

Hearing Judge: The Honorable Wyman Yip
Hearing Date: October 6, 2023
Hearing Time: 10:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Matter of:

Case No. 22-4-08326-1 KNT

THE SHARON M. HAROLD
IRREVOCABLE TRUST DATED
NOVEMBER 12, 2004

a trust.

**PETITIONER TRUSTEE'S MOTION
FOR PARTIAL SUMMARY
JUDGMENT ON TRUSTEE'S
ENTITLEMENT TO EMPLOY
COUNSEL ON BEHALF OF TRUST
AND PAY COUNSEL FROM TRUST'S
FUNDS**

I. RELIEF REQUESTED

Petitioner David A. Paice, as Trustee ("Trustee") of the Sharon M. Harold Irrevocable Trust dated November 12, 2004 ("Harold Trust" or "Trust") respectfully moves the Court for partial summary judgment on the Trustee's entitlement to employ counsel on behalf of the Harold Trust and pay counsel reasonable compensation from the Trust's funds. California law, which governs the Harold Trust, and the Trust instrument itself entitle the Trustee to employ counsel and pay counsel from the Trust. Article IV, ¶ F.11 of the Harold Trust, for example, provides that the Trustee may "employ counsel to assist and advise in the management, preservation and administration of the Trust Estate; and to compromise, arbitrate, settle, or litigate any matters pertaining thereto" and that the Trustee "shall pay reasonable compensation therefor." Despite California law and the clear language of the Harold Trust, Respondents have objected to the Trustee's entitlement to employ and pay counsel from the Trust. Accordingly, the Trustee seeks a partial summary judgment order confirming that (a) the Trustee is entitled to employ counsel to represent the Trust and the Trustee in this action; and (b) the Trustee may pay counsel reasonable

1 compensation from the Harold Trust's funds.¹

2 **II. STATEMENT OF FACTS**

3 **A. Ms. Sharon Harold created the Harold Trust, an irrevocable trust, and Mr. Paice is** 4 **the Trustee of the Trust.**

5 Trustor Sharon M. Harold executed the Declaration of Trust of the Sharon M. Harold
6 Irrevocable Trust on November 12, 2004. Declaration of Aleksander R. Schilbach ("Schilbach
7 Decl."), Ex. A ("Harold Trust"). The Harold Trust clarified that the term "Trustee" refers to
8 successor trustees of the Harold Trust and that all of the Trust estate was to be held and managed
9 as provided for in the trust instrument:

10 SHARON M. HAROLD (referred to herein as the "Grantor"), has
11 transferred, without consideration, the property described in the
12 attached Schedule A, all of which is the Grantor's separate property,
13 to ROBERT G. HATCH, as Trustee. The term "Trustee", as used in
14 this Instrument, shall refer to the initial Trustee as well as to any
15 successor Trustee(s).

16 All property now or hereafter subject to the terms of this Instrument
17 shall constitute the Trust Estate, and shall be held, managed and
18 distributed as hereinafter provided.

19 Harold Trust at 1.

20 Article I of the Harold Trust confirmed the Trust was irrevocable:

21 This Instrument is irrevocable and may not be amended or revoked
22 in whole or in part by the Grantor or any other person.

23 *Id.*, Art. I.

24 David A. Paice was appointed as successor trustee of the Harold Trust in late February or
25 early March 2010. Declaration of David A. Paice dated December 1, 2022, ¶ 3 (Dkt. 3); Verified
26 Petition for Approval of Interim Account; For Discharge of Successor Trustee; and For
27 Appointment of Successor Trustee ("Verified Petition") (Dkt. 1), Ex. B ("Acceptance of David
Allen Paice to Act as Successor Trustee of the Sharon M. Harold Irrevocable Trust Dated
November 12, 2004").

¹ The Trustee is not seeking approval of any specific attorney's fees or costs amount at this time. The Trustee reserves the right to seek approval of the Harold Trust's attorney's fees and costs at a later date in accordance with the terms of the Harold Trust and relevant law.

