

CLERK OF THE COURT

Electronically Filed
May 19 2015 02:41 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOAS
MICHAEL N. BEEDE, ESQ.
Nevada State Bar No. 13068
THE LAW OFFICE OF MIKE BEEDE, PLLC
2300 W Sahara Ave., Suite 420
Las Vegas, NV 89102
Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorney for Petitioner, Stephen Brock

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of)

FREI IRREVOCABLE TRUST dated)
October 29, 1996.)


CASE NO.: P-09-065257-T
DEPT. NO.: 26

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that petitioner, Steven Brock, hereby appeals to the Supreme Court of Nevada from the Findings of fact, Conclusions of Law and Order Denying Stephen Brock's Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust entered in this action on April 14, 2015.

Dated this 14th day of May, 2015.

THE LAW OFFICE OF MIKE BEEDE, PLLC



Michael N. Beede, Esq.
Nevada Bar No. 13068
2300 W Sahara Ave., Suite 420
Las Vegas, NV 89102
Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorney for Petitioner, Steven Brock

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Office of Mike Beede, PLLC and that on the 14th day of May, 2015, I did cause a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve System:

Clear Counsel Law Group

| Name | Email | <input type="checkbox"/> | Select <input checked="" type="checkbox"/> |
|--------------------|--|-------------------------------------|---|
| Jonathan W. Barlow | jonathan@clearcounsel.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sarena Faranesh | sarena@clearcounsel.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

GERRARD COX & LARSEN

| Name | Email | <input type="checkbox"/> | Select <input checked="" type="checkbox"/> |
|-----------------|--|-------------------------------------|---|
| Kanani Gonzales | KGonzales@Gerrard-cox.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Gerrard Cox Larsen

| Name | Email | <input type="checkbox"/> | Select <input checked="" type="checkbox"/> |
|--------------|--|-------------------------------------|---|
| Rich Chatwin | rchatwin@gerrard-cox.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Hutchison & Steffen

| Name | Email | <input type="checkbox"/> | Select <input checked="" type="checkbox"/> |
|-----------------|--|-------------------------------------|---|
| Russel J. Geist | rgeist@hutchlegal.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Shaun L. Bruce | sbruce@hutchlegal.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Hutchison & Steffen, LLC

| Name | Email | <input type="checkbox"/> | Select <input checked="" type="checkbox"/> |
|-------------------|--|-------------------------------------|---|
| Amber Anderson | aanderson@hutchlegal.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Edward De La Vega | edelavega@hutchlegal.com | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

And the parties listed below by mailing a true and correct copy via US Mail, First Class Postage Prepaid to the following addresses:

Elliot S. Blut, Esq.
Blut & Campaign
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
Dana A. Dwiggin, Esq.

Daniel V. Goodsell, Esq.
Goodsell & Olsen
10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Lawrence Howe

1 Solomon Dwiggins & Freer, Ltd.
2 9060 W. Cheyenne Avenue
3 Las Vegas, NV 89129

839 Columbian Ave.
Oak Park, IL 60302

3 John Brock
4 P.O. Box 127
5 Santa Barbara, CA 93102

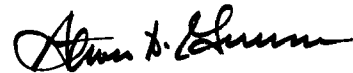
Francis Brock
215 Creek Walk Drive
Walkersville, MD 21793

5 Peter Brock
6 Box 362
7 Garrett Park, MD 20896

Vincent Brock
15549 La Subida Drive
Hacienda Heights, CA 91745

8 By: 

9 An Employee of The Law Office
10 of Mike Beede, PLLC
11
12
13
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CLERK OF THE COURT

ASTA
MICHAEL N. BEEDE, ESQ.
Nevada State Bar No. 13068
THE LAW OFFICE OF MIKE BEEDE, PLLC
2300 W Sahara Ave., Suite 420
Las Vegas, NV 89102
Telephone (702) 473-8406
Facsimile (702) 832-0248
Attorney for Petitioner, Stephen Brock

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of)

FREI IRREVOCABLE TRUST dated)
October 29, 1996.)

CASE NO.: P-09-065257-T
DEPT. NO.: 26

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f) appellant, Stephen Brock, files this Case Appeal Statement:

1. Name of appellant filing this case appeal statement:

Stephen Brock

2. Identify the judge issuing the decision, judgment or order appealed from:

Gloria Sturman, Eighth Judicial District Court, in and for Clark County, Nevada.

3. Identify each appellant and the name and address of counsel for each appellant:

Stephen Brock, represented by The Law Office of Mike Beede, PLLC, Michael N. Beede, Esq., 2300 W. Sahara Ave, Suite 420, Las Vegas, NV 89102.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

Petitioner is unaware of the appellate counsel for the respondents, and therefore provides the names and addresses of Trial Counsel in this matter.

Premier Trust, Inc, represented by Gerard Cox Larsen, Douglas D. Gerard, Esq. and

1 Richard D. Chatwin, Esq, 2450 St. Rose Parkway, Suite 200, Henderson, NV 89074.
2 Lawrence Howe and Elizabeth Mary Frei, represented by Hutchison & Steffen, LLC,
3 Russel J. Geist and Todd L. Moody 10080 West Alta Drive, Suite 200, Las Vegas, NV
4 89145.

- 5 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
6 licensed to practice law in Nevada and, if so, whether the district court granted that
7 attorney permission to appear under SCR 42:

8 To the best of appellant's knowledge all attorneys identified above are licensed to
9 practice law in the State of Nevada.

- 10 6. Indicate whether appellant was represented by appointed or retained counsel in the
11 district court:

12 Appellant was represented by retained counsel in the district court.

- 13 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

14 Appellant is represented by retained counsel on appeal.

- 15 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
16 of entry of the district court order granting such leave:

17 Appellant was not granted leave to proceed in forma pauperis.

- 18 9. Indicate the date the proceedings commenced in the district court:

19 The instant matter began with the filing of the Petition to Construe Terms of Trust, to
20 Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compell
21 Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust on
22 November 19, 2014. Initial litigation regarding the subject trust was opened by the filing
23 of a Petition in the case on March 11, 2009.

- 24 10. Provide a brief description of the nature of the action and result in the district court,
including the type of judgment or order being appealed and the relief granted by the
district court:

This action relates to the terms of the subject trust, specifically the validity of the

1 spendthrift clause as it relates to a settlement agreement between appellant, Stephen
2 Brock, and one of the two original settlors of the subject trust. The district court held that
3 the spendthrift clause was not valid as between Mr. Brock and one of the settlors of the
4 subject trust, and ratified payment by trustee Premier Trust in violation of the terms of the
5 spendthrift clause.

- 6 11. Indicate whether the case has previously been the subject of an appeal to or original writ
7 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
8 number of the prior proceeding:

9 This case has not previously been the subject of an appeal or original writ proceeding.

- 10 12. Indicate whether this appeal involves child custody or visitation:

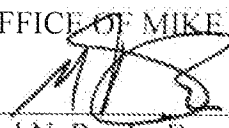
11 This appeal does not relate to child custody or visitation.

- 12 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

13 Based upon the nature of proceedings to this point, and the acrimonious relationship
14 between the parties, this case seems unlikely to be resolved by settlement.

15 Dated this 13th day of May, 2015.

16 THE LAW OFFICE OF MIKE BEEDE, PLLC

17 
Michael N. Beede, Esq.

18 Nevada Bar No. 13068

19 2300 W Sahara Ave., Suite 420

20 Las Vegas, NV 89102

21 Telephone (702) 473-8406

22 Facsimile (702) 832-0248

23 *Attorney for Petitioner, Steven Brock*
24

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The Law Office of Mike Beede, PLLC and that on the 14th day of May, 2015, I did cause a true and correct copy of the foregoing **CASE APPEAL STATEMENT** to be served upon each of the parties listed below via electronic service through the Eighth Judicial District Court's Odessey E-File and Serve System:

Clear Counsel Law Group

| Name | Email | | Select |
|--------------------|--|--------------------------|-------------------------------------|
| Jonathan W. Barlow | jonathan@clearcounsel.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Sarena Faranesh | sarena@clearcounsel.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

GERRARD COX & LARSEN

| Name | Email | | Select |
|-----------------|--|--------------------------|-------------------------------------|
| Kanani Gonzales | KGonzales@Gerrard-cox.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Gerrard Cox Larsen

| Name | Email | | Select |
|--------------|--|--------------------------|-------------------------------------|
| Rich Chatwin | rchatwin@gerrard-cox.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Hutchison & Steffen

| Name | Email | | Select |
|-----------------|--|--------------------------|-------------------------------------|
| Russel J. Geist | rgeist@hutchlegal.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Shaun L. Bruce | sbruce@hutchlegal.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Hutchison & Steffen, LLC

| Name | Email | | Select |
|-------------------|--|--------------------------|-------------------------------------|
| Amber Anderson | aanderson@hutchlegal.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Edward De La Vega | edelayega@hutchlegal.com | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

And the parties listed below by mailing a true and correct copy via US Mail, First Class Postage Prepaid to the following addresses:

Elliot S. Blut, Esq.
Blut & Campain
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
Dana A. Dwiggin, Esq.

