

SURROGATE'S COURT  
FILED

AUG 22 2023

COUNTY OF ONONDAGA  
STATE OF NEW YORK

At a Term of the Surrogate's  
Court of the State Of New York,  
held in and for the County of  
Onondaga, at the Onondaga  
County Courthouse, 401  
Montgomery Street, Syracuse,  
New York, on the 17<sup>th</sup> day of  
August 2023.

PRESENT: Hon. Mary Keib Smith, Surrogate

STATE OF NEW YORK COUNTY OF ONONDAGA  
SURROGATE'S COURT

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**PEARL G. SIMMONS** as Settlor of an Irrevocable  
Living Trust of Eugene M. Simmons and Pearl  
G. Simmons,  
Petitioner

vs

The EUGENE AND PEARL SIMMONS  
IRREVOCABLE INCOME ONLY TRUST,  
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**ORDER**

File No.: 2023-985

Pearl G. Simmons (hereinafter "Petitioner"), as settlor and income beneficiary of the Eugene and Pearl Simmons Irrevocable Income Only Trust (hereinafter "Trust"), filed a verified petition dated May 9, 2023 seeking dissolution of the Trust, removal of Trustees and appointment of a single Trustee. The Court signed an order to show cause on May 11, 2023 based upon said petition which required the response of Trustees Alan Simmons, Michael Simmons, Brian Simmons, Kevin Simmons, Marcia Simmons Crims and James Simmons, and Philip Crim, Individually and as owner of Simmons Farm at Limeledge, LLC, suspended the Trustees, appointed Mark Simmons as Temporary Trustee, and ordered the Trustees to submit an accounting.

Respondents Alan Simmons, Michael Simmons, Marcia Simmons Crim, and James Simmons, and Philip Crim individually and as owner of Simmons Farms at Limeledge, LLC (hereinafter “Limeledge”) filed a verified answer, cross-petition, and motion to dismiss in opposition to said petition and in support of the reinstatement of the original Trustees named in the Trust, and an order preventing Mark Simmons, Kevin Simmons, and Brian Simmons (hereinafter “MKB Respondents”) from interfering with the Arboretum Lease between the Trust and Philip Crim individually and as sole proprietor of Limeledge. These papers included the attorney affirmation of Ann Marie Murzin, Esq., Westfall Law PLLC, dated June 14, 2023, with exhibits attached thereto including the affidavit of Michael Simmons with exhibits, the affidavit of Marcia Simmons Crim, the affidavit of James Simmons, the affidavit of Alan Simmons, and the affidavit of Philip Crim submitted individually and on behalf of Limeledge, all sworn to on June 13, 2023, and a verification of court ordered accounting with exhibits sworn to on June 12, 2023 by Michael R. Simmons.

Petitioner then filed a cross-motion and response to Respondent’s response to OTSC and cross-motion which sought dismissal of Respondent’s motion to dismiss, disqualification of Westfall Law PLLC, institution of a constructive trust for certain real estate, and an order for Marcia Simmons Crim to return a “Hoosier Cabinet” to Petitioner. Said cross-motion and response included the attorney affirmation of Jarrod W. Smith, Esq., dated July 20, 2023, together with the exhibits attached thereto and Petitioner’s affidavit sworn to on July 14, 2023.

Respondents then filed the affirmation of attorney Ann Marie Murzin, Esq., dated July 26, 2023, in further support of Respondents’ motion to dismiss and in further opposition to the order to show cause and cross-motion, together with the exhibits attached thereto including the

affidavit of Marcia Simmons Crim sworn to on July 26, 2023 together with the exhibits attached thereto.

The MKB Respondents, through their attorney, Michael S. Ciaccio, Esq., submitted papers in support of the original petition and in opposition to the Respondents' cross motion to dismiss, including an attorney's affirmation dated July 20, 2023, the affidavit of Mark Simmons, signed on July 20, 2023, and the affidavit of Kevin Simmons sworn to July 21, 2023 which attached a letter from respondent Brian Simmons signed on July 14, 2023.

Oral argument was held on August 1, 2023 and the Court having heard Petitioner's counsel, Jarrod W. Smith, Esq., in support of the Petition; Ann Marie Murzin, Esq., as counsel for Respondents; and Michael S. Ciaccio, Esq., as counsel for the MKB Respondents; and due deliberation having been had thereon, it is now

**ORDERED** that the cross-motion to dismiss brought by Respondents Alan Simmons, Michael Simmons, Marcia Simmons Crim, James Simmons and Philip Crim, as an individual and as owner of Limeledge, is granted in its entirety; and it is further

**ORDERED** that the petition and order to show cause are dismissed in their entirety and all temporary relief granted in the order to show cause is hereby revoked; and it is further

**ORDERED** that the Petitioner's cross-motion against Respondents' motion to dismiss is dismissed in its entirety; and it is further

**ORDERED** that the original Trustees named in the Trust (Mark Simmons, Marcia Simmons Crim, and Michael R. Simmons) are restored to their positions and Brian Simmons, Kevin Simmons, James Simmons, and Alan Simmons are removed as Trustees; and it is further,

**ORDERED** that Respondents, Mark Simmons, Kevin Simmons, and Brian Simmons are to cease and desist all interference with the Arboretum Lease and the rights of Philip Crim and Limeledge created thereunder; and it is further

**ORDERED** *sua sponte* that the three original Co-Trustees who are re-appointed in this Order, shall render an account on or before sixty (60) days from the signing of this Order with a verified petition praying that said account be judicially settled and cause process to be issued and served upon all personas necessary under SCPA§2210 including but not limited to, the Petitioner, Pearl G. Simmons; and it is further

**ORDERED** that Petitioner’s demand for return of the “Hoosier Cabinet” is dismissed without prejudice as it is not properly before this Court.

Dated: August 22, 2023

  
Hon. Mary Keib Smith  
Surrogate