1 **B. The Harold Trust allows the Trustee to employ and pay counsel.**

2 Article IV, ¶ F.11 of the Harold Trust explains that the Trustee has the power to employ
3 counsel on behalf of the Trust and pay counsel from the Trust's funds:

4 **F. POWERS OF THE TRUSTEE**

5 To carry out the purposes of the Trust, and subject to any limitation
6 stated elsewhere herein, the Trustee and any successor Trustee are
7 hereby vested with the following powers and discretions, in addition
8 to those now or hereafter conferred by law:

9

10 11. To employ counsel to assist and advise in the management,
11 preservation and administration of the Trust Estate; and to
12 compromise, arbitrate, settle, or litigate any matters pertaining
13 thereto. The Trustee shall pay reasonable compensation therefor,
14 and the same shall be charged against income and/or principal in
15 such manner as the Trustee shall deem just and equitable.

16 Harold Trust, Art. IV, ¶ F.11.

17 **C. Respondents have objected to the Trustee's use of trust funds to hire an attorney to
18 represent him as Trustee.**

19 Respondents objected to the Trustee hiring counsel in this matter and paying counsel from
20 the Trust. *See* Verified Joint Objection to Verified Petition for Approval of Interim Account; For
21 Discharge of Successor Trustee; and For Appointment of Successor Trustee at 27–30 (Dkt. 28)
22 (“Verified Joint Objection”).

23 The Trustee now seeks a partial summary judgment order confirming the Trustee's
24 entitlement to (a) employ counsel on behalf of the Harold Trust; and (b) pay counsel from the
25 Harold Trust's funds.

26 **III. STATEMENT OF ISSUE**

27 Should the Court grant the Trustee partial summary judgment on the Harold Trust's
entitlement of the Trustee to employ counsel on behalf of the Trust and pay counsel from the Trust?

Yes.

IV. EVIDENCE RELIED UPON

The Trustee's motion relies upon the declaration of Aleksander R. Schilbach in Support of

1 Petitioner Trustee’s Motion for Partial Summary Judgment on Trustee’s Entitlement to Employ
2 Counsel on Behalf of Trust and Pay Counsel from Trust’s Funds dated September 8, 2023, and
3 David A. Paice, Trustee, dated December 1, 2022, which is in the Court’s file at Dkt. 3, all exhibits
4 attached thereto, and the records on file with the Court.

5 **V. AUTHORITY**

6 **A. Summary Judgment Standard.**

7 Summary judgment is appropriate when there is no genuine issue of material fact and the
8 moving party is entitled to judgment as a matter of law. CR 56(c). To defeat summary judgment,
9 the “nonmoving party must set forth specific facts that demonstrate a genuine issue of material
10 fact and cannot rest on mere allegations.” *Lipscomb v. Farmers Ins. Co. of Wash.*, 142 Wn. App.
11 20, 27, 174 P.3d 1182 (2007); CR 56(e). “Questions of fact may be determined on summary
12 judgment as a matter of law where reasonable minds could reach but one conclusion.” *Swinehart*
13 *v. City of Spokane*, 145 Wn. App. 836, 844, 187 P.3d 345 (2008).

14 **B. Although Washington procedural law applies, the Court must apply California**
15 **substantive law to this issue.**

16 Although the situs of the Harold Trust is Washington, the Trust provides that California
17 law governs its terms. *See* Harold Trust, Art. IV, ¶ I (providing the Trust’s “validity, construction
18 and all rights hereunder shall be governed by the laws of California”). *See also* Verified Petition
19 at 8–9 (requesting Court’s determination that Washington is situs of Harold Trust pursuant to
20 RCW 11.98.005(3)(c)(i)–(iv)). Accordingly, the Court must apply California substantive law.

21 As this Petition was filed under Chapter 11.96A RCW in King County, Washington,
22 however, Washington’s procedural rules of court apply. RCW 11.96A.090(4) (“The procedural
23 rules of court apply to judicial proceedings under this title only to the extent that they are consistent
24 with this title . . .”).

1 **C. California law authorizes a trustee to employ and pay counsel from the trust in order**
2 **to seek approval of the trust's accountings, which California law and courts view as**
3 **routine administrative actions.**

4 California's Probate Code² "is studded with provisions authorizing the trustee to hire and
5 pay (or seek reimbursement for having paid) attorneys to assist in trust administration." *Hollaway*
6 *v. Edwards*, 68 Cal. App. 4th 94, 97, 80 Cal. Rptr. 2d 166, 168 (1998). First, California Probate
7 Code § 16247 empowers the trustee to hire attorneys to "advise or assist" the trustee in "the
8 performance of administrative duties":

9 The trustee has the power to hire persons, including accountants,
10 attorneys, auditors, investment advisers, appraisers (including
11 probate referees appointed pursuant to Section 400), or other agents,
12 even if they are associated or affiliated with the trustee, to advise or
13 assist the trustee in the performance of administrative duties.

