

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT
) SS:
COUNTY OF HAMILTON) DOCKET NO. 29D03-0910-EU-141

DEBORAH J. SIMON,

Plaintiff

v.

BREN SIMON, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
MELVIN SIMON, AND BREN SIMON, AS)
TRUSTEE OF THE MELVIN SIMON FAMILY)
ENTERPRISES TRUST AGREEMENT DATED)
OCTOBER 28, 1990 (AMENDED AND)
RESTATED ON DECEMBER 11, 2003; AND)
THEN FIRST AMENDED ON JULY 2, 2005; AND)
THE MELVIN SIMON FAMILY TRUST)
AGREEMENT NUMBER ONE DATED)
DECEMBER 11, 2003; AND THE MELVIN)
SIMON FAMILY TRUST AGREEMENT)
NUMBER TWO DATED DECEMBER 11, 2003;)
AND THE MELVIN SIMON FAMILY TRUST)
AGREEMENT NUMBER THREE DATED)
DECEMBER 11, 2003; AND THE MELVIN)
SIMON FAMILY CHARITABLE TRUST)
AGREEMENT NUMBER ONE DATED)
DECEMBER 11, 2003; AND THE MELVIN)
SIMON FAMILY CHARITABLE TRUST)
AGREEMENT NUMBER TWO DATED)
DECEMBER 11, 2003; AS CONSOLIDATED AND)
AMENDED AND RESTATED IN FULL ON JUNE)
10, 2006, KNOWN AS THE MELVIN SIMON)
RESTATED FAMILY ENTERPRISES TRUST; AS)
FIRST AMENDED ON AUGUST 3, 2006; AND)
SECOND RESTATED ON MAY 7, 2007; AND)
THIRD RESTATED ON JANUARY 19, 2008; AND)
FOURTH RESTATED ON FEBRUARY 13, 2009),)

Defendants.)

HAMILTON COUNTY, INDIANA

2010 JAN - 7 PM 3:24

VERIFIED COMPLAINT TO CONTEST WILL

Deborah J. Simon ("Deborah") hereby brings her Complaint against Bren Simon in her capacity as Personal Representative and Trustee ("Bren"), stating as follows:

INTRODUCTION

1. Deborah brings this action against Bren, the second wife of her late father, Melvin Simon ("Melvin"), to set aside the last version of Melvin's will. This will and a contemporaneous trust, which were hastily prepared and executed on February 13, 2009, dramatically altered Melvin's estate plan to Bren's benefit at a time when he was in ill health and dependent on Bren for his care.

2. Melvin's previous comprehensive estate plan had been in effect for more than a decade. That estate plan, as reflected in his will and trust, was the result of a carefully considered, deliberate process and was developed with the assistance of Melvin's lawyers, including a local law professor specializing in tax, trusts, and estates, as well as his accountants and financial planners. It was implemented only after numerous memoranda and written and oral presentations were made to Melvin setting out his assets and how they would be distributed upon his death. Essentially, this prior estate plan divided his assets into three equal portions: one-third for Bren outright; one-third for a marital trust with Bren as the sole income beneficiary (with the remainder to pass to Melvin's children upon her death); and, consistent with Melvin's lifetime practice of philanthropic activity, one-third to a series of charitable lead annuity trusts that would donate tens of millions of dollars each year to various local and national charities, with Melvin's children ultimately receiving the remainder (if any) after a predetermined period.

3. On February 13, 2009, this estate plan was radically altered after a three-hour meeting prior to and during which Melvin was not provided a single document summarizing his assets or the new estate plan. Melvin was not provided a draft of the new estate documents

before the meeting, nor did he even read them in their entirety during the meeting. Under this new estate plan, Bren would receive hundreds of millions of dollars more than Melvin had previously intended to provide, the inheritance of Deborah, Cynthia A. Simon Skjodt, and David E. Simon would be dramatically reduced, and essentially all charitable donations would be eliminated.

4. According to these hastily created documents, Bren is to receive outright one-half of an estate that totals more than \$1 billion, while the other half is to be placed in a marital trust with Bren as the sole income beneficiary. These documents also suggest that it was Melvin's intent – after a lifetime of charitable giving totaling more than \$150 million – to leave more than a billion dollars to Bren with almost nothing going to charity until, at the earliest, her death (which, as an actuarial matter, is not expected for 20 years). Moreover, these changes were so hurriedly implemented that the trust agreement is now internally inconsistent and makes little sense as drafted and executed. And all of this took place while Melvin was very ill and dependent on Bren for his care and well-being. In fact, Melvin was so ill that he was unable to sign either the new will or trust agreement himself, necessitating someone to hold a pen in Melvin's hand and move his hand as he allegedly "signed" both documents.

