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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In the Matter of

THE STERLING FAMILY TRUST.

Case No. BP152858

Assigned to Hon. Michael Levanas, Dept. 5

**RESPONDENT'S REPLY IN SUPPORT  
OF BRIEF RE JURISDICTION**

Trial Date: July 7, 2014

Time: 1:30 p.m.

Dept.: 5

Petition Filed: June 11, 2014



**I. This Court Should Dismiss Shelly's Petition Sua Sponte Because the Requested Relief Is Not Necessary**

Petitioner Rochelle H. Sterling ("Shelly") consistently argues, with emphasis, throughout her pleadings, that the Sterling Family Trust is self-executing. *Probate Code* sections 17200 *et seq.* **does not require** this Court to approve or even rule on Shelly's Petition. Shelly sets forth that she abided the terms of the trust in having Donald declared incapacitated so that she became the alleged sole trustee of the Sterling Family Trust. *See, e.g.,* Cal. Code Civ. Proc. § 1060; Bender, 4-8 MB Prac. Guide: Cal. Trust Litigation, § 8.05[4] ("Until 1995, a person who was interested under a will or trust could seek judicial declaration of his or her rights or duties under the trust. If an actual controversy existed as to the existence of the trust, or as to the rights of two or more persons under terms of the trust, the court could resolve the controversy by granting declaratory relief under CCP § 1060. After January 1, 1995, however, an action for declaratory relief may not be maintained by a person who seeks a declaration of rights or duties under a will or a trust [see Stats. 1994, ch. 806, § 2]. The only remedy is a petition under Probate Code § 17200, which may be pursued only by a trustee or beneficiary [Probate Code § 17200(a)].") CCP § 1060.

Although we vigorously dispute the premise of Shelly's contention, namely that she is the sole trustee, but even if we assume, arguendo, that she is capable of selling the team to Mr. Ballmer, there is still no need for further Probate Court proceedings because the trust is as Shelly contends "self-executing" without the necessity of any court intervention [emphasis original]. (Pet. Brief of "Procedures", p. 4, l.7). Petitioner cannot have her cake and eat it too. There either is or is not a need for Court intervention.

The Legislature clearly contemplates and expressly states that the Probate Court *has absolute discretion* to "dismiss a petition if it appears that the proceeding is not reasonably necessary for the protection of the interests of the trustee or beneficiary." *Cal. Prob. Code* § 17202. The Legislature even went as far as to state that "[t]he administration of trusts is intended to proceed expeditiously and *free of judicial intervention*, subject to the jurisdiction of the court." *Cal. Prob. Code* § 17209 (emphasis added). Section 17206 of the *Probate Code* clearly grants this Court the authority to dismiss Shelly's Petition, which amounts to a request for declaratory relief



1 because the Sterling Family Trust is, by Shelly's emphatic admission, self-executing. Section  
2 17206 states that this Court "in its discretion may make any orders and take any other action  
3 necessary or proper to dispose of the matters presented by the petition. . . ." *Cal. Prob. Code* §  
4 17206.

5 The Court has correctly noted that Shelly is *not* asking this Court to interpret the terms of  
6 the trust instrument. Instead, Shelly seeks relief under *Probate Code* section 17200 to do nothing  
7 more than "bless" the actions taken by her. But no "blessing" is required under the terms of the  
8 Sterling Family Trust. Because the trust is self-executing, this Court should **abstain** from  
9 intervening in the matter and dismiss Shelly's Petition as improvidently filed without approving  
10 the sale as Shelly and Ballmer seek under the terms of the BTS. If Ballmer wants to force the sale  
11 to satisfy the BTS, that matter belongs in superior or federal court with a claim for specific  
12 performance. Probate court does not exist to approve the sale of NBA basketball teams.

13 **II. Shelly, as a Former Trustee of the Revocable Sterling Family Trust (Which Donald as**  
14 **a Co-Settlor Revoked), May Only Take Passive Acts to Wind Up the Affairs of the**  
15 **Trust**

16 As previously discussed, the Sterling Family Trust is expressly made revocable by its  
17 terms. The trust instrument is, and was, revocable by either settlor. This applies during the joint  
18 lifetimes of Shelly and Donald. *See Cal. Probate Code* § 15407(a) ("a trust terminates when any  
19 of the following occurs: . . . (5) The trust is revoked.").