14 Cal. Prob. Code § 16247.

15 Second, § 16243 of the California Probate Code provides that the trustee can pay
16 reasonable compensation to agents of the trust and other expenses incurred in the care,
17 administration, and protection of the trust:

18 The trustee has the power to pay taxes, assessments, reasonable
19 compensation of the trustee and of employees and agents of the trust,
20 and other expenses incurred in the collection, care, administration,
21 and protection of the trust.

22 Cal. Prob. Code § 16243.

23 Finally, § 15684(a) of the California Probate Code provides that a trustee is entitled to
24 repayment out of the trust funds for expenditures incurred in the administration of the trust:

25 A trustee is entitled to the repayment out of the trust property for the
26 following:

27 (a) Expenditures that were properly incurred in the administration
of the trust.

(b) To the extent that they benefited the trust, expenditures that were
not properly incurred in the administration of the trust.

² In accordance with LCR 7(b)(5)(B)(v), Petitioner has provided all non-Washington authorities cited in this Motion
in an Appendix for the Court and opposing parties. The Appendix will not be filed in accordance with LCR
7(b)(5)(B)(v).

1 Cal. Prob. Code § 15684.³ “Under California law, a trustee may use trust funds to pay for legal
2 advice regarding trust administration (Prob. Code § 16247) and may recover attorney fees and
3 costs incurred in successfully defending against claims by beneficiaries.” *Wells Fargo Bank v.*
4 *Superior Ct.*, 22 Cal. 4th 201, 213, 990 P.2d 591, 599 (2000) (internal citations omitted).

5 California Probate Code § 17200 explains that petitioning for an order approving the trust’s
6 accountings, approving the trustee’s resignation, releasing and discharging the trustee, and
7 appointing a successor trustee are all routine aspects of trust administration:

8 (a) [A] trustee . . . of a trust may petition the court under this
9 chapter concerning the internal affairs of the trust or to determine
the existence of the trust.

10 (b) Proceedings concerning the internal affairs of a trust include,
11 but are not limited to, proceedings for any of the following purposes:

12

13 (5) Settling the accounts and passing upon the acts of the trustee,
including the exercise of discretionary powers.

14

15 (10) Appointing or removing a trustee.

16 (11) Accepting the resignation of a trustee.

17 Cal. Prob. Code § 17200(a), (b)(5), (b)(10)–(11). California courts have echoed § 17200:

18 Attorneys hired by a trustee to aid in administering the trust are
19 entitled to reasonable fees paid from trust assets. Preparing the
accounting and responding to the beneficiaries’ objections to that
20 accounting are aspects of trust administration.

21 *Kasperbauer v. Fairfield*, 171 Cal. App. 4th 229, 235, 88 Cal. Rptr. 3d 494, 499 (2009), as
22 modified on denial of reh’g (Feb. 24, 2009).

23 “The underlying principle which guides the court in allowing costs and attorneys’ fees
24 incidental to litigation out of a trust estate is that such litigation is a benefit and a service to the
25 trust’ and not for the personal benefit of the trustee.” *People ex rel. Harris v. Shine*, 16 Cal. App.

26 ³ Washington law, like California law, authorizes trustees to employ attorneys to assist in the administration of the
27 trust. *See* RCW 11.98.070(27).

1 5th 524, 534, 224 Cal. Rptr. 3d 380, 387 (2017) (quoting *Whittlesey v. Aiello*, 104 Cal. App. 4th
2 1221, 1230, 128 Cal. Rptr. 2d 742, 748 (2002)).

3 In situations, unlike this one, where the trustee is not neutral and represents the interests of
4 beneficiaries from only one side of the dispute, California law may not allow the trustee its
5 attorney's fees and costs. For example, a trustee is not entitled to reimbursement of litigation
6 expenses from the trust estate when "the dispute was, and continues to be, over who will enjoy the
7 benefits and who will control the trust" and the trustee is not participating in the litigation as a
8 neutral trustee to defend and protect the trust's assets. *Zahnleuter v. Mueller*, 88 Cal. App. 5th
9 1294, 1307, 305 Cal. Rptr. 3d 474, 484 (2023) (citing *Whittlesey v. Aiello*, 104 Cal. App. 4th 1221,
10 1231, 128 Cal. Rptr. 2d 742, 748 (2002) and *Terry v. Conlan*, 131 Cal. App. 4th 1445, 1462, 33
11 Cal. Rptr. 3d 603, 615 (2005)).

