| **Accounting of Carney, Will of Spacek, Deceased** |
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| 2014 NY Slip Op 32719(U) |
| September 30, 2014 |
| Sup Ct, Nassau County |
| Docket Number: 350077/E |
| Judge: Edward W. McCarty III |
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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Accounting of Diana Carney, Will of ANTON SPACEK, Deceased.

File No. 350077/E

Dec. No. 30043

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In connection with the petition to account filed by Diana Carney, as executor of the estate of Anton Spacek, the court has before it a motion filed by a partial residuary legatee, Lynne A. Krontz, which asks the court to set aside a release, receipt and waiver signed by movant, on the ground that the executor misled her into signing it, and that the executor failed to render a full and complete disclosure of the amounts claimed by Carney individually as her share of decedent's estate.

BACKGROUND

The following facts underlying the present motion are undisputed. Anton Spacek (the "decedent") died on December 9, 2007, leaving a will dated January 23, 1995. Under the terms of decedent's will, his residuary estate was bequeathed to his six nieces by marriage, Christine A. Spacek, Francine Spacek LeVasseur, Jayne Mathers Fletcher, Justine F. Burnett ("Burnett"), Diana Carney ("Carney" or the "executor"), and Lynne M. Krontz ("Krontz" or "movant"). Letters testamentary issued to Carney on April 9, 2008.

Counsel for the executor sent a letter dated June 23, 2009 to the other five residuary legatees. The letter included (1) a Memorandum, (2) a proposed Agreement Settling Account (the "Agreement"), and (3) financial records relating to decedent's estate, consisting of (a) decedent's New York State estate tax return, Form ET-90, (b) the estate checking account ledger, (c) consolidated and monthly Ameritrade statements, and (d) the closing statement for the sale of

decedent's home in Albertson, New York. The Agreement recited that "[t]he parties wish to avoid the delay and expense of the preparation of a formal accounting and judicial settlement of the same and . . . the Executor has attached . . . the cash statements covering the period December 9, 2007 through March 30, 2009." The combined documents were referred to as the "Executor's Account." The Agreement was signed by all of the residuary legatees with the exception of Burnett.

Krontz signed and mailed the proposed agreement on June 29, 2009. A few weeks later, she became aware of questions raised by counsel for Burnett as to the accuracy of the executor's accounts, specifically concerning joint accounts in the names of decedent and Carney in the alleged total amount of $378,413.93. Krontz has filed an affidavit stating that she immediately telephoned the executor's counsel at the time and requested that her signature page be returned, because she no longer agreed to the Agreement, but that counsel refused to return the document. Krontz further claims that she sent counsel a handwritten note the next day revoking her assent to the Agreement.

In May 2010, Krontz engaged counsel to represent her. On July 13, 2010, Burnett and Krontz filed a petition to compel the executor to file her account. In response, petitioner filed her account on November 29, 2010, and Krontz and Burnett filed objections thereto. Settlement talks followed, and counsel for Carney objected to Krontz sharing in any potential settlement, on the ground that Krontz had signed a valid Release in 2009. The present motion was filed in response to that objection.

MOTION AND AFFIDAVIT

On April 30, 2014, counsel for Krontz filed the present motion, in which he asks the court to vacate the release signed by Krontz. Counsel argues that his client was misled into executing the Agreement, that there was a failure to disclose by the executor, and that immediately after executing the Agreement Krontz revoked the release by oral and written notice to the executor.

In her supporting affidavit, Krontz argues that "[n]o accounting, formal or informal, was attached to the Memorandum" sent to her by the executor. "Only the estate tax return and miscellaneous financial records were annexed." Krontz argues that she was misled by Carney because the first page of the Agreement recited that decedent's will provided for the residuary estate to be divided into equal shares among the six residuary legatees. Krontz asserts that the funds contained in decedent's joint accounts were estate assets and that Krontz was therefore entitled to a one-sixth share of these funds.

AFFIRMATION IN OPPOSITION TO THE MOTION

On May 21, 2014, counsel for Carney filed an affirmation in opposition to the present motion. Counsel maintains that the documents which the executor sent to the residuary legatees in June 2009 constituted an informal account and release, which was signed by all of the beneficiaries, including Krontz, with the exception of Burnett. The release was accompanied by copies of the estate account checkbook ledger, the closing statement for the real estate sale, the transaction statements for stock owned by decedent, and the New York estate tax return, which included information concerning non-probate assets.

Counsel for Carney argues that the joint accounts did not come into Carney's hands as executor and that she had no duty to account for these non-probate assets. Despite this, counsel

maintains that Carney did not hide these assets but disclosed them by distributing copies of the estate tax return which reflected these assets and their distribution to Carney as the joint owner of the property.

Further, counsel for Carney notes that Krontz has offered no proof that she ever withdrew her signed release, verbally or in a written note. There is no record of a written withdrawal of a release in the file of Carney's present counsel[1], and counsel asserts that no attempted withdrawal was ever conveyed directly to the executor.

In her affirmation, counsel for Carney agrees with movant that an executor must provide complete disclosure of all data relevant to the estate, but she maintains that Carney provided complete disclosure to Krontz by providing financial records. It is well established that the law allows for informal settlement of accounts where all parties are competent adults, as was the case here. Counsel cites various decisions in support of the position that a party who signs a release is bound by its terms, and that a party who failed to read the release or engage assistance in interpreting the release has acted negligently. Counsel asks the court to deny Krontz's motion in its entirety.

