VERMONT SUPERIOR COURT
Chittenden Unit
175 Main Street, PO Box 187
Burlington VT 05402
802-863-3467
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 21-CV-00084

Peter Val Preda, Jr. v. Diana Val Preda

DECISION ON RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This is a probate appeal of a trust action on remand from the Supreme Court. *See In re Peter Val Preda Trusts*, 2019 VT 61, 210 Vt. 607. Petitioner and trust beneficiary Peter Val Preda, Jr. ("Peter Jr.") seeks to remove the individual co-trustee—his sister and Respondent Diana Val Preda ("Diana")—and replace her with his wife, Nancy Val Preda. Peter Jr.'s statement of questions filed pursuant to V.R.C.P. 72 consists of 21 questions. Seeking to narrow the issues for trial, Diana moves for summary judgment on 16 of those 21 questions. For the reasons stated below, the court grants the motion.

Undisputed Facts

In 1992, Peter Jr. and Diana's father, Peter Val Preda, Sr. ("Peter Sr."), established two trusts: the Peter Val Preda Family Trust Revocable Trust Agreement ("Family Trust"), and the Peter Val Preda Insurance Trust Irrevocable Trust Agreement ("Insurance Trust"). He appointed himself as trustee of the Family Trust, with Diana and Chittenden Bank as successor trustees. He appointed himself and Diana as trustees of the Insurance Trust, with Chittenden Bank as his successor.

Peter Sr. died in 1995. After his death and for the remainder of her lifetime, his wife, Charlotte, had access to the income and principal from both trusts. She died in 2006, leaving Peter Jr. and Diana as the principal beneficiaries of both trusts.

The Family Trust had a traditional A/B construction, containing a marital trust (A) and a credit shelter trust (B). The credit shelter trust was funded up to the maximum of the estate tax exemption at the time of Peter Sr.'s death, with the remainder placed in the marital trust. After Peter Sr.'s death, the marital trust was split in two. The maximum generation skipping tax exempt amount (83 shares of Peter Val Preda Ltd.) flowed to a generation skipping trust ("GST Trust"), labeled the A-1 Trust, with the remainder left in the marital trust and labeled A-2. After Charlotte died, the GST (A-1) Trust was split equally between Diana and Peter Jr, to be held in further trust. The non-GST portion of the marital trust (A-2) was similarly split in two, except that half was distributed outright to Diana and Peter Jr.'s

half was held in further trust. The remaining assets in the credit shelter trust were also split in two, with half going to Diana free of trust, and half remaining in further trust for Peter Jr. Peter Jr.'s half from the credit shelter trust was ultimately combined with the A-2 trust assets.

Thus, Diana received most of the money from the Family Trust outright and free of trust, while Peter Jr.'s share continued to be held in trust. The trustees have complete discretion over income distributions to Peter Jr. except that he may not receive distributions if he is not working unless he is disabled or over age 60. No principal may ever be distributed to Peter Jr. from his portion of the Family Trust.

Upon Charlotte's death, the Insurance Trust created two trusts, one for Diana and one for Peter Jr. The Insurance Trust allows for income distributions to Peter Jr. and his children at the trustees' discretion with no obligation to do so equally. Peter Jr. may receive distributions from the Insurance Trust only if he is disabled, over 60, or employed, and no principal may ever be distributed to Peter Jr. from the Insurance Trust.

Discussion

What Peter Jr. ultimately seeks is to remove Diana as co-trustee and replace her with his wife. His statement of questions purports to articulate various ways by which Diana has allegedly failed in her duties as trustee and which, he contends, require her removal as co-trustee. Diana concedes that five of the 21 questions involve disputed facts for trial. She moves for summary judgment on the other 16 questions on the grounds that they are duplicative, barred by the statute of limitations, or otherwise fail to state a claim under the Vermont Trust Code. The court notes that there appears to be really only one issue or claim here: the potential removal of Diana from her position as co-trustee. Nevertheless, to the extent that the 21 questions could somehow be construed as separate claims, the court addresses each in turn.

I. Questions Conceded by Respondent

Diana concedes that the following five questions involve disputed factual issues that must await trial:

> 4) Whether or not the individual trustee has performed her duties as a fiduciary regarding communication with the beneficiary;
>
> 9) Whether or not the individual trustee has acted for the benefit of the beneficiary;
>
> 16) What is the relationship between the individual trustee and the beneficiary;
>
> 17) What is the relationship between the individual trustee and the remaindermen;

21) Whether or not the individual trustee is responsive to the beneficiary.

