

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 1, Honorable Le Jacqueline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS

DATE: June 28, 2024

TIME: 10 A.M.

*****NOTICE*****

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	19PR186810	Schram Revocable Trust	Click on LINE 1 or scroll down for attached Tentative Ruling.
LINE 2	19PR186810	Schram Revocable Trust	Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3	24PR196408	Trust of Norman Hart	Click on LINE 3 or scroll down for attached Tentative Ruling.

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Calendar line 1

Motion continued on Court's own motion to 8-16-24 at 10am. If you have a scheduling conflict with this date, please email Dept 1 clerk at department1@scscourt.org including opposing counsel to obtain a different hearing date.

Calendar line 2

Calendar line 3

INTRODUCTION

In 2008, settlor and initial trustee Norman Hart (“Decedent”) executed the Norman James Hart 2008 Trust. He named as successor co-trustees Harry Parker (“Respondent”) and the Northern Trust Bank of California. The Northern Trust Bank of California declined to serve as trustee, leaving Respondent as the sole trustee.

On January 9, 2024, Petitioner Joanna Evans filed a petition for instructions pursuant to Probate Code section 17200.

Currently before the court is a motion by Respondent (specially appearing) to quash service of the petition and dismiss the action on the ground of inconvenient forum.

DISCUSSION

I. Motion to Quash

A. Legal Background

Respondent moves to quash service of the petition under Code of Civil Procedure section 418.10.1 Section 418.10, subdivision (a)(1) authorizes a defendant to file a motion to quash service of summons “on the ground of lack of jurisdiction of the court over him or her.” (§ 418.10, subd. (a)(1).) Personal jurisdiction will be deemed lacking where service of the summons and complaint fails to comply with the statutory procedures regarding the manner of service of process. (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1444.) “[A] motion to quash under section 418.10, subdivision (a)(1) is a limited procedural tool to contest personal jurisdiction over the defendant where the statutory requirements for service of process are not fulfilled.” (*Stancil v. Superior Court* (2021) 11 Cal.5th 381, 390.)

“A plaintiff opposing a motion to quash service of process for lack of personal jurisdiction has the initial burden to demonstrate facts establishing a basis for personal jurisdiction.” (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1167.) “When a defendant moves to quash service for lack of personal jurisdiction, the plaintiff must establish by a preponderance of the evidence the facts justifying the exercise of jurisdiction. The burden then shifts to the defendant to demonstrate exercising jurisdiction would be unreasonable.

[Citation.]” (Van Buskirk v. Van Buskirk (2020) 53 Cal.App.5th 523, 530 (Van Buskirk).) “ ‘Jurisdictional facts must be proved by admissible evidence. This generally requires declarations by competent witnesses. A properly verified complaint may be treated as a declaration for this purpose.’ [Citation.]” (Id. at p. 535.)

B. Merits of the Motion

Respondent, the current trustee of the trust, moves to quash service of the petition on the ground of lack of personal jurisdiction. Probate Code section 17003, subdivision (a) provides, “Subject to [Probate Code] Section 17004: . . .By accepting the trusteeship of a trust having its principal place of administration in this state the trustee submits personally to the jurisdiction of the court under this division.”² Here, the trust had its principal place of administration in California during Decedent’s lifetime. However, Respondent contends that he has moved the principal place of administration of the trust to Massachusetts, where he currently resides and where he claims to be administering the trust at this time.

At the outset, the court notes that Petitioner contends that it was Decedent’s intent that the trust would be administered in California. But, Respondent correctly points out that the issue is whether the California court has personal jurisdiction over Respondent and the question of Decedent’s intent is not at issue in connection with this motion.

“California state courts cannot extend the reach of their personal jurisdiction beyond federal limits. [Citation.] We focus on the defendants’ relationship to the forum state when assessing personal jurisdiction. [Citation.] Jurisdiction is proper if a defendant has minimum contacts with the state such that the lawsuit does not offend traditional notions of fair play and substantial justice. (Daimler AG v. Bauman (2014) 571 U.S. 117, 126.) [¶] Personal jurisdiction can be all-purpose (also called ‘general’) or case-linked (also called ‘specific’). [Citation.] . . . With case-linked jurisdiction, the court may adjudicate only those disputes relating to defendants’ contacts with the forum. [Citation.]” (Van Buskirk, *supra*, 53 Cal.App.5th at p. 531.)

Petitioner also argues that Respondent’s actions relating to administering the trust establish sufficient minimum contacts between Respondent and the state of California such that the California court may establish personal jurisdiction over Respondent.

“A three-part test governs case-linked jurisdiction. With our emphasis, case-linked jurisdiction is proper when: [¶] (1) defendants have purposefully availed themselves of forum benefits; [¶] (2) the controversy relates to the defendants’ contacts with the forum; and [¶] (3) the

exercise of jurisdiction comports with fair play and substantial justice. (Pavlovich v. Superior Court (2002) 29 Cal.4th 262, 269.)” (Van Buskirk, supra, 53 Cal.App.5th at p. 531.)