5. Accordingly, Deborah has brought this action in an effort to see that Melvin's actual wishes, charitable and otherwise, are carried out.

PARTIES, JURISDICTION, VENUE

6. Melvin Simon died on September 16, 2009, at the age of 82. He was domiciled in Hamilton County, Indiana at the time of his death.

7. Deborah J. Simon and Cynthia A. Simon Skjodt are the natural daughters of Melvin, and they are domiciled in Hamilton County, Indiana. David E. Simon is the sole

surviving son of Melvin, and he is domiciled in Hamilton County, Indiana. Deborah, Cynthia, and David are hereafter referred to as the "Simons."

8. As the daughter of Melvin, Deborah is an interested party in his estate pursuant to Indiana Code Section 29-1-1-3. She also is an interested party in The Melvin Simon Family Enterprises Trust Agreement as his daughter and because she is a beneficiary of that trust.

9. Bren Simon is the personal representative of Melvin's estate and trustee of the Melvin Simon Family Enterprise Trust Agreement and is domiciled in Hamilton County, Indiana.

10. Jurisdiction and Venue are proper pursuant to Indiana Trial Rules 75(A)(2) and (8).

BACKGROUND FACTS

11. Melvin was born on October 21, 1926.

12. In 1955, Melvin married Bess Meshulam Simon, and the Simons are children of that marriage.

13. The Simons each enjoyed a good personal relationship with their father and had, throughout his life, been the natural objects of his affection and benevolence.

14. Melvin divorced Bess Simon and in 1972 married Bren. Bess Simon died in 1977.

15. Upon information and belief, Bren is 66 years old. According to the 2001 Commissioners Standard Ordinary Mortality Table, the life expectancy for a 66 year-old woman is 18.48 years.

16. Melvin and Bren had one child, Joshua Simon, who predeceased them.

17. Bren had a child from an earlier marriage, Tamme McCauley ("Tamme"), who was adopted by Melvin at approximately age 40.

I. Melvin's Illness and Bren's Undue Influence

18. In his later years, Melvin's health declined.

19. Melvin suffered from neurological disorders that impaired his language, reading, writing, cognition, memory, and understanding.

20. Melvin was at one point diagnosed with Lewy Body Dementia, the effects of which on the cognitive, physical and behavioral well-being, and functioning of an individual are similar to Alzheimer's and Parkinson's diseases. He also was diagnosed with Cortico Basal Degeneration, which impairs an individual's cognitive function like dementia and Alzheimer's disease.

21. Melvin was suffering from a variety of illnesses that resulted in a deterioration of his physical and mental conditions.

22. As a result of his medical conditions, Melvin also became increasingly reliant on others for his care and well-being.

23. Late in his life, Melvin was unable to provide for his own care, conduct his personal financial affairs, or otherwise function independently.

24. Bren was aware of and had knowledge of Melvin's weakened and susceptible state of mind.

25. Bren made various statements that Melvin was not in his right mind and could not care for himself, sign documents, or manage his personal affairs.

26. During the period of Melvin's declining health, Bren took almost complete control of his healthcare and other aspects of his life.

27. Late in his life, Melvin was dependent on Bren in all facets of his life.

28. Melvin died on September 16, 2009.

29. Melvin's assets, including those in the trusts, are estimated to be in excess of one billion dollars (\$1,000,000,000).

II. Melvin's Estate Plan and Administration of the Estate

30. Before February 13, 2009, Melvin had an estate plan that consisted principally of his Last Will and Testament dated June 10, 2006 ("2006 Will"), and a Trust named "The Melvin Simon Family Enterprises Trust Agreement," dated October 28, 1990, which, together with a series of other trusts, was consolidated, amended, and restated as "The Melvin Simon Restated Family Enterprises Trust," dated June 10, 2006. A true and accurate copy¹ of the 2006 Will is attached hereto as **Exhibit A**.

31. Before February 13, 2009, The Melvin Simon Restated Family Enterprises Trust Agreement was amended and restated by Melvin, as the settlor, on June 10, 2006 and May 7, 2007 ("Prior Trusts"). It was amended and restated again on January 19, 2008. A true and accurate copy² of the trust executed on January 19, 2008 (the "2008 Trust") is attached hereto as **Exhibit B**.

32. Before 2006, previous versions of Melvin's will and trust had been developed after lengthy and detailed consultations with Melvin's lawyers, including a local law professor specializing in tax, trusts, and estates, as well as his accountants and financial consultants.

