

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

IN RE: ESTATE OF

HENRY BIALER

PROBATE DIVISION

Civil Case No. 2024-CA-000735

ROBERT BIALER and MARTIN BIALER, as
Co-Trustee of the HENRY BIALER 2009
REVOCABLE TRUST AS AMENDED AND
RESTATED ON MARCH 22, 2022,

Plaintiffs,

v.

VERONICA BIALER, individually and as trustee,
Et. Al.

Defendants

**PLAINTIFFS' RESPONSE TO VERONICA'S MOTION TO QUASH SERVICE, TO
DISMISS AND FOR OTHER RELIEF**

Plaintiffs, ROBERT BIALER and MARTIN BIALER ("Plaintiffs") by and through their undersigned counsel, hereby file this response in opposition to Defendant, Veronica Bialer's ("Defendant" or "Veronica")'s Motion to Dismiss filed March 12, 2024, and in support thereof states:

SUMMARY OF THE ARGUMENT

Defendant, Veronica Bialer, filed the instant Motion to Dismiss Plaintiffs' Complaint, *contesting the facts* as alleged in the Complaint and as set forth on the summons issued, served, and returns of service filed. Veronica also appears to ask the Court to dismiss the Complaint claiming that Plaintiffs are not *proving their case* at the pleading stage. Plaintiffs have filed a detailed Complaint explaining from what information was available to them, and despite

Veronica's objections and threats to the banks and estate planner to not speak with the successor trustees and personal representatives about Henry's assets, the allegations explain Veronica's transfer of what now appears to be 30-Million Dollars out of her husband's revocable trust, at the end of his life, to her control. The result of this is not for the benefit of Veronica, who was more than amply provided for to support even a more luxurious lifestyle than what she lived with her husband, but to change Henry's long term, heavily negotiated estate plan, as to where Henry's money will go after Veronica's death.

BACKGROUND FACTS

1. On August 7, 2023, Decedent passed away reaching the ripe age of 99 years and 8 months old, survived by his two adult sons and his second wife, Veronica Bialer. *See* Compl. at para. 21, 22.

2. Henry was originally married to Ethel Bialer and they had two children, Robert and Martin. Henry and Ethel eventually divorced. *See* Compl. at para 24.

3. Henry married Veronica, approximately 16 years younger than Henry, who was Henry's long-term spouse. Henry and Veronica had no children together. Veronica had two daughters from her previous marriage, Rita and Betty. *See* Compl. at para. 25.

4. In 2009, Henry created the Henry Bialer Revocable Trust Agreement that originally provided 2-Million Dollars to Veronica free of trust and a marital trust for Veronica's benefit during her life, but upon Veronica's passing would pass to Henry's blood relatives. Henry's main purpose in his estate plan was to provide for Veronica upon his death, to ensure she was well taken care of, but upon her death, Henry wanted his wealth to be distributed to his two sons, Robert and Martin, and eventually to their children. *See* Compl. at para. 26.

5. Veronica was dissatisfied with the amount of money that she would receive upon

her husband's death as well as the provisions for Veronica's children and grandchildren, which caused Henry's estate plan to be amended six times over 12 years, the most recent of which, and the operative trust, was amended and Restated on March 22, 2022. *See Compl. at para. 27.*

6. Unfortunately, it was a great surprise to many that to circumvent Henry's estate plan, Veronica instead caused distributions to their joint bank account and/or to Veronica's trust or accounts for which Veronica would inherit the money during the last few years of Henry's life that approximate, upon information and belief, at least 30-Million Dollars based on discovery to date. Veronica has demanded from the trustee that she *also* receive the \$8-Million Dollars provided by the estate plan. *See Compl. at para. 30.*

7. Unfortunately, due to these changes, these transfers may significantly change to whom these monies will go upon Veronica's death contrary to Henry's explicit wishes made known to Robert and his estate planner. *See Compl. at para. 32.*