With respect to purposeful availment, Petitioner argues that Respondent accepted the trusteeship knowing that the trust had been administered in California, that the trust formerly held real property in California and that certain trust property still remains in a storage center in California. Petitioner also asserts that Respondent has hired lawyers and accountants in California to assist with administering the trust and that Respondent has flown to California several times to accomplish trust administration tasks.

The court notes that most of this information is not provided to the court as admissible evidence. (See Van Buskirk, supra, 53 Cal.App.5th at p. 535 [“ ‘Jurisdictional facts must be proved by admissible evidence. This generally requires declarations by competent witnesses. A properly verified complaint may be treated as a declaration for this purpose.’ [Citation.]”].) As discussed above, Petitioner has the burden of establishing purposeful availment by a preponderance of the evidence. (Id. at p. 530.) Here, in connection with her opposition to the motion, Petitioner has provided only the declaration of Andrea Nguyen, Esq. indicating that Respondent hired her law firm located in Millbrae, California to assist with administration of the trust but that the firm ceased its representation of Respondent in 2022. (See Declaration of Andrea A. Nguyen, Esq. at ¶¶ 5, 7.)

But, the court may also consider the allegations in the verified petition. (See Van Buskirk, supra, 53 Cal.App.5th at p. 535.) The petition indicates that, during Decedent’s lifetime, the trust was administered from Decedent’s residence in Cupertino, California. (Petition at ¶ 6.) The petition also alleges that Respondent sold that Cupertino real property belonging to the trust. (Petition at ¶¶ 17-20.) The petition further asserts that certain trust property remains in California and “[s]ince the death of Mr. Hart (7/15/2021) very little has been done regarding the personal property. The trustee has made several trips to California at the expense of the trust, to supposedly administer these items, yet nothing seems to have been done.” (Petition at ¶¶ 8, 21.)

Thus, the evidence before the court is that Respondent accepted the trusteeship when the trust was administered in California, that Respondent was involved in selling trust real property located in California as part of the administration process, that Respondent has been to California several times in connection with the trust administration process, and that Respondent hired a California attorney to help with the administration process.³

This is sufficient to establish purposeful availment in California. “The first prong of the three-part test is ‘purposeful availment’: have defendants purposefully availed

themselves of forum benefits? We consider whether the defendants' conduct connects them to the forum in a

meaningful way. (Walden v. Fiore (2014) 571 U.S. 277, 290.) Defendants purposefully avail themselves of a forum's benefits if they intentionally direct their activities at a forum such that, by virtue of the benefit the defendants receive, they should reasonably expect to be subject to jurisdiction there. (Burger King Corp. v. Rudzewicz (1985) 471 U.S. 462, 475-476 [.]) By focusing on the defendants' reasonable expectations, this requirement ensures defendants will not be haled into a jurisdiction solely because of fortuitous or attenuated contacts or because of the unilateral activity of another party. (Id. at p. 475.)" (Van Buskirk, supra, 53 Cal.App.5th at p. 532.)

In Van Buskirk, the Court of Appeal concluded that the acceptance of a trusteeship when the trust had been administered in California "connected [a defendant] to California." (Van Buskirk, supra, 53 Cal.App.5th at p. 532.) Also relevant to the determination that the defendants were subject to jurisdiction in California under Van Buskirk was the fact that the trust held real property in California and that the defendants physically came to California in connection with trust-related transactions. (Id. at p. 533.) Here, similarly, Respondent accepted the trusteeship at a time when the trust was administered in California and when the trust held real and personal property located in California. Although Respondent contends he is administering the trust from Massachusetts, Petitioner has provided evidence, via the verified petition, that Respondent has visited California to administer the trust and sold trust real property in California. Further, the court notes that Respondent does not argue that he has formally petitioned to change the place of administration via the procedures set forth in Probate Code section 17400, et seq, or any other means. Notably, Respondent relies on Probate Code section 17002 to establish that the principal place of administration is where he conducts the day to day business of the trust but Probate Code section 17002 is a venue statute with no applicability to personal jurisdiction. (Van Buskirk, supra, 53 Cal.App.5th at p. 538.)

Further, the court finds that Petitioner's claims are related to Respondent's minimum contacts. "A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate." (Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 452.) Here, the petition alleges that Respondent has failed to timely sell the California real property and to timely distribute the proceeds of the sale of said real property to the beneficiaries. (Petition at ¶¶ 27, 31.) Further, the petition takes issue with how Respondent has administered the trust, which is related to Respondent's decision to accept the trusteeship.

