

Matter of Rutgers

2014 NY Slip Op 32863(U)

November 13, 2014

Sur Ct, New York County

Docket Number: 2014-1479

Judge: Rita M. Mella

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

New York County Surrogate's Court
DATA ENTRY DEPT.
NOV 13 2014

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In the Matter of the Application of JPMorgan Chase Bank,
N.A., as trustee, et al. for permission to split property held
in Trust pursuant to EPTL 7-1.13(a)(3) and for reformation of
said Trust created under agreement dated January 22, 1965, by

DECISION
File No.: 2014-1479

FREDERICK RUTGERS
and KATHERINE PHILLIPS RUTGERS,

Grantors.

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M E L L A, S.:

This is an unopposed¹ application seeking to split and reform an intervivos trust created under agreement dated January 22, 1965, by and between Frederick Rutgers and Katherine Phillips Rutgers, as grantors, and JPMorgan Chase Bank N.A.'s corporate predecessor, Manufacturers Hanover Trust Company, as trustee ("the Trust").

To better serve the interests of the Trust's individual beneficiaries, petitioners, the current trustee and all adult individual beneficiaries, seek to reform or modify the Trust in three respects. First, pursuant to EPTL 7-1.13(a)(3), petitioners ask the court to direct the split of the Trust into three separate trusts, one for the current benefit of each income beneficiary. Second, petitioners seek to modify Article SIXTH of the Trust instrument as it relates to the power provided to the grantors' daughters to appoint a successor trustee. Finally, petitioners seek reformation of Article SIXTH of the Trust to add a power to remove a trustee and extend trustee-appointment powers, not contemplated by the Trust instrument.

The income beneficiaries of the Trust are grantors' three grandchildren, who are the issue of grantors' two daughters, and who themselves have issue. All aforementioned family members

¹ Two guardians *ad litem* appointed for the minor remainder beneficiaries interpose no objection to this petition and recommend that the requested relief be granted.

are beneficiaries of principal distributions for certain emergency expenses at the discretion of the trustee. Upon termination, the principal of the Trust is to be distributed to the grandchildren, in equal shares. Any share for a pre-deceased grandchild goes to said grandchild's issue in equal shares per stirpes. The Trust instrument provides for two charities as contingent remainder beneficiaries.

DISCUSSION

1. Trust Splitting

Except where prohibited by the terms of the Trust instrument, upon application, the court may direct the establishment of two or more separate trusts for any reason not contrary to the primary purpose of the trust (EPTL 7-1.13[a][3]). In this case, the proposed split of the Trust corpus into three separate trusts, one for each grandchild, is consistent with the grantors' intent to provide regular income distributions to their grandchildren in equal shares.

The court is mindful that, as a result of trust-splitting, each grandchild and his or her respective family unit will have a reduced pool of funds available from which to seek a principal distribution for emergency expenses. However, the effect is likely de minimis given that such distributions were at the trustee's discretion and is, in any event, outweighed here by petitioners' uncontroverted assertions that the income beneficiaries have different investment goals and financial needs, better served by separate trusts (*see Matter of Jones*, NYLJ, Oct. 10, 2006, at 21, col 3 [Sur Ct, NY County]). Additionally, severing the trusts has no material effect on the distribution plan for the Trust corpus upon termination (*cf Matter of Fussell*, 34 AD3d 164, 170 [4th Dept 2006] [splitting the trust contravened the primary purpose of the trust as it would

disproportionately benefit one familial line over the other upon trust termination])). Accordingly, such relief is granted.

2. *Administrative modifications to terms of the separate trusts*

Pursuant to the statute, each separate trust shall be governed by the terms of the original instrument except to the extent modification of the terms is necessary to maintenance of the separate trusts (*see Matter of Ferguson*, NYLJ, Apr. 9, 2013, at 27 [Sur Ct, NY County]). Under the original instrument, the grantors' daughters share the power to appoint a successor trustee. Petitioners seek to modify this appointment power and the related trustee resignation and appointment procedure so that each daughter's power will apply only to the separate trust or trusts established for her respective issue. The division of such administrative powers and processes is a natural extension of the trust split and does not contravene the purpose of the original Trust. As such, this modification is approved.

3. *Additional appointment and removal powers*

Finally, petitioners request that a power to remove the trustee, not contemplated by the Trust instrument, be given to one of the daughters or, upon her death or incapacity, to her issue for their respective trusts. A similar request is made with respect to the trust for the issue of the other daughter, but the power is to be given to a third party. In addition, petitioners seek to extend the daughters' power to appoint successor trustees to the issue of one of the daughters and to the aforementioned third party.

Petitioners have failed to provide a justification or basis in law for granting reformation. No showing has been made that reforming the terms of the instrument to add an extrajudicial mechanism to remove trustees or provide additional individuals with trustee-appointment powers


advances, or is at least in accordance with, the settlor's intent (*see Matter of Knapp*, NYLJ, Sept. 30, 2013, at 29 [Sur Ct, NY County]; *see also Matter of Goldfarb*, NYLJ, Nov. 23, 2010, at 26 [Sur Ct, NY County]). The doctrine of equitable deviation, under which reformation of the administrative provisions of the trust may be permitted in certain circumstances, also fails to provide an avenue for this relief (*see Matter of Goldfarb, supra; see also Matter of Knapp, supra*).

CONCLUSION

Accordingly, the court grants petitioners' application to split the Trust into three separate trusts and the collateral modification to the trustee-appointment powers, and denies petitioners' request to reform the trust to confer a power to remove and appoint trustees not contemplated by the Trust instrument.

Settle decree providing for compensation of the guardians *ad litem*.

Dated: November 13, 2014



S U R R O G A T E