

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

IN THE MATTER OF THE THOMAS J.	)	
PRICE JR. AND HELEN J. PRICE TRUST	)	
	)	
THOMAS J. PRICE, III	)	Case No. 24-CV-2909
Plaintiff	)	
	)	Div. 2
Vs.	)	
	)	
TERESA KUHN, ET AL.,	)	
Defendants.	)	
_____	)	

**-FIRST AMENDED-  
ANSWER AND COUNTERCLAIM OF DEFENDANT DAVID C. KIRK  
CONSERVATOR FOR THOMAS J. PRICE JR.**

Defendant, David C. Kirk, Conservator for Thomas J. Price, Jr., comes before the Court by his attorney, Michael S. Martin, and for his first amended answer to the Amended Petition for Modification of Trust, Distribution to Beneficiaries and Termination of Trust [Doc 6], denies each and every material allegation contained in the Amended Petition and further, more specifically answering states as follows:

1. Admits the allegations of paragraph 1.
2. Admits the allegations of paragraph 2.
3. Denies the allegations of paragraph 3.
4. Denies the allegations of paragraph 4.
5. Without admitting the validity of the Restated Trust, admits that the document attached to the Amended Petition contains Article 11, Section 11.08(d) as alleged in paragraph 5.

6. Admits the allegations of paragraph 6.
7. Admits that Thoms J. Price, III and Teresa J. Kuhn are qualified beneficiaries of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
8. Paragraph 8 is not an allegation of fact to which a response is required. To the extent a response is required, it is admitted that the trustee of a Kansas trust has a responsibility under K.S.A. 58a-813 to keep qualified beneficiaries reasonably informed of administration of the trust and of the material facts necessary for them to protect their interests.
9. Without admitting the validity or the legal existence of the Restated Trust, it is admitted that the primary purpose of the document called the “Restated Trust” is to provide support for the Grantor during his lifetime. The other allegations of paragraph 9 are denied.
10. Paragraph 10 contains an allegation of law to which no response is required. To the extent a response is required, paragraph 10 accurately recites the provisions of K.S.A. 58a-412.
11. Admits that the requested trust modification will result in distributions to the Grantor’s three grandchildren, Thomas J. Price III, and Theresa J. Kuhn.
12. Admits that Thomas J. Price Jr. has valuable assets. The remaining allegations of paragraph 12 are denied.
13. Denies the allegations of paragraph 13.
14. Denies the allegations of paragraph 14.
15. Admits the allegations of paragraph 15.

16. Admits the allegations of paragraph 16.
17. This defendant is without knowledge or information sufficient to reply to the allegations of paragraph 17 and, therefore, denies the allegations of paragraph 17.
18. This defendant is without knowledge or information sufficient to reply to the allegations of paragraph 18 and, therefore, denies the allegations of paragraph 18.
19. This defendant is without knowledge or information sufficient to reply to the allegations of paragraph 19 and, therefore, denies the allegations of paragraph 19.
20. This defendant is without knowledge or information sufficient to reply to the allegations of paragraph 20 and, therefore, denies the allegations of paragraph 20. Further answering, this defendant affirmatively asserts that the distribution of trust assets while Thomas J. Price Jr. is alive is contrary to the primary purpose of the trust and contrary to the best interests of Thomas J. Price Jr.

#### **AFFIRMATIVE DEFENSES**

1. The Amended Petition fails to state adequate grounds for modifying or terminating the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
2. To the extent the September 19, 2022, trust restatement is determined to be legally valid and enforceable, the sunset provisions contained in the United States Tax Code pertaining to estate tax were known at the time of the trust restatement and cannot be used as “circumstances not anticipated” when the restatement was allegedly executed.
3. The trust modification suggested by the plaintiff is not in the best interest of Thomas J. Price Jr.

4. To the extent the September 19, 2022, trust restatement is determined to be legally valid and enforceable, that document does not contain provisions which enable the trustee to make amendments to the trust.
5. Determinations regarding what may be in the best interests of Thomas J. Price Jr. are to be determined exclusively within the guardianship and conservatorship proceedings pending in the District Court of Johnson County, Kansas, Case No. 22GC224.
6. The Amended Petition fails to state a claim upon which relief can be granted.

WHEREFORE, having fully answered, this defendant requests the Court to deny the Amended Petition; assess attorney fees and costs against the plaintiff pursuant to K.S.A. 58a-1004; and for such other and further relief as the Court determines to be just and proper.

