

Santoro v Santoro

2007 NY Slip Op 32971(U)

September 12, 2007

Supreme Court, Nassau County

Docket Number: 4466-05/

Judge: Daniel Martin

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SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

TRIAL/IAS, PART 31
NASSAU COUNTY

RENEITA SANTORO.

Plaintiff.

- against -

Sequence No.: 003 & 004
Index No.: 014466/05

PATRICIA SANTORO and JOSEPH SANTORO,
Individually and as Trustees of the Santoro Family
Irrevocable Trust.

Defendants.

The following named papers have been read on this motion:

	Papers Numbered
Notice of Motion and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	X
Answering Affidavits	X
Replying Affidavits	X

Motion pursuant CPLR 3212 by the defendants Patricia Santoro and Joseph Santoro, individually and as Trustees of the Santoro Family Irrevocable Trust, for summary judgment dismissing the complaint.

Cross-motion pursuant CPLR 3212 by the plaintiff Reneita Santoro for summary judgment.

In August of 1998, the parties' father, Phillip Santoro, created as grantor, the "Santoro Family Irrevocable Trust" into which he transferred, *inter alia*, title to his then residence, located at 71 Buckingham Road, West Hempstead, New York (Defs' Exh., "C").

"Article Fourth" of the instrument provides that upon Phillip's death, the proceeds of the trust were to be divided equally between Philip's three children – codefendants Joseph Santoro and Patricia Santoro, and the plaintiff herein, Reneita Santoro – who were also appointed joint trustees.

Significantly, the Trust's introductory provisions emphasize that the instrument is "irrevocable as to the Grantor's ability to rescind, cancel, or modify the terms or class of beneficiaries * * *" (Trust at 1).

The instrument further states that, "[t]he Grantor has no power to alter, amend, revoke or terminate any Trust provision or interest, whether under this Trust Agreement, or any rule of law * * *".

However, the trust contains an exception to the foregoing prohibition, since it also refers to certain "powers reserved to the Grantor," including the "right to alter the distribution percentages as designated in ARTICLE FOURTH either while alive or by testamentary designation."

ARTICLE FOURTH provides that the "Grantor reserves the right to change the percentage of distribution among the class of beneficiaries," and that if the Grantor "decides to change the distribution * * * [he] shall do so in writing delivered to the Trustee of the Trust" (Trust at 4).

Article NINTH authorizes the grantor to remove a Trustee for various reasons, including, *inter alia*, where the trustee is "physically, mentally or emotionally unable to devote sufficient time to administer the trust" (Trust Article Ninth, ¶ 7).

In June of 2002, Phillip executed an amendment to the underlying Trust which removed Reneita as a joint trustee and reduced Reneita's distributive percentage to zero.

Specifically, the disputed June, 2002 amendment recites, *inter alia*, that "I, Phillip Santoro, Grantor of the Santoro Family Irrevocable Trust * * * am hereby exercising my right to change the distribution among the class of beneficiaries * * * as allowed by Article FOURTH".

The instrument further states that "I hereby remove RENEITA SANTORO [as Trustee] due to her incapacity and that she is physically, mentally, or emotionally unable to devote sufficient time to administer the Trust" (Defs' Exh., "D").

The amendment goes on to specify that the trust proceeds were now to be divided solely and equally between the defendants Patricia and Joseph Santoro.

Nevertheless, the amendment adds that, "[i]t is my wish that Patricia and Joseph do what they can to support and assist Reneita without endangering themselves or others"(Defs' Exh., "D").

Thereafter, in August of 2002, Phillip Santoro died and in September of 2002, codefendants Patricia and Joseph, as Trustees, conveyed to themselves, ownership of the West

Hempstead premises (Pltff's Exh., "P"). Thereafter, Joseph conveyed his interest in the premises to his sister, defendant Patricia Santoro (Cmplt., ¶ 22).

According to Patricia Santoro, her father altered the Trust agreement because, *inter alia*, Reneita was supposedly bragging about her impending inheritance, and because he disapproved of Reneita's plans to marry a 75-year old man (P. Santoro Dep., at 20-24, 25).

Reneita argues, however, that her father told her on his death bed that she would, in fact, be receiving her one-third interest, but that the money would be left to Patricia for her benefit so that the adult home where she had been staying would "not get it" (Santoro Dep., at 29, 37-39).

It is undisputed that at the time the amendment was executed, Patricia was caring for Philip, who was afflicted with lung cancer and was in a very weakened condition due to various ailments and health problems.

The plaintiff also claims that neither her father nor Patricia informed her about the amendment prior to its execution.

Thereafter, by summons and verified complaint dated August, 2005, the plaintiff Reneita Santoro commenced the within action alleging that the subject amendment violated the terms of the Trust.

According to the plaintiff, the amendment impermissibly altered "both the class of beneficiaries and the distribution plan" by "removing the plaintiff completely as a beneficiary and distributee" (Cmplt., ¶ 17).

The complaint further alleges that the Phillip was not of sound mind and body when the amendment was executed; that the defendants Joseph and Patricia Santoro breached their fiduciary duty as Trustees to the plaintiff; and that the defendants employed coercion, duress and undue influence to fraudulently induce Phillip to alter the trust (Cmplt., ¶¶ 29-34).

Among other things, the complaint seeks relief, *inter alia*, (1) declaring the amendment null and void; (2) setting aside all conveyances which ensued subsequent to Phillip's death; and (3) directing that the defendants execute a deed conveying to the plaintiff legal title to the subject property in accord with the pre-amendment beneficiary percentages set forth in the original trust instrument (Cmplt., at 8).