Daniel V. Goodsell, Esq.
Goodsell & Olsen
10155 W. Twain Ave., Suite 100
Las Vegas, NV 89147
Lawrence Howe

1 Solomon Dwiggins & Freer, Ltd.
2 9060 W. Cheyenne Avenue
3 Las Vegas, NV 89129

839 Columbian Ave.
Oak Park, IL 60302


3 John Brock
4 P.O. Box 127
5 Santa Barbara, CA 93102

Francis Brock
215 Creek Walk Drive
Walkersville, MD 21793

5 Peter Brock
6 Box 362
7 Garrett Park, MD 20896

Vincent Brock
15549 La Subida Drive
Hacienda Heights, CA 91745

8 By:


An Employee of The Law Office
of Mike Beede, PLLC

FAMILY DOMESTIC
CASE SUMMARY
CASE NO. P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

§
§
§
§
§

Location: **Family Domestic**
Judicial Officer: **Judge Sturman, Probate**
Hearing Master: **Yamashita, Wesley**
Filed on: **03/11/2009**
Case Number History:
Cross-Reference Case **P065257**
Number:

CASE INFORMATION

Case Type: **Probate - Trust/Conservatorships**
Subtype: **Individual Trustee**

Case Flags: **Appealed to the Nevada Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

| | |
|------------------|------------------------|
| Case Number | P-09-065257-T |
| Court | Family Domestic |
| Date Assigned | 12/03/2012 |
| Judicial Officer | Judge Sturman, Probate |
| Hearing Master | Yamashita, Wesley |

PARTY INFORMATION

Petitioner **Brock, Stephen M**







Lead Attorneys
Beede, Michael, ESQ
Retained
702-473-8406(W)

Trust **Frei Joint Irrevocable Trust Dated October 29, 1996**

DATE

EVENTS & ORDERS OF THE COURT

INDEX

| | | |
|------------|---|--|
| 03/11/2009 |  Petition Filed by: Petitioner Brock, Stephen M <i>* to Confirm Turstees of the Frei Joint Irrevocable Trust Dated October 29, 1996, for Order Assuming Jurisdiction over the Trust, and for an Order Reforming Terms of the Trust</i> | |
| 03/11/2009 |  Notice of Hearing Filed by: Petitioner Brock, Stephen M | |
| 03/13/2009 |  Certificate of Mailing Filed by: Petitioner Brock, Stephen M For: Other Parties Receiving Notice* | |
| 03/25/2009 |  Certificate of Mailing Filed by: Petitioner Brock, Stephen M For: Other Parties Receiving Notice* | |
| 04/10/2009 |  Errata Filed by: Petitioner Brock, Stephen M | |
| 04/10/2009 |  Certificate of Mailing Filed by: Petitioner Brock, Stephen M For: Other Parties Receiving Notice* | |

FAMILY DOMESTIC
CASE SUMMARY
CASE NO. P-09-065257-T

| | |
|------------|--|
| 04/17/2009 | Petition for Confirmation (9:30 AM) (Judicial Officer: Yamashita, Wesley) 04/17/2009, 04/24/2009, 05/01/2009 Events: 03/11/2009 Notice of Hearing <i>Petition to Confirm Trustees of the Frei Joint Irrevocable Trust Dated October 29, 1996, for Order Assuming Jurisdiction Over the Trust, and for an Order Reforming Terms of the Trust</i> |
| 04/22/2009 |  Opposition Filed by: Other Parties Receiving Notice* <i>To Petition To Confirm Trustees Of The Frei Joint Irrevocable Trust Dated October 29, 1996</i> |
| 04/29/2009 |  Receipt of Copy Filed by: Petitioner Brock, Stephen M Party 2: Petitioner Brock, Stephen M <i>of Reply to Opposition to Petition to Confirm Trustees</i> |
| 04/29/2009 |  Reply Filed by: Petitioner Brock, Stephen M <i>to Opposition to Petition to Confirm Trustees of the Frei Joint Irrevocable</i> |
| 05/20/2009 |  Report and Recommendations Filed by: Petitioner Brock, Stephen M <i>Probate Commissioner's Report And Recommendation Regarding Petition</i> |
| 06/12/2009 |  Order Filed by: Petitioner Brock, Stephen M |
| 06/16/2009 |  Notice of Entry of Order Filed by: Petitioner Brock, Stephen M <i>Order 06/12/09</i> |
| 11/19/2014 |  Petition Filed by: Petitioner Brock, Stephen M <i>Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 11/19/2014 |  Notice Filed by: Petitioner Brock, Stephen M <i>Notice of Election to Have Matter Heard by the Probate Judge</i> |
| 11/19/2014 |  Notice of Hearing Filed by: Petitioner Brock, Stephen M <i>Notice of Hearing on Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 12/04/2014 |  Notice of Appearance Party: Other Premier Trust Inc <i>Notice of Appearance</i> |
| 12/17/2014 |  Notice of Appearance Party: Other Howe, Lawrence <i>Notice of Appearance</i> |

FAMILY DOMESTIC
CASE SUMMARY
CASE NO. P-09-065257-T




| | |
|------------|--|
| 12/29/2014 |  Opposition Filed by: Other Premier Trust Inc <i>Opposition to Petition to Construe Terms of Trust, To Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/09/2015 |  Joinder Filed by: Other Howe, Lawrence <i>Joinder in Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/12/2015 |  Reply Filed by: Petitioner Brock, Stephen M <i>Reply to Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/12/2015 |  Supplement Filed by: Petitioner Brock, Stephen M <i>Supplement to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/12/2015 |  Objection Filed by: Petitioner Brock, Stephen M <i>Objection to Joinder in Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/12/2015 |  Declaration Filed by: Petitioner Brock, Stephen M <i>Declaration of Stephen Brock</i> |
| 01/13/2015 |  Reply Filed by: Other Howe, Lawrence <i>Reply to Stephen Brock's Objection to Joinder in Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/14/2015 |  Petition - HM (9:00 AM) (Judicial Officer: Sturman, Gloria) Events: 11/19/2014 Petition <i>Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i> |
| 01/16/2015 |  Subpoena Duces Tecum Filed by: Other Frei, Elizabeth Mary <i>SubPoena</i> |
| 01/22/2015 |  Declaration Filed by: Petitioner Brock, Stephen M <i>Declaration of Stephen Brock</i> |
| 01/26/2015 |  Petition (10:00 AM) (Judicial Officer: Sturman, Gloria) <i>Construe Terms of Trust, Compel Compliance, Confirm Removal of Trustee, Compell Redress</i> |

FAMILY DOMESTIC
CASE SUMMARY
CASE NO. P-09-065257-T

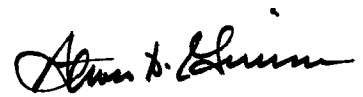
of Breach of Fiduciary Duties, and Release Jurisdiction of Trust

| | |
|------------|---|
| 02/09/2015 | <p> Supplemental</p> <p>Filed by: Other Premier Trust Inc</p> <p><i>Premier Trust's Supplement to Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i></p> |
| 02/13/2015 | <p> Supplemental</p> <p>Filed by: Other Howe, Lawrence</p> <p><i>Supplemental Brief in Opposition to Petition to Construe Terms of Trust, to Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i></p> |
| 02/20/2015 | <p> Errata</p> <p>Filed by: Other Howe, Lawrence</p> <p><i>Errata to Supplemental Brief in Opposition to Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of Trust</i></p> |
| 02/27/2015 | <p> Supplement</p> <p>Filed by: Petitioner Brock, Stephen M</p> <p><i>Supplemental Reply to Supplemental Oppositions of Premier Trust and Lawrence Howe and Elizabeth Mary Frei to the Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i></p> |
| 03/06/2015 | <p> Errata</p> <p>Filed by: Petitioner Brock, Stephen M</p> <p><i>Errata to Supplemental Reply to Supplemental Oppositions of Premier Trust and Lawrence Howe and Elizabeth Mary Frei to the Petition to Construe Terms of Trust, to Compel Compliance with Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust</i></p> |
| 03/11/2015 | <p> Evidentiary Hearing (1:30 PM) (Judicial Officer: Sturman, Gloria)</p> <p>Events: 11/19/2014 Petition</p> <p><i>Petition: Construe Terms of Trust, Compel Compliance, Confirm Removal of Trustee, Compell Redress of Breach of Fiduciary Duties, and Release Jurisdiction of Trust</i></p> |
| 03/13/2015 | <p> Recorders Transcript of Hearing</p> <p><i>Transcript of Proceedings PETITION: CONSTRUE TERMS OF TRUST, COMPEL COMPLIANCE, CONFIRM REMOVAL OF TRUSTEE, COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND RELEASE JURISDICTION OF TRUST MONDAY, JANUARY 26, 2015</i></p> |
| 04/14/2015 | <p> Notice of Entry</p> <p>Filed by: Other Premier Trust Inc</p> <p><i>Notice of Entry re: Findings of Fact, Conclusions of Law and Order Denying Stephen Brock's Petition to Construe Terms of Trust, To Compel Compliance with terms of Trust, to Confirm Removal of the Trustee, to Compel Redress of Breach of Fiduciary Duties, and to release Jurisdiction over the Trust</i></p> |
| 04/14/2015 | <p> Findings of Fact, Conclusions of Law and Judgment</p> <p>Filed by: Other Premier Trust Inc</p> <p><i>Findings of Fact, Conclusions of Law and Order Denying Stephen Brock's Petition to Construe Terms of Trust, To Compel Compliance with terms of Trust, to Confirm Removal of the Trustee, to Compel Redress of Breach of Fiduciary Duties, and to release Jurisdiction over the Trust</i></p> |

