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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MARIANA QUEZADA Plaintiff and Appellant, v. GENEVIEVE RAMIREZ, as Trustee, etc., Defendant and Respondent.	B272093 (Los Angeles County Super. Ct. No. BP156903)

APPEAL from a judgment of the Superior Court of Los Angeles County. Maria E. Stratton, Judge. Affirmed.

George M. Halimi for Plaintiff and Appellant.

Genevieve Ramirez, in pro. per., for Defendant and Respondent.

We affirm a probate court judgment declaring the meaning of certain terms of a living trust which set forth the distribution of a parcel of real property.

FACTS

Background

Carlos Rodriguez Quezada and Concha R. Quezada had three children who lived into adulthood: Mariana Quezada Carrillo (born in 1956), Cynthia Quezada Figueroa (born in 1960), and Genevieve Quezada Ramirez (born in 1965).[1] Carlos and Concha owned one house.

Concha died in 2002. Around the time that Concha died, Genevieve moved into the family home. Genevieve thereafter cared for Carlos in the family home until he died in 2013. During his lifetime, Carlos suffered from heart bypass surgery, prostate cancer, diabetes, and, ultimately, Alzheimer's disease and dementia.

The Trust

In 2008, Carlos executed a multi-page, typewritten trust instrument creating the "Carlos Rodriguez Quezada Revocable Living Trust Dated June 14, 2008" (hereinafter the Trust). The rudiments of the trust instrument named Carlos as trustee of the Trust, Genevieve as successor trustee, and Mariana as alternate successor trustee, and provided that the Trust was created for Carlos's exclusive use during his lifetime. After his death, the successor trustee was to pay debts, expenses and any death taxes. The sole asset of significant value placed into the Trust was Carlos's house, a parcel of real property commonly known as

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[1] We hereafter use first names in this opinion for the most part for sake of clarity.

12407 Jersey Avenue in the City of Norwalk (hereafter the Norwalk property).

The relevant parts of the trust for purposes of the present appeal follow. Paragraph 5.6 of the trust instrument, entitled "DISPOSITON OF REMAINING TRUST ESTATE," reads as follows:

> "On the settlor's death, the remaining trust estate shall be disposed of as directed and assigned in SCHEDULE B."

The relevant language in SCHEDULE B for purposes of the present appeal reads as follows:

> "Upon the death of the Settlor [Carlos], the then acting Trustee [Genevieve] shall arrange for the Settlor's funeral and burial, pay the Settlor's debts, including the funeral and expenses of last illness, and distribute the Trust. *The Trustee shall remain living in the Settlor's estate real property without paying paying rent for a maximum of 50 years*.
>
> [¶] . . . [¶]
>
> "[1] *The Settlor hereby gives, devises, and bequeaths the trust assets, non-trust assets and residue and remainder of the estate to Settlor's Three Daughters MARIANA . . . , CYNTHIA . . . , GENEVIEVE . . . .* [2] *Settlor's Daughter GENEVIEVE . . . shall be allowed to live on the estate's real property located at 12407 Jersey Avenue, Norwalk, CA 90650 without paying rent for a maximum of Fifty (50) years.*
> *GENEVIEVE . . . shall pay the property taxes and*

> *homeowners insurance for the period of time she is living on the property.* Settlor's Daughter GENEVIEVE has cared for Settlor since the death of his spouse CONCHA . . . .
>
> "If Settlor's child(ren) . . . fail to survive the distribution of the Trust Estate, and have children, then and in that event, the share of the Trust intended for distribution to such child shall instead . . . be distributed in equal shares, by right of representation, to the issues(s) of the predeceased child.
>
> "If Settlor's child(ren) . . . fail to survive the distribution of the Trust Estate, and have no children, then and in that event, the share of the Trust intended for distribution to such child shall instead . . . be distributed to the remaining living children of the Settlor." (Italics and numbered headings added.)

The Probate Court Case

At all times since Carlos's death, Genevieve has lived at the Norwalk property.

In October 2014, Mariana filed a petition for declaratory relief in the probate court. Mariana's operative pleading, her first amended petition filed in February 2015, alleged that Carlos intended that the Trust would create "an interest of 'tenancy in common' between the beneficiaries of [the] Trust" in the Norwalk property. Further, that Carlos did not intend that the Trust would create a "life estate" in favor of Genevieve. Additionally, Mariana alleged that Carlos did not intend that the Trust would

"'limit[] or exclude[]' the remaining tenants [in common] the right to possess the [Norwalk] property." The prayer for relief in Mariana's first amended petition reads:

> "[Mariana] prays for judgment against [Genevieve] as follows: [¶] . . . For declaration that the beneficiaries of Trust *are the co-owners in fee* of [the Norwalk property]." (Italics added.)

Genevieve filed an opposition to the amended petition for declaratory relief. The prayer for relief in Genevieve's opposition asked for the following:

> "[A] declaration that ownership of the [Norwalk property] shall be *held in the name of decedent's three daughters Genevieve . . . , Mariana . . . and Cynthia . . . , subject to the specific terms of the . . . Trust providing [Genevieve] with the right to reside in the [Norwalk property] rent free for a period of up to 50 years, subject to her obligation to pay property taxes and insurance on said property*." (Italics added.)

In summary, Mariana's and Genevieve's pleadings agreed on the ultimate outcome of the case insofar as to the ownership of the Norwalk property was concerned — a declaration that all three of Carlos's daughters were to own the property in equal shares. Beyond this, Genevieve wanted a judicial declaration that she had a right to occupy the Norwalk property for a period of 50 years.

The matter was tried to the probate court. At that time, Mariana testified that she had visited Carlos "every other

weekend" in the family home after Concha died in 2002, and that she and Carlos were not estranged at the time he created the Trust. During the last year of Carlos's life in 2103, Genevieve had "forbidden" Mariana from visiting Carlos. Genevieve rested her case without testifying.

During a series of exchanges with Mariana's counsel during argument, the court repeatedly asked what it was, as a practical matter, that Mariana wanted the court to do. Mariana's counsel stated that Mariana wanted to be recognized as a joint owner of the house. When pressed, Mariana's counsel acknowledged that Mariana wanted to be able to "sell" her share of the Norwalk property.

The probate court issued a multi-page minute order setting out its ruling. In relevant part, the court's minute order provides: "By the time of trial, the parties had refined their arguments. Both agreed at trial that the settlor gave his real property equally to his three daughters, subject to the terms of the Trust. Both agreed that under the terms of the Trust, Genevieve has a right to occupy the real property for a maximum of 50 years subject to her payment of property taxes and insurance. The issue at trial was two-fold as stated by [Mariana]: 1) whether Genevieve's right to occupy the property was an *exclusive right* so that the other two beneficiaries do not have [the] right to occupy the property; [or] 2) whether the settler limited Genevieve's right to occupy the property to fifty years only, while the other two beneficiaries had an unlimited right to occupy the property, beginning at the settlor's date of death." In short, the probate court viewed the case as involving a dispute over the right to occupy the Norwalk property, with no issue as to ownership of the property.

On the issue of the right to occupy the Norwalk property, the probate court correctly observed that no evidence had been presented on Carlos's intent as to whether Genevieve had an exclusive right to occupy the property, and that this meant the issue had to be determined from the language of the trust instrument alone. The court decided that the most reasonable interpretation of the Trust was that Carlos intended Genevieve to have an exclusive right to occupy the Norwalk property. In the end, the court ruled that "[d]uring the period of the right of occupancy [for 50 years], title is held by the trustee of the trust," and that Genevieve's right of occupancy was exclusive.

Mariana thereafter filed a motion to set aside the court's judgment. Mariana argued that declaring the Trust would hold title to the Norwalk property was inconsistent with the trust instrument's language, and also with the parties' agreement at trial that Carlos intended for the Norwalk property to be given to his three daughters in equal shares. Mariana sought a new judgment that would declare the Norwalk property to be owned jointly by all three of Carlos's daughters. Further, that upon the court declaring joint ownership in Carlos's three daughters, the judgment could not recognize an exclusive right of occupancy in favor of Genevieve as that would contravene joint ownership principles. Genevieve filed a timely opposition.

The probate court heard arguments on the motion. The court recounted its understanding of the scope of trial: "[F]rankly, at trial, this [issue as to the ownership of the Norwalk property] didn't come up. What came up was, [Mariana] wants to kick Genevieve out or [Mariana] wants to move in with Genevieve. That's what we were looking at or focused on at

trial." During ensuing discussions, counsel for both Mariana and Genevieve stated that joint ownership of the Norwalk property was intended, and the court essentially agreed to accept their position. The parties and the court then discussed the form of an "amended judgment," and it was agreed by both counsel for Mariana and Genevieve that it should provide that the Norwalk property would be transferred by the trustee "to the three daughters as tenants in common, subject to Genevieve's 50-year right of occupancy."

Thereafter, the court entered a final judgment which reads in pertinent part as follows:

> "THE CARLOS RODRIGUEZ QUEZADA REVOCABLE LIVING TRUST DATED JUNE 14, 2008 gives an exclusive right of possession/occupancy to GENEVIEVE RAMIREZ for her lifetime or a period of up to fifty (50) years from August 14, 2013 (date of death of Carlos Rodriguez Quezada), whichever comes first, on the condition that she pay property taxes and insurance and said trust does not give a similar right of occupancy to the remaining trust beneficiaries MARIANA QUEZADA aka MARIANA Q. CARRILLO and CYNTHIA Q. FIGUEROA for the real property commonly known as 12407 Jersey Ave., Norwalk, California . . . .
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> "Successor Trustee GENEVIEVE RAMIREZ shall distribute title to that real property to GENEVIEVE RAMIREZ, MARIANA QUEZADA aka MARIANA Q. CARRILLO and CYNTHIA Q. FIGUEROA as Tenants in Common, subject to that exclusive right of possession/occupancy."

Mariana filed a timely notice of appeal.

DISCUSSION

As best as we understand the briefing, Mariana contends the probate court's declaratory judgment must be reversed because it suffers from an internal inconsistency that cannot stand as a matter of law. She argues that by being recognized in the judgment as having a one-third title interest in the Norwalk property, it follows that she "has an equal right of tenancy in [the property]." Mariana argues: "In California, each tenant in common [owner] has an equal right to possession of the entire property, and no cotenant [owner] has a right to the exclusive possession of the property as against another cotenant [owner]." Mariana asserts the probate court's judgment "stripped the right to cotenancy from [her], by declaring [Genevieve's] right of cotenancy [*sic*] . . . is an exclusive right of possession/occupancy."

It seems Mariana takes two positions: First, the judgment should not declare that Genevieve has an *exclusive right* to occupy the Norwalk property. Instead, it should declare that Mariana has an "equal right" to occupy the Norwalk property, meaning, that she can move in with Genevieve. Or, second, the judgment should not declare that Genevieve has *any right* to occupy the Norwalk property, exclusive or otherwise. Here, Mariana argues that, to the extent the provisions of the Trust are construed to "confer[] a life estate" to Genevieve, those provisions must be "disregarded due to [the] contradictory provisions of the Trust [giving joint ownership to all three daughters.]"

We turn to these contentions raised by Mariana, as we understand them.

I. The Trust Did Not Confer a Life Estate to Genevieve

We first correct Mariana's misconception that the Trust conferred a "life estate" in the Norwalk property to Genevieve. It did not.

As the probate court stated: "It is not uncommon for a trust to provide that a [named person] has the right to live in a residence rent-free for the remainder of his or her life or for a term of years. This type of arrangement does not grant the beneficiary a 'life estate' in the home; instead it creates what is called a right of occupancy. (See *Le Breton v. Cook* (1895) 107 Cal. 410, 419 [(*Le Breton*); and see] Weinfeld, *The Right of Occupancy*, California Lawyer, September 2015 40, 40.) . . . [¶] A right of occupancy does not grant the holder any kind of estate or title to the subject property. . . . A right to occupancy is personal to the holder and cannot be sold or transferred. . . ."

The probate court's discussion is amplified by Weinfeld, and we reiterate it, as we find his discussion helpful: "Many trusts provide that a [named person] has the right to live in a residence rent free for the remainder of his or her life. This type of provision is particularly common in a second marriage when the settlor (the person creating the trust) comes into the marriage with a home that is separate property and wants the surviving spouse to live there before the property passes to the settlor's children. . . . [¶] Many practitioners believe that this type of arrangement grants the [occupier] a life estate in the home, but it does not. The provision creates what is called a right of occupancy. (See *Le Breton v. Cook, supra*, 107 Cal. at p. 419.) . . . [C]ase law does make clear that those rights of

occupancy are different from life estates. (See *Le Breton*, *supra*, 107 Cal. at [p.] 419; *Robbins v. Bueno* (1968) 262 Cal.App.2d 79, 82; *Dandini v. Johnson* (1961) 193 Cal.App.2d 815, 820.) [¶] Unlike a life estate, a right of occupancy does not grant the holder any kind of estate or title to the subject property. During the period of the right of occupancy, title is held by the trustee of the trust. A right of occupancy is personal to the holder, and thus it generally cannot be sold or transferred . . . (See *Le Breton, supra*, 107 Cal. at p. 419; see also Cal. Prob. Code §§ 15300–15301.)" (Weinfeld, *The Right of Occupancy*, *supra*, at p. 40.)

