

Tekiner v Bremen House Inc.
2022 NY Slip Op 33604(U)
October 19, 2022
Supreme Court, New York County
Docket Number: Index. No. 657193/2020
Judge: Joel M. Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

<p>YASEMIN TEKINER,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>BREMEN HOUSE INC., BREMEN HOUSE TEXAS, INC., GERMAN NEWS COMPANY, INC., GERMAN NEWS TEXAS, INC., 254-258 W. 35TH ST. LLC, BERRIN TEKINER, GONCA TEKINER, BILLUR AKIPEK, ZEYNEP TEKINER,</p> <p style="text-align: center;">Defendants.</p>	<table border="0"> <tr> <td style="padding-right: 10px;">INDEX NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">657193/2020</td> </tr> <tr> <td style="padding-right: 10px;">MOTION DATE</td> <td style="border-bottom: 1px solid black; text-align: center;">N/A</td> </tr> <tr> <td style="padding-right: 10px;">MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black; text-align: center;">024</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	657193/2020	MOTION DATE	N/A	MOTION SEQ. NO.	024
INDEX NO.	657193/2020						
MOTION DATE	N/A						
MOTION SEQ. NO.	024						

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 024) 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 460, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613 were read on this motion to REMOVE AND APPOINT TRUSTEE.

This case involves a family-owned business that is riven with bitter internecine disputes. The current protagonists are Berrin Tekiner (“Berrin”) and her daughter Gonca Tekiner (“Gonca”), on one side, and Berrin’s other daughters Yasemin Tekiner (“Yasemin”) and Zeynep Tekiner (“Zeynep”) on the other side, though the factional configurations have varied over time. Caught in between is Billur Apitek (“Billur”), Berrin’s long-time trusted employee, who is in the unenviable position of serving simultaneously as the sole “independent” trustee in separate trusts created for *each* of the warring sisters as they battle with and among each other and with Berrin, including in this litigation, for access to and the fruits of the family business.

Each trust owns roughly a one-third interest in Bremen House Inc., Bremen House Texas, Inc., German News Co., Inc., and German News Texas, Inc. (collectively, the “Company Defendants”). While this arrangement may have worked for many years, the events leading up

to this lawsuit, and the lawsuit itself, has placed Billur in the middle of a family feud where clear lines have been drawn.

Yasemin now moves to remove Billur as a Member of the Trust Committee for the Yasemin Tekiner 2011 Descendants Trust (the “Trust”) and to appoint an independent replacement member.¹ According to Yasemin, Billur’s removal is imperative for at least three reasons: 1) Billur has breached her fiduciary duties to Yasemin, and is in an inherently conflicted position; 2) under 12 Del. C. § 3327(3), based on the substantial change in circumstance created by this lawsuit; and 3) under 12 Del. C. § 3327(3), based on the “hostility” between Billur and Yasemin, which makes it impossible for Billur to properly perform her duties as the independent member of the Trust Committee.

For the reasons stated below, the branch of Yasemin’s motion seeking to remove Billur as a Member of the Trust Committee is granted. The evidence before the Court clearly demonstrates that Billur cannot serve as Trustee for all three Trusts, at least under current circumstances. Billur is inherently in a position of conflict, which the Court has noted many times during this grim dispute. The Court finds that the relationship between the plaintiff and the defendant family members is so hostile and confrontational as to prevent Billur from being able to administer the trust in accordance with her fiduciary duties.

¹ Plaintiff Zeynep Tekiner (“Zeynep”) filed a separate motion to remove Billur from the trust committee of the Zeynep Tekiner 2011 Descendants Trust and to appoint an Independent Trust Committee Member (Mot. Seq. 032), which adopted and relied on the factual recitations and legal arguments made in support of this motion, without establishing her own factual record. At oral argument on August 15, 2022, this Court indicated that it would resolve Yasemin’s motion first and then Zeynep’s motion, if possible (NYSCEF 685 at 90-91 [Tr. of Aug. 15, 2022]). Although the factual record is slightly different for Zeynep, the trust documents are mostly identical, and thus the basis for the Court’s decision in this motion equally applies to Zeynep’s motion, which will be addressed in a separate order.