Peter Jr. does not contest that the inquiry on these questions should be limited to the one-year statutory period before the original petition was filed in June 2018.

II. Statute of Limitations

Diana contends that Questions 3, 6, 18, 19, and 20 are time-barred. Those five questions are:

> 3) Whether or not the individual trustee has committed acts of self-dealing;
>
> 6) Whether or not there is a missing trust account and if so, the location of the missing trust account;
>
> 18) Where is the missing $2,000,000.00;
>
> 19) What w[]ere the assets of Peter Val Preda Ltd at the time of the dissolution;
>
> 20) Which stockholders received the assets of Peter Val Preda Ltd at the time of dissolution if any, and if so at what percentage.

"A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." 14A V.S.A. § 1005(a). Such a report adequately discloses the existence of a potential claim "if it provides sufficient information so that the beneficiary or representative knows or has reason to know of the potential claim or that the beneficiary had a duty to inquire further and the response to such an inquiry would have disclosed the potential claim." *Id*. § 1005(b). "The burden of proving that a claim is barred by the statute of limitations rests on the party asserting the defense." *Fucci v. Moseley & Fucci Assocs., Ltd.*, 170 Vt. 626, 627 (2000) (mem.) (citing *Monti v. Granite Savings Bank & Trust Co.,* 133 Vt. 204, 209 (1975)). Application of these principles makes clear that these questions are time-barred.

The "missing trust account" allegation in question 6 refers to a generation-skipping trust ("GST Trust" or "A-1" trust) created as a subtrust of the Family Trust. The GST Trust was created in 1998 and funded with shares of Peter Val Preda Ltd. Those shares were liquidated in 2005, and the remaining cash in the GST Trust was combined with the Insurance Trust assets in 2007. Peter Jr. received account statements that detailed the combining of these trust assets in early 2008. Resp.'s Statement of Undisputed Mat. Facts ¶ 24; Ex. 8 and 9. Notably, Exhibit 8 plainly refers to an irrevocable "A-1" trust, as well as the dissolution of "Peter Val Preda Ltd." Furthermore, a version of that same statement—produced by Peter Jr. in discovery—includes handwritten notes indicating that

half went to Peter Jr. and half to Diana. *See* Ex. 20 at 3. The record reflects no indication of a "missing trust account" and, in any event, the statements Peter Jr. received provided adequate notice of any potential claim regarding the trust in question. Thus, his allegation falls well outside the one-year statute of limitations.

Questions 18, 19, and 20 all relate to Peter Jr.'s allegation that $2 million went missing from the trusts around the time that Peter Val Preda Ltd was dissolved in the mid-2000s. The statements he received in 2008, however, gave him ample notice of the trust assets after the company sold its assets and was subsequently dissolved. Moreover, Peter Jr. actually raised the issue of the allegedly missing $2 million as early as May 2011—a full 11 years ago. *See* Resp.'s Statement of Undisputed Mat. Facts ¶ 27. In fact, he even consulted with an attorney at the time, but never filed suit or took any action to extend the statute of limitations. *Id*. ¶ 28. Hence, the issues raised in Questions 18, 19, and 20 are also plainly time-barred.

As to question 3, the only alleged act of "self-dealing" that is not already clearly covered by questions 6 and 18–20 is Peter Jr.'s accusation that Diana attempted to give herself a 17% share of Peter Val Preda Ltd by taking advantage of her mother's diminished competency. *See* Pet'r's Opp'n at 12–13; Ex. C. As Exhibit 19 makes clear, however, no such gift occurred. *See* Ex. 19 (Estate of Charlotte Val Preda Form 706, Sched. F) (listing 83 shares of Peter Val Preda Ltd. in the A-1 trust and 17 shares in the A-2 trust after Charlotte's death). Moreover, given the reports Peter Jr. received in 2008, *see* Ex. 8 and 9, he had ample notice of the trust assets of Peter Val Preda Ltd. years ago. The statute of limitations has long since run.

III. Failure to State a Claim

Next, Diana seeks dismissal of questions 1, 2, 5, 7, 8, 10, 11, 12, 13, 14, and 15 for failure to state a claim recognized by the Vermont Trust Code and, alternatively, because they are duplicative of other claims. Chapter 8 of Title 14A outlines a trustee's duties, including the duty to administer the trust, the duties of loyalty, impartiality and prudent administration, and the duty to inform and report. 14A V.S.A. §§ 801–04, 813. To remedy a breach of trust, the court "may . . . remove the trustee as provided in section 706." 14A V.S.A. § 1001(b)(7).