20 As averred by Shelly, Donald exercised his unilateral right to revoke the Sterling Family  
21 Trust. This was prior to the Petition herein being executed or filed. Because the Sterling Family  
22 Trust was revoked, this Court can only authorize a former trustee or a revocable inter vivos trust to  
23 take passive actions in the winding up of the trust. California law does not authorize a former  
24 trustee of a revocable inter vivos trust to take acts that are active.

25 Here, the terms of the Sterling Family Trust require immediate distribution. The Sterling  
26 Family Trust asserts that assets "shall promptly be distributed to the settlors as their community  
27 property." Shelly's reliance on the second sentence which states "the Trustee may retain sufficient  
28 assets to secure payment of liabilities lawfully incurred by the Trustee . . . (see Ex. 4 to Shelly's



Ptn., p. 36, ¶ 2.5.a.) is unavailing because (1) until all conditions precedents are satisfied under the BTS, the Sterling Family Trust has incurred no liability to Ballmer and (2) the terms of the trust do not authorize a former trustee to create a new liability. *See Ball v. Mann*, 88 Cal.App.2d 695, 699 (2d Dist. 1948) (holding that a “court of equity has power to terminate a dry, simple or passive trust and may do so even before the time fixed for its termination by the terms of the trust instrument”) (citation omitted).

As in *Ball*, when the Sterling Family Trust terminated by operation of Donald’s revocation, the trust became passive, and legal as well as equitable title reverted back to the beneficiaries, in this case, Donald and Shelly.

Shelly incorrectly concludes that if she cannot consummate the sale of the Clippers to Mr. Ballmer, then Mr. Ballmer’s rights under the BTS are extinguished. Whether Mr. Ballmer’s rights in his contract with Shelly are affected is a contract issue that belongs in a civil, not a probate, court. Shelly states that “[a] revocable trust cannot escape its binding contractual obligations by the mere act of revocation after the contract has been formed.” Shelly Opp. 1:22-23. She goes on to assume that Donald takes a wholly contradictory position. This is far from the case. Donald asserts that (1) as the former trustee of the Sterling Family Trust, Shelly cannot take any additional active role in the sale of the Clippers and (2) any further action in the sale of the Clippers must be done by Shelly and Donald in their individual capacities.

In essence, the sale is now in the hands of Donald and Shelly, as individuals. Mr. Ballmer has claimed that he maintains the right to commence an action against Shelly, or Shelly and Donald, for specific performance. But if so, this Court is not the forum for that civil, contractual dispute. The Legislature made it very clear through the enactment of *Probate Code* sections 18200 and 19001 that a settlor, during his or her lifetime, cannot create a revocable trust to avoid his creditors. *See Laycock v. Hammer*, 141 Cal.App.4th 25, 31 (4th Dist. 2006). *Probate Code* section 18200 states, “[i]f the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor.” That claim, however, is a determination that belongs in a civil courtroom, and not within a trust proceeding before *this* Court.



1 **III. Shelly's Reliance on Case Law Concerning the Administration of Decedent's Estates**  
2 **Is Wholly Misplaced**

3 Shelly's reliance on *Estate of Nicholas*, 177 Cal.App.3d 1071 (3d Dist. 1986) is wholly  
4 misplaced, as the context is fundamentally different from the instant circumstances, which relate  
5 to the issue after the creation of a testamentary trust under the decedent's will. In *Estate of*  
6 *Nicholas*, William Nicholas died in 1966, leaving his entire estate to Bank of America, in trust,  
7 until his youngest child reached the age of 40 years. The testamentary trust terminated by its own  
8 terms in 1982 when the youngest child turned 40. The Sterling Family Trust is and was a  
9 revocable inter vivos trust. This distinction has significant legal implications. *Estate of Nicholas*  
10 is inapposite because it addresses the wind-up of an irrevocable testamentary trust and concerns  
11 post-death administration, which is entirely irrelevant to this proceeding.

12 *Estate of Scrimger*, 188 Cal. 158 (1922) concerns a testamentary trust that was created on  
13 the death of Nancy Scrimger. Four charitable institutions were named as the remainder  
14 beneficiaries of an undivided one-third (1/3) interest of the trust estate, including the Roman  
15 Catholic Orphan Asylum. However, Roman Catholic Orphan Asylum changed its name to Roman  
16 Catholic Orphan Asylum of San Francisco. Once again, Shelly relies on a case where the context  
17 is fundamentally different. In *Estate of Scrimger*, the court was required to construe the  
18 testamentary trust to determine who was the correct beneficiary. The circumstances of *Estate of*  
19 *Scrimger* offers no guidance here because that case dealt with distribution of assets to a  
20 beneficiary after the death of the testator.