#### **COUNTERCLAIM**

#### **COUNT 1 - ACCOUNTING**

Defendant, David C. Kirk, Conservator for Thomas J. Price Jr., submits the following for his counterclaim against the plaintiff, Thomas J. Price III:

1. Thomas J. Price III is a trustee of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
2. Thomas J. Price III asserts that he is the trustee of a document dated September 19, 2022, purporting to amend and restate the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
3. As trustee of either the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, or the document dated September 19, 2022, purporting to restate the trust (collectively, the "Trust"), Thomas J. Price III has a legal obligation to keep the qualified trust

beneficiaries reasonably informed about the administration of the Trust and of the material facts necessary for them to protect their interests.

4. As trustee of the Trust, Thomas J. Price III has a legal obligation to, at least as often as annually, provide the qualified beneficiaries with a report of the Trust property including liabilities, receipts and disbursements, including the source and amount of the trustee's compensation, a listing of the Trust assets and, if feasible, their respective market values.
5. Thomas J. Price Jr. is a "qualified beneficiary" of the Trust as defined by K.S.A. 58a-104(12).
6. David C. Kirk was appointed by the District Court of Johnson County, Kansas, in a case styled In the Matter of Thomas J. Price Jr., Case No. 22GC224, to serve as the guardian and conservator for Thomas J. Price Jr.
7. As the legally appointed guardian and conservator for Thomas J. Price Jr., David C. Kirk is entitled to be reasonably informed about the Trust.
8. As the legally appointed guardian and conservator for Thomas J. Price Jr., David C. Kirk is entitled to receive annual reports from the trustee of the Trust, including reports of the Trust property, liabilities, receipts, and disbursements.
9. David C. Kirk, in his capacity as conservator for Thomas J. Price Jr. has requested an accounting of the Trust from Thomas J. Price III.
10. Thomas J. Price III has failed or refused to provide David C. Kirk, conservator for Thomas J. Price Jr., with information about the administration of the Trust, an accounting of the

Trust, and the information about the assets of the Trust and its administration necessary for David C. Kirk to him to protect the interests of the ward, Thomas J. Price Jr.

WHEREFORE, on Count 1 of his counterclaim, David C. Kirk, conservator for Thomas J. Price Jr., requests the Court to compel Thomas J. Price III to render to David C. Kirk a full and complete accounting of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, including the purported restatement to the trust dated September 19, 2022; for recovery of his costs and attorney fees pursuant to K.S.A. 58a-1004; and for such other and further relief as the Court determines to be just and proper.

#### **COUNT -2**

#### **DECLARATORY JUDGMENT - DETERMINATION OF TRUSTEES**

11. The foregoing allegations in Count 1, paragraphs 1 – 10, are incorporated by this reference.
12. In her answer [Doc 20], Defendant Teresa Kuhn, asserts that she is a co-trustee of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
13. The plaintiff's Amended Petition asserts that Thomas J. Price III is the sole trustee of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, and the purported Restated Trust dated September 19, 2022.
14. Upon information and belief, Edward Jones Company, has accounts in the name of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
15. Upon information and belief, Edward Jones Company does not recognize Thomas J. Price III as the sole trustee of either the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, or the purported Restated Trust dated September 19, 2022.

16. There is a dispute over who are the currently serving trustees of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
17. The dispute over who are the currently serving trustees of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, interferes with the administration of the trust.
18. Thomas J. Price Jr. has ongoing expenses for medical care that require periodic distributions of principal and income from the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015.
19. The dispute over who are the currently serving trustees of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, jeopardizes Thomas J. Price Jr.'s ability to pay for his ongoing medical care.
20. Pursuant to K.S.A. 58a-201(c), judicial proceedings involving a trust may relate to any matter involving the trust's administration, including an action for declaratory judgment.

WHEREFORE, on Count 2 of his counterclaim, David C. Kirk, conservator for Thomas J. Price Jr. requests the Court to resolve the present dispute over who are the trustees of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015, by identifying, determining, and declaring the person(s) or entities who are the currently serving trustee(s) of the Thomas J. Price Jr. and Helen J. Price Trust dated April 6, 2015; and for such other and further relief as the Court determines to be just and proper.

Respectfully submitted by:

s/Michael S. Martin

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Attorney for Defendant David C. Kirk

Conservator for Thomas J. Price Jr.

**Certificate of Service**

The undersigned person certifies that on August 6, 2024, a true copy of the foregoing Answer and Counterclaim was served on the following parties by the means shown:

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s/Michael S. Martin

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