FAMILY DOMESTIC
CASE SUMMARY
CASE NO. P-09-065257-T

| | | |
|------------|---|--|
| 05/14/2015 |  Substitution of Attorney Filed by: Petitioner Brock, Stephen M <i>Substitution of Counsel</i> | |
| 05/14/2015 |  Notice of Appeal Filed by: Petitioner Brock, Stephen M <i>Notice of Appeal</i> | |
| 05/14/2015 |  Case Appeal Statement Filed by: Petitioner Brock, Stephen M <i>Case Appeal Statement</i> | |

| DATE | FINANCIAL INFORMATION | |
|------|------------------------------------|-------------|
| | Other Howe, Lawrence | |
| | Total Charges | 223.00 |
| | Total Payments and Credits | 223.00 |
| | Balance Due as of 5/18/2015 | 0.00 |
| | Petitioner Brock, Stephen M | |
| | Total Charges | 295.00 |
| | Total Payments and Credits | 295.00 |
| | Balance Due as of 5/18/2015 | 0.00 |



CLERK OF THE COURT

DOUGLAS D. GERRARD, ESQ.
Nevada Bar No. 4613
dgerrard@gerrard-cox.com
RICHARD D. CHATWIN, ESQ.
Nevada Bar No. 10870
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2450 St. Rose Parkway, Suite 200
Henderson, NV 89074
O: (702) 796-4000
F: (702) 796-4848
Attorneys for Premier Trust, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

| | | |
|------------------------------|---|-------------------------|
| In the Matter of |) | Case No.: P-09-065257-T |
| |) | Dept. No.: 26 |
| FREI IRREVOCABLE TRUST dated |) | |
| October 29, 1996 |) | |
| |) | |

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING STEPHEN
BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL
COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE,
TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE
JURISDICTION OF THE TRUST**

THIS MATTER, having come on for oral argument before the Honorable Gloria Sturman on January 14, 2015, January 26, 2015 and March 11, 2015 on STEPHEN BROCK's Petition to Construe Terms of Trust, To Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust filed on November 19, 2014, with appearances made by STEPHEN BROCK, who appeared through his counsel, JONATHAN W. BARLOW, ESQ. of CLEAR COUNSEL LAW GROUP, PREMIER TRUST, INC., by and through its counsel, DOUGLAS D. GERRARD, ESQ. and RICHARD D. CHATWIN, ESQ. of the law firm GERRARD COX LARSEN, and LAWRENCE HOWE and ELIZABETH MARY FREI, by and through their counsel, RUSSEL J. GEIST, ESQ. of the law firm HUTCHISON & STEFFEN.

///

///

GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, NV 89074
O: (702) 796-4000 F: (702) 796-47848

After reviewing the pleadings filed in this matter, including all supplements filed after the January 26, 2015 hearing and before the March 11, 2015 hearing, and considering all evidence and testimony presented, this Court makes the following findings of fact, conclusions of law and orders:

I.

FINDINGS OF FACT

A. The Frei Irrevocable Trust

1. On October 29, 1996, Dr. Emil Frei, III ("Dr. Frei") and Adoria B. Frei ("Mrs. Frei"), as husband and wife (jointly the "Settlors"), created the FREI IRREVOCABLE TRUST (the "Trust").

2. The Trust was irrevocable from its inception and named all five of Dr. Frei's children, who were from a previous relationship, and all five of Mrs. Frei's children, who were from a previous relationship, as equal beneficiaries.

3. The Trust showed an intent by Dr. Frei and Mrs. Frei to be fair and equal with all ten children in their estate planning.

4. Stephen Brock ("Stephen") is a son of Mrs. Frei and, therefore, a named beneficiary of the Trust.

5. The Trust contained a spendthrift clause at Article 13, § 3.

6. Mrs. Frei died on January 28, 2009.

B. The Amendment to the Frei Irrevocable Trust and Premier Becoming Trustee

7. On April 17, 2009, Stephen, by and through his counsel, Daniel V. Goodsell, Esq., filed a Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29, 1996, for Order Assuming Jurisdiction Over the Trust, and for an Order Reforming Terms of the Trust (the "2009 Petition").

8. In the 2009 Petition, Stephen sought to amend Article Seven of the Trust to allow a beneficiary of the Trust to withdraw all of their beneficial interest in the Trust after the death of the second of the Settlers to die by making a written request to the Trustee. Stephen's 2009 Petition to modify the Trust was made after one of the Settlers had died.

///

1 9. Probate Commissioner Wesley Yamashita issued a Report and Recommendation
2 approving the 2009 Petition on May 20, 2009. The Report and Recommendation was never
3 objected to and an Order approving the Report and Recommendation was entered by this Court on
4 June 12, 2009 (the "June 2009 Order"). The June 2009 Order modified the Trust.

5 10. On September 14, 2009, Premier Trust, Inc. ("Premier Trust") executed a written
6 Acceptance of Trustee to become a Co-Trustee of the Trust.

7 C. Litigation And Global Settlement Between Dr. Frei and Stephen

8 11. On April 24, 2009, Dr. Frei, one of the Settlers of the Trust, filed a Complaint in
9 Clark County, Nevada District Court against Stephen and entities controlled by Stephen (Case No.
10 A-09-588750-C) (hereinafter the "2009 Lawsuit"). In the 2009 Lawsuit, Dr. Frei alleged that
11 Stephen exploited Dr. Frei, breached fiduciary duties towards Dr. Frei, and converted more than
12 \$500,000.00 from him.

13 12. On March 31, 2010, in the middle of a jury trial of the 2009 Lawsuit, Stephen,
14 through his attorney of record, Dana A. Dwiggin, Esq., entered into a global settlement agreement
15 with Dr. Frei, through his attorney of record, Elliot S. Blut, Esq., before the Honorable Kenneth C.
16 Cory (hereinafter the "Settlement").

17 13. The Settlement immediately ended not only the 2009 Lawsuit, but also resolved
18 several other cases in the Clark County, Nevada District Court involving Dr. Frei and Stephen,
19 including case numbers P-09-065235-E, A-10-609292-C, and A-10-607772-C.

20 14. The Settlement was carefully negotiated and drafted by Stephen and Dr. Frei and
21 included the following terms, covenants and conditions:

- 22 (i) Stephen promised to repay Dr. Frei (through the Emil Frei, III Trust, a trust
23 created by Dr. Frei which was revocable at the time the Settlement was
24 entered into) the total sum of \$415,000.00 (identified as \$175,000, \$150,000
25 and \$90,000 respectively in the Settlement documents) by making payments
26 in the amount of \$5,000.00 per month, beginning on June 1, 2010, over a
three year period, with the principal balance earning interest at the rate of
prime plus 1% and a balloon payment being made at the end of the three year
term (hereinafter the "Settlement Payment Obligation").

27 ///

28 ///

///

*The Order Approving Settlement Agreement provided
that the amount shall be secured by "*

(ii) ~~Stephen agreed to pledge his full beneficial interest in the Trust as security in the event that he failed to make the full Settlement Payment Obligation to Dr. Frei. See Order dated 6/18/2010 Case # P-09-065235~~

(iii) The Settlement called for a 5% default interest rate in the event Stephen Defaulted on the Settlement Payment Obligation.

15. A transcript of a March 31, 2010 hearing before the Honorable Kenneth C. Cory in the 2009 Lawsuit and an Order Approving Settlement Agreement entered with Commissioner Wesley Yamashita in case P-09-065235-E on June 18, 2010 clearly outline the terms, conditions, nature, details, and covenants of each party involved in the Settlement. This 2009 Lawsuit transcript and June 18, 2010 Order also clearly show that Dr. Frei and Stephen understood and fully agreed with all of the terms, conditions, nature, details and covenants of the Settlement, and that each of them intended to modify the Trust to permit (i) Stephen to secure his Settlement obligations with his beneficiary rights under the Trust, and (ii) the Settlement amounts to be paid to Dr. Frei from the Trust if Stephen failed to make the payments outlined in the Settlement. This March 31, 2010 Settlement, as confirmed by the June 18, 2010 Order, constituted an amendment and a modification to the terms of the Trust, which amendment and modification only affected Stephen's beneficiary interest in the Trust (the "2010 Trust Amendment"). This 2010 Trust Amendment was consented to by the only surviving Settlor, Dr. Frei, and the only beneficiary whose interest was impacted, Stephen.