21 **IV. Shelly's Reliance on Case Law Concerning Non-Inter Vivos Trusts Is Wholly**  
22 **Misplaced**

23 When relying on *Hise v. Superior Court*, 21 Cal.2d 614 (1943), Shelly has confused an  
24 inter vivos trust, such as the Sterling Family Trust, and a constructive trust or other types of trust  
25 agreements. *Hise* did not concern a revocable inter vivos trust and was not created by settlors.  
26 Instead, this matter dealt with equitable liens, debtor-creditor relationships, and an agreement  
27 where a company took title to and possession of all assets, both real and personal, owned by a loan  
28 association. Again, this case addresses legal issues not even contemplated by the *Probate Code*.

Again, Shelly's reliance on *Botsford v. Haskins & Sells*, 81 Cal. App. 3d 780 (1st Dist. 1978) is to no avail. This case provides no support for their argument as previously briefed by Donald.<sup>1</sup>

**V. Shelly's Desperate Position Is Underscored by Her Inability to Find Any Persuasive California Authority to Support Her Request**

Next, Shelly attempts to use inapplicable New York authority, which offers her no more support. *In re Lathers' Will*, 243 N.Y.S. 366 (N.Y. Sur. Ct. 1930) is a case in which the decedent, Mr. Lathers, left numerous gifts and left the residue of his estate to his executors and the survivor thereof in trust. This secondary source from 1930 does not relate to the facts at hand. Shelly is once again relying on a case concerning a testamentary trust where the trust was created on the death of the testator. *Lathers* is readily distinguishable from this matter, which involves a revocable trust that was revoked by a co-settlor and co-trustee.

*Neary v. City Bank Farmers Trust Co.*, 24 N.Y.S.2d 264 (App. Div. 1940) does nothing more to advance Shelly's position. In this New York case, the grantor created a living trust naming herself as the beneficiary and a trust company as the trustee. At a later time, the grantor revoked the trust by sending a letter to the trustee and demanded that the trustee immediately turn over to her all trust assets. *Neary* held that as a result of the termination of a trust, the trustee was able to render an accounting and seek approval of its past acts. Here, this case only concerns passive management in the rendering of an accounting. Nothing in *Neary* permits a *former* trustee, in this case Shelly, to take affirmative acts and sell a trust asset.

Lastly, Shelly attempts to use inapplicable Mississippi authority, namely *Peoples Bank v. D'Lo Royalties, Inc.*, 235 So.2d 257, 266 (Miss. 1970), to suggest that Shelly continues to have the authority to take active steps to sell the Clippers. Once again, Shelly has confused an inter vivos trust, such as the Sterling Family Trust, with a "business trust" or "Massachusetts Trusts." Neither a business trust or Massachusetts Trust have anything to do with the matter at hand. Those trusts

<sup>1</sup> See Donald's Memorandum of Points and Authorities Regarding Questions Raised by the Court, 4:12-28, 5:1-4.

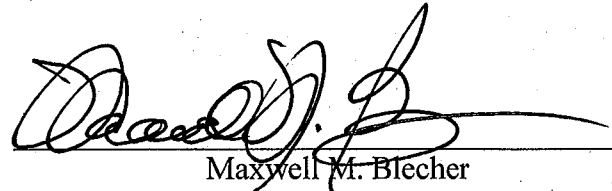
1 were widely used in the southern portions of the United States after the First World War in lieu of  
2 incorporation. It is unclear how *Peoples Bank* relates in any coherent fashion to the matter at  
3 hand.

4 For all of the foregoing reasons, Donald respectfully requests that the Court exercise its  
5 discretion and dismiss Shelly's Petition as being improperly before this Court.

6 Dated: June 29, 2014

BLECHER COLLINS PEPPERMAN & JOYE, P.C.

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8  
9 By:



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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 515 South Figueroa Street, Suite 1750, Los Angeles, CA 90071-3334.

On June 29, 2014, I served true copies of the following document(s) described as **RESPONDENT'S REPLY IN SUPPORT OF BRIEF RE JURISDICTION** on the interested parties in this action as follows:

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**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent to the persons at the e-mail addresses listed above.

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

Executed on June 29, 2014, at Los Angeles, California.

\_\_\_\_\_  
Lorelei L. Gerdine