

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM05
HON. Judge Ebrahim Baytieh

Date: 05/03/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Flint -Trust (2020-01127509)	<p style="text-align:center">MOTION FOR ASSIGNMENT ORDER</p> <p>Petitioner Pamela Koslyn’s motion for assignment (ROA 811) is DENIED.</p> <p>Petitioner Pamela Koslyn’s request for judicial notice (ROA 967) is GRANTED as to Exhibits 2-8, consistent with the limitations listed below.</p> <p><u>BACKGROUND</u></p> <p>On 3/20/18, Joyce Ann Flint (“Joyce”) created The Flint Family Trust (the “Trust”). Sandra B. DeMeo (“DeMeo”) became the successor trustee when Joyce passed away. The Trust provided that upon Joyce’s death, DeMeo was to marshal all trust assets, liquidate them, and divide the proceeds into two separate special needs trusts for Joyce’s two sons, Michael Flint (“Michael”) and Harry Guy Flint (“Guy”). Members of the Flint family are referred to by their first names for clarity only. No disrespect is intended. (<i>Young v. McCoy</i> (2007) 147 Cal. App. 4th 1078, 1081 fn.2.; and <i>In re Marriage of Olsen</i> (1994) 24 Cal.App.4th 1702, 1704, fn. 1.)</p> <p>On 6/17/18, Joyce executed a First Amendment to the Trust. The First Amendment established separate trusts for Michael and Guy to be equally funded with trust assets upon Joyce’s passing. Michael and Guy were to receive \$2,500 per month from their respective trusts. Upon the death of both Michael and Guy, any residue was to go to the Israeli Air Force.</p> <p>On 2/28/19, Joyce executed a document entitled “Modifications and Clarifications to my Last Will and Testament and the Flint Family Trust.” The parties have referred to this document as the “Second Amendment” to the Trust. The testamentary effect of this document is unclear, as is the direction for distributions. It states, “the balance of my estate will be divided equally between my two sons. Also, if Michael or Guy were to have a child, any trust assets will pass on to them and the clause to give funds to the Israeli Air Force will become null and void.” It also states that the trust properties should not be liquidated but should be used to provide income for Michael and Guy in lieu of the \$2,500 per month, indicating that there would still be two trusts for Michael and Guy. Further, this document provides that any “leftover” funds from the Trust should be “divided on the one hand, the Israeli Air Force Association, the Israeli Air Force Foundation, The Israeli Air Force Museum, or the IAF 101 Squadron room . . . and on the other hand, charitable or non-profit, endeavors such as a documentary on the Birth of the Israeli Air Force that features Mitchell, UCLA, UC Berkely, Cedars Sinai.”</p> <p>Joyce passed away on 3/20/19. Thereafter, Michael and Guy contested the validity of the First Amendment, and DeMeo contested the validity of the Second Amendment. On 1/28/20, DeMeo filed a “Petition Under Probate Code §</p>

17200(b) for Order Taking Jurisdiction Over the Trust and for Order Approving Settlement Agreement.” (ROA 2.) The settlement agreement made outright distributions of Trust real property and cash assets to Michael and Guy.

On 4/23/20, the court granted an *ex parte* application by DeMeo to approve the settlement agreement (the “4/23/20 Order”). (ROA 21.) The 4/23/20 Order states that “notice to all interested parties has been satisfied.” In fact, notice was not given to the contingent remainder beneficiaries, i.e., the Israeli Air Force, the named charitable beneficiaries, and/or the Attorney General for any unspecified charitable beneficiaries. Notice of Entry of Judgment was filed on 8/17/20. (ROA 42.)

A few months later, on 11/4/20, Pamela Koslyn (“Koslyn”) filed a Petition to Enforce Judgment against Michael’s interest in the Trust (“Enforcement Petition”). (ROA 84.) Koslyn is a Judgment Creditor of Michael, having obtained a Judgment for \$205,000 (plus interests, costs, and attorney’s fees) in a separate civil action (OCSC Case No. BC567687).

On 8/4/22, DeMeo filed a Petition for Instructions, seeking an order instructing the Trustee to rescind the settlement agreement based on the agreement of the parties (“Rescission Petition”). (ROA 368.) At some point after 10/19/22, Cheri O’Lavery (“O’Lavery”) became the Successor Trustee of the Trust in place of DeMeo.

