

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

Bristol Division

DOCKET NO. BR15E0006QC  
BR13P2422EA

**PATRICIA A. GIROUX**, Personal Representative of the Estate of Joseph A. Peixoto  
and Trustee of the Oakland Peixoto Realty Trust u/d/t Dated May 19, 2006,  
*Plaintiff/Defendant-in-Counterclaim*

v.

**ARTHUR LARANJO, STEPHEN LARANJO, ELIZABETH REIS,  
JOHN REIS, and SUSAN TOOLIN,**  
*Defendants/Plaintiffs-in-Counterclaim*

and

**MARIA BERNADETTE LARANJO, MARIA ANTOINETTE REIS,  
and MARIA LOURDES AMARAL,**  
*Interested Persons/Plaintiffs-in-Counterclaim*

and

**PARTICIA A. GIROUX, JOSEPH H. ROSE,  
and NORTH EASTON SAVINGS BANK,**  
*Interested Persons*

**SUMMARY JUDGMENT  
ON COMPLAINT FOR DECLARATORY JUDGMENT**

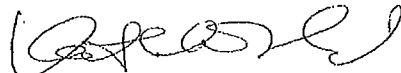
After hearing, Summary Judgment on the Complaint for Declaratory Judgment shall enter in favor of the Plaintiff as follows:

1. The final schedule of beneficiaries dated September 26, 2013 of the Oakland Peixoto Realty

Trust is controlling: the current beneficiaries of the Trust, with the passing of the lifetime beneficiary of the Trust, Joseph A. Peixoto, are now Patricia A. Girous (60%), Joseph H. Rose (10%), Maria Bernadette Laranjo (10%), Maria Antoinette Reis (10%) and Maria Lourdes Amaral (10%).

2. The Defendants and their agents, servants, employees and attorneys are permanently enjoined from taking any action in a capacity of either trustee or beneficiary of the Oakland Peixoto Realty Trust, including but not limited to pursuing lawsuits, distributing assets of the Realty Trust, selling assets of the Realty Trust or encumbering assets of the Realty Trust.

Dated: March 4, 2016



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Katherine A. Field, Justice  
Bristol Probate and Family Court

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**v.**

**ARTHUR LARANJO, STEPHEN LARANJO, ELIZABETH REIS,  
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*Defendants/Plaintiffs-in-Counterclaim*

**and**

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and MARIA LOURDES AMARAL,**  
*Interested Persons/Plaintiffs-in-Counterclaim*

**and**

**PARTICIA A. GIROUX, JOSEPH H. ROSE,  
and NORTH EASTON SAVINGS BANK,**  
*Interested Persons*

**MEMORANDUM OF DECISION and ORDER**

(On Plaintiff/Defendant-In-Counterclaim's Motion for Summary Judgment, filed June 22, 2015)

The above matter was before the Court (Field, J.) for hearing on December 14, 2015. The plaintiff/defendant-in-counterclaim Patricia A. Giroux (hereinafter "the Plaintiff") was represented at the hearing in her capacity as Personal Representative of the Estate of Joseph A. Peixoto and as Trustee of the Oakland Peixoto Realty Trust by Attorney David J. Correira and Attorney Eric D. Correira. The Plaintiff was represented in her individual capacity by Attorney Joseph F. DeMello. The defendants/plaintiffs-in-counterclaim, Arthur Laranjo, Stephen Laranjo, Elizabeth Reis, John Reis, and Susan Toolin (hereinafter "the Defendants"), were represented by Attorney Sean Michael

Murphy. Attorney Victor T. Sloan was present in his capacity as the Independent Trustee of the Oakland Peixoto Realty Trust.

After hearing and upon review of the pleadings, the Court hereby enters the following **ORDER**:

The Motion for Summary Judgment, filed by the plaintiff/defendant-in-counterclaim Patricia Giroux on June 22, 2015, is **ALLOWED**.