"[A] beneficiary may request" the court to remove a trustee under 14A V.S.A. § 706(b) or to replace a trustee under § 706(c). *Id*. § 706(a). The court "may remove" a trustee for the following reasons:

(1) the trustee is obviously unsuitable;

(2) the trustee has committed a serious breach of trust;

(3) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(4) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;

(5) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the Probate Division of the Superior Court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available;

(6) for any cause, if the interests of the trust estate require it.

14A V.S.A. § 706(b). A court may replace a trustee if it "finds that a change in trustee would be in keeping with the intent of the settlor." *Id*. § 706(c). In making this determination, the court may consider several factors:

(1) Whether removal would substantially improve or benefit the administration of the trust;

(2) The relationship between the settlor and the trustee as it existed at the time the trust was created;

(3) Changes in the nature of the trustee since the creation of the trust;

(4) The relationship between the trustee and the beneficiaries;

(5) The responsiveness of the trustee to the beneficiaries;

(6) The experience and skill level of the trustee;

(7) The investment performance of the trustee;

(8) The charges for services performed by the trustee; and

(9) Any other relevant factors pertaining to the administration of the trust.

Id.

Seven of the questions on which Diana seeks summary judgment are plainly duplicative and add nothing of substance to the remaining claims:

1) Whether or not the friction between the individual trustee and the beneficiary is incurable;

5) Whether or not the trustee has acted to oppress the beneficiary;

7) Whether or not the trustee has a bias against the beneficiary;

8) Whether or not the individual trustee has infected the relationship between the beneficiary and the corporate trustee;

13) Whether or not there is a pattern of indifference by the individual trustee toward the beneficiary;

14) Whether or not the mindset of the individual trustee in relation to the beneficiary has caused friction between the parties;

15) Whether or not the bias and animosity of the Respondent towards the beneficiary has influenced the Respondent's actions;

These questions do not squarely raise any issue explicitly recognized by the Vermont Trust Code as allowing removal. That said, all of these questions potentially implicate either the relationship between Diana and Peter Jr., which is a factor under § 706(c)(4), or the duties of loyalty and impartiality under §§ 802 and 803. Notably, however, Questions 16 and 17 already explicitly deal with the relationship between trustee and beneficiary. Additionally, to the extent some of these seven questions allege a "pattern of indifference" or "bias and animosity," they are duplicative of Question 9 ("Whether or not [Diana] has acted for the benefit of the beneficiary"). While the issues raised in Questions 1, 5, 7, 8, 13, 14, and 15—friction, oppression, bias, mindset, etc.—might be relevant to questions 9, 16, and 17 and, therefore, such evidence might be admissible at trial to the extent probative of the parties' relationship or Diana's loyalty or impartiality, there is no purpose in allowing them to proceed as separate questions or "claims."

Question 10 asks: "Whether or not the individual trustee has actively managed the trust accounts." The Vermont Trust Code, however, does not require "active manage[ment]" of a trust account. *See generally* 14A V.S.A. §§ 901–06 (Uniform Prudent Investor Act). Instead, the Code sets forth a standard of "prudent administration," whereby the trustee must "consider[] the purposes, terms, distributional requirements, and other circumstances of the trust" and "exercise reasonable care, skill, and caution." 14A V.S.A. § 804; *see also id*. §§ 901–02. Nor do the trusts themselves contain an "active management" requirement. *See* Ex. 1 (Family Trust) §§ 6.11, 7.1(f), 8.3; Ex. 2 (Life Insurance Trust) §§ 9.11, 10.1(f), 11.3. In any event, it is undisputed that the corporate trustee, People's United Bank, actively manages the trust accounts. *See* Resp.'s Statement of Undisputed Mat. Facts ¶ 32. Thus, this question is irrelevant to the claim for removal.

Question 11 states: "Whether or not the individual trustee has provided information to the beneficiary which would allow him to protect his interest." A trustee must keep beneficiaries "reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests" and "promptly respond to a beneficiary's request for information related to the administration of the trust." 14A V.S.A. § 813(a). Additionally, a trustee must send a beneficiary particular information annually: "a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values." *Id*. § 813(c). It is undisputed that Peter Jr. has received statements on an annual or quarterly basis from the corporate trustee since the trusts' inception in the 1990s. *See* Resp.'s Statement of Undisputed Mat. Facts ¶ 16.[1] It is equally undisputed that those statements "detailed the assets held in the investment portfolio, including their market value, the gain and loss on those assets, trustee and investment fees, trust receipts and liabilities, the income distributed to Mr. Val Preda, and People's compensation," *id*. ¶ 17, and that this was consistent with 14A V.S.A. § 813(c). In short, to the extent relevant, the court answers this question in the affirmative, as a matter of law.