33. Melvin's various advisors had assisted him in developing his estate plan through a deliberate process that included numerous memoranda and written and oral presentations setting out Melvin's assets and how they would be distributed upon his death.

34. Upon information and belief, Melvin has donated more than \$150 million to charitable causes during his lifetime.

¹ Deborah does not allege or admit that the 2006 Will is operative or valid, but merely alleges that the document attached as Exhibit A constitutes the true and accurate copy of the document.

35. Bren met with the Simons regarding Melvin's estate on October 13, 2009 ("October 13 Meeting"). Eric Manterfield ("Manterfield") and Marianne Schmitt Hellauer ("Hellauer"), both of whom represent Bren as executrix of Melvin's estate, and Bruce Jacobson ("Jacobson"), an accountant and financial advisor to Melvin and Bren, also attended this meeting.

36. At the October 13 Meeting, Bren, through counsel, claimed that Melvin purportedly executed a "new" will on February 13, 2009, (hereinafter the "Altered Will"), a true and accurate³ copy of which is attached hereto as **Exhibit C**.

37. Bren also asserted that Melvin allegedly amended and restated the 2008 Trust on February 13, 2009 (hereinafter the "Altered Trust"), a true and accurate⁴ copy of which is attached hereto as **Exhibit D**.

38. On October 13, 2009, Bren filed a Petition for Probate of Self-Proved Will, Issuance of Letters Testamentary and for Unsupervised Administration.

39. On October 13, 2009, the Court issued an Order admitting a subsequent will dated February 13, 2009 to Probate, appointing Bren Executrix of the Estate of Melvin Simon, issuing Letters Testamentary to Bren on her Oath as Executrix, and authorizing her to administer the Estate of Melvin Simon without Court supervision.

² Deborah does not allege or admit that the 2008 Trust is operative or valid, but merely alleges that the document attached as Exhibit B constitutes the true and accurate copy of the document.

³ Deborah does not allege or admit that the Altered Will is an operative or valid will, but merely alleges that the document attached as Exhibit C constitutes the true and accurate copy of the document which Bren asserts to be Melvin's operative will.

⁴ Deborah does not allege or admit that the Altered Trust is operative or valid, but merely alleges that the document attached as Exhibit D constitutes the true and accurate copy of the document which Bren asserts to be Melvin's operative trust.

III. Genesis of Altered Will and Altered Trust

40. The Altered Will and Altered Trust were purportedly signed on February 13, 2009.

41. Manterfield allegedly represented Melvin during the period in which the Altered Will and Altered Trust were created and purportedly executed.

42. Hellauer allegedly represents Bren and has never represented Melvin.

43. About one week before February 13, 2009, Hellauer traveled from Baltimore, Maryland and met with Melvin at his Indiana home.

44. Upon information and belief, at that meeting, Hellauer talked with Melvin about his estate plan. Melvin did not have any counsel present at this initial meeting.

45. As part of that meeting, Hellauer apparently called Manterfield on a speaker phone with Melvin in the room. Hellauer, who was Bren's attorney, apparently told Manterfield how Melvin's estate plan was to be changed (the "Phone Conversation").

46. Melvin apparently did not speak to Manterfield about these proposed changes during the Phone Conversation.

47. The Phone Conversation was the first time Manterfield was instructed to make changes to the 2006 Will or the 2008 Trust.

48. Manterfield did not speak to Melvin about his estate plan and the proposed changes to his 2006 Will and 2008 Trust between the time of the Phone Conversation and February 13, 2009.

49. Manterfield did not provide Melvin with any documents detailing or summarizing the suggested changes to the 2006 Will or 2008 Trust between the time of the Phone Conversation and February 13, 2009.

50. Manterfield did not provide Melvin with a draft of a new will or trust changing the 2006 Will or 2008 Trust between the time of the Phone Conversation and February 13, 2009.

51. Upon information and belief, neither Manterfield nor Jacobson provided Melvin with any documents detailing or summarizing his assets, the changes in distribution of his assets, or the tax implications of these suggested changes to the 2006 Will or 2008 Trust, either before or at the February 13, 2009 meeting.

52. Hellauer and Bren were present at Melvin's and Bren's Indiana home on February 13, 2009, and attended a meeting at which changes to the 2006 Will and 2008 Trust were discussed.

53. Manterfield and Jacobson also attended the February 13, 2009 meeting.

54. Jacobson and Manterfield allegedly explained this new estate plan to Melvin, and then later witnessed Melvin's purported execution of the Altered Will and Altered Trust.

