

Rice v DiNapoli

2009 NY Slip Op 32573(U)

November 5, 2009

Supreme Court, Albany County

Docket Number: 1915-09

Judge: Joseph C. Teresi

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

ADAM D. RICE, as Administrator
of the Estate of Gary Rice,

Plaintiff,

-against-

DECISION and ORDER
INDEX NO. 1915-09
RJI NO. 01-09-96127

THOMAS DINAPOLI, State Comptroller of the
New York State and Local Retirement Systems;
and EVA RICE,

Defendants.

Supreme Court Albany County All Purpose Term, October 20, 2009
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Criscione Law Firm, LLC
Nicholas Criscione, Esq.
Attorneys for Plaintiff
120 Broadway
Albany, New York 12204

Walter, Thayer & Mishler, PC
Anita Thayer, Esq.
Attorneys for Defendant Eva Rice
756 Madison Avenue
Albany, New York 12208

Andrew M. Cuomo, Esq.
Attorney General of the State of New York
Attorneys for Defendant Thomas DiNapoli
Susan C. von Reusner, Esq. AAG
The Capitol
Albany, New York 12224

TERESI, J.:

Plaintiff, by this declaratory judgment action, seeks a declaration that the death benefit payable by the New York State Employees' Retirement System (hereinafter "Retirement System") due to the death of Gary Rice (hereinafter "Mr. Rice") is payable 50% to defendant

Rice and 50% to Plaintiff. Defendant DiNapoli answered, declined to oppose Plaintiff's complaint and advised the Court that the Retirement System "awaits the court's order instructing payment". Eva Rice (hereinafter "Defendant") also answered, generally denied the complaint's allegations and seeks a declaration that she is the sole beneficiary of Mr. Rice's Retirement System death benefit. Both Plaintiff and Defendant now move for summary judgment. Because Plaintiff demonstrated that Defendant waived her right to a portion of Mr. Rice's Retirement System death benefit, his motion is granted.

It is well established that "the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (Smalls v. AJI Industries, Inc., 10 NY3d 733 [2008] quoting Alvarez v. Prospect Hospital, 68 NY2d 320 [1986]; CPLR §3212). If the movant establishes their right to judgment as a matter of law, the burden then shifts to the opponent of the motion to establish, by admissible proof, the existence of genuine issues of fact. (Zuckerman v. City of New York, 49 NY2d 557 [1980]; Manculich v. Dependable Auto Sales and Service, Inc., 39 AD3d 1070 [3d Dept. 2007]).

On this record, the facts are not in dispute. Mr. Rice's Retirement System beneficiary designation, dated April 15, 2003, names Defendant as the 100% beneficiary. Subsequent to its execution, Mr. Rice and Defendant entered into a Separation Agreement, last dated September 13, 2007. Although the parties lived separate and apart pursuant to the Separation Agreement, no Judgment of Divorce or Domestic Relations Order was ever executed.

Likewise, the terms of the Separation Agreement are not in dispute. The Separation Agreement specifically addresses Mr. Rice's Retirement System benefits (hereinafter the

“Pension” portion of the Separation Agreement) . The Pension portion states that: “[u]ntil such time as the Domestic Relations Order is signed, and entered, [Mr. Rice] agrees to keep [Defendant] listed as a 50% beneficiary on his in-service death benefit.” It also provides that, as part of the Domestic Relations Order issued subsequent to the Judgment of Divorce “[Mr. Rice] will elect to receive a joint and survivor annuity with a 50% survivor option, with [Defendant] as the beneficiary of that option... [Defendant] shall pay for the 50% survivor option from her share of the pension proceeds, such that the amount of monthly payments to [Mr. Rice] shall be the same as though there was no survivors option.” The Separation Agreement further provides a general release, which states in full that:

Each party irrevocably waives surrenders and renounces any and all rights of election under the present or future laws of any jurisdiction regarding the estate of the other, whether heretofore or hereafter executed, as provided for in any law, now or hereafter effective, of any state or territory of the United States, or any foreign country, and relinquishes, renounces and releases all interest, right or claim of any nature whatsoever, now or hereafter acquired, including without limitation any claim of distributive share, intestate succession, dower, thirds, curtsy, statutory allowance, widow’s allowance, community property, homestead, inheritance, or right to take in intestacy or against the last will and testament of the other (whether heretofore or hereafter executed) or any *inter vivos* transfers or testamentary substitutes made by the other party, as well as any other right or rights that he or she had, now has or might ever have against the other or the estate of the other, or the property of whatsoever nature, real or personal, of the other, under or by virtue of the laws of any state or territory or county including, without limitation, the applicable Estates, Powers, Trusts Law of such jurisdiction.

