

1. CONSERVATORSHIP OF TYLER R., SP20030031**(1) Biennial Review of the Conservatorship of the Person and Estate****(2) 4th Account and Report of Conservator**Review of the Conservatorship

This matter was continued from March 29, 2023, so that the parties could meet and confer about conservatee's desire to terminate the conservatorship.

4th Account and Report of Conservator

Absent objection, petition is granted as requested.

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 8:30 A.M., WEDNESDAY, MAY 24, 2023, REGARDING WHETHER CONSERVATEE WILL PETITION FOR TERMINATION OF THE CONSERVATORSHIP. THE CONSERVATOR IS ORDERED TO PAY THE COURT \$500.00 FROM THE CONSERVATEE'S ASSETS AS REIMBURSEMENT FOR THE COURT INVESTIGATOR'S FEE WHEN FUNDS ARE AVAILABLE. SHOULD THE CONSERVATOR WISH TO REQUEST A PARTIAL OR FULL WAIVER OF THE FEE, THE CONSERVATOR NEEDS TO APPEAR AT 8:30 A.M., WEDNESDAY, MAY 24, 2023, IN DEPARTMENT FOUR AND SUBMIT INFORMATION CONCERNING THE CONSERVATEE'S ASSETS AND INCOME FOR THE COURT'S CONSIDERATION. ABSENT OBJECTION, THE 4TH ACCOUNT IS ALLOWED, SETTLED, AND APPROVED AS RENDERED. FEES ARE ALLOWED AS REQUESTED.

2. MATTER OF EDWARD W. DUNN & MIRA Y. DUNN TRUST, SP20210034**Respondent's Motion for Summary Judgment/Adjudication**

Respondent Pat Hansen ("Respondent") moves for summary judgment or, alternatively, summary adjudication pursuant to Code of Civil Procedure section 437c against Petitioner and Successor Trustee Robert Huckaby's ("Petitioner") petition for surcharge (filed June 13, 2022) and supplement to petition for surcharge (filed Nov. 9, 2022).

A. Standard of Review

A respondent moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action at issue cannot be established or there is a complete defense to the cause of action. (Aguilar v. Atl. Richfield Co. (2001) 25 Cal.4th 826, 850.) The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (Ibid.)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (Raven H. v. Gamette (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (Stationers Corp. v. Dun & Bradstreet, Inc. (1965) 62 Cal.2d 412, 417.)

B. Preliminary Matters**1. RESPONDENT'S REQUEST FOR JUDICIAL NOTICE**

Respondent's request for judicial notice ("RJN") of item numbers 1–8 is granted. (Evid. Code, § 452, subd. (d)(1).)

2. RESPONDENT'S EVIDENTIARY OBJECTIONS

Respondent's objection numbers 1 through 5 are sustained.

3. PETITIONER'S OBJECTION TO TIMELINESS OF MOTION

Petitioner's objection to the motion on the basis it was not timely filed is overruled. Hearing on the motion was originally set for May 10, 2023, and the court trial was set for June 12, 2023. The motion was served via overnight mail on February 21, 2023, and was file-stamped on February 22, 2023. Seventy-five days from February 21 is May 7, plus 2 court days for overnight service is May 9, which is prior to the hearing date and at least 30 days before the trial date. As such, the motion was timely filed and served. (Code Civ. Proc., § 437c, subd. (a)(2).)

C. Respondent's Motion

Respondent moves for summary judgment or, alternatively, summary adjudication on the following grounds:

1. The Trust exculpatory clause bars each alleged breach of fiduciary duty raised in the petition for surcharge and supplement to petition for surcharge.
2. Respondent did not breach fiduciary duties as a result of her compensation for trustee services.
3. The affirmative defenses of laches and statute of limitations bar petitioner's claim alleging breach of fiduciary duties as a result of respondent's compensation for trustee services.
4. Respondent did not breach fiduciary duties by hiring and paying for attorneys to represent her.
5. Respondent did not breach fiduciary duties regarding Social Security Administration ("SSA") communications because she timely responded to the

SSA's request for information and was not charged with directly managing Michael Dunn's¹ SSI benefits.

6. Respondent did not breach fiduciary duties with respect to investment of Trust monies, and she diligently complied with the Prudent Investor Rule.
7. Respondent did not breach fiduciary duties with respect to taxes paid with the Michael Dunn Special Needs Trust ("SNT") as a Subtrust.
8. The affirmative defense of statute of limitations bars Petitioner's claim alleging breach of fiduciary duties with respect to taxes paid with the SNT as a Subtrust.
9. Respondent did not breach fiduciary duties with respect to transferring the Pollock Pines property into the SNT, nor is she maintaining a position as trustee of that Subtrust.

