

Anderson v Garr
2017 NY Slip Op 33570(U)
October 16, 2017
Supreme Court, Cayuga County
Docket Number: Index No. E2017-0270
Judge: Ann Marie Taddeo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CAYUGA

FILED
CAYUGA COUNTY CLERK
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Susan M. Dwyer
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SHERRY L. GARR ANDERSON, Successor Trustee of
Trust B created pursuant to the provisions of the
GARR REVOCABLE TRUST dated September 19, 1994,
residing at 5911 Petre Drive, Auburn, New York 13021;

Index No. 2017-0270
DECISION AND
ORDER

PHYLLIS A. GARR-ALLEN, Successor Co-Trustee of
the GLADYS M. GARR REVOCABLE TRUST,
dated October 19, 2001, residing at 5913 Petre Drive,
Auburn, New York 13021;

SHERRY L. GARR ANDERSON, Successor Co-Trustee of
the GLADYS M. GARR REVOCABLE TRUST,
dated October 19, 2001, residing at 5911 Petre Drive,
Auburn, New York 13021;

SHERRY L. GARR ANDERSON, Co-Executor of
the ESTATE OF GLADYS M. GARR, residing at
5911 Petre Drive, Auburn, New York 13021;

PHYLLIS A. GARR-ALLEN, Co-Executor of
the ESTATE OF GLADYS M. GARR, residing at
5913 Petre Drive, Auburn, New York 13021;

SHERRY L. GARR ANDERSON, Individually,
residing at 5911 Petre Drive, Auburn, New York 13021;

PHYLLIS A. GARR-ALLEN, Individually,
residing at 5913 Petre Drive, Auburn, New York 13021;

and RICHARD M. GARR, Individually,
residing at 138 Standart Avenue, Apt. 204,
Auburn, New York 13021;

Petitioners

V.

LINDA J. GARR
5910 Petre Drive, Auburn, New York 13021,
Respondent.

Hon. Ann Marie Taddeo, JSC

Upon Respondent's motion to Dismiss the Petition, an Affirmation in Support by Zachary M. Mattison, Esq., a Memorandum in Support by Mr. Mattison; and upon Petitioners' Cross-Motion for partial Summary Judgment, an Affirmation in Support of Petitioners' Motion and in Opposition to Respondent's Motion by Robert E. Barry, Esq., a Memorandum in Support of Petitioners' Motion and in Opposition to Respondent's Motion by Mr. Barry; and upon a Reply Affirmation and a Reply Memorandum by Mr. Mattison; and upon a Reply Affirmation by Barry; and upon consideration of all exhibits attached to counsels' papers and oral argument having been conducted in chambers; the Court renders the following Decision:

Gladys M. Garr and Melvin J. Garr owned a house located at 5910 Petre Drive in Auburn, New York (the Lake House). On September 19, 1994, Gladys and Melvin created the "Garr Revocable Trust" (the Trust) and conveyed the Lake House to the Trust. Under the terms of the Trust, upon Melvin's death in 2001, the assets of the trust were split into two sub-trusts, Trust A and Trust B and the assets of trust B (including one-half of the Lake House) were distributed to Gladys and Melvin's children. Gladys died in 2014. Upon Gladys' death in 2014, her one-half interest in the Lake House was distributed to the children, Sherry, Phyllis, Richard and Linda.

Two provisions of the Trust are relevant here. First, is a provision that the Lake House could only be sold if all the children agreed. Second, is a provision that Linda could live rent-free in the Lake House's garage apartment in perpetuity.

Petitioners claim that the Lake House requires extensive maintenance: the sea wall is crumbling, the roof needs replacement, there is mold in the house and the driveway needs to be repaired or replaced. According to the terms of the Trust, the four siblings are to divide the costs of such repairs equally. In the past, maintenance expenses were paid out of the remaining money in the Trust, but Sherry, Phyllis and Richard claim that there are insufficient funds to keep the house up. They wish to sell the Lake House and split the proceeds four ways, but Linda will not consent. Petitioners brought this action seeking Court approval to sell the property over their sister's objections.

