

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of Gabrielle Levitis, as petitioner  
and Trustee of the Svetlana Mizman Condominium Trust, to  
terminate the Trust and grant authorization to distribute the  
principal remaining to the beneficiaries.

**DECISION & ORDER**

File No. 2020-3668

Executor of the Estate of

**FILIP GOTMACHER,**

Deceased.

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**MONTALBANO, S.**

In this miscellaneous proceeding, Gabrielle Levitis (Trustee), trustee and remainder beneficiary of the Svetlana Mizman Condominium Trust (the Trust), filed a petition to terminate the Trust, pursuant to EPTL § 7-1.19. Svetlana Mizman (Objectant), a beneficiary with a life estate granted by the Trust, filed objections alleging that the Trustee is unqualified to serve as Trustee. The parties have waived a trial and consented to the court deciding the matter on the pleadings and the law. For the following reasons, the petition is granted.

**Background**

Filip Gontmacher (Grantor) died on April 10, 2020, leaving two daughters, the Objectant and Mila Tasevich, and a granddaughter, the Trustee herein. The Grantor established the Trust, inter vivos, on May 2, 2012, which sole asset is a condominium unit located at 3080 West 1<sup>st</sup> Street, Unit 301, Brooklyn, New York (Condominium). The Trust appointed his granddaughter as Trustee and provides that during the Grantor's lifetime, he shall have exclusive right to reside in and occupy the Condominium. The Trust further provides that upon the Grantor's death, the Objectant shall have the exclusive right to reside in and occupy the Condominium provided that she "pay all maintenance and utilities." Upon the Objectant's death, the Condominium is to be distributed to the Trustee as remainder beneficiary.

The Trustee seeks termination of the Trust, pursuant to EPTL 7-1.19, alleging that the continuation of the Trust has become economically impractical. The Trustee further alleges that

the Objectant never moved into the Condominium and does not currently reside in the Condominium. In addition, the Trustee alleges that the Objectant has failed to pay for any costs associated with maintaining the condominium, including monthly common charges, utilities, taxes, and insurance. Accordingly, the Trustee argues that the Trust is unable to fund the costs of maintaining the condominium, as the Trust has no other assets or means of generating income. The Objectant does not dispute that she never moved into the Condominium or that she has not paid a penny toward the maintenance of the Condominium since the Grantor's death.<sup>1</sup> Instead, the Objectant argues that the Trustee should be removed as trustee because she is hostile to the Objectant and is otherwise unfit to serve as trustee.

### **Discussion**

A trust may be terminated where (a) it is economically impracticable to maintain; (b) the express terms of the instrument do not prohibit early termination; (c) such termination would not defeat the specified purpose of the trust; and (d) termination would be in the best interests of the beneficiaries. EPTL 7-1.19(a)(2). First, the express terms of the Trust do not prohibit early termination. In fact, the Objectant was obligated under the Trust to pay for the maintenance costs of the Condominium and has refused to do so. Accordingly, the express terms of the Trust supports termination under the circumstance.

Further, the Objectant has not moved into the Condominium since the decedent's death over two years ago. Accordingly, early termination of the Trust would not defeat its specified purpose of providing the Objectant a place to reside during her lifetime. *See Matter of Burack*, 2019 NYLJ LEXIS 4294 (Sur Ct, NY County, Dec. 3, 2019). Additionally, since the Objectant has paid no costs to maintain the Condominium and the Trust has no other assets or income, the Trust is economically impractical to maintain and termination would be in the best interests of the beneficiaries.

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<sup>1</sup> Although not stated in her pleadings, in conferences with the court, the Objectant stated that she currently resides in a two-family home she owns jointly with her sister and admitted that she has not paid for any costs associated with maintaining the Condominium.

**Conclusion**

Based upon the foregoing, the petition is granted pursuant to EPTL 7-1.19. The Mizman Condominium Trust is hereby terminated and the Trustee is authorized to distribute the principal remaining to the remainder beneficiary under the Trust.

This constitutes the decision and order of this court.

Dated: July 28, 2022  
Brooklyn, New York



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HON. ROSEMARIE MONTALBANO  
Surrogate