

<b>Matter of LeoGrande</b>
2009 NY Slip Op 33140(U)
December 18, 2009
Surrogate's Court, Nassau County
Docket Number: 318886
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 Petition to Compel an Accounting by  
 Norman LeoGrande, as Executor of the Estate of  
 Joseph W. LeoGrande, Sr.,

Deceased.

File No. 318886

In the Matter of the Settlement of the Intermediate Account  
 for the period from December 31<sup>st</sup>, 1985 to December 31<sup>st</sup>,  
 2005 of Stanley Ross and Joseph LeoGrande, Jr., as Trustees  
 of the Trust created under Agreement dated December 17<sup>th</sup>,  
 1976 for the benefit of Norman LeoGrande.

Dec. No. 849

In the Matter of the Accounting by Donald LeoGrande and  
 Joseph LeoGrande, Jr., as Trustees of the trust created under  
 agreement dated January 22<sup>nd</sup>, 1986 for the benefit of  
 Joseph LeoGrande, Sr. (deceased April 11, 2001).

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 This is a miscellaneous proceeding by Donald LeoGrande, Joseph LeoGrande, Jr.,  
 Norman LeoGrande and Stanley Ross for, among other things, approval of the resignation of  
 Stanley Ross as (a) co-trustee of the trust created for the benefit of Donald LeoGrande under trust  
 agreement dated December 17, 1976, (b) co-trustee of the trust created for the benefit of Joseph  
 LeoGrande, Jr. under trust agreement dated December 17, 1976, and (c) co-trustee of the trust  
 created for the benefit of Norman LeoGrande under trust agreement dated December 17, 1976.

By instrument dated December 17, 1976, Joseph LeoGrande, as settlor, entered into a  
 trust agreement with Rose Leo Grande and Frank Devorkin, as trustees, known as the LeoGrande  
 1976 Irrevocable Trust for the benefit of Donald LeoGrande, Norman LeoGrande and Joseph  
 LeoGrande, Jr. As a result of certain settlements relating to the trust, three separate trusts were  
 created so that a separate trust was created for each of Donald, Joseph, Jr. and Norman. The  
 LeoGrande family has been involved in various disputes over the years involving the trusts. In

order to settle all of their disputes, the parties entered into a stipulation of settlement in open court on April 23, 2009.

The stipulation of settlement provides for the resignation of Stanley Ross as a co-trustee of the three trusts and for the appointment of a co-trustee to act in his place and stead with respect to each trust. The settlement agreement provides for the appointment of (i) Susan B. LeoGrande to act as successor co-trustee in place and stead of Stanley Ross with respect to the Norman LeoGrande trust, (ii) Donald LeoGrande, Jr. to act as successor co-trustee in place and stead of Stanley Ross with respect to the Donald LeoGrande trust and (iii) Donald LeoGrande, Jr. to act as successor co-trustee in place and stead of Stanley Ross with respect to the Joseph LeoGrande, Jr. trust. Susan B. LeoGrande and Donald LeoGrande, Jr. have each consented to their appointment and aver that they will faithfully discharge the duties of successor co-trustee. In addition, Donald LeoGrande, Joseph LeoGrande, Jr. and Norman LeoGrande have waived their right to an accounting by Stanley Ross as co-trustee.

In addition, with respect to the Norman LeoGrande trust, the stipulation of settlement further provides for the resignation of Joseph LeoGrande, Jr. as co-trustee and the appointment of Norman LeoGrande as successor co-trustee in his place. Joseph LeoGrande, Jr. has agreed to resign as co-trustee and Norman LeoGrande has consented to his appointment and avers that he will faithfully discharge the duties of successor co-trustee. Norman LeoGrande has waived the right to an accounting by Joseph LeoGrande, Jr. as co-trustee.

Granting a trustee's application to resign rests in the court's discretion (*Matter of Busto's Will*, 173 Misc 25 [Sur Ct, Queens County 1939], *affd* 258 App Div 980 [2d Dept 1940]). The court's primary concern in exercising its discretion is whether the resignation is in the best

interests of the beneficiaries and whether the prospective administration of the trust will be advanced (*Barch v Avco Cor.*, 30 AD2d 241 [4<sup>th</sup> Dept 1968]; *Matter of Antonecchia*, NYLJ, Feb. 10, 2004, at 27, col. 3 [Sur Ct, Westchester County]; *Matter of Barber*, NYLJ, June 12, 2000, at 37 [ Sur Ct, Westchester County]).

