

Matter of Selzer (Caridi)
2019 NY Slip Op 31997(U)
July 11, 2019
Surrogate's Court, New York County
Docket Number: 2016-1034
Judge: Nora S. Anderson
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New York County Surrogate's Court
Date: JULY 11, 2019

SURROGATE'S COURT : NEW YORK COUNTY
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In the Matter of the Intermediate
Account of Proceedings of Herbert M.
Selzer, as Trustee under an Agreement,
Dated February 28, 2006,
Established by

File No. 2016-1034/1

LEON CARIDI,

As Grantor.

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A N D E R S O N , S .

In this contested intermediate trust accounting,
petitioner moves to dismiss a beneficiary's objections on the
ground that the objections fail to state a ground for relief
(CPLR 3211[a][7]).

Background

Leon Caridi ("grantor") created a trust under an
agreement dated February 28, 2006, for the benefit of various
family members, including his cousin David Caridi, the
objectant herein. Grantor gave the trustee broad discretion
to distribute or withhold income and principal to any
beneficiary.

On October 11, 2016, the trustee filed an account for
the period February 28, 2006, through August 31, 2016.
David, appearing pro se, filed objections to the account and
three weeks later amended his objections with the assistance
of counsel. The guardian ad litem appointed for the
objectant's incapacitated daughter raised various issues in

his report of

August 14, 2017, but declined to file formal objections.

The Motion to Dismiss

The motion papers refer to David's original objections and the amended objections. However, the court need address only David's amended objections to the account since his original pro se objections are superseded by his amended objections (*Stella v. Stella*, 92 AD2d 589 [2d Dept 1983], *Matter of Davidson*, NYLJ October 31, 2017, at 22, col 1 [Sur Ct, NY County]).

On a motion to dismiss a pleading for failure to state a claim (CPLR 3211[a][7]), the court must "accept the facts as alleged in the [pleading] as true, accord [the pleader] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 94 NY2d 83, 87-88 [1994]); *Braddock v Braddock*, 60 AD3d 84, 86 [1st Dept 2009].

Whether the pleader can ultimately prevail on his allegations is not part of the court's consideration in determining a motion to dismiss (*EBC v. Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]).

Movant notes that David's amended objections do not single out any particular entry in the account or refer to any specific action of the trustee as imprudent or

unreasonable. He argues that it is therefore impossible for him to respond to the amended objections.

David's amended pleading consists of three objections, all of which contain allegations that are general and conclusory in nature. As an example, which is representative of the entire pleading, 1(a) states: "Object to the statement of the current principal balance and affirmatively allege: One or more stated losses from sales or other distributions are believed to be inaccurate, authorized [sic], without sufficient documentary support, or misrepresented on Schedule B."

SCPA 302[2] requires that a pleading be "sufficiently particular to give the court and parties notice of the claim, objection or defense." On a motion to dismiss objections for failure to meet basic pleading requirements (see SCPA 302[2]), there is a fundamental mandate to construe pleadings liberally (see *Matter of Allan*, 5 NY2d 333) in order to ensure that a claim with substance not be sacrificed to mere formality. However, a court must also protect the adversary's right to fair notice of the position being taken against him, such notice being the basic function of a pleading. The amended objections here are vague or incomprehensible and thus violate the trustee's right to fair notice. Accordingly, the trustee's motion is granted and the

objections are dismissed.

Settle decree.

Clerk to notify the parties.

Dated: July 11, 2019



SURROGATE