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SURROGATE'S COURT : NEW YORK COUNTY
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Reformation Proceeding in the Estate of

CHARLES SUKENIK,

Deceased.
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New York County Surrogate's Court
Date: June 28, 2016

File No. 2014-20/A

A N D E R S O N, S.

Petitioner, the wife of decedent Charles Sukenik, asks the court to reform an inter vivos trust he established, as well as the IRA beneficiary designation form he executed in which he left his IRA to petitioner. The purpose of the reformation is to remedy "inefficient estate and income tax planning" which, absent the requested reformation, will result in petitioner's incurring an income tax liability of approximately $1.6 million.

Decedent died on August 17, 2013. Under his will, executed on November 4, 2004, decedent left his tangible personal property and cooperative apartment to petitioner and left his residuary estate to The Charles and Vivian Sukenik Philanthropic Fund, Inc. (the "Foundation"). Under the trust, established on August 21, 1996, and amended and restated the same day as the will's execution, decedent provided that, upon his death, petitioner would receive certain real property in Columbia County, New York, with the balance of the trust remainder to be distributed to the Foundation. The will was admitted to probate and letters testamentary issued to the nominated executor, a cousin, who is also the sole trustee of the trust. The IRA beneficiary

designation form at issue was executed by decedent on July 29, 2009, almost five years after the will and trust, and it names petitioner as the recipient of decedent's IRA at UBS Financial Services, Inc.

Petitioner asks the court to reform the trust to add a pecuniary bequest to petitioner in a sum equal to the value of the IRA (about $3.2 million) and to reform the IRA beneficiary designation form to name the Foundation the beneficiary instead of petitioner. If such relief were granted, petitioner would avoid receipt of an asset (the IRA) on which income tax would be due. According to petitioner, decedent intended to benefit the Foundation and his spouse, but his estate plan "could have been structured in a more tax efficient manner ...." By "swap[ping]" assets, petitioner notes that decedent's intent to benefit her and charity, *i.e.*, the Foundation, will be carried out "more tax efficiently." Neither the Foundation nor the Attorney General of the State of New York has opposed the application.

Courts have the power to reform an instrument, *i.e.*, to add, excise, change or transpose language, if doing so would effectuate a decedent's intent (*see e.g. Matter of Snide*, 52 NY2d 193 [1981]). As a general rule, courts will rarely reform a testamentary or trust instrument to correct a mistake (*see e.g. id.; Matter of Dickinson*, 273 AD2d 89 [1st Dept 2000]) unless the reformation is required to rescue the instrument from a

circumstance that threatens to subvert the intent of the testator or grantor to maximize available tax exemptions or deductions (*see e.g. Matter of Martin*, 146 Misc 2d 144 [Sur Ct, New York County 1989]; *Matter of Choate*, 141 Misc 2d 489 [Sur Ct, New York County 1988]; *Matter of Lepore*, 128 Misc 2d 250 [Sur Ct, Kings County 1985). These tax-related reformations are normally sought to cure an instrument's failure to meet the technical requirements of the Internal Revenue Code ("IRC") because of a drafting error (*see e.g. Matter of Gottfried,* NYLJ, Apr. 11, 1997, at 46, col 4 [Sur Ct, New York County 1997]) or because of a subsequent change in law (*see e.g. Matter of Choate*, 141 Misc 2d 489, *supra*).

By contrast, the reformation requested here is prompted by neither a drafting error nor a subsequent change in law. Several years after executing his will and trust, decedent himself thwarted the tax efficiency of his own estate plan by making petitioner the beneficiary of the IRA. There is nothing in the record indicating why, after executing these estate planning instruments, decedent chose to leave additional assets to his wife in this manner or why, in the four years before his death, he did not take steps to cure the unfavorable tax consequences of

his choice of IRA beneficiary.[1]

Petitioner relies on the general presumption that those executing testamentary instruments intend to minimize taxes (*see e.g. Matter of Lepore*, 128 Misc 2d 250, *supra*). However, that presumption has been applied to support tax-related reformations where there was a drafting error or a change in law and the intent of the testator to secure the specific tax advantages sought through reformation/construction was clear (*see e.g. Matter of Choate*, 141 Misc 2d 489, *supra*; *Matter of Marino*, NYLJ, Nov. 5, 2007, at 43, col 4 [Sur Ct, Suffolk County 2007]; *cf. Matter of Kaskel*, 146 Misc 2d 278 [Sur Ct, New York County 1989] [will executed years before enactment of first generation skipping transfer tax ("GST") reformed to preserve the surviving spouse's GST tax exemption because, among other things, language of will indicated testator intended to minimize/postpone taxes related to grandchildren). Thus, in *Matter of Dunlop* (162 Misc 2d 329 [Sur Ct, Hamilton County 1994], the court refused to reform an instrument to secure GST exemptions for decedent and his spouse where testator expressed an intent to maximize only the marital deduction and was silent as to the GST, which had been in

[1] According to petitioner, at some unspecified time, decedent's estate planning attorney (who post-deceased decedent) had suggested that decedent leave the IRA to charity and leave certain non-IRA accounts to petitioner rather than to charity, but shortly thereafter - a characterization that leaves too much to conjecture - grantor became too ill to make the necessary changes.

existence when the will was drafted.

Petitioner has offered no authority to support the reformation of a clear and unambiguous instrument in order to remedy the adverse tax consequences of poor estate planning. Although the court is sympathetic to petitioner's regret that grantor's decision to leave her additional assets left her with an additional tax burden as well, nothing in the trust or the will indicates that decedent intended to minimize the income tax consequences of distributions to any beneficiary. Indeed, in both instruments, decedent indicated that he was neutral as to the tax consequences of distributions by giving his fiduciaries the power to distribute assets without regard to "income tax basis." The IRA beneficiary designation is, of course, silent on this issue.

To reform instruments such as those at issue here based only upon the presumption that one who executes testamentary instruments intends to minimize taxes would expand the reformation doctrine beyond recognition and would open the flood gates to reformation proceedings aimed at curing any and all kinds of inefficient tax planning (*see Matter of Manville*, 112 Misc 2d 355 [Sur Ct, Westchester County 1982]; *see also Matter of Rubin*, 4 Misc 3d 634, 640 [Sur Ct, New York County 2004] [rejecting argument that presumption applied in reformation case where the instrument did not contain "technical drafting errors"]). As the Appellate Division, First Department, stated in

Matter of Dickinson (273 AD2d 89, 90, *supra*), a case in which the court affirmed dismissal of a reformation proceeding:

> "'When the purpose of the testator is reasonably clear by reading his words in their natural and common sense, the courts have not the right to annul or pervert that purpose upon the ground that a consequence of it might not have been thought of or intended by him (*Matter of Tamargo*, 220 NY 225, 228 [1917].'"

Based upon the foregoing, the petition is denied.

This decision constitutes the order of the court.

Dated: June 28, 2016

S U R R O G A T E