55. No documents other than drafts of the will and trust were prepared or brought by Manterfield to Melvin's home on February 13, 2009 to assist Melvin's review of the new estate plan and any changes proposed by the Altered Will and Altered Trust.

56. During that meeting, Manterfield called his office and instructed that additional changes be made to Melvin's estate planning documents. Manterfield left the meeting to retrieve the Altered Will and Altered Trust from his office.

57. Melvin was unable to hold the pen and sign his name, and Jacobson held and moved Melvin's hand as Melvin allegedly signed the Altered Will and Altered Trust.

58. No videotape or audio recording was made of Melvin's purported execution of the Altered Will and the Altered Trust.

IV. Bren's Willful Alterations of the 2006 Will and 2008 Trust Diverted Assets to Her Benefit

59. The Altered Will and Altered Trust made material changes to Melvin's existing estate plan.

60. The 2008 Trust provided for the creation and funding of charitable lead annuity trusts ("CLATs") with approximately one-third of the residue of the Trust's assets for the benefit of charity.

61. Under the 2008 Trust, the CLATs were designed to pay all of the assets transferred to them to charity over terms of years specified in the CLATs, with any remainder interest at the end of the respective terms to pass to the Simons or Tamme, or to trusts for their benefit.

62. The 2008 Trust provided that approximately one-third of the residue of the Trust's assets were to be distributed to Bren outright, and one-third were to fund a marital trust for Bren, which provided income only to Bren and no right to invade principal.

63. Under the 2008 Trust, when Bren died, the remainder of the marital trust was to be distributed to trusts for the benefit of each of the Simons and Tamme in equal shares.

64. The Altered Trust operates much differently than the 2008 Trust.

65. According to the Altered Trust, substantially more of the residue of the trust's assets – one-half rather than one-third – is to be distributed to Bren immediately, and the remaining one-half (rather than one-third under the Prior Trusts) of the trust residue is to fund a marital trust for Bren's benefit.

66. After Bren's death, the remainder of the marital trust is no longer to be distributed directly to trusts for the benefit of the Simons and Tamme, removing a substantial benefit Melvin provided in the 2008 Trust for the Simons.

67. The Altered Trust substantially increases both the amount of the trust assets Bren would receive outright and the amount of assets that fund the marital trust of which she is trustee and sole lifetime beneficiary. The Altered Trust also allegedly removes specific charitable bequests in the Prior Trusts, purportedly eliminates the benefit charities would receive from the immediate operation of the CLATs, and substantially diminishes and postpones the benefit the Simons would receive from the marital trust after Bren's death, among other changes.

68. Under the Altered Will and Altered Trust, almost none of Melvin's assets are required to be used for charitable purposes until, at the earliest, after Bren's death.

69. All of this is contrary to the charitable intentions expressed in Melvin's 2006 Will, 2008 Trust, and the Prior Trusts.

V. Conflicting Terms in the Altered Trust

70. The language of the Altered Trust is internally inconsistent and conflicting.

71. One example of this internal inconsistency is the Altered Trust's treatment and funding of the CLATs.

72. Pursuant to the clear and unambiguous terms of the Prior Trusts, the 2008 Trust, and Melvin's long-standing estate plan, CLATs were to be effective and funded, immediately at his death, with approximately one-third of the residue of the trust's assets.

73. In multiple provisions spanning approximately 13 pages, the Altered Trust states that the CLATs are to be operational immediately upon Melvin's death, which is consistent with the Prior Trusts and the 2008 Trust.

74. For example, the CLAT for the Simons is to begin immediately upon Melvin's death and end after 12 years.

75. But other provisions of the Altered Trust provide that the CLATs be funded with the remainder property from the marital trust only after Bren's death, which would not work because, by the Altered Trust's own terms, the CLATs are to be operational immediately.

76. Manterfield has asserted that the CLATs were "intended" to be funded after Bren's death and that the Altered Trust contains "scrivener" errors that needed to be corrected.

77. It is uncertain whether or how the Altered Trust and these conflicting provisions in it were presented to Melvin or explained to him (if at all).

78. The conflicting provisions and inconsistencies are emblematic of the efforts to change Melvin's estate plan through a process initiated by Bren and Hellauer, and hurriedly facilitated by Manterfield and Jacobson.

79. The result is an ineffectual Altered Trust and estate plan that attempts to displace Melvin's clear and unambiguous intent and that could not have been understood by Melvin or any other person attempting to comprehend its meaning and effect.