The resignations of Joseph LeoGrande, Jr. and Stanley Ross are part of a settlement which has put an end to bitter litigation amongst the LeoGrande family members regarding the trustees. As a result, it appears that the resignation of (i) Joseph LeoGrande, Jr. and Stanley Ross with respect to the trust for the benefit of Norman Leo Grande, (ii) and Stanley Ross with respect to the trust for the benefit of Joseph LeoGrande, Jr. and the trust for the benefit of Donald LeoGrande will be in the best interests of the trusts and the beneficiaries. Accordingly, the application is granted.

The petitioners also seek a transfer of the situs and jurisdiction of the trust for the benefit of Norman LeoGrande to Virginia on the basis that both of the trustees of the trust and the beneficiary reside in Virginia and, thus, the trust will be more easily administered there.

The Surrogate's Court has the authority to remove the situs of a trust by virtue of its general equity powers under SCPA 201 and 203 (*Matter of Bedito*, 83 Misc 2d 740 [Sur Ct, Nassau County 1975]). A change of situs will be denied, however, where the language of the will or trust agreement expressly or implicitly prohibits a transfer (*Matter of Hudson*, 29 AD2d 145 [3d Dept 1968], *affd* 23 NY2d 834 [1969]; *Matter of Bush*, 2 Misc 3d 744 [Sur Ct, New York County 2003]). An application for a transfer of situs may be denied where the governing instrument specifically provides that New York law will govern the administration of the trust (*Matter of Hudson*, 29 AD2d 145 [3d Dept 1968], *affd* 23 NY2d 834 [1969]; *Matter of Bush*, 2

Misc 3d 744 [Sur Ct, Nassau County 2003]; *Matter of Firth*, 205 Misc 101 [Sur Ct, New York County 1953]).

The courts have allowed a change of situs where the will (in the case of a testamentary trust) or trust agreement (in the case of an inter vivos trust) does not prohibit the transfer, either explicitly or implicitly, and the transfer will simplify the administration of the trust or promote the beneficiaries' interests (*Matter of Weinberger*, 21 AD2d 780 [1<sup>st</sup> Dept 1964]; *Matter of Hitchcock*, NYLJ, Sept. 7, 1999, at 34 col 4, [Sur Ct, Nassau County]; *Matter of McComas*, 165 Misc 2d 947 [Sur Ct, New York County 1995]; *Matter of Dornbush*, 164 Misc 2d 1028 [Sur Ct, New York County 1995]; *Matter of Matthiessen*, 195 Misc 598 [Sup Ct, New York County 1949]). In *Matter of Weinberger* (21 AD2d 780 [1<sup>st</sup> Dept 1964]), the court found that a transfer of situs would facilitate the administration of the trust since the distance between the two trustees had made the administration difficult. Similarly, in *Matter of McComas* (165 Misc 2d 947 [Sur Ct, New York County 1995]), the court granted the application for a change of situs finding that the interests of the beneficiaries would be promoted by a transfer to the beneficiaries' residence. In many of these cases, the main reason for a request to transfer the situs out of New York was to avoid New York's fiduciary income tax (*Matter of Flint*, NYLJ, July 15, 2002, at 26, col 5 [Sur Ct, Queens County]; *Matter of Beir*, NYLJ, Sept. 20, 2002, at 22, col 4 [Sur Ct, Westchester County]; *Matter of Hitchcock*, NYLJ, Sept. 7, 1999, at 34, col 4 [Sur Ct, Nassau County]).

The petitioners here maintain that a transfer of the situs of Norman LeoGrande's trust to Virginia would simplify the trust administration and promote the beneficiaries' interests. The income beneficiary and presumptive remaindermen reside in Virginia. They contend that a transfer to Virginia will provide the beneficiaries with more convenience than if the trust

remained situated in New York.

The decedent's intention is to be gleaned from the language in the instrument (*Matter of Smart*, 15 Misc 2d 906 [Sup Ct, New York County 1958]). The trust agreement does not contain language explicitly prohibiting a change of situs. The trust agreement does state that "[t]his agreement shall be construed and administered and the validity of the trust hereby created shall be determined in accordance with the laws of the State of New York." Nevertheless, it appears that the administration of the trust will be more efficiently effectuated if situs is transferred to Virginia. Notwithstanding this, the court shall retain jurisdiction over all three individual trusts relating to enforcement of the stipulation.

Accordingly, petitioner's application is granted in its entirety.

Submit decree.

Dated: December 18, 2009

JOHN B. RIORDAN  
Judge of the  
Surrogate's Court