The branch of the motion seeking to appoint a new Member to replace Billur, or to permit Yasemin to do so, is denied as inconsistent with the terms of the Trust Agreement, which gives Berrin the power of appointment.

BACKGROUND

The Trust is an irrevocable trust created under a trust agreement dated August 1, 2011 (the “Trust Agreement”) (NYSCEF 431 [“Trust Agrmt.”]). Under its terms, Berrin is the Grantor and sole member of the Protector Committee (*see* NYSCEF 559 ¶ 4, 14 [“Berrin Aff.”]). The Trust is a shareholder of, and holds a roughly one-third interest in, the Company Defendants (*see* NYSCEF 430 ¶5 [“Yasemin Aff.”]). The Trust is held for the benefit of Yasemin and her descendants (Trust Agrmt. at Art. 2) and is governed by Delaware Law (*id.* at Art. 13). Bryn Mawr is the corporate Trustee of the Yasemin Trust (Berrin Aff. ¶ 14).

The Trust, its distributions, investments, and assets are managed by a Trust Committee that has “exclusive management authority and responsibility” for, *inter alia*, the investments and assets of the Trust (Trust Agrmt. at Art. 15–Art. 16). The Trustee has no authority to make distributions from the Trust, “except as directed by the Trust Committee” (*id.* at Art. 15(A)(1)(a)). Similarly, the Trustee “shall act with respect to the investment of the assets of the trusts created hereunder only upon the written direction of the Trustee Committee” (*id.* at Art. 16(A)(1)). As such, the Trustee cannot take any action relating to distributions or investments without the Trust Committee (*id.* at Art. 15–16). The Trust Agreement provides that the Trust Committee “shall be considered a fiduciary in exercising its functions” (*id.* at Art. 16(A)(1)). The Trust Agreement provides that “[i]n directing any distribution,” the Trustee is requested to “give preference to providing for YASEMIN” (*id.* at 2(D)).

Yasemin and Billur were named as “initial members of the Trust Committee” (*id.* at preamble). Billur serves as the as the “independent member” of the Trust Committee, which is defined by the Trust Agreement as someone who “shall be a person who has no beneficial interest whatsoever in such trust, it being the intention of the Grantor to exclude from service as the independent member of the Trust Committee any person having an actual, potential or contingent interest in such trust” (*id.* at Art. 9 (D)(2)).

The Trust Agreement provides Berrin, as sole Protector Committee member, with the right to remove a Trustee and a member of the Trustee Committee at any time and for any reason:

EIGHTH: Removal and Replacement of Members of Trust Committee. (A) Anything in this instrument to the contrary notwithstanding, the Protector Committee may remove one or more members of the Trust Committee or designated successor members of the Trust Committee from office at any time and for any reason and may appoint one or more persons and/or a bank or trust company (none of whom are the Grantor, YASEMIN or any person and/or entity related or subordinate to the Grantor or YASEMIN as such terms are defined in Section 672(c) of the Code) in the place and stead of any removed Trust Committee member or designated successor Trust Committee member.

(NYSCEF 431, Art. 8(A)(1); Art. 6(A)(1) [Removal and Replacement of Trustees]).

The Trust Agreement also gives Berrin the sole and absolute discretion to appoint any person to serve as an additional member of the Trust Committee:

NINTH: Appointment of Successor and Additional Members of the Trust Committee. Subject to the provisions of Article EIGHTH of this instrument: (A) The Protector Committee or, if no member of the Protector Committee is then acting, the then serving members of the Trust Committee, in their sole and absolute discretion, may appoint any person (other than the Grantor), and/or a bank or trust company to serve as an additional member of the Trust Committee at any time or from time to time.

(NYSCEF 431, Art. 9(A)(1)).