VI. Breach of Fiduciary Duty and Undue Influence

80. Bren had various fiduciary duties to Melvin.

81. Bren has been a co-trustee of The Melvin Simon Restated Family Enterprises Trust Agreement since 2006.

82. Melvin executed a power of attorney on behalf of Bren that was in place for a period of time prior to his death.

83. As Melvin's attorney-in-fact, Bren had the obligation to exercise due care and to act for the benefit of Melvin, and as a trustee of The Melvin Simon Restated Family Enterprises Trust Agreement to exercise due care and act for the benefit of Melvin and all the trust beneficiaries.

84. Bren violated and breached her fiduciary duties to Melvin by exerting undue influence over Melvin for her personal and financial benefit.

85. Bren substituted her wishes for the wishes of the testator and settlor, Melvin.

86. Bren manipulated Melvin, as a result of her position of control and authority over him, causing him to make dispositions of his property in a manner that he would not have if left freely to act according to his own wishes.

87. Given the foregoing facts, circumstances, and legal relationships, the burden of proving the Altered Will and Altered Trust were freely negotiated and executed by Melvin shifts to Bren.

COUNT I – WILL CONTEST

88. Deborah incorporates by reference herein the allegations set forth in paragraphs 1 – 87 as though fully set out herein.

89. Deborah is an interested party in Melvin's estate pursuant to Indiana Code Section 29-1-1-3, with standing to bring claims asserting a Will Contest.

90. The Altered Will is invalid, illegal, and should be revoked.

91. The Altered Will was obtained through fraud, undue influence, duress, and/or other breaches.

92. As of February 13, 2009, Melvin did not have sufficient capacity to know the extent and value of his property, those who were the natural objects of his bounty, their desserts with respect to their treatment and conduct towards him, and to retain such facts in mind long enough to have a will prepared and executed.

93. Accordingly, Melvin lacked the necessary capacity to legally execute the Altered Will.

94. The Altered Will was unduly executed.

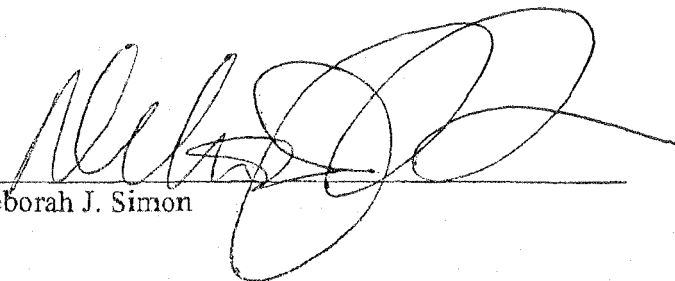
95. The Altered Will was the result of the unlawful imposition of Bren, facilitated by Hellauer, Manterfield, and Jacobson, whereby the victim, Melvin, was forced to do an act which was not his voluntary act.

RELIEF REQUESTED

WHEREFORE, the Plaintiff prays that the Court:

1. Invalidate the Altered Will;
2. Revoke its Order of October 13, 2009, admitting the Alleged Will to Probate, appointing Bren Simon Executrix of the Estate of Melvin Simon, issuing Letters Testamentary to Bren Simon and authorizing her to administer the Estate without Court supervision;
3. Order an accounting of all inter vivos transfers of Melvin's assets for the last five years of his life;
4. Order an accounting of all actions taken by Bren on behalf of Melvin pursuant to his power of attorney;
5. Order the imposition of a constructive trust to safeguard all of Melvin's assets until the remainder of Deborah's claims are resolved;
6. Award attorney's fees and the costs of this action to the Plaintiff; and
7. Grant all other relief that is just and proper in the premises.

I affirm under the penalties of perjury that the foregoing representations are true to the best of my knowledge and belief.




Deborah J. Simon

Dated: January 7, 2010

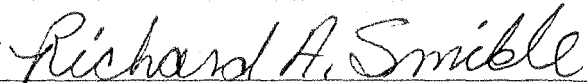
Respectfully submitted,

CHURCH, CHURCH, HITTLE & ANTRIM



Jack G. Hittle, Atty. No. 7550-29
938 Conner Street
P.O. Box 10
Noblesville, IN 46061
(317) 773-2190
(317) 773-5320 (fax)

ICE MILLER LLP



Richard A. Smikle, Atty. No. 1598-49
Andrew N. Vento, Atty. No. 22564-49
One American Square
Suite 2900
Indianapolis, IN 46282
(317) 236-2100
(317) 236-2219 (fax)

Counsel for Deborah J. Simon