The Settlement Agreement provided security

16. ~~Dr. Frei wanted the Settlement Payment Obligation to be secured as part of the Settlement in light of Dr. Frei's belief that Stephen had converted money from him previously, and was unwilling to settle with Stephen without the certainty of payment from the Trust.~~
for payment through the pledge of Stephen's interest in the trust.

17. All parties, including Dr. Frei and Stephen, agreed to and relied upon all of the terms, conditions, nature, details and covenants of the Settlement, including Stephen's promise to pledge his beneficial interest in the Trust as security and collateral in the event he failed to make the Settlement Payment Obligation, when they agreed to terminate all litigation between them, including Clark County, Nevada District Court cases A-09-588750-C, P-09-065235-E, A-10-609292-C, and A-10-607772-C.

D. Dr. Frei's Death, Stephen's Default and Payments Made by Premier Trust

18. Dr. Frei died on April 30, 2013.

19. Following Dr. Frei's death, all of the beneficiaries of the Trust, except Stephen, received an outright distribution from the Trust under the powers given to them in the June 2009 Order in an amount equal to all of their beneficial Trust interest, less approximately \$1,725.49 each (equaling approximately \$15,529.39 total among these nine beneficiaries), which has been withheld by Premier Trust as reserves for various future Trust expenses.

20. From the time Stephen entered into the Settlement until the present, he has only made a single \$5,000.00 payment towards his Settlement obligations, which was done on or shortly after the Settlement was finalized before Judge Kenneth C. Cory on March 31, 2010.

21. Following Dr. Frei's death, Premier Trust, in following the terms of the Trust, as modified by the Settlement, made payments to the Emil Frei, III Trust from Stephen's beneficial interest in the Trust in the following amounts and on the following dates:

(i) \$100,000.00 on October 9, 2013.

(ii) \$100,000.00 on November 4, 2013.

(iii) \$100,000.00 on January 10, 2014.

22. After Premier Trust made these three \$100,000.00 payments, Stephen sought to remove Premier Trust as Trustee of the Trust under Article Ten, Section 2 (page 10-1) of the Trust Agreement.

II.

CONCLUSIONS OF LAW

1. In general, the law allows a settlor of an irrevocable trust and a beneficiary of that same irrevocable trust to agree to amend the trust's terms. See, e.g., Cal. Prob. Code § 15404; Restatement (Second) of Trusts § 338 (1959). See also, Musick v. Reynolds, 798 S.W.2d 626, 630 (Tex. App. 1990).

2. However, there is no controlling statute or common law in Nevada on the issue of whether a settlor and beneficiary of an irrevocable trust can agree to amend that trust. There is

1 further no controlling law in Nevada on whether such an amendment would be permitted if one of
2 the original settlors to the irrevocable trust had died before the amendment.

3 3. This Court uses its equitable powers to determine that under the unique
4 circumstances of this case, an amendment to the Trust occurred on March 31, 2010 when Dr. Frei,
5 the surviving settlor, and Stephen, the only Trust beneficiary whose interest is effected, agreed to the
6 Settlement and agreed to permit Stephen to pledge his interest in the Trust as security therefore. As
7 a matter of equity, the Settlement between Dr. Frei and Stephen constituted a valid amendment to
8 the terms of the Trust because the intent of Dr. Frei and Mrs. Frei was followed through the terms of
9 the Settlement. Some, but not all, of the factors giving rise to this Court's finding that the
10 Settlement between Dr. Frei and Stephen constituted a valid amendment to the terms of the Trust are
11 as follows:

- 12 (i) The Court finds that Dr. Frei, as a Settlor of the Trust, was seeking to recover
13 from Stephen, who is a beneficiary of the Trust, money which Dr. Frei
14 alleged Stephen had wrongfully converted and which was to be divided
15 among all of Dr. and Mrs. Frei's children, through the litigation which ended
16 with the Settlement. The Settlement was secured through a modification of
17 the Trust at the time of the Settlement to permit Stephen to repay Dr. Frei
18 what had allegedly been fraudulently taken by Stephen with Stephen's
19 beneficial interest in the Trust, and as Stephen allegedly had nothing else, the
20 modification to the Trust was vital to carrying out the intent of both Dr. and
21 Mrs. Frei.
- 22 (ii) It was the intent of both Dr. Frei and Mrs. Frei that they wanted to treat their
23 children as equal beneficiaries in their estate plans, including the Trust. Had
24 Stephen been able to keep the monies he allegedly took fraudulently from Dr.
25 Frei it would have disadvantaged the other nine children and would have been
26 both unequal and unfair.
- 27 (iii) The Settlement affected only Stephen's beneficial interest in the Trust, which
28 is fair to all other beneficiaries of the Trust and consistent with the manifested
intent of Dr. Frei and Mrs. Frei in their estate planning.
- (iv) The 2010 Trust Amendment was agreed to by both Dr. Frei and Stephen and
was relied upon by Dr. Frei to resolve all the pending lawsuits.
- (v) Dr. Frei, all the other Trust beneficiaries, and the Co-Trustees of the Trust
then relied upon the 2010 Trust Amendment for many years, without
objection from Stephen, until after Dr. Frei died and money had been
distributed from the Trust in reliance upon the 2010 Trust Amendment.

1 4. Nevada recognizes the doctrine of judicial estoppel. See, e.g., Marcuse v. Del Webb
2 Communities, Inc., 163 P.3d 462 (Nev. 2007). There are five elements of judicial estoppel: (i) a
3 party has taken two positions, (ii) the positions were taken in judicial or quasi-judicial
4 administrative proceedings, (iii) the party was successful in asserting the first position (i.e., the court
5 adopted the position or accepted it as true), (iv) the two positions are totally inconsistent, and (v) the
6 first position was not taken as a result of fraud or mistake. Id., 163 P.3d at 663. A party asserting
7 judicial estoppel does not need to show all of these elements exist to successfully assert the doctrine.
8 Mainor v. Nault, 120 Nev. 750, 765 (Nev. 2004) (“Although not all of these elements are always
9 necessary, the doctrine generally applies when...”). A party may be estopped under the doctrine of
10 judicial estoppel “merely by the fact of having alleged or admitted in his pleadings or former
11 pleadings the contrary of the assertion sought to be made.” Breliant v. Preferred Equities Corp., 918
12 P.2d 314, 317 (Nev. 1996) (quoting Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d
13 850, 854 (1964)). The “mistake” portion of the fifth element of judicial estoppel is for mistakes of
14 fact only, not mistakes of law. Vaile v. Dist. Ct., 118 Nev. 262, 44 P.3d 506, 514 (Nev. 2002)
15 (quoting Sterling Builders, Inc., 80 Nev. at 549-50, 396 P.2d at 854 (“According to the rule of
16 judicial estoppel, a party who has stated an oath in a prior proceeding, ‘as in a pleading,’ that a given
17 fact is true may not be allowed to deny the same fact in a subsequent action”)).

18 5. Here, all of the elements of the doctrine of judicial estoppel apply in this case against
19 Stephen. Stephen took two inconsistent positions (that he could amend the terms of the Trust
20 through the Settlement with Dr. Frei but now claims it is impossible to do and is void *ab initio*),
21 both of the inconsistent positions were taken in judicial or quasi-judicial administrative proceedings,
22 Stephen was successful in amending the terms of the Trust in regards to his beneficial interest in it
23 with Dr. Frei through the Settlement in 2010, and Stephen, who was represented by competent
24 counsel, did not enter into the Settlement due to any ignorance, fraud or mistake. In summary,
25 Stephen cannot enter into the Settlement with Dr. Frei in 2010, promise to make the Settlement
26 Payment Obligation, secure that those payments with his beneficial interest in the Trust, and then
27 later claim that he did not want to agree to the Settlement or that what he agreed to was impossible
28 or void *ab initio*.

1 6. Dr. Frei justifiably relied upon Stephen's covenants and promises made in the
2 Settlement, including Stephen's agreement to pledge his full beneficial interest in the Trust as
3 security in the event he failed to fully pay the Settlement Payment Obligation.

4 7. The justifiable reliance by Dr. Frei in entering into the Settlement with Stephen
5 judicially estops Stephen and the arguments he has made before this Court. The doctrine of judicial
6 estoppel exists to prevent a party from taking a benefit of settling a case, telling four judges you
7 want to settle, and then later try to void those settlements. To allow Stephen to void the Settlement
8 would completely disregard his former promises to Dr. Frei. Therefore, Stephen cannot argue the
9 Trust could not be amended through the 2010 Settlement.

10 8. Nevada Revised Statutes Chapter 166's spendthrift protections, including those at
11 N.R.S. § 166.120, apply between the interest of a trust beneficiary and third parties, not between a
12 settlor of a trust and a beneficiary of that same trust. Additionally, there are no public policy
13 considerations that prevent a settlor of an irrevocable trust from amending that trust with the consent
14 of a beneficiary where the trust has a spendthrift clause.