D. Discussion

1. TRUST EXCULPATORY CLAUSE

Respondent moves for summary judgment on the basis that the Trust exculpatory clause bars each alleged breach of fiduciary duty raised in the petition for surcharge and supplement to petition for surcharge.

Section 7.21 of the Trust provides: "No trustee shall be liable to any interested party for acts or omissions of that trustee, except those resulting from that trustee's willful misconduct or gross negligence. This standard shall also apply regarding a trustee's liability for the acts of omissions of any cotrustee, predecessor trustee, or agent employed by the trustee." (Ibid.)

" 'Ordinary negligence'—an unintentional tort—consists of a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm. [Citation.] [¶] 'Gross negligence' long has been defined in California and other jurisdictions as either a 'want of even scant care' or

¹ The court will refer to Michael Dunn by his first name to avoid confusion. The court intends no disrespect.

‘an extreme departure from the ordinary standard of conduct.’ [Citations and footnote.]”
(City of Santa Barbara v. Superior Court (2007) 41 Cal.4th 747, 753–754.)

“ ‘ ‘ ‘Wilful misconduct’ means something different from and more than negligence, however gross. The term ‘serious and wilful misconduct’ is described ... as being something ‘much more than mere negligence, or even gross or culpable negligence’ and as involving ‘conduct of a quasi criminal nature, the intentional doing of something either with the knowledge that it is likely to result in serious injury or with a wanton and reckless disregard of its possible consequences.’ ... The mere failure to perform a statutory duty is not, alone, wilful misconduct. It amounts only to simple negligence. To constitute ‘wilful misconduct’ there must be actual knowledge, or that which in the law is esteemed to be the equivalent of actual knowledge, of the peril to be apprehended from the failure to act, coupled with a conscious failure to act to the end of averting injury....” ’ [Citations.] [¶] ‘ “While the line between gross negligence and wilful misconduct may not always be easy to draw, a distinction appears ... in that gross negligence is merely such a lack of care as may be presumed to indicate a passive and indifferent attitude toward results, while wilful misconduct involves a more positive intent actually to harm another or to do an act with a positive, active and absolute disregard of its consequences.” ’ [Citation.]” (Bigge Crane & Rigging Co. v. Workers’ Comp. Appeals Bd. (2010) 188 Cal.App.4th 1330, 1349–1350, quoting Mercer-Fraser Co. v. Industrial Acc. Com. (1953) 40 Cal.2d 102.)

The court finds that Respondent provided sufficient evidence to meet her initial burden of producing a prima facie showing of the nonexistence of a triable issue of material fact that her actions do not amount to gross negligence or willful misconduct, and therefore Petitioner’s claims are barred by the Trust exculpatory clause. (Mot., Separate Statement in Support of Mot. (“UMF”), ¶¶ 1–15.)

As such, the burden now shifts to Petitioner to make a prima facie showing that there are triable issues of material fact as to gross negligence or willful misconduct, thus negating the exculpatory clause. The court finds that Petitioner has not met this burden.

In his handwritten responses to Respondent's UMF, Petitioner does not cite to any evidence. At most, he states there are "no records" to support Respondent's statements in her declaration about the work she performed for the Trust. The purported lack of records goes to the weight of Respondent's evidence about her work for the trust, but the lack of records, standing alone, does not raise a triable issue of material fact as to gross negligence or willful misconduct.

Petitioner's other responses to Respondent's UMF simply consist of legal argument; e.g., "Disputed, irrelevant"; "Disputed, irrelevant, hearsay"; "Disputed, no records," "Agreed, except for mental health confinement"; "Disputed, violation of duties to support Michael"; "Disputed, improper delegation of duties"; "Disputed, being Trustee requires fulfillment of duties so this is conclusory not factual"; "Disputed, as law does not allow a person to be relieved from responsibility for results of their actions"; "Disputed, conclusion." Those statements are not evidence that would negate the application of the exculpatory clause and raise a triable issue of material fact. Further, Petitioner cannot rely on the allegations in his pleadings, even if verified, to make an evidentiary showing in opposition to a summary judgment/adjudication motion. (Parker v. Twentieth Century Fox-Film Corp. (1970) 3 Cal.3d 176, 181.)

Accordingly, the court finds that Respondent is entitled to judgment as to the petition for surcharge and supplement to petition for surcharge on the basis that all of Petitioner's claims are barred by the Trust exculpatory clause.

2. AFFIRMATIVE DEFENSES BAR PETITIONER'S CLAIM RE: COMPENSATION

Additionally, or in the alternative, the court finds that Respondent met her initial burden of producing a prima facie showing that the affirmative defenses of laches and the statute of limitations bar Petitioner's claim alleging breach of fiduciary duties as a result of Respondent's compensation for trustee services. As such, she is entitled to summary adjudication on this claim.

“Laches is based on the principle that those who neglect their rights may be barred, in equity, from obtaining relief.” (City of Oakland v. Oakland Police & Fire Retirement System (2014) 224 Cal.App.4th 210, 248.) “ ‘The doctrine of laches is to actions in equity what statutes of limitations are to actions in law.’ [Citation.]” (In re Marriage of Parker (2017) 14 Cal.App.5th 681, 687.)

The statute of limitations for breach of fiduciary duty is four years. (Code Civ. Proc., § 343.) Respondent provided evidence that Petitioner and Michael have known of her compensation rate since 2011. (UMF, ¶¶ 13, 19, 19-2.) Despite that, Petitioner did not file this surcharge petition and allege a claim of improper compensation until 2022, which is 11 years after learning of Respondent’s compensation rate. As such, the court finds that Respondent met her initial burden of making a prima facie showing that Petitioner’s claims concerning her compensation are barred by the doctrines of laches and the statute of limitations.

As such, the burden now shifts to Petitioner to show there are triable issues of material fact about Respondent’s compensation. The court finds that Petitioner has not met his burden. In his responses to Respondent’s separate statement, Petitioner cites to paragraphs 2 and 3 of his declaration as his evidence in opposition. (UMF, ¶¶ 19, 19-2, p. 9.) Those paragraphs simply state that Petitioner never received any documentation setting forth the services rendered by Respondent to the Trust which would support the compensation she received, or any documentation supporting her basis of compensation as a percentage of the Estate and the reasonableness of that method for determining compensation. The issue is not the reasonableness or the compensation received or of the method for calculating Respondent’s compensation, but rather whether the claim is barred by Respondent’s affirmative defenses. Petitioner’s evidence does not raise a triable issue of material fact as to Petitioner’s and Michael’s knowledge in 2011 of Respondent’s compensation and that she was compensating herself based on a percentage of the Estate.

Accordingly, Respondent is entitled to summary adjudication on Petitioner's claim alleging breach of fiduciary duties as a result of Respondent's compensation for Trustee services.

3. HIRING AND PAYING OF ATTORNEYS TO REPRESENT RESPONDENT

The court finds that Respondent met her initial burden of producing a prima facie showing that she did not breach her fiduciary duties by hiring and paying for attorneys to represent her. Specifically, section 7.11(f) of the Trust provides that the Trustee has the power to "[e]mploy and discharge agents and employees, including but not limited to attorneys, accountants, investment and other advisers, custodians of assets, property managers, real estate agents and brokers, and appraisers, to advise and assist the trustee in the management of any trusts created under this trust instrument, and compensate them from the trust property." (*Ibid.*; UMF, ¶ 20; Hansen Decl., Ex. A.)

Respondent provided evidence that she retained the assistance of counsel from 2019 to 2021 to prepare trust accountings for multiple years, to obtain records to verify information, and to organize the accountings in compliance with the Probate Code. (UMF, ¶¶ 13, 20–23; Hansen Decl., Ex. G.)

As such, the burden now shifts to Petitioner to produce a prima facie showing that there are triable issues of material fact as to whether Respondent was authorized to hire and compensate attorneys to represent her in the manner they did. The court finds that Petitioner has not met his burden. In his handwritten responses to Respondent's separate statement, Petitioner does not cite to any evidence. At most, Petitioner asserts legal arguments in response to Respondent's evidence; e.g., "Disputed, conclusion"; "Disputed, limited to overall duty to properly administer for benefit of the Estate"; "Disputed, limited to overall duty to benefit the Estate"; "Disputed, improper delegation of Trustee's duties and unreasonable cost to Estate, no records." Those statements are not evidence and do not raise a triable issue as to Respondent's hiring and paying attorneys to prepare trust accountings and obtain records.

Accordingly, Respondent is entitled to summary adjudication on Petitioner's claim alleging breach of fiduciary duties by hiring and paying attorneys to represent her.

4. MICHAEL'S SSI BENEFITS

The court finds that Respondent met her initial burden of producing a prima facie showing that she did not breach her fiduciary duties regarding communications with the SSA and Michael's SSI benefits. (UMF, ¶¶ 13, 24–28; Hansen Decl., Exs. A, C, G.) Specifically, section 6.6(b) of the Trust provides that “[t]he trustee may, in the exercise of the trustee's discretion, seek as necessary all available public benefits for Michael's benefit” (Hansen Decl., Ex. A [underlining added].) Respondent declares that Michael “handled his SSI benefits himself and insisted he do so.” (Hansen Decl., ¶ 7.) He was not subject to a conservatorship at any time during Respondent's trusteeship. (UMF, ¶ 9.) She further declares that Michael “would become forgetful and did not respond to” the SSA when needed. (Hansen Decl., ¶ 7.) Respondent responded “to SSA's second request for information on October 15, 2010 and provided the requested accounting and residential verification in an effort to help preserve Michael's SSI benefits. [She] annotated the October 7, 2010 letter from SSA requesting this information ‘Mailed 10/15/10’ to confirm that it was responded to. [She] did not receive any other letters from SSA after responding to this correspondence.” (Id., ¶ 7 & Ex. C.)

As such, the burden now shifts to Petitioner to make a prima facie showing that there are triable issues of material fact as to whether Respondent breached her fiduciary duties concerning Michael's SSI benefits. The court finds that Petitioner has not met this burden. In his handwritten responses to Respondent's separate statement, Petitioner does not cite to any evidence. Petitioner simply asserts legal arguments in response to Respondent's evidence; e.g., “Disputed, conclusion”; “Disputed, Trust required her to protect his govt. benefits”; “Disputed, breach of duty to protect Michael's benefits”; “Disputed, notice from SSA reducing Michael's benefits”; “Disputed, conclusion, violation of Trust duties to protect Trust assets.” Those statements are not evidence and do not

raise a triable issue as to Respondent's alleged fiduciary duties concerning Michael's SSI benefits. Accordingly, Respondent is entitled to summary adjudication on this claim.

5. INVESTMENT OF TRUST MONIES

The court finds that Respondent met her initial burden of producing a prima facie showing that she did not breach her fiduciary duties with respect to the investment of Trust monies. (UMF, ¶¶ 13, 29–35.)

As such, the burden now shifts to Petitioner to produce a prima facie showing that there are triable issues of material fact as to whether Respondent breached her fiduciary duties concerning Trust investments. The court finds that Petitioner has not met his burden. In his handwritten responses to Respondent's separate statement, Petitioner does not cite to any evidence. Petitioner simply asserts legal arguments in response to Respondent's evidence; e.g., "Disputed, conclusion"; "Disputed, irrelevant, no records"; "Disputed, no accountings with that information"; "Disputed, no complete records provided, irrelevant to duty to properly manage Trust assets"; "Disputed, no complete records provided, conclusion." Those statements are not evidence and do not raise a triable issue as to Respondent's fiduciary duties concerning Trust investments. Accordingly, Respondent is entitled to summary adjudication on this claim.

6. TRANSFER OF POLLOCK PINES PROPERTY INTO THE SNT

Lastly, the court finds that Respondent met her initial burden of producing a prima facie showing that she did not breach her fiduciary duties by transferring the Pollock Pines Property into the SNT and that she is not maintaining a position as Trustee of the SNT. (UMF, ¶¶ 13, 43–45; RJN, No. 7, Exs. 1, 2.)

As such, the burden now shifts to Petitioner to produce a prima facie showing that there are triable issues of material fact as to whether Respondent breached fiduciary duties by transferring the Pollock Pines property into the SNT and/or that she is maintaining her position as Trustee of the SNT. The court finds that Petitioner has not met his burden. In his responses to Respondent's separate statement, Petitioner cites to

paragraph 8 of his declaration as his evidence in opposition. (UMF, ¶¶ 43, 45, p. 20.) That paragraph simply states that Respondent “has failed to provide any documentation for the alleged creation or existence of the Michael Dunn Trust or the Michael Dunn Special Needs Trust.” (Opp., Huckaby Decl., ¶ 8.) The fact that Petitioner has not seen documentary evidence is not sufficient to make a prima facie showing of a triable issue of material fact regarding the transfer and Respondent’s resignation as Trustee of the Trust and the SNT.

In addition, other than the citation to his declaration, Petitioner did not cite or provide any other evidence in support of his opposition. Petitioner merely stated legal arguments or objections in response to Respondent’s evidence; e.g., “Disputed, conclusion”; “Agreed, irrelevant.” Those statements are not evidence and do not raise a triable issue of material fact as to Respondent having transferred the property into the SNT or whether she is maintaining her position as Trustee of the SNT.

Accordingly, Respondent is entitled to summary adjudication on this claim.

D. Conclusion

The court finds that the Trust exculpatory clause bars all of Petitioner’s claims, and Petitioner did not produce a prima facie showing that there are triable issues of material fact that Respondent’s actions could amount to gross negligence or willful misconduct, thus negating the affirmative defense. Accordingly, Respondent’s motion for summary judgment is granted.

In addition, or in the alternative, the court also found that several of Petitioner’s claims would be entitled to summary adjudication even if the exculpatory clause did not apply. Any issue or claim not separately addressed with regard to summary adjudication means that the court finds the claim is barred by the Trust exculpatory clause.

TENTATIVE RULING # 2: RESPONDENT’S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

3. ESTATE OF JORAT, SP20210014

1st and Final Report; Petition for Final Distribution, Compensation, Fees

TENTATIVE RULING # 3: ABSENT OBJECTION, PETITION IS GRANTED AS REQUESTED.