

Parker v American Assn. of Univ. Women
2019 NY Slip Op 30380(U)
February 13, 2019
Supreme Court, New York County
Docket Number: 654069/2018
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 53EFM**

**DIANA PARKER, as Trustee of the HENRY ROTHSCHILD
IRREVOCABLE TRUST,**

Plaintiff,

-against-

**THE AMERICAN ASSOCIATION OF UNIVERSITY
WOMEN,**

Defendant.

-----X

**DIANA PARKER, as Executor under the Last Will and
Testament of Gertrude F. Rothschild and as Trustee under
the GERTRUDE F. ROTHSCHILD IRREVOCABLE
TRUST,**

Plaintiff,

-against-

**THE AMERICAN ASSOCIATION OF UNIVERSITY
WOMEN,**

Defendant.

-----X

DECISION/ORDER

**Index No. 654069/2018
(Action #1)**

Mtn. Seq. Nos. 001, 003 & 004

**Index No. 654490/2018
(Action #2)**

Mtn. Seq. Nos. 002-004

Borrok, J.S.C.:

For the purposes of this Decision and Order, Index nos. 654069/2018 and 654490/2018 are consolidated for disposition. The following motions are before the court in Index No. 654069/2018: motion seq. 001 (removal to Surrogate’s Court), motion seq. 003 (summary judgment), and motion seq. no. 004 (motion to supplement the record). The following motions are before the court in Index No. 654490/2018: motion seq. 002 (removal to Surrogate’s Court), motion seq. 003 (summary judgment), and motion seq. no. 004 (motion to supplement the record).

For the reasons set forth below and set forth on the record (2/13/19, A. Armstrong, Ct. Reporter), Index No. 654069/2018 is removed to the Bronx Surrogate Court and Index No. 654490/2018 is removed to the Westchester Surrogate Court.

Article II.B of the Henry Rothschild Trust provides in relevant part:

D. Balance of Trust/Remote Takers: Any property directed to be disposed of in accordance with the provisions of the Subdivision and any property not otherwise effectively disposed of under this Agreement, whether upon the Grantor’s death or upon the termination of any trust hereunder shall be distributed as follows:

1. Subject to the conditions and restrictions set forth in this Paragraph, the sum of Five Million Dollars (\$5,000,000) shall be distributed to (LAF), to establish an endowment fund to be known as the “Henry and Gertrude F. Rothschild Memorial Fund” (the Memorial Fund). The Grantor directs that the principal of the Memorial Fund shall be

held in perpetuity and that only the net income therefrom shall be used to support LAF and its activities. The distribution provides for is expressly conditioned upon

- a. LAF being and remaining **legally independent** from the American Association of University of Women and the American Association of University of Women Education Foundation; and
- b. LAF delivering to the Trustees its written commitment, signed and acknowledged, on terms satisfactory to the Trustees, that:
 - i. LAF will not impose an overhead charge (or similar charge which may be denominated by another name to cover the organization's expenses including, but not limited to maintenance, utilities, rent security and general administration (10%) of the Memorial Fund net income each year;
 - ii. No more than thirty percent (30%) of the Memorial Fund's net income each year shall be used for public education activities;
 - iii. At least sixty percent (60%) of the Memorial Fund's net income each year shall be used for case support (i.e., payment of legal expenses of women plaintiffs pursuing sex discrimination lawsuits against institutions of higher education, particularly lawsuits involving denial of promotion or tenure (the "Case Support Income");
 - iv. Case Support Income shall be applied to only one (1) case until ninety percent (90%) of the litigation expenses of such case has been air for or, at the discretion of the LAF Board, until one hundred (100%) of the litigation expenses of such case has been paid. Thereafter, Case Support Income may be applied to another case, subject to the same restriction contained in the preceding sentence.
- c. In the event that LAF shall for any reason fail to fulfill either or both of the requirements listed in Subparagraphs a and b of this Paragraph, then the distribution to LAF provided for in this Paragraph shall lapse. In addition, if LAF shall fail to comply in any material respect with the spirit of the conditions set forth in its written agreement with the Trustees for any reason, then the Memorial Fund shall be terminated and the remaining principal thereof shall be distributed in equal shares to the other Exempt Organizations aimed in this Agreement.
- d. The Grantor strongly urges the Board of LAF, in selection of cases, to give preference to women challenging the denial of promotion or tenure at Ivy League institutions and other prestigious institutions of higher education such as Stanford, University of California at Berkley, Los Angeles, and Irvine, and Massachusetts Institute of Technology because the grantor believes that the publicity generated by such cases will produce a strong impact on public perceptions and bring about change more quickly.

The March 6, 2014 Summary Judgment decision of the Bronx County Surrogate's Court indicates that there was an issue of fact as to the intent of the term "legally independent" and that such term is ambiguous. Following the Summary Judgment decision, a stipulation of settlement (the **Stipulation of Settlement**) was entered and so ordered by that court (*i.e.*, entered September 17, 2015).

