

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 2, Honorable Drew C. Takaichi, Presiding
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: June 24, 2024

TIME: 10:00 A.M.

*****NOTICE*****

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	21PR191187	<i>In the matter of Pedro Rocha</i>	Petitioner, Karla Rocha and Kevin Cowan, attorney for claimant, Pedro Rocha, are ordered to appear at Court regarding deposit of claimant's funds in a blocked account pursuant to order of the Court.
LINE 2	23PR195989	<i>The Guist Family Revocable Trust, dated December 15, 1999</i>	Click or scroll to line 2 for tentative ruling.
LINE 3			
LINE 4			

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LINE 5			
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
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LINE 13			
LINE 14			
LINE 15			
LINE 16			
LINE 17			
LINE 18			
LINE 19			
LINE 20			
LINE 21			
LINE 22			
LINE 23			
LINE 24			
LINE 25			
LINE 26			
LINE 27			
LINE 28			
LINE 29			
LINE 30			

Calendar line 1

Calendar line 2

Case Name: *The Guist Family Revocable Trust, dated December 15, 1999*

Case No.: 23PR195989

Hearing date, time, and department: June 24, 2024 at 10:00 a.m. in Department 2

INTRODUCTION

Trustors Leroy and Susan Guist executed the Guist Family Revocable Trust on December 15, 1999. The trust was amended multiple times during the lifetime of the settlors. Successor trustee Wells Fargo initiated this action in 2023 by filing a petition to confirm its status as trustee, to confirm its resignation, to appoint a successor trustee, and to confirm certain property as assets of the trust. The court granted the petition, appointing professional fiduciary Elizabeth Dean as trustee.

Currently before the court is Beneficiary Barbara Guist's ("Beneficiary") motion to reform the trust so as to allow purchase of an annuity. The motion is unopposed.

DISCUSSION

Beneficiary seeks to modify the trust under Probate Code section 15409, subdivision (a), which provides, "On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument."

Beneficiary notes that the trust instrument provides, "The intent is that the Trustee purchase an annuity or similar investment for each beneficiary that would pay a set monthly sum to each beneficiary for the course of their natural life. The type of investment will be in the sole discretion of the Trustee." She seeks to purchase an annuity without the oversight of the trustee, ostensibly to avoid paying trustee's fees. She has provided the declaration of a financial planner who indicates that there would be no fees for maintaining the annuity once it is purchased. She also points to the trustee's fee schedule, which is attached to Wells Fargo's petition as Exhibit J, contending that she will need to pay the trustee to monitor the annuity.

The court has "equitable power, founded in common law as discussed above, to modify the Trust provided (1) a "peculiar" or "exceptional" circumstance made modification necessary to accomplish the purpose of the trustors, and (2) there was some expression in the trust instrument of the purpose of the trustors." "[A] trust can be modified if provisions are ambiguous or if "slavish adherence" to the terms of the trust would defeat the primary purpose of the trust; but neither Probate Code Appendix section 17200 nor the common law of trusts permits the creation of a new agreement under the guise of a modification or reformation. [Citation.]" (*Estate of Sigourney* (2001) 93 Cal.App.4th 593, 605.)

Here, it appears that the payment of fees for a professional trustee was contemplated by the trustors. In fact, Wells Fargo, a professional trustee, was appointed a successor trustee

pursuant to the terms of the trust. Further, section 5.01 of the trust provides for reasonable compensation for the trustee. Thus, it appears that payment of trustee's fees was contemplated by the trustors.

Additionally, it is not clear that the successor trustee will charge fees for oversight of the annuity. While the successor trustee does charge for administering the trust, once the annuity or similar investment vehicle is purchased, it is not clear that any oversight will be necessary. Similarly, it is not clear that trustee's fees can be avoided altogether as it appears that there are other beneficiaries of the trust and that the trust holds certain assets, as confirmed by the court's order granting Wells Fargo's petition. Thus, some trustee's fees are likely to be incurred regardless of the type of investment vehicle purchased.

Finally, Beneficiary does not indicate the cost of the annuity she seeks to purchase, nor does she argue that the type of investment vehicle the trustee seeks to purchase is inferior. The trust provides that the annuity or similar investment vehicle shall be chosen by the trustee. Here, the court cannot find that the purpose of the trust would be defeated by adherence to its terms; nor can it find that the payment of trustee's fees was not contemplated by the trustors. Accordingly, the court declines to reform the trust pursuant to Probate Code section 15409, subdivision (a). The motion is DENIED.

CONCLUSION

The motion is DENIED.

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