(hereinafter the “Mutual Release” portion of the Separation Agreement)

A named beneficiary to a Retirement System death benefit cannot waive her rights thereto, unless the waiver is “explicit, voluntary and made in good faith.” (*see generally Silber v. Silber*, 99 NY2d 395, 404 [2002]; *Eredics v. Chase Manhattan Bank, N.A.*, 100 NY2d 106 [2003]; *In re Estate of Sbarra*, 17 AD3d 975 [3d Dept. 2005]). The terms of a separation

agreement, if meeting the above tripartite test, may effectuate such waiver. (Silber, supra).

The waiver at issue in this action meets the above tripartite test. It is undisputed by the parties that the Separation Agreement was entered voluntarily and in good faith. Moreover, the Mutual Release portion of the Separation Agreement is a sufficiently “explicit” waiver. Focusing on the specific language used, Defendant waived “relinquishe[d], renounce[d] and release[d] all interest [in]... testamentary substitutes made by [Mr. Rice].” As Mr. Rice’s Retirement System beneficiary designation is a “testamentary substitute”, Defendant explicitly waived her right to it. (EPTL §5-1.1A(b)(1)(G); In re Estate of Alent, 271 AD2d 73 [4th Dept. 2000]; In re Estate of Richardson, 20 Misc.3d 1105(A) [Sup. Ct. Bronx Co. 2008]).

The record also demonstrates that Mr. Rice and Defendant intended to limit Defendant’s Retirement System death benefit by operation of the Separation Agreement. A separation agreement is a contract and the “ultimate goal in contract interpretation is realization and effectuation of the parties’ intent.” (In re Estate of Shatraw, __NYS2d__, 2009 WL 3461301 [3d Dept. 2009] quoting Frye v. Brown, 189 AD2d 1031 [3d Dept. 1993]; Heinlein v. Kuzemka, 49 AD3d 996 [3d Dept. 2008]). Defendant did not explicitly waive her right to Mr. Rice’s Retirement System death benefit in the Pension portion of the Separation Agreement. However, the Pension portion clearly demonstrates the parties’ intent to limit such benefit. It required Mr. Rice, with the mandatory term “will”, to select the Retirement System’s “50% survivor option” payable to Defendant when the contemplated Domestic Relations Order was entered. The Pension portion further required Defendant to pay the cost associated with such selection, and prevented Mr. Rice from reducing Defendants’ Retirement System death benefit to less than 50% prior to entry of a Domestic Relations Order. The parties’ intent, as clearly expressed in the

Pension portion of the Separation Agreement, contemplated Defendant's interest in Mr. Rice's Retirement System death benefit as 50%.

Accordingly, Plaintiff's motion is granted, Defendant's motion is denied and it is hereby:

ORDERED, ADJUDGED, DECLARED AND DECREED that by operation of the Separation Agreement, entered September 13, 2007, Defendant waived her right to 50% of Mr. Rice's Retirement System death benefit and defendant DiNapoli is directed to correct Mr. Rice's Retirement System beneficiary designation, dated April 15, 2003, pursuant to Retirement and Social Security Law §803-A to reflect such waiver.

Further, Plaintiff shall submit an order, on notice to the parties herein and within ten days of the date of this Decision and Order, directing the payment of the remaining 50% of Mr. Rice's Retirement System death benefit to the Estate of Gary Rice,.

This Decision and Order is being returned to the attorneys for the Plaintiff. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: November 5, 2009
Albany, New York


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Motion, dated September 18, 2009, Attorney's Affirmation of Nicholas Criscione, dated September 18, 2009, with attached Exhibits A-F;
2. Notice of Motion, dated October 13, 2009, Affidavit of Eva Rice, dated October 13, 2009, with attached Exhibits 1-2.