Paragraph 11 of the Stipulation of Settlement that was entered September 17, 2015 provides that the Surrogate's Court of Bronx County shall "retain jurisdiction over all parties hereto to implement,

carry out, construe and enforce any and all terms of this Stipulation.” Paragraph 1.a provides in relevant part:

Article II.D.1 of the Trust will be construed to pay to the AAUW Legal Advocacy Fund (the “LAF”) the sum of One-Million Dollars (\$1,000,000) to be held by the LAF subject to the terms of Article II.D.1 **but without regard to the requirement set forth in Article II.D.1(a) of the Trust.**” (emphasis added)

Paragraph 6 indicates that “Petitioner did not participate in the negotiation of the **amounts** agreed upon by the parties in Section 1.a, 1.c or 1.h.” (emphasis added).

Significantly, the carve-out in Section 6 does not also separately carve-out that the Petitioner does not agree that Paragraph 1.a. of the trust which indicated that the Trust will be construed “without regard to the requirement set forth in Article II.D.1(a) of the Trust — *i.e.*, that the Trustee was not agreeing to that interpretation. In addition, there is not a carve-out or disagreement by the Petitioner to the Bronx County Surrogate’s Court retaining jurisdiction. Moreover, the Receipt, Release and Refunding Agreement provides that the Settlement Stipulation may not be received into evidence in any proceeding other than in the Matter of the Estate of Henry Rothschild pending in the Surrogate’s Court of the Bronx of New York, under File Number 2012-1424. Accordingly, the action is transferred to the Bronx County Surrogate’s Court to determine whether the terms of the Stipulation of Settlement and the trust covered by that Stipulation of Settlement have been complied with.

With respect to Index No. 654490/2018, CPLR 325(e) provides that, “where an action pending in the supreme court affects the administration of a decedent’s estate which is within the jurisdiction of the surrogate’s court, the supreme court, upon motion, may remove the action to such surrogate’s court upon the prior order if the surrogate’s court.” The First Department has made clear that transfer consent of the Surrogate Court is not required for transfer where appropriate. *See Benjamin v Morgan Guar. Trust Co. of New York*, 173 AD2d 373 (1st Dept 1991).

This case concerns a gift to the Legal Advocacy Fund and whether such gift and the administration of such gift complies with a trust agreement. The gift was made pursuant to the administration of the estate of Gertrude Rothschild. As discussed above, the companion case (654069/2018) Stipulation of Settlement from the Bronx County Surrogate’s Court provides that the Bronx County Surrogate’s Court will retain jurisdiction. Accordingly, that matter will not be heard by this court and there is therefore no judicial economy realized by this court retaining jurisdiction over this matter.

Except for the provision of the Receipt, Release and Refunding Agreement which otherwise appears to bar consideration in evidence of the Stipulation of Settlement, it would otherwise have appeared to this court that the issue of “legal independence” may have been resolved by agreement by the so-ordered stipulation of settlement entered in that case where all of the litigants had a full and fair opportunity to litigate this issue and agreed in a stipulation of settlement that Article II.D.1. of the Trust will be interpreted without regard to Article II.D.1.a. That said, inasmuch as this case involves construction of a parallel provision in connection with a joint gift and the decision of the Surrogate’s Court in the Bronx in the comparison case found based on essentially the same submissions that the term “legally independent” was ambiguous and that extrinsic evidence would be necessary to

interpret this provision of the bequest to determine the intent of the grantor, the Surrogate's Court is the best forum to adjudicate this issue. Venue is proper because the trust gift and compliance with the trust is intimately connection to the proper administration of the estate of Gertrude Rothschild. See Benjamin v Morgan Guar. Trust Co. of New York, 173 AD2d 373 (1980); SCPA 205(1).

Accordingly, it is hereby

ORDERED that motion to transfer venue (seq. 001) in Index No. 654069/2018 is granted and this action shall be removed to the Surrogate's Court of Bronx County pursuant to CPLR 325(e); and it is further

ORDERED that motion to transfer venue (seq. 002) in Index No. 654490/2018 is granted and this action shall be removed to the Surrogate's Court of Westchester County pursuant to CPLR 325(e); and it is further

ORDERED that, within 30 days from the date of entry of this order, counsel for the plaintiff in each action referenced above shall serve a copy of this order with notice of entry upon the Clerk of this Court (60 Centre Street, Room 141B) and shall contact the staff of the Clerk to arrange for the effectuation of the transfer in an efficient manner; and it is further

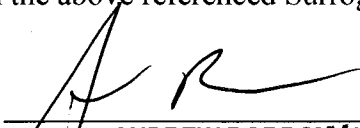
ORDERED that the Clerk shall transfer these actions and all documents filed therein to said Courts; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)]; and it is further

ORDERED that the Clerk of this Court and the Clerks of the above referenced Surrogate's Courts shall coordinate the transfer of the documents in the file in both cases so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to documents that may be in digital format; and it is further

ORDERED that motion seq. no. 003 (summary judgment) and motion seq. no. 004 (motion to supplement the record) in Index No. 654069/2018, and motion seq. no. 003 (summary judgment), and motion seq. no. 004 (motion to supplement the record) in Index No. 654490/2018 are denied as moot, based on the foregoing, without prejudice to their renewal in the above referenced Surrogate's Courts.

2/13/2019
DATE


ANDREW BORROK
HON. ANDREW BORROK
J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input checked="" type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: