

**Fedele v Qualified Personal Residence Trust of  
Margett**

2014 NY Slip Op 33734(U)

April 8, 2014

Supreme Court, Nassau County

Docket Number: 602342-2013

Judge: Norman Janowitz

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**LISA BUCKLEY FEDELE and NANCY E. SWEDER  
not in their individual capacities, but solely in their capacities  
as co-executors of the estate of Sanford Rosen and THE  
ESTATE OF SANFORD ROSEN,**

**Plaintiff(s),**

**IAS PART 20**

**Index No.602342-2013**

**Motion Seq.:002**

**Submit Date: Mar. 10, 2014**

**- against -**

**DECISION AND ORDER**

**THE QUALIFIED PERSONAL RESIDENCE TRUST OF  
DORIS ROSEN MARGETT DATED NOVEMBER 21, 2001,  
et. al.,**

**Defendants.**

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Motion by defendant, North Shore Hospital Long Island Jewish Health System for an order [CPLR §3211] dismissing the complaint is disposed of as indicated. On oral argument, counsel for the parties agreed the motion may be considered as seeking a summary disposition.

At issue is the interpretation of the provisions of the Qualified Personal Residence Trust [IRS Code §2707(a)(3)(A)(ii)] established by Doris Rosen Margett on November 14, 2011, when she was then 82 years of age. The purpose of the trust was to minimize gift and estate taxes. For purposes of this determination the following is relevant. Mrs. Margett who resided at 51 The Serpentine Roslyn Estates transferred the property to herself and her son, Sanford Rosen, as trustees. The initial term of the trust was 7 years or Mrs. Margett's prior death [Article II]. In the event Mrs. Margett was alive after 7 years, the property was to remain in trust subject to her right

to lease the property on a yearly term. Upon expiration of any lease without renewal or Mrs. Margett's death the trustee was directed to distribute the property to her son, Sandford Rosen. If he had predeceased his mother the property was to be distributed to movant, North Shore Hospital [Article 1X].

The 7 year trust term ended on November 14, 2008. At that time Mrs. Margett pursuant to the terms of the trust entered into the 1 year formal lease agreement preserving her right to live in her home. It appears that thereafter Mrs. Margett did not formally execute a lease renewal each year. Sanford Rosen died on May 16, 2013.

Plaintiffs Lisa Fedele and Nancy Sweder are the co-executors of the estate of Stanford Rosen. The complaint seeks a declaration that the estate is the owner of the subject property by virtue of a termination of the trust and a directive that Doris Rosen Margett transfer the property to Ms. Fedele and Ms. Sweder as executors. It is plaintiff's contention that the failure of Mrs. Margett to execute a lease renewal on a yearly lease as required by Article 1X(b)(4) terminated the trust. It is not disputed Mrs. Margett has lived in her home and continued to pay a yearly rental under the 2009 lease up to the present time.

On the issue of Doris Rosen Margett's intent in executing the QPRT on November 17, 2001, is obvious i.e. to remain in her home for the rest of her life and minimize gift and estates taxes. It can safely be assumed that Mrs. Margett did not expect to be faced at age 95 with a loss of her right to remain in her home. In that regard the fact that counsel indicated the estate would not evict Mrs. Margett if they are successful does not alter the fact that if successful it would have every right to do so. Mrs. Margetts counsel's letter of August 12, 2013, provides insight

into Mrs. Margett's feelings toward the interpretation urged by plaintiffs. He states in response to a request she turn over the property that:

"Mrs. Margett personally finds your client's demand contemptuous and abhorrent."

The issue becomes then whether the obvious intent and purpose of the agreement must yield to the provisions of the trust agreement itself. Put another way can the provision of the QPRT be interpreted as justifying termination during Mrs. Margett's lifetime over her objection because there has been a failure to formally re-new the required lease. In that regard Article 1X [Trial upon Expiration of Term] provide that after 7 years:

2. The Trustees shall then secure and pay for an independent professional appraisal of the value of the Residence and of the fair market rental by a tenant who pays maintenance, utilities, and property taxes.
3. After receipt of this appraisal, the Trustees shall give me (if I am then living), or otherwise give my husband, if I am then married, at least ninety (90) days within which to lease the Residence for its fair rental value, as determined by such appraisals.
4. This lease shall be for a one (1) year period, annually renewable by the lessee for a market rent determined by an independent professional appraisal secured by the Trustees. Pursuant to this lease, the lessee shall pay all maintenance and upkeep of the Residence, and all real property taxes on the Residence. Upon expiration of any lease without a renewal, the Trustee shall distribute the trust property as described in Paragraph 5 below.
5. If upon expiration of the Term, neither I nor my husband, if I am then married, lease the Residence, the Trustees shall distribute the trust property to my son, SANFORD ROSEN, if he is then living, or if he is not then living, the Trustee shall distribute the trust property to the North Shore Hospital Long Island Jewish Health System.

The lease executed in January of 2009 by Mrs. Margett and Sanford Rosen as trustee landlords and Doris Rosen Margett as tenant provided in Paragraph 19.

#### HOLDOVER BY TENENT

Should Tenant remain in possession of the Residence with the consent of Landlord after the expiration of the Term of this Lease, a new tenancy from month to month shall be created which shall be subject to all the terms and condition of this Lease, but shall be terminable on thirty (30) days by either party or longer notice if required by law. If tenant hold over without Landlord's consent. Landlord is entitled to double rent, pro-raTed per each days of the holdover, lasting until Tenant leaves the house.

The provisions of Article 1X places the obligation to prepare renewal leases on the trustees who from 2009 until May 16, 2013, were Mrs. Margett and her son Sandford Rosen. At no time after the expiration oF the initial 1 year lease executed January 1, 2009, did the trustees obtain the "professional appraisal" which was a prerequisite to a renewal lease. Under the circumstances Mrs. Margett became entitled to remain in possession as a holdover with the consent of trustees. Under the circumstance the lease cannot be said to have expired within the meaning of Article 1X of the Trust and Doris Rosen Margett cannot be said to have lost her rights under the Trust Agreement of November 14, 2001.

The legal objections aside the equities dictate the result arrived at. The intent of the QPRT is obvious. Permit Mrs. Margett to remain in home until she dies, save of taxes and transfer ownership of the family home to her son on her death if he survived her, if he did not make a charitable gift to North Shore Hospital. Unfortunately tax mitigation is not without its formalities. In this case the requirement of proprietary leases. When the 2001 agreement had run its 7 year term, the tax law mandated a cosmetic landlord/tenant relationship. Mrs. Margett was 90 years old and might be expected to look to and rely on her son for guidance in tax law obligation and trust requirements. To assume Mrs. Margett would knowingly waive her right to

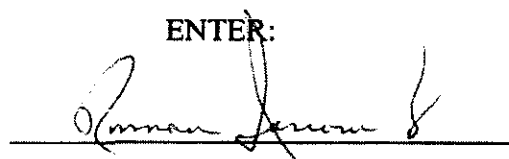
live in her home is absurd. To assume her son, Sanford Rosen, would knowingly have his mother waive such right to his benefit is equally absurd. Unfortunately the result Mrs. Margett had hoped for i.e. her son surviving her and receiving her home did not occur. Under the circumstances it is only proper that her secondary wishes for the property be complied with.

Accordingly, defendant's motion to dismiss is granted as to the complaints second, third, fourth and fifth causes of action, all of which are premised on a failure to terminate the trust. With respect to the complaint's first cause of action for declaratory judgement, the Court declares the trust was not obligated to distribute property to Sanford Rosen before his death or to his estate at that time and further declaring defendant, Hospital, retains its right under Article 1X of the Trust Agreement.

The Clerk shall enter judgment in accordance with this determination.

DATED: April 8, 2014  
Mineola, NY

ENTER:



HON. NORMAN JANOWITZ

J.S.C.

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**ENTERED**

MAY 05 2014

NASSAU COUNTY  
COUNTY CLERK'S OFFICE