STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 29, 2025)

IN RE Estate of Renee H. Rapaporte,	:	
	:	
JAY ROSENSTEIN, CPA in his capacity as Trustee of the Renee H. Rapaporte Revocable Trust,	:	
Petitioner,	:	
	:	
v.	:	**C.A. No. PM-2024-05022**
	:	
FORREST KARL GARDNER	:	
Respondent,	:	
	:	
and	:	
	:	
TRUSTMAN SENGER,	:	
Interested Party.	:	

DECISION

STERN, J. Before the Court is Interested Party Trustman Senger's ("Ms. Senger") Motion for Judgment on the Pleadings, joined by Trustee Jay Rosenstein, pertaining to Trustee Rosenstein's Petition for Instructions for disposition of a trust. For the reasons set forth below, this Court denies the Motion for Judgment on the Pleadings.

I

Facts and Travel

The instant Motion comes before this Court following the passing of Renee H. Rapaporte ("Ms. Rapaporte") on November 2, 2023. (Am. Pet. for Instructions ¶ 8 (Am. Pet.).) Prior to Ms. Rapaporte's passing, on February 25, 2015 she executed the Seventh Amendment and Restatement of the Renee H. Rapaporte Revocable Trust ("Rapaporte Trust") and that Trust Agreement is at the

heart of this dispute. *Id.* ¶ 7. The executor of the Rapaporte Trust is Jay Rosenstein ("Mr. Rosenstein" or "Trustee"). *Id.* ¶ 1.

Article III of the Rapaporte Trust provides for specific dispositions upon Ms. Rapaporte's death. This dispute arises out of one disposition in particular:

> "(4) One million dollars ($1,000,000) to my dear friend, Karl Gardner, of Burlington, Massachusetts, if he survives me by thirty (30) days, AND if at my death he is my significant other." *Id.* ¶ 9 (emphasis in original).

Ms. Rapaporte and Forrest Karl Gardner ("Mr. Gardner") met in the 1990s and began dating in 2002. (Countercl. ¶ 6.) In 2005, Mr. Gardner moved into Ms. Rapaporte's home, where he lived with her until she moved to Grand Oaks Assisted Living Facility ("Grand Oaks") in 2017. *Id.* ¶¶ 6, 7. Prior to 2013, Ms. Rapaporte and Mr. Gardner enjoyed together the many pleasantries offered by life. The couple attended concerts and vacationed together, and supported each other emotionally. *Id.* ¶ 7. In 2013, however, Ms. Rapaporte began showing signs of mental decline and was diagnosed with Alzheimer's disease. *Id.* ¶ 8. In 2014, Ms. Rapaporte's doctor diagnosed her with dementia. *Id.* ¶ 9. In 2015, Ms. Rapaporte's condition further declined, and Mr. Gardner hired nurse aides to help care for her. *Id.* ¶¶ 10-11. From 2015 to 2017, Mr. Gardner supervised Ms. Rapaporte's medical care and assisted Ms. Rapaporte in her daily activities. *Id.* ¶¶ 10-15.

In late 2016, the decision was made to move Ms. Rapaporte to a skilled living facility in Washington, D.C., closer to her family. *Id.* ¶¶ 15-16. On January 12, 2017, Mr. Gardner accompanied Ms. Rapaporte to Washington, D.C., where Ms. Senger moved Ms. Rapaporte into Grand Oaks. *Id.* ¶18. Mr. Gardner had some initial difficulty coordinating a visit with Ms. Rapaporte, but he did visit her at Grand Oaks a number of times. *Id.* ¶¶ 21-29. In 2017, Mr. Gardner visited Ms. Rapaporte in the facility thirty-three times. (Am. Pet. ¶ 12.) In 2018 and 2019, Mr. Gardner visited Ms. Rapaporte eleven and seven times, respectively. *Id.* In 2020, before COVID

restrictions took effect, Mr. Gardner was able to visit Ms. Rapaporte once in February 2020. *Id.* In 2019, Mr. Gardner was diagnosed with an illness that caused him to be immunocompromised and unable to travel to visit Ms. Rapaporte. (Countercl. ¶ 31.)