Question 12 asks: "Whether or not the individual trustee is unwilling to assist or aid the beneficiary." It is not clear what this question means. The Vermont Trust Code establishes no such duty to "assist or aid" the beneficiary. To the extent this question implies that Diana has been unresponsive to Peter Jr.'s inquiries, that issue is covered by Question 21.[2]

Question 2 asks: "2) Whether or not the trust accounts have performed as mandated in the trust document and under 14A V.S.A. § 706." Peter Jr. contends that Diana should be removed because the Trust assets' financial performance has fallen below a particular benchmark set forth in the Trusts. Neither the Trusts nor the Trust Code, however, authorize the court to remove Diana on that basis. The Trusts permit (but do not require) Diana to remove the corporate trustee if the investment performance does not meet a particular benchmark. Ex. 1, § 8.3; Ex. 2, § 11.3. Moreover, the investment performance reports provided by the corporate trustee plainly do not show three consecutive years of performance below the S&P 500 or Barclay's Capital Aggregate Index, as required by the Trusts, during the relevant limitations period. *See* Ex. 14; Resp.'s Statement of Undisputed Mat. Facts ¶ 36.

---

[1] Peter Jr. started receiving statements when he requested them in 2001. He received all statements since the inception of the Trust at that time. *See* Ex. 25; Resp.'s Reply in Support of Statement of Undisputed Mat. Facts ¶ 16.

[2] Curiously, Peter Jr. argues in his opposition that Diana has not been responsive to him. Pet'r's Opp'n at 12. That very issue, of course, is the core of Question 21, on which Diana has *not* moved for summary judgment and which Peter Jr. will have ample opportunity to litigate at trial.

Thus, even assuming that Diana could be removed as trustee for failure to remove the corporate trustee, she had no such power to remove the corporate trustee in these circumstances.

Lastly, Peter Jr. contends that to the extent that any of his questions fail to state a claim explicitly recognized by the Vermont Trust Code, at the very least they fall under § 706 (b)(6), which permits removal of a trustee "for any cause, if the interests of the trust estate require it." Peter Jr. apparently interprets § 706(b)(6) as a catch-all provision, but it clearly does not save duplicative questions. *Cf. Olde & Co. v. Boudreau*, 150 Vt. 321, 323 (1988) ("Rule 60(b)(6) may be invoked only when a ground justifying relief is not encompassed within any of the first five subsections of the rule."). Moreover, "[t]he doctrine of *ejusdem generis* deals with the interpretation of a residual catchall phrase at the end of a series or enumerated list, and it requires courts to interpret such catchall phrases by reference to the preceding, more specific, items in the list." *United States v. Craig*, 401 F. Supp. 3d 49, 78 (D.D.C. 2019) (citing *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114–15 (2001)); *see also In re Tyler Self-Storage Unit Permits*, 2011 VT 66, ¶ 8, 190 Vt. 132; *Vermont Baptist Convention v. Burlington Zoning Bd.*, 159 Vt. 28, 30 (1992); 2A Sutherland Statutory Construction § 47:17 (7th ed.). To interpret § 706(b)(6) as broadly as Peter Jr. suggests here would lead to absurd results and render the rest of the subsection meaningless. *See Jud. Watch, Inc. v. State*, 2005 VT 108, ¶ 16, 179 Vt. 214 ("statutes should not be interpreted to produce 'absurd or illogical' results").

ORDER

The court grants Diana's Motion for Partial Summary Judgment. The remaining "questions" for trial are Questions 4, 9, 16, 17, and 21. Those questions are limited to the one-year period before the original petition was filed in June 2018, pursuant to 14A V.S.A. § 1005(a).[3] Contemporaneously with the issuance of this decision, the court is striking Peter Jr.'s jury demand. The clerk will set a pretrial conference at the court's earliest convenience; counsel should be prepared to discuss their, their clients', and their witnesses' availability for the months of July, August, and September 2022.

Electronically signed pursuant to V.R.E.F. 9(d): 6/27/2022 5:16 PM

Samuel Hoar, Jr.
Superior Court Judge

[3] Because Peter Jr. received his 2017 annual statement in January 2018, just five months before filing his original petition, all activity appearing on that statement survives the one-year statute of limitations.