12 For example, and unlike the situation here, in *Zahnleuter v. Mueller*, the trustee, Thomas,
13 opposed a residuary beneficiary's challenge to a trust amendment that would have provided for a
14 \$10,000 gift to each of Thomas's two daughters. *Id.* at 1299, 1302 (explaining relevant facts
15 regarding amendment). After examining Thomas's biased behavior, the *Zahnleuter* court
16 explained that Thomas did not participate in the litigation as a neutral trustee. *Id.* at 1308. Instead,
17 Thomas "pursued the interest of others, including his two daughters, to the detriment of Katherine
18 [another beneficiary]." *Id.* Accordingly, the court explained that Thomas must "bear his own
19 litigation costs, rather than be reimbursed from the trust estate." *Id.* Unlike in *Zahnleuter*, though,
20 where the trustee pursued the interests of some beneficiaries at the expense of others, the Trustee
21 in this matter is completely neutral: he is not advocating on behalf of or against any group of
22 beneficiaries in this matter at the expense of another group. To the contrary, the Trustee's action
23 falls squarely within California Probate Code § 17200.

24 Here, in contrast to the situation in *Zahnleuter*, California law explicitly allows the Trustee
25 to employ and pay counsel to assist the Trustee with the trust accounting and responding to the
26 beneficiaries' objections to the trust accounting. *See* Cal. Prob. Code §§ 16247, 16243, 15684. In
27 this matter, Mr. Paice, as Trustee, is not biased in favor of one group of beneficiaries or

1 representing only one group of beneficiaries against another group of beneficiaries vying for
2 control of the trust or its assets. Rather, the Trustee is seeking court approval of accountings,
3 approval of the Trustee's resignation, the appointment of a successor trustee, and a release and
4 discharge—all of which are aspects of routine trust administration under California law. *See* Cal.
5 Prob. Code § 17200(a), (b)(10)–(11); *Kasperbauer*, 171 Cal. App. 4th at 235. Although certain
6 beneficiaries have objected to the Trustee's accountings, the existence and nature of those
7 objections does not alter the Trustee's entitlement to (a) employ counsel on behalf of the Trust and
8 (b) pay counsel from the Trust's funds.

9 The Court should reject Respondents' objection—that the Trustee's Verified Petition only
10 benefits the Trustee in his individual capacity—out of hand. Respondents' Verified Joint Objection
11 states:

12 As stated earlier, Respondents are before this Court for one simple
13 reason: the Trustee brought us here, solely for HIS personal benefit,
14 NOT the benefit of the Trust.

15 Verified Joint Objection at 27. This objection, however, fundamentally misunderstands California
16 Probate Code § 17200 and ignores the plain language of the Harold Trust. First, California law
17 explicitly allows the Trustee to seek the court's approval of accountings, the approval of the
18 Trustee's resignation and the appointment of a successor trustee, and a release and discharge of
19 the Trustee. As California courts have recognized, “[p]reparing the accounting and responding to
20 the beneficiaries' objections to that accounting are aspects of trust administration,” and as
21 California Probate Code § 17200 recognizes, trustees may petition the court regarding appointing
22 and removing a trustee. *Kasperbauer*, 171 Cal. App. 4th at 235. Second, Respondents' position
23 neglects the terms of the Harold Trust that Ms. Sharon Harold herself created. The Harold Trust's
24 terms explicitly allow the Trustee to employ counsel and pay counsel from the Trust's funds, and
25 the Trust “is irrevocable and may not be amended or revoked in whole or in part by the Grantor
26 [Ms. Harold] or any other person.” Harold Trust, Art. I.
27

1 **D. The Harold Trust’s plain language entitles the Trustee to employ counsel and pay**
2 **counsel from the Trust.**

3 In addition to California law, article IV, ¶ F.11 of the Harold Trust authorizes the Trustee
4 to employ and pay counsel for the Trust. “In construing trust instruments, as in the construction
5 and interpretation of all documents, the duty of the court is to first ascertain and then, if possible,
6 give effect to the intent of the maker.” *Zahnleuter v. Mueller*, 88 Cal. App. 5th 1294, 1305, 305
7 Cal. Rptr. 3d 474, 482 (2023) (citing *In re Gump’s Estate*, 16 Cal. 2d 535, 548, 107 P.2d 17, 20
8 (1940)). “If the court can ascertain the testator’s intent from the words actually used in the
9 instrument, the inquiry ends. Where the terms of the instrument are free from ambiguity, the
10 language used must be interpreted according to its ordinary meaning and legal import and the
11 intention of the testator ascertained thereby.” *Zahnleuter*, 88 Cal. App.5th at 1305 (internal
12 citations and quotations omitted).