The defendants have answered, denied the material allegations of the complaint and interposed various affirmative defenses.

Discovery is complete and the parties now move and cross move for summary judgment on their respective claims.

In support of her application, the plaintiff contends that the amendment should be construed as an improper alteration of the class of beneficiaries, while the defendants assert that the trust expressly authorizes the grantor to do precisely what he did, *i.e.*, to “alter the distribution percentages designated” in article four.

The plaintiff alternatively contends that issues of fact exist as to her claim that Phillip was incompetent when the amendment was executed and/or that the defendants fraudulently coerced him into changing the trust. The defendants’ motion is granted. The plaintiff’s motion is denied.

Initially, the Court agrees that the plaintiff has failed to raise a triable issue of fact as to the claim that the amendment was the product of the defendants’ coercive conduct or undue influence.

It has been held “that to establish such influence, respondents must identify the claimed acts constituting the influence and the times and places when and where such acts occurred” (In re Estate of Friedman, 26 A.D.3d 723, 725-726; In re Spinello, 291 A.D.2d 406, 407; In re Bustanoby, 262 A.D.2d 407).

Here, the plaintiff has offered at most, only inconclusive and generalized assertions to the effect that her sister, codefendant Patricia Santoro, yelled at, or was allegedly abusive to Phillip (In re Bustanoby, *supra*). These bare assertions – unaccompanied by facts suggesting that any influence was actually exercised – do not generate factual issues with respect to the claim that the amendment was the product of coercion, fraud or duress (*see, generally*, In re Estate of Ruparshek, 36 A.D.3d 998, 1000; In re Will of Ryan, 34 A.D.3d 212; In re Estate of Friedman, 26 A.D.3d 723; In re Chiurazzi, 296 A.D.2d 406; In re Spinello, *supra* *cf.*, Matter of Fiumara's Estate, 47 N.Y.2d 845 [1979]; In re Neuman, 14 A.D.3d 567, 568).

With respect to the claims founded upon the language of the instrument, it has been held that, “[a] cardinal principle of construction is that the intention of the settlor is to be sought in all his words, and when ascertained is to prevail unless contrary to public policy or an established rule of law” (In re Day's Trust, 10 A.D.2d 220, 222 *see also*, In re Manufacturers & Traders Trust Co., ___ A.D.3d ___, 2007 WL 1953944 [4th Dept. 2007]; Hemingway v. Hemingway Found., 193 A.D.2d 559, 560; Associated Industries of New York State, Inc. v. Murray, 80 A.D.2d 648, 650; In re Balsam's Trust, 58 Misc.2d 672, 677-678 [Supreme Court, Richmond County 1968]).

Where “the settlor reserves a power to modify the trust, it is a question of interpretation to be determined in view of the language used and all the circumstances whether and to what extent the power is subject to restrictions’ ” (In re Woodward's Trust, 284 AD 459, 463, *quoting from*, Restatement, Trusts, § 331, comment h *see, generally*, 106 N.Y. Jur2d, Trusts, §§ 345, 582).

“To ascertain the scope and extent of the amendment power, however, we must examine the language and terms of the whole instrument (Associated Industries of New York State, Inc. v. Murray, supra, at 650; In re Woodward's Trust, supra).

Here, the terms of the trust clearly and expressly confer upon the grantor, the power to “alter the distribution percentages as designated in ARTICLE FOURTH.” There is no dispute that the plain language of the trust authorizes the grantor to alter beneficiary percentages.

Moreover, the Court agrees that this unlimited power to alter the percentages necessarily includes the authority to reduce the designated percentages to zero (*accord*, In re Woodward's Trust, supra, at 463-464).

The respondent’s reliance upon provisions in the Trust which preclude modification of the “class” of beneficiaries in unpersuasive.

While the Trust generally provides that the grantor “shall not have the right to rescind, cancel or modify” the “class” of beneficiaries, the Court agrees that the subject amendment does not constitute a modification to the class of beneficiaries designated in the Trust – here comprised of Phillip’s children. Rather, the amendment constitutes a permissible change in the beneficiary percentage relating to a member of the existing “class” – albeit a class member whose stated percentage has now been definitively reduced (*cf.*, In re Woodward's Trust, supra).

When harmonized in accord with the foregoing interpretive analysis, the disputed reduction falls within the scope of the powers expressly reserved to the grantor. Significantly, there is nothing in the Trust which otherwise limits the grantor’s broad power to alter beneficiary percentages as he sees fit.

Lastly, the Court finds that the alleged failure to notify all the Trustees prior to the formal execution of the amendment is not fatal to its legality.

It bears noting that the amendment terminated the plaintiff’s status as a Trustee, and that the Trust language relating to notice does not specify precisely when the contemplated notice is to be provided. Significantly, the defendants have submitted proof that they did, in fact, apprise the plaintiff of the amendment – albeit at some point in June of 2003 (Tanck Aff., in Reply).

The Court has considered the plaintiff’s remaining contentions and concludes that they are lacking in merit.

Accordingly, it is,

ORDERED that the motion pursuant CPLR 3212 by the defendants Patricia Santoro and Joseph Santoro, individually and as Trustees of the Santoro Family Irrevocable Trust, for

summary judgment dismissing the complaint, is granted.

The foregoing constitutes the decision and order of the Court.


A.J.S.C.

Dated: September 12, 2007

ENTERED
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NASSAU COUNTY
COUNTY CLERK'S OFFICE