Mr. Gardner's last in-person visit with Ms. Rapaporte was in February of 2020. (Am. Pet. ¶ 12.) Thereafter, Mr. Gardner arranged Zoom or FaceTime calls with Ms. Rapaporte, facilitated by Grand Oaks employees. *Id.* ¶ 13. Mr. Gardner virtually visited Ms. Rapaporte over one hundred times between February of 2020 and her death,[1] despite her fluctuating participation in these calls. (Countercl. ¶¶ 32-33.) In May of 2022, during a video call with Ms. Rapaporte, a hospice worker informed Mr. Gardner that Ms. Rapaporte was "nearing the final phase of her life." (Am. Pet. ¶ 17.) Subsequently, Mr. Gardner informed the Trustee of Ms. Rapaporte's condition and reported that he would be unable to visit her in person due to his traveling to Europe for the following three weeks. *Id.*

Approximately eighteen months later, on November 2, 2023, Ms. Rapaporte passed away. *Id.* ¶ 19. Mr. Gardner did not learn of Ms. Rapaporte's passing until approximately six weeks later, when he was told by his hair stylist, who was also Ms. Rapaporte's hair stylist for a time. *Id.* Upon Ms. Rapaporte's death, Mr. Gardner made a demand on the Trustee for his disposition. *Id.* ¶ 27. The Trustee concluded that Mr. Gardner was not Ms. Rapaporte's "significant other" at the time of her death and declined to distribute money to Mr. Gardner. *Id.* ¶ 26. On August 12, 2024, Mr. Gardner's counsel made a formal demand that the Trustee pay Mr. Gardner the one million dollars ($1,000,000) pursuant to the terms of the Trust. *Id.* ¶ 27. The Trustee then filed a Request for Instructions with the Court on September 20, 2024, asking the Court to declare that Mr. Gardner was not Ms. Rapaporte's "significant other" at the time of her death and thus Mr. Gardner is not

[1] It is unclear from the pleadings when Mr. Gardner's final call with Ms. Rapaporte was.

entitled to receive the contingent disposition. (Am. Pet. ¶ 30.) In response to the Trustee's Request for Instructions, Mr. Gardner filed an Answer and Counterclaim on October 25, 2024, in which Mr. Gardner asks this Court to find that he was Ms. Rapaporte's "significant other" at the time of her death. (*See generally* Countercl.) On December 12, 2024, this Court granted Mr. Gardner's motion to add Ms. Senger as an interested third party to this matter. (Docket.) On January 24, 2025, Ms. Senger, Ms. Rapaporte's daughter, filed the instant Motion for Judgment on the Pleadings and Stay of Discovery. (Docket.) Ms. Senger supports the Trustee's conclusion that Mr. Gardner was not the "significant other" of Ms. Rapaporte at the time of her death and asked this Court to stay discovery until the Motion on the Pleadings is resolved. (Interested Party Senger's Mot. at 5-6 (Senger's Mot.).) On March 5, 2025, the Court granted Ms. Senger's motion to stay discovery. (Docket.) On March 12, 2025, Mr. Gardner filed his opposition to Ms. Senger's Motion for Judgment on the Pleadings. (Resp't's Mem. in Opp'n to Mot. for J. on Pleadings at 1 (Resp't's Mem.).) Also on March 12, 2025, the Trustee filed his Response and Joinder to Interested Party Senger's Motion for Judgment on the Pleadings. (Docket.) The parties were heard in full during a virtual hearing on March 24, 2025. (Docket.)

II

Standard of Review

"Rule 12(c) 'provides a trial court with the means of disposing of a case early in the litigation process when the material facts are not in dispute after the pleadings have been closed and only questions of law remain to be decided.'" *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Chariho Regional School District v. Gist*, 91 A.3d 783, 787 (R.I. 2014)). "[W]hen a motion for judgment on the pleadings is made. . . , such a motion is normally an attack upon the sufficiency of the complaint and is thus, in effect, a Super.

R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim." *Swanson v. Speidel Corp.*, 110 R.I. 335, 338, 293 A.2d 307, 309 (1972). "The allegations of the complaint are taken as true and for the purposes of such a motion to dismiss, the complaint should be viewed in the light most favorable to [the nonmoving party], and no complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that [a party] will be unable to prove his right to relief, that is, unless it appears to a certainty that he will not be entitled to relief under any set of facts which might be proved in support of his claim." *Id.* (citing *Bragg v. Warwick Shoppers World, Inc.*, 102 R.I. 8, 12, 227 A.2d 582, 584 (1967)). In ruling on a motion to dismiss, the trial justice is "confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in [the nonmoving party's] favor." *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011).

III

Analysis

No one disagrees that Mr. Gardner was Ms. Rapaporte's significant other during the time in which they lived together from 2005 to 2017. (Senger's Mot. at 4; Am. Pet. ¶ 26; Resp't's Mem. at 3-4.) However, whether Mr. Gardner was Ms. Rapaporte's significant other at the time of her death on November 2, 2023, is disputed by the parties. (Senger's Mot. at 4-5; Am. Pet. ¶ 26; Resp't's Mem. at 3-4.) The Rapaporte Trust provides for "(4) One million dollars ($1,000,000) to my dear friend, Karl Gardner, of Burlington, Massachusetts, if he survives me by thirty (30) days, AND, if at my death he is my significant other." (Am. Pet. ¶ 9) (emphasis in original). The Rapaporte Trust does not, however, define the term "significant other" (Am. Pet. ¶ 25); therefore, the Court must first determine the meaning of "significant other" before the Court can decide whether Mr. Gardner was Ms. Rapaporte's "significant other" when she passed away.