Respondent moves to dismiss the Complaint pursuant to CPLR §3211(a)(7), i.e. that the pleading fails to state a cause of action. "In determining such a motion, '[t]he facts pleaded are to be presumed to be true and are to be accorded every favorable inference...'" *Younis v. Martin*, 60 A.D.3d 1373 (4th Dept. 2009); citing *Gershon v. Goldberg*, 30 AD3d 372, 373 (2nd Dept. 2006). Thus, to succeed on her motion, Respondent must show that the evidence in support of her position resolves all factual issues of law.

In bringing this action, Petitioners rely on §§ 1601, 1602 and 1604 of the Real property Actions and proceedings Law (RPAPL). §1601 allows a trustee to apply to the

Court “for an order authorizing such trustee to mortgage, to lease or to sell real property [held by the trust]. §1602 allows an individual co-owner of real property to apply to the court for an order directing sale of real property which is divided into one or more possessory interests and one or more future interests. §1604 allows the Court to “grant such application upon such terms as to it shall seem proper, if satisfied from the proceedings theretofore duly had, that the act to be authorized is *expedient*... The granting of such an application is not necessarily precluded by the fact that it is opposed by one or more persons having interests in the affected real property; or by the fact that the granting thereof will be in contravention of a provision contained in the instrument creating some or all of the interests in the affected real property.”

Respondent argues that the Estate has no interest in the subject property. She argues that, as the Lake House passed through the Trust the estate has no standing to bring this action. The Court agrees with this argument but does not accept Respondent’s further contention that the Trust also has no standing. Prior to Gladys’ death, the Trust controlled a one-half interest in the Lake House and Gladys the other. Upon Gladys’ death, her half passed to the Trust as well, not to the four children directly. As such, the Trust now maintains 100% interest in the House, with an obligation to manage and disperse those assets in accordance with the terms of the Trust.

Petitioners argue that if the Court finds the Lake House is owned by the Trust, §1601 should apply. In the alternative, if the Court finds it is owned by the siblings individually, §1602 should apply. In either case, §1604 allows the Court to authorize the sale if it finds such sale to be expedient. “Expediency” has been held to be a result which is suitable, practical and efficient in “achieving a particular end which is proper or advantageous under the circumstances.” *Matter of Mantineo*, 16 Misc. 3d 1112 (Nassau County Surrogate’s Court 2007); *Matter of Sauer*, 194 Misc 2d 634, 638 (Nassau County Surrogate’s Court 2002); *In re Talmage* 64 A.D.3d 662 (2nd Dept. 2009). The question before this Court then is, “would the sale of the Lake House be suitable, practical and efficient?”

At the outset, the Court notes that under RPAPL §901(2), as Linda has a life interest in the garage apartment, partition is not an available remedy unless Linda consents. The relevant language from that section reads:

2. A person holding a future estate ...or a reversion as joint tenant or tenant in common may maintain an action for the partition of the real property to which it attaches, ...but no sale of the premises in such an action shall be made except with the consent in writing...of the person owning and holding such particular estate. If partition or sale cannot be made without great prejudice to the owners, the complaint shall be dismissed...

Therefore, the only remedy available in this case is sale of the Lake House and then only if sale can be made without great prejudice to the Respondent.

Sale of the Lake House might be efficient, and given the animosity that has grown between the parties, it might even be practical, but the Court is not convinced that such a solution would be a "suitable" solution under the law. There can be no doubt that Gladys's intent was to insure Linda a rent-free home in perpetuity. Further, by imposing the condition that all four children would have to agree before the Lake House could be sold, Gladys ensured that Linda's siblings would be estopped from selling the House without their sister's consent.

The Court finds that this sale would not be "expedient" because it would be counter to the intent of the Trust: to give Linda a place to live for life. See *Hahn v Hagar*, App Div 2nd Dept, July 19, 2017 (attached) for a discussion on "expediency". See also, *In re Gaffers' Estate*, 254 A.D. 448, 453 (3rd Dept. 1938). To rule other wise would be cause great prejudice to Respondent as defined by §901(2).

In so ruling, the Court has considered all the evidence presented in a light most favorable to Petitioners and has found no merit to their claims.

It is therefore

ORDERED, that Respondent's Motion to Dismiss the Petition is granted; it is further

ORDERED, that, based on the foregoing, Petitioners' Cross-Motion for Summary Judgment is denied.

Dated: October 16, 2017
Rochester, New York


Hon. Ann Marie Taddeo, JSC