

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOETTE MASRY, as Trustee, etc.,

Plaintiff and Appellant,

v.

LOUIS MASRY et al.,

Defendants and Respondents.

2d Civil No. B201185  
(Super. Ct. No. P079906)  
(Ventura County)

ORDER MODIFYING OPINION AND  
DENYING REHEARING  
[NO CHANGE IN JUDGMENT]

JOETTE MASRY,

Plaintiff and Appellant,

v.

LOUIS MASRY, as Cotrustee, etc., et al.,

Defendants and Respondents.

(Super. Ct. No. P079907)  
(Ventura County)

**THE COURT:**

It is ordered that the opinion filed herein on September 4, 2008, be modified as follows:

1. At the end of the last full paragraph on page 2, after the sentence ending "until two weeks after Edward's death," add as footnote 2 the following footnote:

FN2: We use the parties' first names to ease the readers' task.

2. On page 6, the first three full paragraphs, beginning "Edward had an employment agreement" and ending "in their capacities as trustees of the Edward Trust," are deleted and the following paragraphs are inserted in their place:

In 2004, Edward entered into an employment agreement with his law firm, Masry & Vititoe. The agreement provided that if termination occurred because of Edward's death, the benefits would go "to the legal representatives of [Edward's] estate" if no valid beneficiary designation were in place. We agree with respondents that when Edward revoked his interest in the Family Trust, Edward's community share of his benefits under the employment agreement was placed in the Edward Trust.

The Edward Trust states that its property includes Edward's interest in the law firm of Masry & Vititoe. That interest of necessity includes his interest in the employment agreement. Before the Family Trust was revoked, the clause pertaining to the designation of beneficiary in the employment agreement provided that Joette would receive all the benefits as trustee. After the revocation of the Family Trust, Joette is no longer a trustee, but is a beneficiary of her community interest in the employment agreement. We therefore reject her contention that she is entitled to all the interest in the employment agreement.

Respondents, as representatives and trustees of the Edward Trust, filed a civil action against the law firm with causes of action for an accounting, specific performance, and imposition of constructive trust, but then they dismissed the action.

Suffice it to say, the Probate Code enforces no contest clauses "against a beneficiary who brings a contest within the terms of the no contest clause." (Prob. Code, § 21303.) Here respondents, the representatives of Edward's estate, had a duty to gather the assets of the Edward Trust. However they characterized the causes of action in their complaint, they did not run afoul of the no contest clause. (See *Estate of Coplan* (2004) 123 Cal.App.4th 1384.)

There is no change in judgment.

Appellant's petition for rehearing is denied.