While the Trust Committee has the sole and absolute discretion to make distributions under the Trust Agreement, the Trust holds no liquid assets, property, or direct investments (Berrin Aff. ¶¶6–7). Rather, the Trust’s assets are shares of the privately-owned Defendant Companies, which were purchased with promissory notes payable to Berrin, secured by each Trust’s ownership interest in the Companies (*id.*). Currently, each outstanding promissory note totals \$11 million. There have never been any distributions to any beneficiary of any of the trusts since they were created in 2011 (*id.* at ¶7). According to the Affidavit submitted by Berrin, any distribution would require a vote from the Bremen House board, as the Companies would need to authorize a distribution, under its bylaws, to the shares held in the Trusts for the Trusts to have liquid assets to make a distribution to the beneficiaries (*see* Trust Agrmt. Art. VI). Because of the outstanding promissory notes, any dividend or distribution to the Trusts would first go to pay down the promissory notes (Berrin Aff. ¶7). However, the Trusts do receive distributions from the Companies in order to make minimum interest payments on the promissory notes as required by the debt instruments (*id.* ¶8). Furthermore, the practice of the Companies has been to pay out salaries (and other benefits) in lieu of making distributions to shareholders (Billur Tr. at 110:2–8).

The Companies’ main business is to invest in, hold and manage real estate located in New York and Texas (NYSCEF 22 ¶6 [Berrin Aff Jan. 14, 2021]). The Companies hold title to several residential properties, including those occupied by Yasemin, Gonca, Zeynep, and Berrin, and the Companies pay for upkeep on these properties (NYSCEF 22 ¶9 [Berrin Aff Jan. 14, 2021]). According to Yasemin, Billur’s mother lives in an apartment owned by the Tekiner family business under a “sweetheart arrangement” (NYSCEF 548 ¶24 [Second Amended Complaint (“SAC”)]).

In 2017, Berrin, as the sole member of the Protector Committee, removed Yasemin from the Trust Committee. Yasemin was later reinstated in 2019 (Berrin Aff. ¶16).

On December 10, 2020, Yasemin sent Billur, in her role as Trustee, a letter requesting that she join her in a lawsuit against the Companies due to Yasemin's concerns that the Companies were being mismanaged, and the Companies' denial of Yasemin's request to access book and records (NYSCEF 76). After receiving this letter, Billur shared it with Berrin and Gonca (NYSCEF 169 at 177:9–13 ["Billur Tr."]). Berrin removed Yasemin from the Trust Committee, resulting in Billur being the sole member of the Trust Committee (NYSCEF 430 ¶9 ["Yasemin Aff."]).

On January 3, 2021, Yasemin filed a complaint in this action (NYSCEF 2) and requested a temporary restraining order and injunctive relief to prevent, among other things, Defendants from terminating Yasemin as director and officer of the Companies (NYSCEF 5). On January 5, 2021, this Court heard oral argument and denied the request for a temporary restraining order. That same day, the shareholders of Bremen House (*i.e.*, the Trusts) removed Yasemin as a Director through a Joint Written Consent of the Shareholders (NYSCEF 28; Billur Tr. at 179:13–17). The Consent is signed by Berrin and Christina Trust as the corporate Trustee for all three of the sister's Trusts (NYSCEF 28). According to the By-laws of Bremen House, "any or all of the directors may be removed for cause by vote of the shareholders or by action of the Board of Directors. Directors may be removed without cause only by vote of the shareholders" (NYSCEF 31 § 3.5).

Thereafter, on January 8, 2021, Yasemin was removed as Vice President of Bremen House by Unanimous Written Consent of the Boards of Directors, being Berrin, Gonca, and Zeynep (NYSCEF 29). Yasemin was also removed as Treasurer of German News by

Unanimous Written Consent of the Boards of Directors, being Berrin, Billur, and Gonca (NYSCEF 30). Zeynep has since alleged that she was coerced by Berrin and Billur to consent to the firing of Yasemin as Vice President (*see* NYSCEF 371 ¶¶6, 100 [Zeynep’s First Amended Complaint]).

Because Yasemin was removed from her positions at the Companies, Yasemin no longer received a salary (Yasemin Aff. ¶14). Yasemin sent Billur a letter that same day requesting distributions from her trust. Billur testified that she did not respond because “we were in litigation . . . I did not respond because we were already – she was already suing me, the companies, and her family members” (Billur Tr. at 196:2–13). Billur further testified that “historically, having never done any distributions, I did not even consider that it would be appropriate now that were in an active legal suit” (*id.* at 200:22–25).