Because Genevieve was not granted a life estate in the Norwalk property by the trust instrument, but rather, is a rightful occupier of the property, Mariana's arguments regarding the consequences of a merger of a lesser and superior "estate" in real property are not helpful to her. While Mariana's legal argument may be abstractly correct that a life estate is terminated when the life estate and fee are both conveyed to the same person (see, e.g., *Sheldon v. La Brea Materials Co.* (1932) 216 Cal. 686, 692), that is not the situation presented here because Genevieve was not granted a life estate.

II. Exclusive Right of Possession/Occupancy

We find Mariana's arguments that the probate court erred in interpreting the trust instrument to give Genevieve an *exclusive right* to occupy the Norwalk property unpersuasive. Mariana essentially argues that because the trust instrument does not expressly state that Genevieve's right to occupy the Norwalk property is exclusive, it is not. Thus, Mariana contends she must be recognized to share a right of occupancy with the other beneficiary owners under the Trust, i.e., her sisters.

Here, we agree with the probate court that such an interpretation of the trust instrument "defies common sense." The record leaves no room for doubt that Carlos desired to give Genevieve a right to occupy the Norwalk property. Further, the language of the trust instrument, coupled with what little evidence of intent that there is in the record, amply supports the conclusion that Carlos wanted to reward Genevieve for her devotion to him in his later years by giving her a right of occupancy. As the probate court aptly phrased it: The language of the trust instrument and the evidence supports the conclusion that Carlos intended to give Genevieve "an extra benefit in addition to her [ownership] share" of the Norwalk property.

Further, we agree with the probate court that, if Carlos had wanted to right of occupancy to be joint as to all of his children, then he easily could have stated as much, but he did not. Finally, we agree with the probate court that it makes little sense given the family's circumstances, particularly in light of Genevieve's care for Carlos in this later years, that he would give Genevieve a right to occupy the Norwalk property on the express condition that she pay the taxes and insurance, while her sisters would also have a right of occupancy, but not be singled out for an obligation to pay taxes and insurance. There is nothing in the record to support the notion that Carlos would have given Genevieve a burden for her efforts, where his reasonable inclination would have been to give her an added benefit.

For all of the above reasons, we can find no fault in the probate court's interpretation of the trust instrument to give Genevieve an exclusive right to occupy the Norwalk property.

III. Tenant in Common Ownership and the Right of Occupancy Are Not Incompatible

Mariana next contends that Genevieve's right to occupy the Norwalk property should be extinguished. Specifically, Mariana claims that the conveyance transferring the Norwalk property from Genevieve as trustee to Carlos's three daughters, in equal shares, as tenant in common owners, should operate as a matter of law to extinguish Genevieve's right to occupy the property. Mariana's arguments do not persuade us that tenant in common ownership must be ruled necessarily incompatible with a right of occupancy granted under a trust.

Mariana is correct that, *as between* tenants in common, i.e., *as between* co-owners of real property, each has equal right to enter on and to occupy the entire property, and none has the right to exclude another from any portion of the property. (See, e.g., *Russell v. Lescalet* (1967) 248 Cal.App.2d 310, 313 [a tenant in common cannot claim adverse possession against another tenant in common because, even where the former actually possesses the property, his or her possession is presumed to be with the permission of the latter].)

The problem with Mariana's argument is that its fails to recognize that Genevieve has two roles in this case, namely, that of a partial owner of the Norwalk property as a tenant in common, and that of a rightful occupier of the property under a trust instrument. As between the three daughters in their roles as tenants in common, holding title to the Norwalk as co-owners, their rights are equal. Neither has any property interest greater than the other. However, the three daughters hold title to the Norwalk property subject to a pre-existing right of occupancy granted by the Trust.

The fact that Mariana may not be able to sell her share of the property at the present moment because it is unmarketable due to the existing right of occupancy being held by a third-party, i.e., Genevieve in her role as occupier, does not mean that the daughters' co-ownership interests are somehow defective under law. Mariana's co-ownership share is real, and she will be able to sell her share at the conclusion of the period of occupancy, or bequeath it to her children. Mariana has not shown how this is inconsistent with California trust and property law. As Weinfeld correctly notes, the Supreme Court in *Le Breton* seemingly viewed the issue of the ownership of a parcel of real property to be distinct from a right of occupancy in the property, and suggested that real property which is subject to a right to occupancy may be sold subject to the right of occupancy. (*Le Breton, supra*, 107 Cal. at p. 420.) Such a sale might not be realistic in light of practical market forces, but this does not mean that a right of occupancy in a parcel of real property violates any property law when it comes to the ownership and or transfer of the property.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

BIGELOW, P.J.

We concur:

RUBIN, J. GRIMES, J.