Koslyn’s Enforcement Petition and DeMeo’s Rescission Petition were both sent to Judge Salter on the Civil Panel for trial. On 5/31/23, Judge Salter issued a minute order setting forth his ruling on Koslyn’s Enforcement Petition (the “5/31/23 M.O.”). (ROA 618.) With regard to DeMeo’s Rescission Petition, the 5/31/23 M.O. repeatedly states that the issues therein would be decided by the Probate Court. A formal judgment was entered on June 26, 2023 (the “6/26/23 Judgment”). (ROA 644.) As more fully set forth in this court’s minute order of 12/6/23 (ROA 789), the 6/26/23 Judgment entered by Judge Salter only pertains to Koslyn’s Enforcement Petition.

On 12/6/23, this court denied O’Lavery’s motion to set a hearing date on the Rescission Petition, finding that the settlement agreement could not be rescinded by agreement of the parties since it had become a court order; thus, the court opined that O’Lavery would need to move to vacate the court order. (ROA 789.) The court set its own Order to Show Cause re why the Rescission Petition should not be dismissed. (*Id.*) On 1/3/24, the court ruled on its Order to Show Cause and dismissed the Rescission Petition. (ROA 858.)

On 12/11/23, O’Lavery filed a Motion to Vacate the 4/23/20 Order. (ROA 795.) Michael and Guy separately joined in the motion. (ROAs 866 and 869.) Koslyn opposed it. (ROA 855.)

On 2/15/24, the court continued the hearing on the Motion to Vacate and ordered counsel for O’Lavery to give notice to the contingent remainder beneficiaries. (ROA 894.) Briefs were filed by the Regents of the University of California, Cedars-Sinai, and the Attorney General in support of O’Lavery’s Motion to Vacate. (ROAs 912, 947, and 950.) On 4/18/24, the court denied the Motion to Vacate, but left open the opportunity for the contingent remainder beneficiaries to file a motion to vacate. (ROA 991.) The court’s ruling on the Motion to Vacate indicates a likelihood that any such motions would be granted. (*Id.*)

MOTION

Pursuant to Code of Civil Procedure section 708.510, Koslyn moves “for an order assigning all right, title or interest possessed by Cheri O’Lavery, as Trustee of the Flint Family Trust, to pay rent or lease payments from Kimberly Starzyk and/or any other tenant for the lease of real property located at 738 S. Norton Avenue, Los Angeles, CA, and such other relief as may be just.” Koslyn claims Michael now owes approximately \$450,000 (with costs, fees, and interest), and the Trust is collecting \$4,975 per month in rent from the Norton Avenue Property.

In short, Koslyn is seeking to satisfy her civil judgment against Michael pursuant to the 6/26/23 Judgment.

There are several reasons why the assignment order requested could not be properly granted at this time, some of which are raised in O’Lavery’s Opposition to this motion. The court notes that the Opposition (ROA 973) and its supporting Declaration (ROA 958) are missing pages.

Koslyn’s enforcement remedies are limited to Michael’s interest in the Trust, not to Trust property in general. (Code Civ. Proc. § 709.010.) Michael’s interest in the Trust is uncertain at this time. There remains a possibility that the court’s order approving the settlement agreement will be set aside upon motion by the contingent remainder beneficiaries, thereby rendering the settlement agreement null and void since it was conditioned upon court approval. (RJN, Ex. 4, 4:28-5:9.)

More importantly, even if the settlement agreement remains in place, the terms of the settlement agreement condition Michael’s interest in the Norton Avenue property on his payment of one-half of the reverse mortgage obligation affecting another Trust property. (RJN, Ex. 4, 5:17-6:5, 8:27-9:12.) There is no evidence that such condition has been met.

The rent payments from the Norton Avenue Property could not properly be used to satisfy Koslyn’s civil judgment unless and until the rent payments are made payable to Michael through the Trust. (Prob. Code §§ 15300, 15301, 15307.) Even with the settlement agreement in place, Michael is not presently entitled to the rents on the Norton Avenue property.

As to the request for judicial notice listed above, while the court takes judicial notice of Exhibits 2 – 8 (ROA 967), the court does not take judicial notice of the truths asserted within those exhibits. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCourt* (2001) 91 Cal.App.4th 875, 882; see also *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 [“Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning.” [Citation.] While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein. [Citation.] ‘When judicial notice is taken of a document, ... the truthfulness and proper interpretation of the document are disputable.’ [Citation.]”].)

O’Lavery is ordered to give notice of this ruling.

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