

Matter of Shane

2007 NY Slip Op 32484(U)

August 9, 2007

Surrogate's Court, Nassau County

Docket Number: 0316396/2007

Judge: John B. Riordan

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Application for a Compulsory Accounting
for the Trust for the benefit of Toby Shakun under the Will of
and the Estate of

File No. 316396

ROSE G. SHANE,

Dec. No. 383

Deceased.

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This is a petition to compel an accounting by these fiduciaries as co-executors of the decedent's estate and also as co-trustees under decedent's will of a trust for the benefit of the petitioner. The application is opposed on the grounds of receipt and release and the statute of limitations.

Rose G. Shane died on October 14, 2000 survived by her son, Sheldon Shane, and her daughters, Francine Pickman and Toby Shakun, and six adult grandchildren. Her will dated September 5, 1995 was admitted to probate by decree of this court dated January 8, 2001. Letters testamentary and letters of trusteeship issued to Sheldon Shane and David Michael, the nominated fiduciaries. The will provides that the residuary estate is divided into three shares with respect to the families of decedent's three children. The share set aside for Toby Shakun is payable to the trustees to hold for her life and pay the net income to her in at least quarterly installments with a power of invasion on behalf of Toby Shakun and /or her descendants. Upon Toby Shakun's death, the trust terminates and the remainder is payable pursuant to an exercise of a power to appoint in her will or in default thereof "to her descendants as survive her in equal shares per stirpes." Thus, the petition prays that Sheldon Shane and David Michael, as co-executors, file and settle their account of the estate and that Sheldon Shane and David Michael,

as trustees of the separate trust for the benefit of Toby Shakun, file and settle their account as trustees.

On September 15, 2003 Toby Shakun executed a receipt, release and agreement settling the account of the co-executors of the estate of Rose G. Shane. Toby Shakun now claims that she improvidently executed the receipt and release agreement because she was advised by an attorney not admitted in New York but only in Connecticut, albeit an estates and trusts practitioner and certified public accountant.

In the instant case, Toby Shakun by the terms of the release acknowledges that she received a copy of the executors' account and had the opportunity to review it with the assistance of her attorney and accountant. She accepted and approved the account stated as final, accurate and conclusive. The release specifically approves the distributions made to the trust as beneficiary as set forth in Schedules D-1 and E of the account, the payment of claims and administration expenses as reflected in Schedules C, C-1 and C-2 and the payment of commissions paid and to be paid. It is claimed now, four years after the execution of the release, that the executors improperly paid commissions in advance without court order, improvidently invested estate funds, failed to include joint accounts as estate assets, improperly paid GST tax and paid excessive legal fees. It is asserted that petitioner did not have the opportunity to be represented by counsel admitted to practice law in the State of New York to assist her in reviewing the account to allow her to be aware of these allegedly serious objectionable items in the account. Thus, the petitioner implicitly recognizes that the alleged objectionable material was reported and set forth in the account which she and her attorney/accountant reviewed before the execution of her release.

The courts have long held that “where an agreement is made fairly and without coercion, imposition or misrepresentation, it is conclusive upon the party signing it” (*Matter of Blodgett*, 171 Misc 596, 598 [Sur Ct, New York County] 1939). The courts have repeatedly affirmed the validity of settlements of informal accounts where a release is executed in the absence of bad faith, fraud, duress and with full knowledge of the estate’s status (*Matter of Capone*, 258 AD2d 581 [2d Dept 1999]; *Matter of Newhoff*, 107 AD2d 417 [2d Dept 1985]; *Matter of Fechter*, 25 Misc 2d 229 [Sur Ct, Nassau County 1960]; *Matter of Amuso*, 18 Misc 2d 936 [Sur Ct, Nassau County, 1959]; *Matter of Solomon*, 174 Misc 264 [Sur Ct, Kings 1940]). Where there is complete disclosure coupled with expert advice and guidance, the release is binding upon the parties signing it (*Matter of Goldstick*, 177 AD2d 225, 233 [1st Dept 1992]). Whatever the parties’ reasons for signing, they are bound by their act where there has been full disclosure, and no evidence of fraud, imposition or misrepresentation (*Matter of Frutiger*, 29 NY2d 143 [1971]); *Matter of Stone*, 272 NY 121 [1936]; *Pimpinello v Swift*, 253 NY 159, 162-163 [1930]).

In this case, petitioner has not set forth any facts indicating coercion, imposition, misrepresentation, fraud or undue influence in obtaining her release. It is clear she and her attorney/CPA had copies of the account and time to study and review it before she executed her release. It is also apparent that, except as to the joint bank accounts, any claimed objections to the account were present on its face, at the time of her review, and that the document constituted full disclosure of the executors’ administration of the estate. With regard to the joint accounts, the court notes that attached to the executors’ inventory required by 22 NYCRR 207.20 is a copy of the Form 706 federal estate tax return. Schedule E of the return indicates that the decedent was the co-tenant on several bank accounts held jointly with Sheldon Shane. An addendum to

the Schedule E indicates the executors' position that all of the funds in the accounts were deposited by Sheldon Shane and were not includable in the estate. The inventory and accompanying Form 706 were filed in the court on December 20, 2001, three years before the petitioner's execution of her receipt, release and waiver. Thus, the receipt and release is upheld and the petition to compel the executors to account is denied in all respects.

On the other hand, the receipt and release by its terms has no application to the petition to compel the trustees to account to the income beneficiary of the trust. Accordingly, the trustees are directed to file and settle their account as trustees of the trust for the benefit of Toby Shakun under Article FIVE of the Will of Rose G. Shane within sixty (60) days of the service of a decree to be entered herein upon their counsel of record.

Settle decree.

Dated: August 9, 2007

JOHN B. RIORDAN
Judge of the
Surrogate's Court