13 Here, article IV, ¶ F.11 of the Harold Trust is on point. That paragraph provides that the
14 Trustee may

15 employ counsel to assist and advise in the management, preservation
16 and administration of the Trust Estate; and to compromise, arbitrate,
17 settle, or litigate any matters pertaining thereto. The Trustee shall
pay reasonable compensation therefor, and the same shall be
charged against income and/or principal in such manner as the
Trustee shall deem just and equitable.

18 Harold Trust, Art. IV, ¶ F.11. Paragraph F.11 could not be clearer. The words show the testator’s
19 intent: the Trustee may employ counsel to assist in the administration of the Harold Trust, litigate
20 any matters related thereto, and pay reasonable compensation to counsel from the Trust’s funds.
21 Accordingly, the Court should grant partial summary judgment on the Trustee’s entitlement to (a)
22 employ counsel on behalf of the Trust; and (b) pay counsel from the Trust, as provided for in art.
23 IV, ¶ F.11 and under California law

24 **VI. CONCLUSION**

25 Both California law, the law governing the Harold Trust, and the terms of the Harold Trust
26 entitle the Trustee to employ counsel to assist in the administration of the Trust and pay reasonable
27 compensation from the Trust’s funds. Because the Trustee’s Petition is considered a routine

1 administrative matter under California law, the Trustee is entitled to employ counsel and pay
2 counsel from the Trust. The words of article IV, ¶ F.11 also allow the Trustee to employ counsel
3 and pay counsel from the Trust. Although the Trustee is not seeking an award of attorney's fees
4 and costs at this time, the Trustee reserves the right to do so at a later date. Accordingly, Petitioner
5 David A. Paice, as Trustee of the Harold Trust, respectfully requests that the Court enter an order
6 granting partial summary judgment on the Trustee's entitlement to (a) employ counsel on behalf
7 of the Trust and (b) pay the Trust's counsel from the Trust's funds as provided for under the terms
8 of the Harold Trust and applicable law.

9
10 Respectfully Submitted on September 8, 2023

11 LANE POWELL PC

12
13 By: /s/ Aleksander R. Schilbach

14 Gail E. Mautner, WSBA No. 13161
15 Aleksander Schilbach, WSBA No. 51693
16 1420 Fifth Avenue, Suite 4200
17 P.O. Box 91302
18 Seattle, Washington 98111-9402
Telephone: 206.223.7000
mautnerg@lanepowell.com
schilbacha@lanepowell.com

19 *Attorneys for David A. Paice, Trustee of the Sharon*
20 *M. Harold Irrevocable Trust Dated November 12,*
2004

21 I certify that this memorandum contains 3,077 words,
22 in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2023, I caused to be served a copy of the foregoing document to be delivered in the manner indicated below to the following person at the following address:

| | |
|---|---|
| Sharon M. Harold, <i>Pro Se</i> 100 River Bend Rd. #103 Reedsport, OR 97467 smharold7@gmail.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| Charles A. Harold, <i>Pro Se</i> 1455 N. Tomahawk Road Apache Junction, AZ 85119 chuckharold@gmail.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| John J. Harold, <i>Pro Se</i> 230 Westmond Drive Reedsport, OR 97467 john6231@live.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| Amy Jane Small, <i>Pro Se</i> P.O. Box 352 Graegle, CA 96103 aj.harold9@gmail.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| Angel Harold, <i>Pro Se</i> 26707 Isabella Parkway, #202 Canyon Country, CA 91351 angelharold25@gmail.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| Josette Harold Ramirez, <i>Pro Se</i> 11319 Playa St Culver City, CA 90230 jobabe007@gmail.com | <input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |

| | |
|--|--|
| Jenifer Sawyer, <i>Pro Se</i> 1819 74 th St. E Tacoma, WA 98404 send2jen3@gmail.com | <input type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |
| Nicole Loomis 31688D U.S. 97 Tonasket, WA 98855 nikkiloomis20@gmail.com | <input type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery |

DATED: September 8, 2023.

s/ Silvia Webb

Silvia Webb