

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D35907  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - June 8, 2012

RUTH C. BALKIN, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

2011-06744

DECISION & ORDER

In the Matter of Martin Singer, deceased.  
Gary Singer, etc., et al., respondents; Ricki Singer,  
appellant.

(File No. 1871/94)

Law Offices of Ira L. Slade, P.C. (Daniel A. Fried, New York, N.Y., of counsel), for  
appellant.

Elias Sellitti LLC, New York, N.Y. (John M. Elias of counsel), for respondents.

In a probate proceeding, in which Gary Singer, Brad Singer, Dorothy Singer, and Steven Singer, the cotrustees of a certain marital trust created under the will of the decedent, Martin Singer, petitioned for the judicial settlement of an account of that marital trust, the objectant, Ricki Singer, appeals, as limited by her brief, from so much of an order of the Surrogate's Court, Westchester County (Scarpino, Jr., S.), dated May 10, 2011, as granted that branch of the motion of Gary Singer and Brad Singer, denominated as one in limine to preclude the objectant from adducing certain evidence at trial but which was, in actuality, a motion for summary judgment on the issues of self-dealing and appreciation damages with regard to the sale of an interest in Mars Associates, Inc., from that marital trust to Dorothy Singer while she was serving as a cotrustee of that marital trust, subject to a certain reduction in the corpus of the marital trust.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the motion of Gary Singer and Brad Singer, denominated as one in limine but which was, in actuality, a motion for summary judgment, is denied as untimely.

The petitioners, who are cotrustees of the Martin Singer GST Exempt Marital Trust (hereinafter the GST Trust), created under the will of the decedent, Martin Singer, petitioned for an accounting in the Surrogate's Court with respect to the GST Trust. Objections were filed by Ricki

October 10, 2012

Page 1.

MATTER OF SINGER, DECEASED

Singer, as ancillary guardian of her son, Daniel Singer, based, in part, upon the purchase of an asset of the GST Trust, namely an interest in Mars Associates, Inc. (hereinafter the Mars asset), by the petitioner Dorothy Singer (hereinafter Dorothy) in her individual capacity, at the time that Dorothy was serving as one of the cotrustees of the GST Trust, which the objectant alleges evidenced Dorothy's self-dealing.

In a motion denominated as one in limine, the petitioners Gary Singer and Brad Singer (hereinafter together the movants) sought, inter alia, to strike all objections and to preclude all testimony relating to the sale of the Mars asset from the GST Trust to Dorothy while she was serving as a cotrustee of the GST Trust (hereinafter the sale). The Surrogate's Court granted that branch of the motion to the extent of precluding, from trial, all evidence relating to the issues of self-dealing and appreciation damages with regard to the sale, except in connection with a certain reduction in the corpus of the GST Trust. While the movants characterized their motion as one for in limine relief, the record reveals that the entire motion actually was one for summary judgment on the issues of self-dealing and appreciation damages. "[A] motion in limine is an inappropriate substitute for a motion for summary judgment" (*Brewi-Bijoux v City of New York*, 73 AD3d 1112, 1113, quoting *Rondout Elec. v Dover Union Free School Dist.*, 304 AD2d 808, 810-811; see *Ofman v Ginsberg*, 89 AD3d 908, 909). Since the movants failed to offer any excuse for their failure to timely move for summary judgment with respect to whether the circumstances surrounding the sale, and the cotrustees' awareness and ratification of the sale, evidenced self-dealing (see CPLR 3212[a]; *Brill v City of New York*, 2 NY3d 648), such failure warranted the denial of the motion in its entirety without consideration of the merits thereof (see *Miceli v State Farm Mut. Auto Ins. Co.*, 3 NY3d 725; *Rivera v City of New York*, 306 AD2d 456).

In view of our determination, we need not reach the parties' remaining contentions.

BALKIN, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court