15 9. Premier Trust has not breached any fiduciary duty while acting as Trustee of the
16 Trust. Stephen agreed to the Settlement, Settlement Payment Obligation, and the amendment of the
17 terms of the Trust by virtue of the Settlement and Settlement Payment Obligation and Premier Trust
18 has properly followed the terms of the Settlement since becoming Trustee of the Trust.

19 10. Premier Trust had no obligation or duty to make any further inquiry into the
20 Settlement before making the three \$100,000 payments to the Emil Frei, III Trust after Dr. Frei's
21 death. Furthermore, Premier Trust had the right to rely upon the terms of the Settlement, including
22 the Settlement Payment Obligation, and the court orders and court transcript from the 2009 Lawsuit
23 when it made the three \$100,000.00 payments to the Emil Frei, III Trust on October 9, 2013,
24 November 4, 2013 and January 10, 2014. See Restatement (Second) of Trusts § 216 (1959).
25 Therefore, the three \$100,000.00 payments were properly made by Premier Trust from Stephen's
26 beneficial interest in the Trust.
27
28

1 11. It is proper for Premier Trust to satisfy the Settlement Payment Obligation to the
2 Emil Frei, III Trust with the remaining monies it has in the Trust that are part of Stephen's
3 beneficial interest.

4 12. Under the clear terms of the Trust Agreement, all ten children of Dr. Frei and Mrs.
5 Frei are presently income beneficiaries of the Trust, pursuant to Article Twelve, Section 3, Part f
6 (page 12-4 of the Trust Agreement). Because a majority of the ten children have not sought to
7 remove Premier Trust as a Trustee of the Trust (as is required under Article Ten, Section 2 of the
8 Trust Agreement at page 10-1) it is proper for Premier Trust to remain as Trustee of the Trust.

9 **III.**

10 **ORDER**

11 Based upon the above findings of fact and conclusions of law, and good cause appearing:

12 IT IS HEREBY ORDERED that Stephen's November 19, 2014 Petition to Construe Terms
13 of Trust, to Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel
14 Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust is denied in its
15 entirety.

16 IT IS FURTHER ORDERED that Premier Trust shall use Stephen's beneficial interest in the
17 Trust to satisfy Stephen's remaining Settlement Payment Obligation to the Emil Frei, III Trust, as
18 was agreed to previously in the Settlement.

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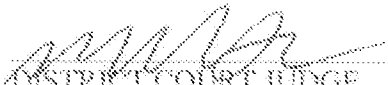
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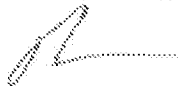
1 IT IS FURTHER ORDERED that Premier Trust should remain as Trustee of the Trust.

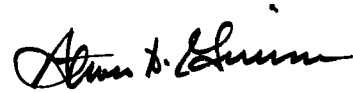
2 DATED this 10th day of April, 2015.

3
4
5 
DISTRICT COURT JUDGE

6 Respectfully Submitted By:

7 GERRARD COX LARSEN

8 
9
10 Douglas D. Gerrard, Esq.
Nevada Bar No. 4613
11 Richard D. Chatwin, Esq.
Nevada Bar No. 10870
12 2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
13 Attorneys for Premier Trust, Inc.
14
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CLERK OF THE COURT

NEO
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Attorney for Premier Trust, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

| | | |
|------------------------------|---|-------------------------|
| In the Matter of |) | CASE NO.: P-09-065257-T |
| |) | |
| FREI IRREVOCABLE TRUST dated |) | DEPT NO.: 26 |
| October 29, 1996 |) | |
| |) | |
| |) | |

**NOTICE OF ENTRY RE: FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS OF
TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM
REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY
DUTIES, AND TO RELEASE
JURISDICTION OF THE TRUST**

NOTICE IS HEREBY GIVEN that a **FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS
OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM
REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY
DUTIES, AND RELEASE JURISDICTION OF THE TRUST**, was entered herein on the
10th day of April, 2015. A copy of said Order is attached hereto as Exhibit "A".

DATED this 14th day of April, 2015.

GERRARD, COX & LARSEN

/s/ Douglas D. Gerrard, Esq.
Douglas D. Gerrard, Esq.
Nevada Bar No. 4613
2450 St. Rose Pkwy., Suite 200
Henderson, NV 89074

CERTIFICATE OF MAILING

I hereby certify that I am an employee of GERRARD, COX & LARSEN, and that on the 14th day of April, 2015, I served a true and correct copy of **NOTICE OF ENTRY RE: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND RELEASE JURISDICTION OF THE TRUST** by e-serving a copy on all parties listed in the Master Service List pursuant to Administrative Order 14-2, entered by the Chief Judge, Jennifer Togliatti, on May 9, 2014.

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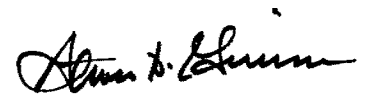
John Brock
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Blut & Campaign
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/s/ Kanani Gonzales
Kanani Gonzales, An employee of
GERRARD COX & LARSEN

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

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Attorneys for Premier Trust, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of)
FREI IRREVOCABLE TRUST dated) Case No.: P-09-065257-T
October 29, 1996) Dept. No.: 26
)
)
)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING STEPHEN
BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL
COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE,
TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE
JURISDICTION OF THE TRUST**

THIS MATTER, having come on for oral argument before the Honorable Gloria Sturman on January 14, 2015, January 26, 2015 and March 11, 2015 on STEPHEN BROCK's Petition to Construe Terms of Trust, To Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust filed on November 19, 2014, with appearances made by STEPHEN BROCK, who appeared through his counsel, JONATHAN W. BARLOW, ESQ. of CLEAR COUNSEL LAW GROUP, PREMIER TRUST, INC., by and through its counsel, DOUGLAS D. GERRARD, ESQ. and RICHARD D. CHATWIN, ESQ. of the law firm GERRARD COX LARSEN, and LAWRENCE HOWE and ELIZABETH MARY FREI, by and through their counsel, RUSSEL J. GEIST, ESQ. of the law firm HUTCHISON & STEFFEN.

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///

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2450 St. Rose Parkway, Suite 200
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1 After reviewing the pleadings filed in this matter, including all supplements filed after the
2 January 26, 2015 hearing and before the March 11, 2015 hearing, and considering all evidence and
3 testimony presented, this Court makes the following findings of fact, conclusions of law and orders:

4 I.

5 **FINDINGS OF FACT**

6 **A. The Frei Irrevocable Trust**

7 1. On October 29, 1996, Dr. Emil Frei, III ("Dr. Frei") and Adoria B. Frei ("Mrs.
8 Frei"), as husband and wife (jointly the "Settlers"), created the FREI IRREVOCABLE TRUST (the
9 "Trust").

10 2. The Trust was irrevocable from its inception and named all five of Dr. Frei's
11 children, who were from a previous relationship, and all five of Mrs. Frei's children, who were from
12 a previous relationship, as equal beneficiaries.

13 3. The Trust showed an intent by Dr. Frei and Mrs. Frei to be fair and equal with all ten
14 children in their estate planning.

15 4. Stephen Brock ("Stephen") is a son of Mrs. Frei and, therefore, a named beneficiary
16 of the Trust.

17 5. The Trust contained a spendthrift clause at Article 13, § 3.

18 6. Mrs. Frei died on January 28, 2009.

19 **B. The Amendment to the Frei Irrevocable Trust and Premier Becoming Trustee**

20 7. On April 17, 2009, Stephen, by and through his counsel, Daniel V. Goodsell, Esq.,
21 filed a Petition to Confirm Trustees of the Frei Joint Irrevocable Trust dated October 29, 1996, for
22 Order Assuming Jurisdiction Over the Trust, and for an Order Reforming Terms of the Trust (the
23 "2009 Petition").

24 8. In the 2009 Petition, Stephen sought to amend Article Seven of the Trust to allow a
25 beneficiary of the Trust to withdraw all of their beneficial interest in the Trust after the death of the
26 second of the Settlers to die by making a written request to the Trustee. Stephen's 2009 Petition to
27 modify the Trust was made after one of the Settlers had died.
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1 9. Probate Commissioner Wesley Yamashita issued a Report and Recommendation
2 approving the 2009 Petition on May 20, 2009. The Report and Recommendation was never
3 objected to and an Order approving the Report and Recommendation was entered by this Court on
4 June 12, 2009 (the "June 2009 Order"). The June 2009 Order modified the Trust.

5 10. On September 14, 2009, Premier Trust, Inc. ("Premier Trust") executed a written
6 Acceptance of Trustee to become a Co-Trustee of the Trust.

7 C. Litigation And Global Settlement Between Dr. Frei and Stephen

8 11. On April 24, 2009, Dr. Frei, one of the Settlers of the Trust, filed a Complaint in
9 Clark County, Nevada District Court against Stephen and entities controlled by Stephen (Case No.
10 A-09-588750-C) (hereinafter the "2009 Lawsuit"). In the 2009 Lawsuit, Dr. Frei alleged that
11 Stephen exploited Dr. Frei, breached fiduciary duties towards Dr. Frei, and converted more than
12 \$500,000.00 from him.

13 12. On March 31, 2010, in the middle of a jury trial of the 2009 Lawsuit, Stephen,
14 through his attorney of record, Dana A. Dwiggin, Esq., entered into a global settlement agreement
15 with Dr. Frei, through his attorney of record, Elliot S. Blut, Esq., before the Honorable Kenneth C.
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17 13. The Settlement immediately ended not only the 2009 Lawsuit, but also resolved
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19 including case numbers P-09-065235-E, A-10-609292-C, and A-10-607772-C.

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23 created by Dr. Frei which was revocable at the time the Settlement was
24 entered into) the total sum of \$415,000.00 (identified as \$175,000, \$150,000
25 and \$90,000 respectively in the Settlement documents) by making payments
26 in the amount of \$5,000.00 per month, beginning on June 1, 2010, over a
three year period, with the principal balance earning interest at the rate of
prime plus 1% and a balloon payment being made at the end of the three year
term (hereinafter the "Settlement Payment Obligation").

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*The Order Approving Settlement Agreement provided
a \$25,000 amount shall be secured by "*

(ii) ~~Stephen agreed to pledge his full beneficial interest in the Trust as security in the event that he failed to make the full Settlement Payment Obligation to Dr. Frei. See Order dated 6/18/2010 Case # P-09-065235~~

(iii) The Settlement called for a 5% default interest rate in the event Stephen Defaulted on the Settlement Payment Obligation.

15. A transcript of a March 31, 2010 hearing before the Honorable Kenneth C. Cory in the 2009 Lawsuit and an Order Approving Settlement Agreement entered with Commissioner Wesley Yamashita in case P-09-065235-E on June 18, 2010 clearly outline the terms, conditions, nature, details, and covenants of each party involved in the Settlement. This 2009 Lawsuit transcript and June 18, 2010 Order also clearly show that Dr. Frei and Stephen understood and fully agreed with all of the terms, conditions, nature, details and covenants of the Settlement, and that each of them intended to modify the Trust to permit (i) Stephen to secure his Settlement obligations with his beneficiary rights under the Trust, and (ii) the Settlement amounts to be paid to Dr. Frei from the Trust if Stephen failed to make the payments outlined in the Settlement. This March 31, 2010 Settlement, as confirmed by the June 18, 2010 Order, constituted an amendment and a modification to the terms of the Trust, which amendment and modification only affected Stephen's beneficiary interest in the Trust (the "2010 Trust Amendment"). This 2010 Trust Amendment was consented to by the only surviving Settlor, Dr. Frei, and the only beneficiary whose interest was impacted, Stephen.

The Settlement Agreement provided security
16. ~~Dr. Frei wanted the Settlement Payment Obligation to be secured as part of the for payment through the pledge of Stephen's interest in the Trust. Settlement in light of Dr. Frei's belief that Stephen had converted money from him previously, and was unwilling to settle with Stephen without the certainty of payment from the Trust.~~

17. All parties, including Dr. Frei and Stephen, agreed to and relied upon all of the terms, conditions, nature, details and covenants of the Settlement, including Stephen's promise to pledge his beneficial interest in the Trust as security and collateral in the event he failed to make the Settlement Payment Obligation, when they agreed to terminate all litigation between them, including Clark County, Nevada District Court cases A-09-588750-C, P-09-065235-E, A-10-609292-C, and A-10-607772-C.

D. Dr. Frei's Death, Stephen's Default and Payments Made by Premier Trust

18. Dr. Frei died on April 30, 2013.

19. Following Dr. Frei's death, all of the beneficiaries of the Trust, except Stephen, received an outright distribution from the Trust under the powers given to them in the June 2009 Order in an amount equal to all of their beneficial Trust interest, less approximately \$1,725.49 each (equaling approximately \$15,529.39 total among these nine beneficiaries), which has been withheld by Premier Trust as reserves for various future Trust expenses.

20. From the time Stephen entered into the Settlement until the present, he has only made a single \$5,000.00 payment towards his Settlement obligations, which was done on or shortly after the Settlement was finalized before Judge Kenneth C. Cory on March 31, 2010.

21. Following Dr. Frei's death, Premier Trust, in following the terms of the Trust, as modified by the Settlement, made payments to the Emil Frei, III Trust from Stephen's beneficial interest in the Trust in the following amounts and on the following dates:

(i) \$100,000.00 on October 9, 2013.

(ii) \$100,000.00 on November 4, 2013.

(iii) \$100,000.00 on January 10, 2014.

22. After Premier Trust made these three \$100,000.00 payments, Stephen sought to remove Premier Trust as Trustee of the Trust under Article Ten, Section 2 (page 10-1) of the Trust Agreement.

II.

CONCLUSIONS OF LAW

1. In general, the law allows a settlor of an irrevocable trust and a beneficiary of that same irrevocable trust to agree to amend the trust's terms. See, e.g., Cal. Prob. Code § 15404; Restatement (Second) of Trusts § 338 (1959). See also, Musick v. Reynolds, 798 S.W.2d 626, 630 (Tex. App. 1990).

2. However, there is no controlling statute or common law in Nevada on the issue of whether a settlor and beneficiary of an irrevocable trust can agree to amend that trust. There is

1 further no controlling law in Nevada on whether such an amendment would be permitted if one of
2 the original settlors to the irrevocable trust had died before the amendment.

3
4 3. This Court uses its equitable powers to determine that under the unique
5 circumstances of this case, an amendment to the Trust occurred on March 31, 2010 when Dr. Frei,
6 the surviving settlor, and Stephen, the only Trust beneficiary whose interest is effected, agreed to the
7 Settlement and agreed to permit Stephen to pledge his interest in the Trust as security therefore. As
8 a matter of equity, the Settlement between Dr. Frei and Stephen constituted a valid amendment to
9 the terms of the Trust because the intent of Dr. Frei and Mrs. Frei was followed through the terms of
10 the Settlement. Some, but not all, of the factors giving rise to this Court's finding that the
11 Settlement between Dr. Frei and Stephen constituted a valid amendment to the terms of the Trust are
12 as follows:

- 13 (i) The Court finds that Dr. Frei, as a Settlor of the Trust, was seeking to recover
14 from Stephen, who is a beneficiary of the Trust, money which Dr. Frei
15 alleged Stephen had wrongfully converted and which was to be divided
16 among all of Dr. and Mrs. Frei's children, through the litigation which ended
17 with the Settlement. The Settlement was secured through a modification of
18 the Trust at the time of the Settlement to permit Stephen to repay Dr. Frei
19 what had allegedly been fraudulently taken by Stephen with Stephen's
20 beneficial interest in the Trust, and as Stephen allegedly had nothing else, the
21 modification to the Trust was vital to carrying out the intent of both Dr. and
22 Mrs. Frei.
- 23 (ii) It was the intent of both Dr. Frei and Mrs. Frei that they wanted to treat their
24 children as equal beneficiaries in their estate plans, including the Trust. Had
25 Stephen been able to keep the monies he allegedly took fraudulently from Dr.
26 Frei it would have disadvantaged the other nine children and would have been
27 both unequal and unfair.
- 28 (iii) The Settlement affected only Stephen's beneficial interest in the Trust, which
is fair to all other beneficiaries of the Trust and consistent with the manifested
intent of Dr. Frei and Mrs. Frei in their estate planning.
- (iv) The 2010 Trust Amendment was agreed to by both Dr. Frei and Stephen and
was relied upon by Dr. Frei to resolve all the pending lawsuits.
- (v) Dr. Frei, all the other Trust beneficiaries, and the Co-Trustees of the Trust
then relied upon the 2010 Trust Amendment for many years, without
objection from Stephen, until after Dr. Frei died and money had been
distributed from the Trust in reliance upon the 2010 Trust Amendment.

1 4. Nevada recognizes the doctrine of judicial estoppel. See, e.g., Marcuse v. Del Webb
2 Communities, Inc., 163 P.3d 462 (Nev. 2007). There are five elements of judicial estoppel: (i) a
3 party has taken two positions, (ii) the positions were taken in judicial or quasi-judicial
4 administrative proceedings, (iii) the party was successful in asserting the first position (i.e., the court
5 adopted the position or accepted it as true), (iv) the two positions are totally inconsistent, and (v) the
6 first position was not taken as a result of fraud or mistake. Id., 163 P.3d at 663. A party asserting
7 judicial estoppel does not need to show all of these elements exist to successfully assert the doctrine.
8 Mainor v. Nault, 120 Nev. 750, 765 (Nev. 2004) (“Although not all of these elements are always
9 necessary, the doctrine generally applies when...”). A party may be estopped under the doctrine of
10 judicial estoppel “merely by the fact of having alleged or admitted in his pleadings or former
11 pleadings the contrary of the assertion sought to be made.” Breliant v. Preferred Equities Corp., 918
12 P.2d 314, 317 (Nev. 1996) (quoting Sterling Builders, Inc. v. Fuhrman, 80 Nev. 543, 549, 396 P.2d
13 850, 854 (1964)). The “mistake” portion of the fifth element of judicial estoppel is for mistakes of
14 fact only, not mistakes of law. Vaile v. Dist. Ct., 118 Nev. 262, 44 P.3d 506, 514 (Nev. 2002)
15 (quoting Sterling Builders, Inc., 80 Nev. at 549-50, 396 P.2d at 854 (“According to the rule of
16 judicial estoppel, a party who has stated an oath in a prior proceeding, ‘as in a pleading,’ that a given
17 fact is true may not be allowed to deny the same fact in a subsequent action”)).

18 5. Here, all of the elements of the doctrine of judicial estoppel apply in this case against
19 Stephen. Stephen took two inconsistent positions (that he could amend the terms of the Trust
20 through the Settlement with Dr. Frei but now claims it is impossible to do and is void *ab initio*),
21 both of the inconsistent positions were taken in judicial or quasi-judicial administrative proceedings,
22 Stephen was successful in amending the terms of the Trust in regards to his beneficial interest in it
23 with Dr. Frei through the Settlement in 2010, and Stephen, who was represented by competent
24 counsel, did not enter into the Settlement due to any ignorance, fraud or mistake. In summary,
25 Stephen cannot enter into the Settlement with Dr. Frei in 2010, promise to make the Settlement
26 Payment Obligation, secure that those payments with his beneficial interest in the Trust, and then
27 later claim that he did not want to agree to the Settlement or that what he agreed to was impossible
28 or void *ab initio*.

1 6. Dr. Frei justifiably relied upon Stephen's covenants and promises made in the
2 Settlement, including Stephen's agreement to pledge his full beneficial interest in the Trust as
3 security in the event he failed to fully pay the Settlement Payment Obligation.

4 7. The justifiable reliance by Dr. Frei in entering into the Settlement with Stephen
5 judicially estops Stephen and the arguments he has made before this Court. The doctrine of judicial
6 estoppel exists to prevent a party from taking a benefit of settling a case, telling four judges you
7 want to settle, and then later try to void those settlements. To allow Stephen to void the Settlement
8 would completely disregard his former promises to Dr. Frei. Therefore, Stephen cannot argue the
9 Trust could not be amended through the 2010 Settlement.

10 8. Nevada Revised Statutes Chapter 166's spendthrift protections, including those at
11 N.R.S. § 166.120, apply between the interest of a trust beneficiary and third parties, not between a
12 settlor of a trust and a beneficiary of that same trust. Additionally, there are no public policy
13 considerations that prevent a settlor of an irrevocable trust from amending that trust with the consent
14 of a beneficiary where the trust has a spendthrift clause.

15 9. Premier Trust has not breached any fiduciary duty while acting as Trustee of the
16 Trust. Stephen agreed to the Settlement, Settlement Payment Obligation, and the amendment of the
17 terms of the Trust by virtue of the Settlement and Settlement Payment Obligation and Premier Trust
18 has properly followed the terms of the Settlement since becoming Trustee of the Trust.

19 10. Premier Trust had no obligation or duty to make any further inquiry into the
20 Settlement before making the three \$100,000 payments to the Emil Frei, III Trust after Dr. Frei's
21 death. Furthermore, Premier Trust had the right to rely upon the terms of the Settlement, including
22 the Settlement Payment Obligation, and the court orders and court transcript from the 2009 Lawsuit
23 when it made the three \$100,000.00 payments to the Emil Frei, III Trust on October 9, 2013,
24 November 4, 2013 and January 10, 2014. See Restatement (Second) of Trusts § 216 (1959).
25 Therefore, the three \$100,000.00 payments were properly made by Premier Trust from Stephen's
26 beneficial interest in the Trust.
27
28

11. It is proper for Premier Trust to satisfy the Settlement Payment Obligation to the Emil Frei, III Trust with the remaining monies it has in the Trust that are part of Stephen's beneficial interest.

12. Under the clear terms of the Trust Agreement, all ten children of Dr. Frei and Mrs. Frei are presently income beneficiaries of the Trust, pursuant to Article Twelve, Section 3, Part f (page 12-4 of the Trust Agreement). Because a majority of the ten children have not sought to remove Premier Trust as a Trustee of the Trust (as is required under Article Ten, Section 2 of the Trust Agreement at page 10-1) it is proper for Premier Trust to remain as Trustee of the Trust.

III.

ORDER

Based upon the above findings of fact and conclusions of law, and good cause appearing:

IT IS HEREBY ORDERED that Stephen's November 19, 2014 Petition to Construe Terms of Trust, to Compel Compliance With Terms of Trust, to Confirm Removal of Trustee, to Compel Redress of Breach of Fiduciary Duties, and to Release Jurisdiction of the Trust is denied in its entirety.

IT IS FURTHER ORDERED that Premier Trust shall use Stephen's beneficial interest in the Trust to satisfy Stephen's remaining Settlement Payment Obligation to the Emil Frei, III Trust, as was agreed to previously in the Settlement.

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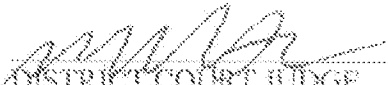
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GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, NV 89074
O: (702) 796-4800 F: (702) 796-4788


1 IT IS FURTHER ORDERED that Premier Trust should remain as Trustee of the Trust.

2 DATED this 10th day of April, 2015.

3
4
5 
DISTRICT COURT JUDGE

6 Respectfully Submitted By:

7 GERRARD COX LARSEN

8 
9
10 Douglas D. Gerrard, Esq.
Nevada Bar No. 4613
11 Richard D. Chatwin, Esq.
Nevada Bar No. 10870
12 2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
13 Attorneys for Premier Trust, Inc.
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

April 17, 2009

P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

April 17, 2009

9:30 AM

Petition for Confirmation

HEARD BY: Yamashita, Wesley

COURTROOM: Courtroom 09

COURT CLERK: Melissa Swinn

PARTIES:

Elizabeth Frei, Other, not present
Frei Joint Irrevocable Trust Dated October 29,
1996, Trust, not present
Lawrence Howe, Other, not present
Parties Receiving Notice*, Other, not present
Premier Trust Inc, Other, not present
Stephen Brock, Petitioner, not present

Todd Moody, Attorney, not present

Todd Moody, Attorney, not present

Richard Chatwin, Attorney, not present
Michael Beede, Attorney, not present

JOURNAL ENTRIES

- At request of counsel, matter CONTINUED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: December 05, 2014 9:30 AM Petition - HM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

April 24, 2009

P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

April 24, 2009

9:30 AM

Petition for Confirmation

HEARD BY: Yamashita, Wesley

COURTROOM: Courtroom 09

COURT CLERK: Melissa Swinn

PARTIES:

Elizabeth Frei, Other, not present
Frei Joint Irrevocable Trust Dated October 29,
1996, Trust, not present
Lawrence Howe, Other, not present
Parties Receiving Notice*, Other, not present
Premier Trust Inc, Other, not present
Stephen Brock, Petitioner, not present

Todd Moody, Attorney, not present

Todd Moody, Attorney, not present

Richard Chatwin, Attorney, not present
Michael Beede, Attorney, not present

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| JOURNAL ENTRIES |
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- At request of counsel, matter CONTINUED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: December 05, 2014 9:30 AM Petition - HM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

May 01, 2009

P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

May 01, 2009

9:30 AM

Petition for Confirmation

HEARD BY: Yamashita, Wesley

COURTROOM: Courtroom 09

COURT CLERK: Kathleen Boyle

PARTIES:

Elizabeth Frei, Other, not present
Frei Joint Irrevocable Trust Dated October 29,
1996, Trust, not present

Todd Moody, Attorney, not present

Lawrence Howe, Other, not present
Parties Receiving Notice*, Other, not present

Todd Moody, Attorney, not present

Premier Trust Inc, Other, not present

Richard Chatwin, Attorney, not present

Stephen Brock, Petitioner, not present

Michael Beede, Attorney, not present

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| JOURNAL ENTRIES |
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- Elliott Blut, Bar #6570, Michael Olsen, Bar #6076, and Daniel Goodsell, Bar #7356 also present.
Guardian ad Litem, Frederick Waide, also present.

Discussion regarding jurisdiction. Mr. Waide advised the Court he had spoken with Dr. Frei, and he was not opposed to any reformation. He wanted the attorneys to reach a resolution.

COMMISSIONER RECOMMENDED, the Court will take jurisdiction over the Trust. The Trustees are CONFIRMED. The Reformation of the Trust shall be ALLOWED. Mr. Goodsell shall prepare the Report and Recommendation.