* * * *

During the course of this litigation, the Court has observed a wide array of bitter disputes between and among Berrin, her daughters, and Billur. The operation of the family business has been characterized by bitterness and strife, with one daughter or another falling in an out of favor with Berrin over time, and then sometimes back (and forth) again. The Court was sufficiently concerned by the process involved in removing Yasemin from the board, including with a not so subtle shove from her “fiduciary” Billur, that it revisited its prior decision and ordered Yasemin’s reinstatement as a director and employee of defendant corporation (NYSCEF 353 [Apr 18, 2022 Decision and Order]). Although the Court has a strong preference for permitting private companies to resolve their own internal affairs, this company demonstrated a sufficient amount of disfunction to require intervention.

One of the through lines during the various disputes has been the role of Billur. Although the three sisters' trusts collectively own nearly all of the equity of the Defendant Companies, as a practical matter Billur controls their votes, blunting any independent interest each beneficiary might have in her own individual affairs and insulating Berrin from any meaningful shareholder oversight. While to some extent Berrin's hegemony was baked into the corporate organization from the outset, the fact remains that Berrin decided to create Delaware-law *trusts* for the benefit of Yasemin, Zeynep, and Gonca. Having chosen to do so, she (and the Court) cannot simply ignore the fiduciary duties owed by Billur to her multiple beneficiaries under Delaware law.

DISCUSSION

As an initial matter, under Delaware law, which governs the Trust (NYSCEF 431, Art. 13), this matter is properly before the Court. “Although the usual proceeding for the removal of a trustee is a direct one instituted by complaint for that purpose, a removal may be allowed upon petition or motion in another action involving the administration of the trust” (*Smith v Biggs Boiler Works Co.*, 33 Del Ch 183, 194 [1952] [citation omitted]). “This has been done, for instance, in an action to enforce the execution of a trust. In another instance defendant sought removal of the complainant co-trustee, based upon allegations set forth in a counterclaim” (*id.* [citations omitted]). Here, this action involves administration of the trust as Yasemin asserts claims against Billur for abuse of trust and breach of fiduciary duty, abuse of discretion in the denial of trust distributions, tortious interference with the trust agreement, and aiding and abetting breach of fiduciary duty (*see SAC*).

In any event, even if Plaintiff's motion were not a proper vehicle for raising Yasemin's concerns, 12 Del C § 3327 authorizes the Court to remove a trustee on its own initiative.

Furthermore, Defendant's argument that granting this motion will award plaintiff the ultimate relief sought is misplaced, as this decision does not reach the merits of the causes of action asserted by Yasemin against Billur or the other defendants.

A. Removal of a Trustee

Billur, as the sole member of the trustee committee of Yasemin's trust, owes Yasemin a fiduciary duty to preserve the trust property and a duty of disclosure (*McNeil v McNeil*, 798 A2d 503, 509 [Del 2002]). Under Delaware law, which governs the trust, "self-dealing on the part of a trustee is virtually prohibited" (*Stegemeier v Magness*, 728 A2d 557, 563 [Del 1999] *see also* Restatement [Second] of Trusts § 170[1] [trustees have "a duty to the beneficiary to administer the trust solely in the interests of the beneficiary"]).

It is well-established that "[t]he power to remove a trustee is ancillary to the duty of the court to see that the trust is administered properly and that power will generally be exercised sparingly" (*Biggs Boiler Works*, 33 Del Ch at 193–94).

Delaware statutory law provides numerous bases on which a Court may remove a trustee.

12 Del C § 3327 provides:

If a governing instrument expressly permits an officeholder (as defined in § 3326 of this title)² to be removed, the officeholder may be removed in accordance with the terms of the governing instrument. *In addition*, the Court of Chancery may remove an officeholder on the Court's own initiative or on petition of a trustor, another officeholder, or beneficiary if:

- (1) The officeholder has committed a breach of trust; or
- (2) The continued service of the officeholder substantially impairs the administration of the trust; or

² Section 3326 provides that "the term 'officeholder' includes a trustee."

(3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:

- a. A substantial change in circumstances;
- b. Unfitness, unwillingness or inability of the officeholder to administer the trust or perform its duties properly; or
- c. Hostility between the officeholder and beneficiaries or other officeholders that threatens the efficient administration of the trust.