When interpreting language of a trust, the Court's "'primary objective . . . is to ascertain and effectuate the intent of the . . . settlor as long as that intent is not contrary to law.'" *In re DiBiasio*, 705 A.2d 972, 973 (R.I. 1998) (quoting *Prince v. Roberts*, 436 A.2d 1078, 1080 (R.I. 1981)). To determine such intent, the Court looks at the plain language of the trust. *Fleet National Bank v. Hunt*, 944 A.2d 846, 851 (R.I. 2008). Furthermore, "[t]o ascertain the settlor's intent, donative language should be interpreted with reference to the whole trust." *Steinhof v. Murphy*, 991 A.2d 1028, 1033 (R.I. 2010) (citing *Chile v. Beck*, 452 A.2d 626, 628 (R.I. 1982)). "'[W]hen the language under consideration is susceptible of being read as disclosing alternate or contrary intentions . . . the rules of construction properly may be invoked.'" *In re DiBiasio*, 705 A.2d at 973-74 (quoting *Goldstein v. Goldstein*, 104 R.I. 284, 287, 243 A.2d 914, 916 (R.I. 1968)). Rules of construction, however, "should be used only when the meaning of a trust is not apparent from the plain and ordinary meaning of its language or, in other words, when it is ambiguous." *Steinhof*, 991 A.2d at 1033-34. "[W]hen donative intent cannot be determined from within the four corners of a . . . trust, resort to extrinsic evidence may be proper." *Id*. at 1034. "Ambiguous language in a . . . trust presents the trial justice with a mixed question of law and fact[.]" *In re DiBiasio*, 705 A.2d at 974 (quoting *Prince*, 436 A.2d at 1080-81).

Massachusetts law governing interpretation of trusts is similar to that of Rhode Island.[2] It is a question of law whether the language of a trust is ambiguous, and courts will first examine the plain language of a trust to determine whether ambiguity exists. *Ferri v. Powell-Ferri*, 72 N.E.3d 541, 545 (Mass. 2017) (internal citations omitted). Under Massachusetts law, language of a trust is "ambiguous 'where the phraseology can support a reasonable difference of opinion as to the

[2] Pursuant to Article XII of the Rapaporte Trust, the Trust is governed by Massachusetts law. After a review of both, the Court finds Rhode Island and Massachusetts law governing trust interpretation to be the same.

meaning of the words employed[.]'" *Id*. (quoting *Bank v. Thermo Elemental Inc.*, 888 N.E.2d 897, 907 (Mass. 2008)). When interpreting a trust, Massachusetts courts "do not read words in isolation and out of context." *Hillman v. Hillman*, 744 N.E.2d 1078, 1080 (Mass. 2001). Rather, the court will "discern the settlor's intent from the trust instrument as a whole and from the circumstances known to the settlor at the time the instrument was executed." *Id*. Furthermore, the Massachusetts Supreme Judicial Court has stated that '"[i]t is fundamental that a trust instrument must be construed to give effect to the intention of the donor as ascertained from the language of the whole instrument considered in the light of circumstances known to the donor at the time of its execution."' *Watson v. Baker*, 829 N.E.2d 648, 651 (Mass. 2005) (quoting *Powers v. Wilkinson*, 506 N.E.2d 842 (Mass. 1987)).

To interpret or define a term, the Rhode Island Supreme Court has repeatedly relied on dictionary definitions to provide a common, ordinary meaning of the term. *See High Steel Structures, Inc. v. Cardi Corp.*, 152 A.3d 429, 435 (R.I. 2017); *Garden City Treatment Center, Inc. v. Coordinated Health Partners, Inc.*, 852 A.2d 535, 542-43 (R.I. 2004) (upholding trial judge's use of a legal dictionary to determine the plain meaning of "audit"); *City of Warwick v. Aptt*, 497 A.2d 721, 724 (R.I. 1985) (using dictionary definition to support finding that "capacity" was unambiguous within the context of the statute to overrule motion to dismiss). The American Heritage Dictionary of the English Language defines "significant other" as "a person, such as a spouse or lover, with whom one shares a long-term sexual relationship" or "a person, such as a family member or close friend, who is important or influential in one's life." The American Heritage Dictionary of the English Language 1619 (4th ed. 2000); *see* The Random House Dictionary of the English Language 1779 (2d ed. 1987) (defining "significant other" as "a person,

as a parent or peer, who has great influence on one's behavior and self-esteem" or "a spouse or cohabitating lover").

