, Pinellas County, Florida, this 14 day of NOVEMBER, 1990.

  
CIRCUIT JUDGE

F-15 (1-85)

97C  
KARLEEN F. DENLAKER, CLERK  
NOV 16. 1990 4:58PM

NOV 15 10 08 AM '90

FILED

\*\*\* OFFICIAL RECORD \*\*\*  
BOOK 742B PAGE 1143

DENLAKER

## **EXHIBIT F**

---

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA, PROBATE DIVISION

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC, DECEASED

IAN KEROUAC,

Petitioner,

File No.: 73-4767-3E

vs.

ANTHONY G. SAMPATAKAKOS, HELEN  
S. SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, and PAUL  
G. BLAKE, JR.

Respondents.

---

**ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM,  
AND CROSS-CLAIM OF PAUL G. BLAKE, JR.**

COMES NOW, Respondent, PAUL G. BLAKE, JR., by and through his undersigned attorneys, would respectfully show the Court as follows:

1. For Answer to the Petition, the Respondent admits all of the allegations to the Petition except those allegations regarding the last known whereabouts of this Respondent.
2. For Counterclaim, Respondent counterclaims against John Lash as General Personal Representative and Gerald Nicosia as Literary Personal Representative of the Estate of Jan Kerouac, now deceased, and affirmatively alleges that if the allegations of Jan Kerouac are true, then this Respondent, as Counterclaimant, is entitled to one third (1/3) of the assets of the Estate of Gabrielle Kerouac and should obtain the same from whomever's hands those assets now reside and is entitled to one third (1/3) of the proceeds of the sale of any assets of the Estate of Gabrielle Kerouac which have been sold since her death.

SEP 30 1996

3. COMES NOW this Respondent and sues Anthony G. Sampatakakos, Helen S. Suprenant, John Sampatakakos, Claire S. Paicopolos, Michael G. Sampas, and James G. Sampas by way of cross-claim and allege:

1. This Respondent as Cross-Claimant realleges all of the allegations of the original Petition in this cause save and except those allegations regarding the whereabouts of this Respondent.

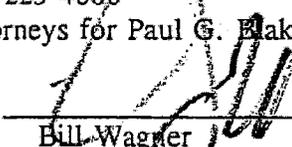
2. This Respondent seeks the same relief as that sought in the original Petition and further seeks the issuance of immediate temporary injunction to prevent the further sale of literary assets of Jack Kerouac presently in the possession of the Respondents.

3. This Petitioner seeks a trial by jury of all issues triable as a right by a jury.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail to SHERRILL FILTER, ESQUIRE, 7000 Cityplace, 2155 Louisiana Boulevard, N.E., Albuquerque, New Mexico 87190, NATHANIEL D. HINES, II, ESQUIRE, 111 Second Avenue, N.E., Suite 1406 Plaza Tower, St. Petersburg, Florida 33701, LETICIA J. MARQUES, ESQUIRE, 719 Vassar Street, Orlando, Florida 32804, KATHERINE WISSEL, ESQUIRE, P.O. Box 7549, Albuquerque, New Mexico 87194, GERALD NICOSIA, 11 Palm Avenue, Corte Madera, California 94925, and JOHN LASH, via Facsimile 011-44171-323-6676 on this 26th day of September, 1996.

WAGNER, VAUGHAN & McLAUGHLIN  
601 Bayshore Boulevard, Suite 910  
Tampa, Florida 33606  
813/225-4000  
Attorneys for Paul G. Blake, Jr.

By:   
Bill Wagner  
Florida Bar No.: 083998

**EXHIBIT G**

PROBATE DIVISION  
CASE NO. 73-4767-3E

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC, DECEASED,

JAN KEROUAC,

Petitioner,

-vs-

ANTHONY G. SAMPATAKAKOS, HELEN S.  
SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, and  
PAUL BLAKE, JR.,

Respondents.

VOLUNTARY DISMISSAL WITH PREJUDICE

COMES NOW the Petitioner, The Estate of Jan Kerouac, deceased, by and through the duly appointed General Personal Representative John Lash, and hereby files this Notice of Voluntary Dismissal With Prejudice of any and all claims and actions against all Respondents named in the above-styled cause.

BY: John Lash  
JOHN LASH as General Personal Representative of  
the Estate of Jan Kerouac, Deceased, Petitioner

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail this \_\_\_ day of September, 1996, to LETICIA J. MARQUES, ESQ., 719 VASSAR ST. ORLANDO, FLORIDA 32804; NATHANIEL HINES, II, ESQ., Suite 1406, 111

Office Box 387, St. Petersburg, FL 33731-0387.