ANALYSIS

There are only two disputed facts before the court: (1) whether Carney misrepresented the estate assets; and (2) whether Krontz attempted to revoke her consent to the Agreement a few weeks after she signed and returned it.

(1) Whether Carney misrepresented the estate assets

[1]Carney was represented by different counsel during the time frame in which the Agreement was signed.

As Surrogate Bennett recognized in *Matter of Amuso* (18 Misc 2d 936 [Sur Ct, Nassau County 1959]), a conflict may arise between the court's encouragement of informal settlements between a fiduciary and estate beneficiaries, and the court's requirement that a fiduciary act with the utmost honor in her dealings with estate beneficiaries (citing Justice Cardozo's decision in *Meinhard v Salmon*, 249 NY 458 [1928]). The precise nature of the account to be provided by a fiduciary, whether written or oral, will depend upon the specific circumstances presented by the estate and its administration (*Matter of Amuso*,18 Misc 2d 936 [Sur Ct, Nassau County 1959]). At the same time, where "the fiduciary clearly possesses superior knowledge and has benefitted from the beneficiary's execution of a release or waiver, [a waiver] will not be sustained unless the beneficiary has been given full knowledge of his [or her] rights and of all material facts and circumstances" (*Matter of Hunter*, 190 Misc 2d 593, 599 [Sur Ct, Westchester County 2002] [internal citations omitted]).

The decedent's estate was relatively simple, and the executor provided Krontz and the other residuary beneficiaries with financial records, the tax return, and the real estate closing documents. While she did not particularly flag the joint accounts, she also did not hide them.

> "In every case the ultimate duty of the fiduciary is to render to the beneficiaries an accounting in some form. The nature of the accounting depends on the nature of the estate and the circumstances present. Whether oral or in writing, the accounting should be complete unless the opportunity for an accounting is fairly made to a cestui and he affirmatively waives his right. It would appear obvious, therefore, that an estate representative acts at his peril if he relies on a general release without evidence of an appropriate accounting, oral or in writing, or of the cestui's refusal or failure to avail himself of such an accounting. Due consideration must be given to a cestui sleeping on his rights and thereafter attacking a release"

(*Matter of Amuso*,18 Misc 2d 936, 937-938 [Sur Ct, Nassau County 1959]).

In the present case, information concerning the joint accounts and Carney's larger share of decedent's taxable assets could be found in three separate places in the materials Carney mailed out to all of the residuary legatees. Part 4 (General Information), line 5 of the estate tax return indicates that Carney received $440,386 from decedent's estate, while the other beneficiaries received $159,122 each, or $281,264 less than Carney. On part 5 of the estate tax return (Recapitulation), line 5 shows jointly owned property in the amount of $256,490. Schedule E of the federal return, which covers jointly owned property, also indicates that Carney is the surviving co-tenant of joint interests in the total amount of $256,490.

Further, the court must consider that Krontz is an adult under no disability (*see, Matter of Schoenewerg*, 277 NY 424 [1938]). At the time that Krontz received the agreement, she had the opportunity to review all of the records sent with it. Prior to signing and returning the Agreement, Krontz never objected to anything found in the informal account or conveyed any questions or complaints. "Ordinarily, the signer of a deed or other instrument is conclusively bound thereby. That her mind never assented to the terms expressed is not material. If the signer could read the instrument, not to have read it was gross negligence . . . the writing binds her" (*Matter of Spina*, NYLJ, Jan. 28, 1998 at 29, col 1[Sur Ct, Nassau County] [internal citations omitted]). Krontz does not assert that she made any further inquiry concerning the materials sent to her or that there was a refusal by Carney or her counsel to disclose information requested by Krontz (*see, Matter of Schoenewerg*, 277 NY 424 [1938]). The executor provided all of the financial records for the probate estate as well as the estate tax return, which reflected the non-probate assets. Krontz has offered no proof that there was a misrepresentation by Carney, and Krontz cannot claim now that Carney owed her "an affirmative duty to detail an

open state of facts as to which [she] was content to waive inquiry" (*Matter of Schoenewerg*, 277 NY 424 [1938]). Accordingly, the court finds that Carney has met her burden of proof in demonstrating "that there was no fraud or misrepresentation incidental to the procurement of the releases" (*Matter of Amuso*, 18 Misc 2d 936 [Sur Ct, Nassau County 1959]).

(2) Whether Krontz attempted to revoke her assent to the Agreement

Even if Krontz had provided the court with evidence of telephoning Carney's attorney, or sending him a note, these actions would be insufficient, standing alone, to revoke the Agreement. "Stipulations of Settlement are favored by the courts and will not be set aside in the absence of fraud, overreaching, collusion or mistake. The same rule applies when a party seeks to set aside a receipt and release" (*Matter of Greenleaf*, NYLJ, May 26, 1995 at 28, col 2 [Sur Ct, New York County] [internal citations omitted]).

CONCLUSION

Accordingly, as there are no material facts in dispute, there is no need for an evidentiary hearing in this matter. The motion is dismissed in its entirety.

This constitutes the decision and order of the court.

Dated: September 30, 2014

EDWARD W. McCARTY III
Judge of the
Surrogate's Court