INTERIM CONDITIONS:

| | | | | |
|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 05/18/2015 | Page 3 of 9 | Minutes Date: | April 17, 2009 |
|-------------|------------|-------------|---------------|----------------|

P-09-065257-T

FUTURE HEARINGS:

Canceled: December 05, 2014 9:30 AM Petition - HM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

January 14, 2015

P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

January 14, 2015 9:00 AM Petition - HM

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

PARTIES:

Elizabeth Frei, Other, present
Frei Joint Irrevocable Trust Dated October 29,
1996, Trust, not present
Lawrence Howe, Other, not present
Parties Receiving Notice*, Other, not present
Premier Trust Inc, Other, not present
Stephen Brock, Petitioner, present

Todd Moody, Attorney, not present

Todd Moody, Attorney, not present

Richard Chatwin, Attorney, present
Jennifer Micheli, Attorney, present

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| JOURNAL ENTRIES |
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- PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE JURISDICTION OF THE TRUST

COURT ORDERED matter SET FOR HEARING.

1/26/2015 at 10AM Hearing on Petition

INTERIM CONDITIONS:

FUTURE HEARINGS:

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|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 05/18/2015 | Page 5 of 9 | Minutes Date: | April 17, 2009 |
|-------------|------------|-------------|---------------|----------------|

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

January 26, 2015

P-09-065257-T

In the Matter of the Trust of:

Frei Joint Irrevocable Trust Dated October 29, 1996

January 26, 2015 10:00 AM Petition

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Marwanda Knight

PARTIES:

Elizabeth Frei, Other, not present
Frei Joint Irrevocable Trust Dated October 29,
1996, Trust, not present

Todd Moody, Attorney, not present

Lawrence Howe, Other, not present
Parties Receiving Notice*, Other, not present

Todd Moody, Attorney, not present

Premier Trust Inc, Other, not present

Richard Chatwin, Attorney, not present

Stephen Brock, Petitioner, not present

Michael Beede, Attorney, not present

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| JOURNAL ENTRIES |
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- Stephen M. Brock, Petitioner, appearing with Jonathan Barlow, Esq.
Lawrence Howe and Mary Elizabeth Frei, Trustees, appearing with Rusel Geist, Esq.
Doug Gerrard, Esq., and Rich Chatwin, Esq., present for Premier Trust, Inc.

At Petition: Construe Terms of Trust, Compel Compliance, Confirm Removal of Trustee, Compell Redress of Breach of Fiduciary Duties, and Release Jurisdiction of Trust Mr. Barlow gave a brief history on the events leading up to today's proceedings. Argument by Mr. Barlow. Mr. Gerrard moved to call Stephen Brock as a witness. Mr. Barlow noted his objection. Following argument by counsel, COURT ORDERED, testimony allowed. Testimony presented (See Worksheet). Argument by Mr. Gerrard. Argument by Mr. Geist. Additional argument by Mr. Barlow. Court stated its findings, noting the Court did not have enough information to rule on the Petition without supplemental briefing. COURT ORDERED, Supplemental Brief due February 13, 2015; Responsive Brief due February 27, 2015. Additionally, counsel is to advise the Court if the parties decide more time is needed to argue this matter.

03/11/2015 10:00 A.M. Petition: Construe Terms of Trust, Compel Compliance, Confirm Removal of Trustee, Compel Redress of Breach of Fiduciary Duties, and Release Jurisdiction of Trust

INTERIM CONDITIONS:

FUTURE HEARINGS:

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**Probate -
Trust/Conservatorships**

COURT MINUTES

March 11, 2015

P-09-065257-T

In the Matter of the Trust of:
Frei Joint Irrevocable Trust Dated October 29, 1996

March 11, 2015 1:30 PM Evidentiary Hearing

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 03H

COURT CLERK: Linda Denman

PARTIES:

| | |
|---|--------------------------------------|
| Elizabeth Frei, Other, not present | Todd Moody, Attorney, not present |
| Frei Joint Irrevocable Trust Dated October 29, 1996, Trust, not present | |
| Lawrence Howe, Other, not present | Todd Moody, Attorney, not present |
| Parties Receiving Notice*, Other, not present | |
| Premier Trust Inc, Other, not present | Richard Chatwin, Attorney, present |
| Stephen Brock, Petitioner, not present | Michael Beede, Attorney, not present |

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| JOURNAL ENTRIES |
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- EVIDENTIARY HEARING ON PETITION TO CONSTRUE TERMS OF TRUST, COMPEL COMPLIANCE, CONFIRM REMOVAL OF TRUSTEE, COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND RELEASE JURISDICTION OF TRUST

Mr. Barlow clarified this hearing was set for counsel to supplement their pleadings regarding specific questions the Court raised: 1) whether the 2009 reformation affected the spendthrift trust provision; and 2) whether the 2010 restatement acted as a modification of the trust. Mr. Barlow stated petitioner's position is that the 2009 reformation is valid because the reformation would not take effect until the death of the surviving settlor. In contrast, the 2010 restatement is invalid because an irrevocable trust cannot be amended without agreement of both settlors and all beneficiaries and that was impossible since the first settlor was deceased. Mr. Gerrard argued that Brock cannot claim the 2009 reformation valid and the 2010 restatement invalid because the same dynamic applied to both changes, one of the settlors was deceased by 2009. He argued Brock's positions are inconsistent and meet the elements of judicial estoppel and should be denied.

Colloquy on the global settlement reached during trial on case A588750 by Judge Cory and included case A609292, A607772 and P065235; in which Brock agreed to pay a large settlement and pledge his beneficial interest in the Trust as collateral for these payments. Mr. Barlow argued that regardless how the Court rules on the 2010 restatement, based on the settlement agreement, is invalid because either Brock violated the spendthrift provision or Premier Trust violated its fiduciary authority in paying without notice or consent and failing to defend its beneficiary. Mr. Gerrard argued Brock agreed to the global settlement to make monthly restitution to Dr. Frei and pledged his future inheritance as collateral. The debt became due and owing once Brock's inheritance was obtainable upon Dr. Frei's death. Notwithstanding judicial estoppel, Mr. Gerrard argued Premier Trust could not have violated its fiduciary duty in following the settlement approved by the beneficiary, settlor, district court judge and probate commissioner.

Mr. Barlow concluded there was no reference to the spendthrift provision in the settlement, which leads to the belief that everyone operated under a mistake of law in finalizing the settlement. Fred Waid stated he was appointed as Dr. Frei's Guardian Ad Litem due to medical and physical limitations and not for mental incapacity. He stressed that the collective estate planning, trust litigation and expertise in this very specific area of law was represented in those settlement discussion with Commissioner Yamashita and other officers of the Court. He stated that Dr. Frei realized Brock had no cash, no hard assets, and no assets that were not encumbered. Everyone considered and explored all ways to resolve these matters and decided the only way was on the life insurance trust already in place and beneficiaries vested. Mr. Waid concluded that collective counsel and parties knew exactly what the settlement meant and there was no mistake or oversight.

COURT STATED ITS FINDINGS that Mr. Barlow raises a valid policy concern because Nevada law does not want to expose the spendthrift trust protections to third-party creditors; however, the distinction in this particular case is that the pledge of future income was to the very person upon whose life the income derived. Court noted there is no case law on point with the circumstances of this unique case. COURT ORDERED Petition to Construe Terms of Trust, Compel Compliance, Confirm Removal of Trustee, Compel Redress of Breach of Fiduciary Duties, and Release Jurisdiction of Trust DENIED. COURT FURTHER ORDERED claims the 2009 reformation modified the spendthrift trust provision GRANTED; Steven Brock is JUDICIALLY ESTOPPED from raising as a defense that the 2010 restatement and settlement was void. COURT FURTHER ORDERED the claim that Premier Trust violated its fiduciary duty in paying the settlement DENIED; FINDING Brock's consent was given at the time he signed the settlement agreement.

Mr. Gerrard to prepare proposed Order; all counsel to review as to form and content.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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|-------------|------------|-------------|---------------|----------------|
| PRINT DATE: | 05/18/2015 | Page 9 of 9 | Minutes Date: | April 17, 2009 |
|-------------|------------|-------------|---------------|----------------|



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT**

**MICHAEL N. BEEDE, ESQ.
2300 W. SAHARA AVE., STE. 420
LAS VEGAS, NV 89102**

**DATE: May 18, 2015
CASE: P065257**

RE CASE: In the Matter of the Trust of: FREI JOINT IRREVOCABLE TRUST dated October 29, 1996

NOTICE OF APPEAL FILED: May 14, 2015

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; FAMILY COURT COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE JURISDICTION OF THE TRUST; NOTICE OF ENTRY RE: FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING STEPHEN BROCK'S PETITION TO CONSTRUE TERMS OF TRUST, TO COMPEL COMPLIANCE WITH TERMS OF TRUST, TO CONFIRM REMOVAL OF TRUSTEE, TO COMPEL REDRESS OF BREACH OF FIDUCIARY DUTIES, AND TO RELEASE JURISDICTION OF THE TRUST; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

In the Matter of the Trust of:

FREI JOINT IRREVOCABLE TRUST
dated October 29, 1996

Case No: P065257

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 18 day of May 2015.

Steven D. Grierson, Clerk of the Court

Mary Kielty

Mary Kielty, Deputy Clerk