8. This means that the Decedent's wife would now be inheriting possibly over \$38-Million Dollars free of trust, plus have the benefit of an additional \$10-Million Dollars held in the marital trust instead of the intended \$8-Million Dollars and income from the marital trust. This significantly changes Decedent's estate planning contrary to what Decedent intended. *See Comp. at para. 37.*

9. Robert and Martin were forced to file the instant action after Veronica refused to negotiate, indicating she would not return \$1. *See Compl. at para 39.*

10. Veronica also refused to provide her estate planning documents. *See Compl. at p. 1 fn.1; para. 40.*

11. On January 26, 2024, the Clerk issued a summons for Veronica, individually and on February 12, 2024, the Clerk issued a summons for Veronica as trustee.

12. Veronica agreed to accept service of the summons, in her individual capacity only, and her counsel accepted service individually on February 8, 2024.

13. Veronica Bialer was served individually *and* in her capacity as trustee on February 21, 2024 via process in service in California having left the jurisdiction of this Court. *See* Return of Service attached as **Exhibit “A” and “B,”** respectively.

14. Veronica has now filed two Motions to Dismiss the Plaintiffs Complaint and one Motion to Dismiss the Plaintiff’s petition for injunction in the Estate. It appears that despite clearly accepting service of the Complaint *and* being served via process server not once, but twice, she still claims lack of service. These numerous motions appear to be more about running up attorneys’ fees and delay than getting to the truth of the matter.

15. Veronica’s arguments in the instant Motion to Dismiss, filed 3/12/24, are without merit and should be denied.

Motion to Dismiss Standard

16. The purpose of a Motion to Dismiss is to test the legal sufficiency of the allegations of the Complaint, not to determine factual issues. *Bouin v. Disabatino*, 250 So.3d 168, 170 (Fla. 4th DCA 2018). In determining a Motion to Dismiss, the Court must confine their review to the four corners of the Complaint, draw all inferences in favor of the pleader, and accept all well-pled allegations in the Complaint as true. *E.g. Gordon v. Kleinman*, 120 So. 3d 120, 121 (Fla. 4th DCA 2013). The Complaint need not anticipate affirmative defenses, and accordingly any defenses should be stated in the defendant’s answer. *Payne v. Humana Hosp. Orange Park*, 661 So. 2d 1239, 1241 (Fla. 1st DCA 1995) (quoting *Shahid*, 552 So. 2d at 322).

**Response to Motion to Quash Service and to Dismiss for Insufficiency of Process
and Service of Process**

17. Defendant, Veronica Bialer, specifically states that her Motion solely relates to the other purported capacity in which Plaintiffs seek to sue her, i.e., in her capacity as trustee of a trust(s) to where Veronica wrongfully transferred the disputed monies.

18. Veronica claims that the summons does not name her in any capacity besides individually, however, a summons was both issued by the clerk, and served upon Veronica, in her *capacity as trustee*, at her daughter's home in California where Veronica is now staying.

19. In fact, both returns of service for Vera and the returns of service for her daughter Rita and her family all indicate Veronica was the person who personally received service.

20. Specifically, the Complaint names Veronica as Trustee, and alleges, (1) "Plaintiffs requested a copy of Veronica's trust(s) prior to filing this lawsuit, but Veronica declined to provide a copy to have the accurate name of the trust in question," and (2) "Robert and Martin requested that Veronica voluntarily provide her estate plan so that they could see what she intended to provide for their side of the family and possible make her trust irrevocable to ensure that Veronica's children do not prey upon her in her old age; however, Veronica refused to disclose the documents." *See* Compl. at p. 1, fn.1; Para. 40.

21. The Complaint makes specific allegations that the funds were transferred into Veronica's trust and in each allegation, references to Veronica are defined as individually and as trustee of her trusts, for which she refused to provide the name of the trust.

22. Veronica now complains about the condition she created by refusing to disclose the names of the trust which Plaintiffs were seeking.

23. For support for this position, Veronica cites to *Hett v. Barron-Lunde*, 290 So. 3d 565 (Fla. 2d DCA 2020), to state that both the trustees and trust must be named in the Complaint.

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