### **I. Background Information**

Joseph A. Peixoto (hereinafter "the Decedent") established the Oakland Peixoto Realty Trust on May 19, 2006 (hereinafter "the Trust"). The Trust was funded with two (2) properties, 246 Tremont Street and 250 Tremont Street, both located in Taunton, MA. The property at 246 Tremont Street was later sold and is no longer part of the Trust. The Trust and the remaining property, 250 Tremont Street, is the subject of the present litigation.

The Trust's schedule of beneficiaries provides the names of the successor beneficiaries to benefit from the Trust upon the death of the lifetime beneficiary, i.e. the Decedent. The Trust's schedule of beneficiaries was revised twice prior to the death of the Decedent. The original schedule of beneficiaries (hereinafter "the First Schedule of Beneficiaries") listed the Decedent as the lifetime beneficiary and the following individuals as successor beneficiaries with a certain percentage assigned to each successor beneficiary, Patricia A. Giroux (50%); Joseph A. Rose (26%); Maria Bernadette Laranjo (8%); Maria Antoinette Reis (8%); and Maria Lourdes Amaral (8%).

On May 29, 2012, the Decedent revised the distribution to the beneficiaries and executed the "Oakland Peixoto Realty Trust Amended Schedule of Beneficiaries" ("the Second Schedule of Beneficiaries"), which named the Decedent as the lifetime beneficiary and the following individuals as the successor beneficiaries and their proportions of the Trust, Arthur Laranjo (20%); Stephen Laranjo (20%); Elizabeth Reis (20%); John Reis (20%); and Susan Tolin (20%). On this date, the Decedent also executed the "First Amendment to the Oakland Peixoto Realty Trust" (hereinafter "the 2012 Amendment") adding an amendment to change "the manner of amending the Trust, such that the Trust may now be amended with the consent of the Trustee and any one (1) beneficiary." The beneficiaries from the First Schedule of Beneficiaries signed documents entitled "Consent," which acknowledge that the original beneficiaries consented to the change of the Trust's beneficiaries reflected in the Second Schedule of Beneficiaries and also consented to the amendment made to the Trust.

The Decedent was diagnosed with Amyotrophic Lateral Sclerosis ("ALS") in 2012 and his health began to decline soon afterwards. In June 2013, the Decedent executed several estate planning

documents, including a Power of Attorney, nominating the Plaintiff, Patricia Giroux, as his Attorney in Fact with Maria Bernadette Laranjo as the alternate. The Decedent also executed a Last Will and Testament on June 18, 2013, in which he changed the distribution of his estate. Attorney James F. Roger (hereinafter "Attorney Rogers") was retained by the Decedent to draft these estate planning documents. The Decedent died on September 29, 2013.

On September 24, 2013, another change to the schedule of beneficiaries was made and it is this change that is at issue in the present litigation. The Decedent requested that Attorney Rogers draft certain changes to the Trust and to the beneficiaries. The Decedent executed the "Second Amendment to the Oakland Peixoto Realty Trust Schedule of Beneficiaries ("Third Schedule of Beneficiaries"), which again identifies the Decedent as the lifetime beneficiary; however, the successor beneficiaries and their shares of the Trust were as follows, Patricia A. Giroux (60%); Joseph H. Rose (10%); Maria Bernadette Laranjo (10%); Maria Antoinette Reis (10%); and Maria Lourdes Amaral (10%). The Third Schedule of Beneficiaries was not executed by the Decedent, but by the Decedent's Attorney in Fact, the Plaintiff. The Third Schedule of Beneficiaries was witnessed by one of the named beneficiaries, Maria Bernadette Laranjo.

On September 26, 2013, the Plaintiff executed the "Second Amendment to the Oakland Peixoto Realty Trust" (hereinafter "the 2013 Amendment"). The document named the Plaintiff as the Successor Trustee for the Trust and Maria Bernadette Laranjo as the Second Successor Trustee. The Second Amendment to the Oakland Peixoto Realty Trust was not executed by the Decedent, but by his Attorney in Fact, and was witnessed by the Second Successor Trustee, Maria Bernadette Laranjo.