Our Supreme Court has "emphasize[d] that '[b]ecause ambiguity lurks in every word, sentence, and paragraph in the eyes of a skilled advocate . . . the question is not whether there is an ambiguity in the metaphysical sense, but whether the language has only one reasonable meaning when construed, not in a hypertechnical fashion, but in an ordinary, common sense manner.'" *Lazarus v. Sherman*, 10 A.3d 456, 464 (R.I. 2011) (quoting *Paul v. Paul*, 986 A.2d 989, 993 (R.I. 2010)). "Any word will produce multiple dictionary definitions; the test is not whether there exist alternate meanings but whether there exist *reasonable* alternate meanings." *RGP Dental, Inc. v. Charter Oak Fire Insurance Co*, No. CA 04-445ML, 2005 WL 3003063 (D.R.I. 2005) (citing *W.P. Associates v. Forcier, Inc.*, 637 A.2d 353, 356 (R.I. 1994)) (emphasis in original). "[P]arties need not choose phraseology which invariably excludes every possible interpretation other than the one which they intend . . . it is sufficient if the language employed is such that a reasonable person, reading the document as a whole and in realistic context, clearly points toward a readily ascertainable meaning." *Fashion House, Inc. v. K Mart Corp.*, 892 F.2d 1076, 1085 (1st Cir. 1989) (citing *Triple-A Baseball Club Associates v. Northeastern Baseball, Inc.*, 832 F.2d 214, 220 (1st Cir. 1987)).

Viewing the Rapaporte Trust agreement as a whole and the context of "significant other" as included in the Rapaporte Trust, the Court determines that the term "significant other" is unambiguous as written in the Rapaporte Trust. To determine intent of the settlor, the Court should look at language "with reference to the whole trust." *Steinhof*, 991 A.2d at 1033. The Court must also look at the plain language of the Rapaporte Trust to determine the intent of Ms. Rapaporte. *See Fleet National Bank*, 944 A.2d at 851. Article III(A)(4) of the Rapaporte Trust refers to Mr.

Gardner both as Ms. Rapaporte's "dear friend" and as Ms. Rapaporte's "significant other." (Am. Pet. ¶ 9.) As demonstrated by dictionary definitions, the plain meaning of "significant other" includes close relationships between people, both platonic and romantic. However, the inclusion of both "dear friend" and "significant other" in Article III of the Rapaporte Trust leads the Court to the inescapable conclusion that Ms. Rapaporte intended to define "significant other" as something more than a relationship between "dear friends." *See Andrukiewicz v. Andrukiewicz*, 860 A.2d 235, 239 (R.I. 2004) ("When ascertaining the usual and ordinary meaning of contractual language, every word of the contract should be given meaning and effect; an interpretation that reduces certain words to the status of surplusage should be rejected."). If Ms. Rapaporte intended "significant other" to mean a relationship between close friends, the earlier description of Mr. Gardner as Ms. Rapaporte's "dear friend" would be superfluous. (*See* The American Heritage Dictionary of the English Language 467 (4th ed. 2000) (defining "dear" as "loved and cherished" or "greatly valued," so a dear friend is a cherished or greatly valued friend)). Therefore, the only reasonable definition of "significant other" within the context of the Rapaporte Trust is an important person with whom one shares a close, spouse-like or similar romantic relationship.

However, despite the fact that the term "significant other" is unambiguous within the context of the Rapaporte Trust, the Court cannot determine, as a matter of law, whether Mr. Gardner was Ms. Rapaporte's "significant other" at the time of her death on November 2, 2023. This is a question of fact reserved for the factfinder after the pleadings stage. Based on the pleadings alone, it cannot be said beyond a reasonable doubt that, under any set of conceivable facts, Mr. Gardner was not Ms. Rapaporte's significant other at the time of her death on November 2, 2023. Therefore, the Court denies Ms. Senger's Motion for Judgment on the Pleadings.

IV

Conclusion

For the foregoing reasons, Interested Party Senger's Motion for Judgment on the Pleadings is **DENIED**. Respondent's counsel shall prepare the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**In Re Estate of Renee H. Rapaporte v. Gardner**
CASE NO:	**PM-2024-05022**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**April 29, 2025**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**Robert M. Duffy, Esq.** **Andrew Blais, Esq.**
For Defendant:	**Andrea Peraner-Sweet, Esq.**