(12 Del C § 3327 [emphasis added]). “Similarly, 12 Del. C. § 3303(a) states that a trust can expand, restrict, or limit various rights and duties, but ‘nothing in this section shall be construed . . . to preclude a court . . . from removing a fiduciary on account of the fiduciary’s willful misconduct.’ The Court clearly has the power to remove a trustee who ‘fails to perform [his] duties through more than mere negligence’” (*Lynch v Barba*, CV 12083-MG, 2018 WL 1613834, at *9 [Del Ch Apr 3, 2018], *adopted*, [Del Ch 2018]).

Here, the Trust Agreement gives Berrin the authority to remove a trustee or a member of the Trustee Committee at any time and for any purpose (NYSCEF 431, § 6(A)(1), 8(A)). But that does not end the inquiry, as Defendants suggest. Section 3327 makes it clear that the Court’s authority to remove is *in addition* to the any removal provisions outlined in the governing documents. Further, while the Trust Agreement provides that Berrin has the ability to remove a trustee or a member of the trustee committee, nowhere does the Trust Agreement provide that Berrin has the exclusive authority to do so. Thus, the Trust Agreement does not “explicitly reserve[] the power to appoint and remove trustees” (NYSCEF 666 at 11).

a. Breach of Trust

“The trustee, as a fiduciary, owes the beneficiaries the duty of loyalty and must exclude all self interests” (*Gans v MDR Liquidating Corp.*, 1991 WL 114514, at *3 [Del Ch June 25,

1991]). Here, Plaintiff argues that Billur should be removed as trustee because she has an inherent conflict of interest. “Actions taken while operating under a conflict of interest would likely breach a duty of loyalty” (*United Bhd. of Carpenters Pension Plan v Fellner*, 2015 WL 894810, at *3 [Del Ch Feb 26, 2015]; *see also Matter of In Matter of Heizer Corp.*, CIV. A. 7949, 1988 WL 58272, at *21 [Del Ch June 6, 1988] [noting that where the trustee’s duties are in conflict with his individual or other interests, it is a breach of trust]).

“The law is settled that the Court may order the removal and replacement of trustees based on a conflict of interest” (*Rosenbloom v Esso Virgin Is., Inc.*, 766 A2d 451, 459 [Del 2000]; *In re Catell’s Estate*, 28 Del Ch 115 [Del Ch 1944] [noting that a conflict of interest is an appropriate ground for the removal of a trustee]; *du Pont v Wilmington Tr. Co.*, 2017 WL 4461132, at *6 n 45 [Del Ch Oct 6, 2017], *as rev* [Oct 11, 2017] [collecting cases]).

A trustees’ conflict of interest may not be a *per se* disqualification (*see Gans*, 1991 WL 114514, at *3). “As commentators have recognized, ‘[i]t is well established that a trustee may occupy conflicting positions in handling the trust where the trust instrument contemplates, creates, or sanctions the conflict of interest’” (*Tigani v Tigani*, 2021 WL 1197576, at *15 [Del Ch Mar 30, 2021] [citation omitted], *judgment entered*, [Del Ch 2021], and *affd*, 271 A3d 741 [Del 2022]). Here, appointing Billur to serve as a trust committee member on each of the Trusts may have worked at the time the Trusts were created, especially given the fact that Berrin sold or gifted the Trusts identical ownership interests in the Companies, and intended for all of her daughters to be treated equally (*see* NYSCEF 559 ¶ 5 [“Berrin Aff.”]). It is undisputed that Billur has been a longtime family friend and an employee of Bremen House for many years (Berrin Aff. ¶ 9–10). All parties involved agreed to this arrangement as they signed off on the trust documents. Thus, the Court declines, at this time and on the present record, to find any

inherent conflict of interest present from the time the trust documents were created. However, the Court does find a conflict of interest presently exists due to a substantial change in circumstances.

b. Substantial Change in Circumstances

In considering the “substantial change in circumstances” provision contained in Section 3327(3)(a), the Delaware Chancery Court has relied on the Uniform Trust Code’s (UTC) “useful guidance” in analyzing a “very similar” provision (*du Pont*, 2017 WL 4461132, at *3). In particular, the official comment to § 706 of the UTC notes that “[c]hanged circumstances justifying removal of a trustee might include a substantial change in the character of the service or location of the trustee” (*id.* [quoting Official Comment]). The UTC official comment also notes that “[b]ecause of the discretion normally granted to a trustee, the settlor’s confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight. This deference to the settlor’s choice can weaken or dissolve if a substantial change in the trustee’s circumstances occurs” (*id.*).

Here, a series of events leading up to this lawsuit, along with the lawsuit itself, has caused a substantial change in Billur’s circumstances such that the character of Billur’s services have changed. A trustee has a duty to act impartially (*see McNeil*, 798 A2d at 509). Billur is simultaneously serving as Trust Committee member for Yasemin’s trust, Zeynep’s trust, and Gonca’s trust. In her multiple roles, Billur controls the votes of the trusts as shareholder of the Companies. Since the interests of the three beneficiaries clearly are not aligned, it is not possible for Billur act impartially as to all three beneficiaries or to protect their opposing interests.

Evidence of this conflict can be seen in the actions taken to remove Yasemin from her positions as director and officer. Billur, as the sole member of the Trust Committee of

Yasemin's Trust, must have consented to Yasemin's removal from the board of directors, as the consent form was signed by the corporate trustee who can only take action at the direction of the Trust Committee. Billur would have had to consent not only as a member of the Trust Committee of Yasemin's Trust, but also as a member of the Trustee Committee for both Gonca's Trust and Zeynep's Trust. As a director of German News, Billur also signed the unanimous consent form to remove Yasemin from her position as Treasurer. There is also evidence to suggest that Billur was involved in pressuring Zeynep to sign the consent form to remove Yasemin (*see, e.g.*, NYSCEF 217, ¶¶ 21–23 [“Zeynep Aff.”]).

Further, due to this litigation, Yasemin can only communicate with Billur through counsel and not directly (NYSCEF 428; 429). While this may be appropriate for litigation purposes, it also underscores Billur's inability to “wear two hats” successfully during this time. Billur testified that she did not respond to Yasemin's request for distributions from her Trust because of the litigation, and that she did not even consider that making distributions would be appropriate due to the active legal suit (Billur Tr. at 196:2–13; 200:22–25). A trustee has a duty to furnish information to a beneficiary (*see McNeil*, 798 A2d at 509). “[A] serious breakdown in communications between beneficiaries and a trustee may justify removal, particularly if the trustee is responsible for the breakdown or it appears to be incurable” (Restatement [Third] of Trusts § 37).

At the same time, Billur is also Vice President of Bremen House, and although she is not on the Board of Bremen House, she is on the Board of German News. While not dispositive here, plaintiffs have created a record which indicates that Billur is beholden to Berrin and Gonca for, among other things, her livelihood and her mother's subsidized apartment.

Billur may have been able to perform in all these various roles without conflict when there was no internal discord among the Tekiner family.³ As this Court has recognized, an arrangement that might have worked in the past no longer works today.

c. Hostility

Given the circumstances of this case, the Court finds that the relationship between Yasemin and Billur is openly hostile. “Hostility between a trustee and the beneficiaries of a trust is an appropriate ground for the removal of a trustee. Mere friction or discord, however, is not sufficient” (*Gans*, 1991 WL 114514, at *4, citing *Biggs Boiler Works*, 33 Del Ch 183). “The difference is a fine line” (*Gans*, 1991 WL 114514, at *4). “The friction or hostility [between trustee and beneficiaries] must be of such a nature as to make it impossible for the trustee to properly perform his duties” (*du Pont*, 2017 WL 4461132, at *8; *see also Broecker v Ware*, 29 A2d 591, 598 [Del Ch 1942] [“[M]ere differences of opinion [between trustee and beneficiary] are not sufficient to justify removal [of the trustee]”]; Restatement [Third] of Trusts § 37 [“[R]esentment ordinarily does not warrant removal of the trustee; but a serious breakdown in communications between beneficiaries and a trustee may justify removal, particularly if the trustee is responsible for the breakdown or it appears to be incurable.”]).⁴

³ The Court notes that this decision does not make any findings regarding the allegations against Billur for self-dealing, abuse of trust, or breach of fiduciary duty, all of which must still be proven by Yasemin and/or Zeynep.