The Plaintiff filed a Petition for Informal Probate and to Appoint a Personal Representative on November 19, 2013 (Docket No. BR13P2422). The appointment was allowed and an Order of Informal Probate of Will and Appointment of Personal Representative was entered on December 5, 2013. On May 20, 2015, Maria Bernadette Laranjo and Maria Lourdes Amaral filed a Petition to Render, alleging that the Plaintiff has failed to prepare an inventory, render an account, or make a final distribution of estate assets. On June 8, 2015, the Plaintiff filed an Inventory for the Decedent's estate and on September 25, 2015, the Plaintiff filed a First Annual Account and a Petition for Allowance of Account.

On March 6, 2015, the Plaintiff filed a Complaint in Equity (Docket No. BR15E0006) seeking a declaratory judgment on the issue of whether a nominee trust's successor beneficiary can have any control over the trust while the lifetime beneficiary is still alive. The Defendants filed an Answer and Counterclaim on March 26, 2015, alleging that the Plaintiff breached her fiduciary duty to the Decedent, exerted undue influence upon him resulting in the change to the schedule of beneficiaries, and requested the removal of the Plaintiff as Personal Representative of the Decedent's estate. The Plaintiff then filed a Motion for Summary Judgment and a Memorandum in support

thereof on June 22, 2015, requesting that the Court dismiss the Counterclaim filed by the Defendants and also that the Court declare the Plaintiff, and the other beneficiaries listed on the Third Schedule of Beneficiaries, the proper beneficiaries of the Trust. On December 1, 2015, the Defendants filed an Opposition to the Plaintiff's Motion for Summary Judgment and a Memorandum in support thereof.

## **II. Discussion**

### *A. Summary Judgment*

Summary judgment is permissible when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56. A moving party may be entitled to summary judgment in one of two ways: first, he may submit affirmative evidence negating the nonmoving party's claim; or second, he may demonstrate that the nonmoving party cannot establish an element of his claim. Kourouvacilis v. General Motors Corp., 410 Mass. 706, 715 (1991), citing Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986) (White, J., concurring). "All evidentiary inferences are to be resolved in favor of the party opposing a motion for summary judgment." J.F. v. J.F., 71 Mass. App. Ct. 782, 789 (2008). "Doubts as to the existence of a genuine issue of material fact are to be resolved against the party moving for summary judgment." Allmerica Fin. Corp. v. Certain Underwriters at Lloyd's, London, 449 Mass. 621, 628 (2007).

"The party moving for summary judgment assumes the burden of affirmatively demonstrating that there is no genuine issue of material fact on every relevant issue, even if he would have no burden on an issue if the case were to go to trial." Pederson v. Time, Inc., 404 Mass. 14, 17 (1989), citing Attorney Gen. v. Bailey, 386 Mass. 367, 371 (1982). If the moving party is able to demonstrate a lack of genuine issue, "the burden shift[s] to the [nonmoving party] to show with admissible evidence the existence of a dispute as to material facts." Godbout v. Cousens, 396 Mass. 254, 261 (1985). The nonmoving party must then go beyond the pleadings and demonstrate specific facts to show that there remains a genuine issue of material fact requiring a trial. Slaven v. City of Salem, 386 Mass. 885, 890 (1982), citing Hahn v. Sargent, 523 F.2d 461, 468 (1st Cir. 1975).

The Plaintiff has filed a Motion for Summary Judgment, seeking to have the Court declare the Third Schedule of Beneficiaries and the 2013 Amendment to the Trust are valid. The Plaintiff argues that there are no disputes as to the material facts of the case; that the Plaintiff, acting as the Attorney in Fact for the Decedent, executed the Third Schedule of Beneficiaries and the 2013 Amendment changing the successor beneficiaries to the Trust and the proportion that each successor beneficiary is to receive, as well as naming successor trustees. The Plaintiff contends that she executed the document in good faith and that she did so at the direction of the Decedent, who was unable to execute said documents at that time. The Plaintiff contends that as the Attorney in Fact for the Decedent, she had the authority to change the schedule of beneficiaries.

The Defendants, however, believe that there are disputes as to the material facts of the case and therefore argue that the Motion for Summary Judgment should be denied. In support, the Defendants assert that while the Plaintiff was acting in a fiduciary capacity for the Decedent she improperly changed the successor beneficiaries so that she would personally benefit. The Defendants contend that the signatures of Maria Bernadette Laranjo on both the Third Schedule of Beneficiaries and the 2013 Amendment were obtained under false pretenses, as Maria Bernadette Laranjo has a limited understanding of written English and believed she was signing documents that said something different; therefore the execution of the documents was not valid. The Defendants also dispute whether the documents were even signed, relying on an email sent by Attorney Rogers on September 24, 2013 and subsequent letters sent by him to the individuals listed as successor beneficiaries on the Third Schedule of Beneficiaries. The Defendants believe that Attorney Rogers is a crucial component to the case and that his credibility should be determined through testimony. Based on these issues, the Defendants argue that summary judgment is not proper.

*B. Breach of Fiduciary Duty*

In Massachusetts, “a fiduciary who benefits in a transaction with the person for whom he is a fiduciary bears the burden of establishing that the transaction did not violate his rights.” Cleary v. Cleary, 427 Mass. 286, 295 (1998). “This burden is generally met if the fiduciary shows that his principal made the bequest with full knowledge and intent . . . or with the advice of independent legal counsel” (internal citation omitted). *Id.* at 291; see generally In re Estate of Moretti, 69 Mass. App. Ct. 642 (2007). If the fiduciary is able to meet their burden, then the burden shifts back to the challenging party to demonstrate by a preponderance of the evidence that the fiduciary exercised fraud or undue influence in order to procure the document in question. See Tarricone v. Cummings, 340 Mass. 758, 762 (1960) (in a will contest based on allegations of undue influence, burden of proof ordinarily rests with the party contesting the will).

It is clear that there was a fiduciary relationship between the Plaintiff and the Decedent, given that the Plaintiff was the Attorney in Fact for the Decedent, and the Decedent named the Plaintiff as Personal Representative in his Will. As there was such a relationship, the burden falls on the Plaintiff, as the fiduciary, to demonstrate that the transaction from which she benefitted (i.e. the execution of the Third Schedule of Beneficiaries) did not violate her fiduciary duty to the Decedent. If the Plaintiff is able to so demonstrate, then the burden shifts back to the Defendants to prove by a preponderance of the evidence that the Plaintiff exercised fraud or undue influence over the Decedent, resulting in the execution of the documents in question.

The Plaintiff has provided to the Court an Affidavit from Attorney Rogers. In the Affidavit, Attorney Rogers states that the Decedent contacted him in March 2013, asking for assistance in changing some estate planning documents. Attorney Rogers and the Decedent exchanged several drafts of said estate planning documents, including his Last Will and Testament, Durable Power of

Attorney, and Health Care Proxy. Further, on July 31, 2013, Attorney Rogers states that the Decedent contacted him regarding making changes to the Trust and the Schedule of Beneficiaries. Attorney Rogers drafted said changes, however the Decedent's health swiftly declined and on September 23, 2013, Attorney Rogers was informed that the Decedent was in a semi-comatose state. The changes to the Trust and the Schedule of Beneficiaries had not yet been executed by the Decedent. Attorney Rogers discussed with the Plaintiff if she would be able to execute those documents as the Decedent's Attorney in Fact. On September 24, 2013, the Plaintiff executed the Third Schedule of Beneficiaries and on September 26, 2013, the Plaintiff executed the Second Amendment to the Oakland Peixoto Realty Trust. Attorney Rogers states that he was present when the Plaintiff and Maria Bernadette Laranjo signed each of those documents and that he notarized said documents. Attorney Rogers states in his Affidavit that both the Third Schedule of Beneficiaries and the 2013 Amendment reflect the wishes and the intent of the Decedent, based on the meetings and correspondence that took place between the Decedent and Attorney Rogers in the months leading up to the execution of the documents.

The Plaintiff argues that the Affidavit from Attorney Rogers demonstrates that the Decedent had access to independent legal counsel and that the 2013 Amendment and the Third Schedule of Beneficiaries were executed as the Decedent had intended and with his full knowledge. The Plaintiff also argues that the changes made to the distributions of the Trust reflect the distributions that resulted from the changes the Decedent made to his Will, which was executed on June 18, 2013. The Will provides for the same percentage shares and names the same individuals as are listed in the Third Schedule of Beneficiaries. Therefore, the Plaintiff argues, it is reasonable for the Decedent to have changed the Trust beneficiaries and their shares to what was provided in the Third Schedule of Beneficiaries, as it is reflective of what he provided in his Will.

The Defendants challenge the validity of the Third Schedule of Beneficiaries and the 2013 Amendment, arguing that the Plaintiff breached her fiduciary duty by executing the documents because she personally benefitted from those documents. Defendants have failed to offer any evidence to support their position other than a conclusory statement that Plaintiff benefitted by the transaction.

The Defendants provided an email from Attorney Rogers to the Plaintiff, dated September 24, 2013, in which he stated that he was "disappointed that [he] could not be of assistance in finalizing the documents that [the Decedent and Attorney Rogers] had discussed." The significance of this letter was clarified by Attorney Rogers in his deposition testimony that he had returned to Joseph's home on September 26, 2015 at which time Patricia, as attorney-in-fact and Maria Bernadette Laranjo signed the document.

The Defendants also provided copies of letters from Attorney Rogers, on dated July 22, 2014 and the other dated August 7, 2014, addressed to the successor beneficiaries listed on the Third



Schedule of Beneficiaries, regarding how to go forward with the Decedent's estate and the Trust. The letters mention that Attorney Rogers was working with the Decedent before he died to update his estate planning documents and that the Decedent's intention was to name a successor Trustee, change the schedule of beneficiaries, and restructure the Trust's distributions to be distributed by the Trustee upon the Decedent's death. The Defendants argue that these pieces of evidence demonstrate that the Third Schedule of Beneficiaries and the 2013 Amendment are not valid because they were not "complete" prior to the Decedent's death and therefore calls in to question the credibility of Attorney Rogers.

The Court finds there to be no dispute as to material fact on the issue of whether or not the Plaintiff breached her fiduciary duty to the Decedent. Therefore, as the Court finds that the Plaintiff has met her burden of demonstrating that the transaction in which she benefitted (i.e. the execution of the Third Schedule of Beneficiaries and the 2013 Amendment) did not violate the Decedent's rights, the Plaintiff is entitled to a judgment as a matter of law. The Decedent had the counsel of an independent attorney, Attorney Rogers, and communicated with that attorney multiple times prior to when his health declined in September 2013. Attorney Rogers drafted several different estate planning documents, including the Decedent's Will and Power of Attorney, which the Decedent reviewed and signed in June 2013. The Decedent then contacted Attorney Rogers for his assistance in drafting an amendment to the Trust and to change the beneficiaries to the Trust. The changes the Decedent made to the beneficiaries reflect the changes that he made to the Will. Unfortunately, the Decedent's health took a turn before he was able to personally execute the 2013 Amendment and the Third Schedule of Beneficiaries, however, Attorney Rogers states that the documents reflect the wishes and intent of the Decedent. The changes made in the Third Schedule of Beneficiaries mirror the changes that were made in the Decedent's Will in terms of the percentage of distributions and the individuals named as beneficiaries. Based on the foregoing, the Court finds that the Plaintiff has met her burden and the burden now shifts to the Defendants to prove by a preponderance of the evidence the existence of undue influence.

### *C. Undue Influence*

As the Court has found that the Plaintiff met her burden of demonstrating that the execution of the 2013 Amendment and the Third Schedule of Beneficiaries did not violate her fiduciary duty to the Decedent, for the Defendants to succeed, they must prove the existence of undue influence. The burden of proving undue influence is on the contestant. Hogan v. Whittemore, 278 Mass. 573, 578 (1932); Tetrault v. Mahoney, Hawkes, & Goldings, 425 Mass. 456, 464-465 (1997). "Four considerations are usually present in a case of undue influence: 'that an (1) unnatural disposition has been made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to exercise undue influence and (4) who in fact used that opportunity to procure the contested disposition through improper means'" (citations omitted). O'Rourke v. Hunter, 446 Mass. 814, 828 (2006). "Although the reasonableness of the provisions of a will may have some bearing

upon the issues of the testamentary capacity of a decedent and undue influence exercised upon him, even if the provisions seem to be unreasonable, this fact 'would not of itself justify' a finding that the will 'was the product of an unsound mind or of undue influence'" (citations omitted). O'Brien v. Collins, 315 Mass. 429, 431 (1994). "Fraud and undue influence in this connection mean whatever destroys free agency and constrains the person whose act is under review to do that which is contrary to his own untrammelled desire." Neill v. Brackett, 234 Mass. 367, 369 (1920).

The Defendants argue that the Plaintiff exerted control and undue influence over the Decedent towards the end of his life. In support, the Defendants purport that the changes made in the Third Schedule of Beneficiaries, granting the Plaintiff 60% of the Trust assets, was a change that was made by the Plaintiff for her benefit because otherwise she was not a successor beneficiary per the Second Schedule of Beneficiaries. The Defendants argue that the Plaintiff certainly had the opportunity to exercise undue influence because she was the caretaker of the Decedent after his diagnosis of ALS and that because of his diagnosis, the Decedent was susceptible to influence. The Defendants provided an affidavit from the Decedent's sister, Maria Bernadette Laranjo. She states in her affidavit that the Plaintiff sometimes prevented her from seeing her brother, the Decedent, during the last months of his life, and that sometimes the Plaintiff "would have a sign on the door to keep friends at a distance." The Defendants assert that the Plaintiff did so influence the Decedent, causing him to make the changes to the Third Schedule of Beneficiaries so that the Plaintiff would become a beneficiary of the Trust.

The Plaintiff argues that the 2013 Amendment and the Third Schedule of Beneficiaries were not the result of undue influence; rather, those documents are reflective of the Decedent's intentions for the distribution of his estate upon his death. The Plaintiff contends that the Third Schedule of Beneficiaries is similar in percentage distribution and individuals as both the First Schedule of Beneficiaries and the Will that was executed by the Decedent in June 2013; therefore it was not an "unnatural disposition." The Defendants were successor beneficiaries under the Second Schedule of Beneficiaries for a little more than one year (May 2012 through September 2013), whereas the Plaintiff and the others named in the Third Schedule of Beneficiaries were also the original successor beneficiaries listed on the First Schedule of Beneficiaries.

The Court finds there to be no dispute as to material fact and the Defendants failed to proffer facts that could satisfy the first element of proving undue influence, that there was an "unnatural disposition." As the Plaintiff points out, the Third Schedule of Beneficiaries is markedly similar to the First Schedule of Beneficiaries and the Decedent's Will. The Third Schedule of Beneficiaries names his sisters, his friend Joe Reis, and the Plaintiff, all people who were well known to the Decedent. The Decedent had independent legal counsel, Attorney Rogers, who assisted the Decedent in drafting the Third Schedule of Beneficiaries. While the Defendants allege that the Plaintiff controlled the Decedent in his final months, the Defendants did not provide to the Court evidence that would suggest the Plaintiff caused the Decedent to act in a manner contrary to his own desire

or that his "free agency" was hindered. Therefore, Count I of the Defendants' Counterclaim shall be dismissed.

*D. Removal of Personal Representative*

Removal of a Personal Representative is governed by the Massachusetts Uniform Probate Code. Specifically, G. L. c. 190B, § 3-611, provides that "[c]ause for removal exists if it is shown that a personal representative . . . intentionally misrepresented material facts in the proceedings leading to appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office." Counts II and III of the Defendants' Counterclaim allege that the Plaintiff breached her fiduciary duty as Personal Representative and should be removed as Personal Representative of the Decedent's estate because she has not filed an inventory, provided an accounting, or provided distributions to the beneficiaries, and she has mismanaged the estate assets for her own personal benefit. At the time the Counterclaim was filed, the Plaintiff had not filed an inventory or accounting, however, since that time, she has filed those documents in the probate matter.

The Court notes that the issue of whether the Plaintiff should be removed as Personal Representative of the Decedent's estate would be more appropriately filed on the actual probate matter, not the present equity litigation. However, in the interest of judicial economy, the Court shall address the issue as it was raised in the Defendants' Counterclaim.

The Plaintiff was appointed Personal Representative of the Decedent's estate on December 5, 2013. She did not file an inventory until June 8, 2015, or an accounting until September 25, 2015; however, both have been filed. As the Plaintiff has been acting as Personal Representative, it is entirely appropriate for her to pursue and defend various legal claims against the estate, including the present matter involving the Trust. While the Defendants allege that the Plaintiff mismanaged the estate assets, no evidence of such conduct was presented to the Court.

*E. Signature of Maria Bernadette Laranjo*

The Defendants argue that the 2013 Amendment to the Trust was not valid because the amendment was signed and executed by the Plaintiff, acting as the Decedent's Attorney in Fact, and that Maria Bernadette Laranjo was tricked into signing the 2013 Amendment. Pursuant to the 2012 Amendment, any changes to the Trust must be acknowledged by the Trustee and one of the Trust beneficiaries. In her Affidavit, Maria Bernadette Laranjo states that since she does not speak or read English very well, she had her son read over the documents before she signed. At the time, Ms. Laranjo thought the documents she signed in the presence of Attorney Rogers were the same as the documents her son reviewed. However, the Defendants now suggest that Ms. Laranjo was

“intentionally misled” by the Plaintiff and the documents she signed were different from the documents her son reviewed. As the 2012 Amendment to the Trust provides that any changes to the Trust or the Schedule of Beneficiaries may be consented to by one (1) of the beneficiaries and the Trustee, and Ms. Laranjo’s signature was not valid, the 2013 Amendment and the Third Schedule of Beneficiaries was not properly executed.

The Court finds the argument that Ms. Laranjo was tricked into signing the documents in question to be unsupported by the evidence presented. A review of the Affidavit from Ms. Laranjo reveals that she simply states she thought the documents she signed were the same as the ones her son reviewed. There is nothing that suggests those documents were not the same other than the Defendants assertions that the documents were different. Therefore this argument fails.

The question of whether Ms. Laranjo’s signature was the result of her having been misled by Ms. Giroux is immaterial because her signature was not required to change the Schedule of Beneficiaries. This is not a question of material fact.


Ms. Laranjo’s affidavit confirms that the Third Schedule of Beneficiaries was executed prior to the death of Joseph and thus undercuts Defendants’ alternate theory that Ms. Giroux and Attorney Rogers fabricated the documents.

*F. Impact of the MUTC*

Insofar as the Oakland Peixoto Realty Trust is a nominee trust which provides that the power to amend or revoke is held by the beneficiaries and **not** by the “settlor” of the trust, this trust is not a revocable trust of a donative nature such that the MUTC would apply.

Upon consideration of the above, the Court finds there to be no dispute as to material facts and the Plaintiff is entitled to a judgment as a matter of law. Therefore, the Court shall **ALLOW** the Plaintiff’s Motion for Summary Judgment, filed June 22, 2015. The Counterclaim filed by the Defendants on March 26, 2015, shall be dismissed.

March 4, 2016

  
Katherine A. Field, First Justice  
Bristol Probate and Family Court