“Once a court decides that a defendant has purposefully established contacts with the forum state and that plaintiff’s cause of action arose out of those forum-related contacts, the final step in the analysis involves balancing the convenience of the parties and the interests of the state in order to determine whether the exercise of personal jurisdiction is fair and reasonable under all of the circumstances.” (Integral Development. Corp. v. Weissenbach (2002) 99 Cal.App.4th 576, 584 (Integral).) The defendant moving to quash service of summons bears the burden of showing that the exercise of jurisdiction over it would not be reasonable. (Id. at p. 591.) The “defendant

‘must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional.’ [Citation.]” (Ibid.)

“A determination of reasonableness rests upon a balancing of interests: the relative inconvenience to defendant of having to defend an action in a foreign state, the interest of plaintiff in suing locally, and the interrelated interest the state has in assuming jurisdiction. [Citation.] The factors involved in the balancing process include the following: ‘the relative availability of evidence and the burden of defense and prosecution in one place rather than another; the interest of a state in providing a forum for its residents or regulating the business involved; the ease of access to an alternative forum; the avoidance of a multiplicity of suits and conflicting adjudications; and the extent to which the cause of action arose out of defendant’s local activities.’ [Citations.]” (Integral, supra, 99 Cal.App.4th at p. 591.)

Respondent asserts that it would be unreasonable to expect him to attend court in California when he is a resident of Massachusetts and he could not anticipate that accepting the trusteeship would cause him to be haled into court in California. Here, interestingly neither Petitioner nor Respondent resides in California. In fact, Respondent represents that none of the beneficiaries of the trust reside in California. Thus, the interest of the plaintiff in suing locally is non-existent in this case. Respondent also provides evidence that Petitioner has filed a petition in a Massachusetts court regarding the estate of another relative and thus, it would not be too difficult for Petitioner to travel to Massachusetts to attend proceedings related to the claims raised in this case.

Respondent represents, in connection with his motion to dismiss based on inconvenient forum, that the records related to his administration of the trust are located in Massachusetts. But, it would appear that the availability of evidence favors exercise of jurisdiction in California as trust real property was sold here and, as discussed above, some of Respondent’s trust administration activities have occurred here. As explained in Van Buskirk, advances in technology have

minimized the burden on foreign litigants to a large extent. “When advisable, trial judges regularly make accommodations of all sorts. At this moment, lawyers, parties, and courts are discovering the many ways technology can reduce or eliminate the burdens of travel.” (Van Buskirk, *supra*, 53 Cal.App.5th at p. 537.)

The court finds that exercising personal jurisdiction over Respondent in California would not be unreasonable given Respondent’s connections to California arising out of his administration of the trust and the availability of accommodations that would minimize the burden of appearance in California. The motion to quash is DENIED.

II. Motion to Dismiss for Inconvenient Forum

Respondent also moves to dismiss the petition on the ground of inconvenient forum under section 418.10. “A defendant, on or before the last day of his or her time to plead or within

any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: . . . To stay or dismiss the action on the ground of inconvenient forum.” (§ 418.10, subd. (a)(2).) Forum non conveniens “ ‘is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. [Citation.]’ [Citation.]” (Roulier v. Cannondale (2002) 101 Cal.App.4th 1180, 1186.) This rule of law is codified in section 410.30 which provides, in pertinent part: “When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.”

“The defendant has the burden of proof. [Citation.] The first step in the analysis is whether the alternative forum is ‘a “suitable” place for trial.’ [Citation.] ‘A forum is suitable if there is jurisdiction and no statute of limitations bar to hearing the case on the merits. [Citation.] “[A] forum is suitable where an action ‘can be brought,’ although not necessarily won.” [Citation.]’ [Citations.]” (Roulier v. Cannondale, *supra*, 101 Cal.App.4th at p. 1186.)

However, Respondent makes no argument as to how Massachusetts courts provide a suitable forum or whether there is a statute of limitations bar to bringing the petition in Massachusetts. A forum is suitable if the defendant is amenable to service of process there and if the statute of limitations will not bar the claims if raised in the other forum. (Stangvik v. Shiley Inc. (1991) 54 Cal.3d 744, 752.) “ ‘[T]he action will not be dismissed unless a suitable alternative forum is available to the plaintiff [citations]. Because of . . . [this] factor, the suit will be entertained, no matter how inappropriate the forum may be, if the defendant cannot be subjected to jurisdiction

in other states. The same will be true if the plaintiff's cause of action would elsewhere be barred by the statute of limitations, unless the court is willing to accept the defendant's stipulation that he will not raise this defense in the second state [citations].' [Citations.]" (Ibid.) Respondent bears the burden of proof on a motion to dismiss for inconvenient forum, (ibid.), and, by failing to address the suitability of the Massachusetts courts as a forum, he has not met this burden.

The motion to dismiss is DENIED.

CONCLUSION

The motion is DENIED in its entirety.

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