*John Lash*

John Lash

IN THE CIRCUIT COURT OF THE  
SIXTH JUDICIAL CIRCUIT, IN AND  
FOR PINELLAS COUNTY, FLORIDA

PROBATE DIVISION

CASE NO. 73-4767-3E

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC, DECEASED,

JAN KEROUAC,

Petitioner,

-vs-

ANTHONY G. SAMPATAKAKOS, HELEN S.  
SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, and  
PAUL BLAKE, JR.,

Respondents.

---

AFFIDAVIT OF JOHN LASH

STATE OF MASSACHUSETTS

COUNTY OF PLYMOUTH

Before me, the undersigned authority, personally appeared JOHN LASH, who after being  
duly sworn, deposes and says:

1. I am over the age of 18. I am the Personal Representative of the Estate of Jan  
Michelle Kerouac, as well as Co-Beneficiary of said estate. Said estate is administered from the  
State of New Mexico.

2. I executed a Voluntary Dismissal of the above-captioned cause in September,

of Ms. Kerouac's estate to continue this litigation.

3. Further affiant sayeth not.

*John Lash*

JOHN LASH, General Personal  
Representative of the Estate of Jan Kerouac,  
Deceased, Petitioner

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of  
August, 1999, by JOHN LASH, General Personal Representative of the  
Estate of Jan Kerouac, Deceased, who is personally known to me or who has produced  
\_\_\_\_\_ as identification and who did/did not take an oath.

*Teresa J. Tavares*  
NOTARY PUBLIC

TERESA J. TAVARES  
(PRINT NAME)

(SERIAL NUMBER, IF ANY)

MY COMMISSION EXPIRES: 1/29/2004

**EXHIBIT H**

**received**  
3-29-04

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA, PROBATE DIVISION**

IN RE: THE ESTATE OF  
GABRIELLE KEROUAC, DECEASED

JAN KEROUAC,

Petitioner,

Case No.: 73-4767-ES  
(73-4767-3E)

vs.

ANTHONY G. SAMPATAKAKOS, HELEN  
S. SUPRENANT, JOHN SAMPATAKAKOS,  
CLAIRE S. PAICOPOLOS, MICHAEL G.  
SAMPAS, JAMES G. SAMPAS, and PAUL  
G. BLAKE, JR.

Respondents.

**ORDER ON SAMPAS-RESPONDENTS' MOTION FOR  
SUMMARY JUDGMENT AND FINAL JUDGMENT**

THIS MATTER came on to be heard on March 16, 2004, upon The Estate of Anthony G. Sampatakakos, Helon S. Suprenant, John Sampatakakos, Claire S. Paicopolos, Michael G. Sampas, James G. Sampas, collectively the "SAMPAS Respondents", Motion for Summary Judgment and the Court, after having reviewed the file, the memoranda in support and opposition to said Motion, heard the arguments of counsel, and being otherwise fully advised in the premises, it is;

**ORDERED AND ADJUDGED:**

1. A suggestion of the death of Michael G. Sampas has been filed and the Estate of Michael G. Sampas is hereby substituted as a respondent in this proceeding. This order and Final Judgment applies fully to bar the claims asserted against Michael G. Sampas or his estate.
2. The Court has determined that any claim against any assets or property which were inherited or received by any of the SAMPAS Respondents through the Estate of Stella

Sampas Kerouac, Deceased, is barred by reason of the provisions of the Florida Statute, § 733.710 (1989).

3. Final Judgment is hereby entered in favor of The Estate of Anthony G. Sampatakakos, Helen S. Suprenant, John Sapatakakos, Claire S. Paicopolos, Michael G. Sampas and his Estate, James G. Sampas, and against Respondent PAUL BLAKE, JR., on any and all such claims, including claims against them under Count II of the Amended Cross-Claim which has previously been stricken and dismissed with prejudice by this Court. Accordingly, the Sampas Respondents, including the Estate of Michael G. Sampas, are dismissed with prejudice.

4. The Court reserves jurisdiction to award fees and costs, if found appropriate.

**DONE AND ORDERED** in Chambers, Pinellas County, Florida, this \_\_\_\_ day of March, 2004.

GEORGE W. GREER  
Circuit Court Judge

TRUE COPY  
ORIGINAL SIGNED  
MAR 25 2004  
*George W. Greer*  
GEORGE W. GREER  
CIRCUIT JUDGE

cc: Bill Wagner, Esquire  
Leticia J. Marques, Esquire  
Sylvia H. Walbolt, Esquire