⁴ Indeed, the circumstances here fit squarely into the type of case the Restatement had in mind: “The settlor named two of her five children as co-trustees of a trust for all of the children and their families. Over several years, extreme ill will has developed among the children and is now impairing the proper functioning of the trust. It is within the reasonable discretion of the court to remove and replace the trustees” (Restatement [Third] of Trusts § 37, Comment *e* (1), Illustration 7).

The hostility here goes beyond a difference of opinion or dissatisfaction. As noted above, Billur was involved in the removal of Yasemin as a director and officer, as well as in coercing Zeynep to consent to Yasemin's firing and removal. Further, Billur never responded to Yasemin's request for distributions from her Trust once her a sole source of income was cut off, testifying that she didn't even consider it because of the lawsuit. Billur, along with her co-defendants, have also filed counterclaims against Yasemin in this lawsuit seeking to, *inter alia*, evict her from her home (*see* NYSCEF 143 at ¶ 94). Although Defendants have since represented that they are not pursuing eviction, this counterclaim is still indicative of the hostile relationship between the parties.

The outlined disputes only scratch the surface. The evidence before the Court on this motion, and the record as a whole, demonstrate “that the relationship between the plaintiff and the defendant trustee[] is so bitter and unpleasant as to prevent the trustee[]” from administering the trust in accordance with her fiduciary duties (*Biggs Boiler Works*, 33 Del Ch at 195).

Accordingly, Yasemin's motion is granted, and Billur is removed as trustee. Although it is possible that the conflicts giving rise to this result could dissipate at the conclusion of this litigation, that cannot be assumed.

B. Appointment of a Trustee

While it is well-established that a Court may removal a trustee, appointing a trustee raises a different issue (*McNeil*, 798 A2d at 513).

“The Court of Chancery possesses undoubted authority to appoint a trustee if the trust instrument fails to do so” (*id.* citing *Craven v Wilmington Teachers Ass'n.*, 47 A2d 580, 584 [Del Ch 1946]). “Where the terms of the trust provide a method for filling vacancies by some method other than by appointment of the court, however, the designated method of replacement should

be followed” (*McNeil*, 798 A2d at 513). “Even when a court seeks to exercise its residual authority of appointment, it should do so ‘only in rare circumstances,’ since the identity and number of the trustees is central to the structure of the trust and a key indicator of the intent of the settlor” (*id.* [citations omitted]). “The designation of replacement trustees is a matter for the settlor’s determination in the first instance and, where that intention is expressed, should not be disregarded in the absence of compelling circumstances such as the unsuitability of a designated replacement” (*id.* at 514). “The beneficiaries are not entitled to select a trustee, although the court will ordinarily consider the wishes of beneficiaries in making an appointment” (Restatement Third] of Trusts § 34).

Here, there is no designated replacement in the Trust Agreement. Instead, Article 9 provides Berrin with the “sole and absolute discretion” to “appoint any person (other than the Grantor), and/or a bank or trust company to serve as an additional member of the Trust Committee at any time or from time to time” (Trust Agrmt. Art. 9(A)). Accordingly, Berrin has the discretion to appoint to new member to the Trustee Committee, provided that such new trustee has no disqualifying conflicts of interest. Given the nature of the disputes to date, the Court observes that appointment of an experienced and independent “bank or trust company” could be a prudent choice.

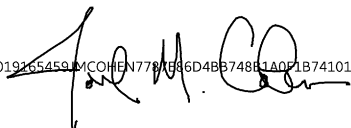
Plaintiff’s request to appoint her own replacement is denied, as it is inconsistent with the terms of the trust.

Accordingly, it is

ORDERED that Plaintiff’s motion is **granted in part**, as follows: Billur Akipek is hereby removed as a Member of the Trust Committee of the Yasemin Tekiner 2011 Descendants Trust, to be replaced by Berrin Tekiner in accordance with the terms of the Trust Agreement.

This constitutes the Decision and Order of the Court.

20221019265459 JMC0HEN7787336D4B6748B1A071B741012AF4D7



JOEL M. COHEN, J.S.C.

10/19/2022
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: