

**Waheed v Kirwan**

2023 NY Slip Op 30487(U)

February 15, 2023

Supreme Court, New York County

Docket Number: Index No. 155345/2021

Judge: Laurence L. Love

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LAURENCE L. LOVE PART 63M**

*Justice*

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SEHRA WAHEED,

Petitioner,

- v -

CHRISTOPHER GRANT KIRWAN as Trustee ,  
CHRISTOPHER GRANT KIRWAN,

Respondent.

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INDEX NO. 155345/2021

MOTION DATE 08/03/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, 35, 39, 40, 46, 47, 48, 53, 55, 58, 59, 60, 61 were read on this motion to/for JUDGMENT - FORECLOSURE & SALE.

Upon the foregoing documents, the Petition is decided as follows:

Petitioner, Sehra Waheed, commenced the instant Petition by filing same on June 2, 2021, under Article 77 of the CPLR seeking a determination of matters relating to a condominium apartment located at 1 Irving Place, Apt. P7C, New York, NY 10003 (the "Condominium"), currently held in the SALAM FAMILY IRREVOCABLE TRUST 2020 (the "Trust"). Specifically, Petitioner seeks a judgment directing that the Respondent, as Trustee of the Trust, to distribute her 1/3 share of the condominium outright and free of trust by either mortgaging or selling said property.

As described in the Verified Petition, In 2020, Waheed Salam established the Salam Family Irrevocable Trust for the benefit of his three daughters, one of whom, is the Petitioner. Sanah Waheed Kirwan is one of the other 2 daughter of Waheed Salam, as well as, the wife of Respondent, Christopher Grant Kirwan. The petition claims that, upon information and belief, Christopher Grant Kirwan unduly influenced Walam Salam to appoint him as Trustee for the

purpose of depriving Petitioner of her beneficial share of the condominium and diverting her interest to his wife. Pursuant to the terms of the trust agreement, the Petitioner was entitled to remain in the condominium and reside there, for her use and enjoyment of the premises. Upon information and belief, Respondent in fact unduly influenced Waheed Salam to evict his daughter, the Petitioner, from the premises. Pursuant to the terms of the trust agreement, Petitioner is entitled to support and maintenance from the trust.

In opposition to the Petition, Respondent submits the affidavit of Waheed Salam, which establishes as follows:

“I appointed Christopher Grant Kirwan, my son-in-law as the Trustee ... as he is the most suitable and trustworthy among my family and being highly educated. Christopher Grant Kirwan ... did not ... influence, intimidate or force me to appoint him as the Trustee of the Irrevocable Salam Family Trust dated Monday, December 30, 2019. The Trustee did not refuse to provide a copy of the Trust to Sehra’s lawyers, but it was my decision to direct Moss and Moss LLP, to refrain access of the Trust to anybody, to prevent a conflict among my three direct beneficiaries. The most important objective of the Trust was to protect my Apartment P7C, One Irving Place, New York, NY 10003, from any third party claims, dues and liens, if I am unable to pay for hospital, hospice and medical expenses. Sehra’s eviction process was initiated on Friday, July 26 2019, which occurred over three months prior to the establishment of the Trust, hence there’s no direct correlation between her eviction and execution of the Trust. The Trustee was not a party to Sehra’s eviction on Monday, October 28 2019, and neither did he influence me, as I had initiated the process for her eviction of my own free will and sound mind, without any coercion or force, thereby she was ordered to move out of my apt., by a Housing Court Judge”

All parties previously moved for judgment in their favor and said motions were denied, with leave to renew upon the completion of substantial discovery, specifically the production of a copy of the trust document for inspection by all parties. Said Trust having been e-filed as NYSCEF Document No. 51 on October 14, 2022 pursuant to an Order of this Court, the Petition may be fully evaluated.

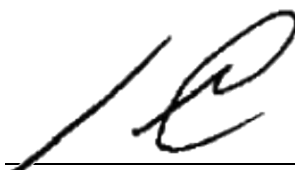
Upon review of the Trust Agreement, the sole asset held by the Trust is “Condominium Unit P7C, located at One Irving Place, New York, New York 10003.” The intent of the Grantor was to create “a supplemental needs trust which confirms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trusts Law (EPTL).” Pursuant to Article III of the Trust, “The Trust shall, nevertheless, terminate upon the death of the Grantor, at which time the remaining Trust estate shall be distributed pursuant to the terms of Article V...” Pursuant to Article V of the Trust, after payment of Grantor’s debts at the time of his death and several other payments, the net proceeds of the apartment shall be divided “(i) Ten (10%) per cent to the Islamic Cultural Center of New York; (ii) Thirty (30%) per cent to each of the Grantor's biological children or their issue per stirpes.” Article VI of the Trust, entitled “Spendthrift Provisions” provides as follows:

No beneficiary of any trust created by this Trust Agreement shall have the power to anticipate, transfer, sell, assign, or encumber any payment or distribution of either principal or income to be made under the provisions of such trust, and any anticipation, transfer, sale, assignment or encumbrance of any interest of any such beneficiary, whether of income or principal, whether by voluntary act or by operation of law, shall be void, and no payment or distribution shall be made by the Trustee to such beneficiary. If, notwithstanding the above, it shall be held that the interest, whether of income or principal, of any beneficiary of any trust under this Trust Agreement has vested in any vendee, transferee, assignee, receiver or trustee in bankruptcy of such beneficiary, whether by voluntary transfer or by operation of law, then to the extent of such transfer, sale, assignment, or encumbrance, such interest shall cease, and the Trustee may thereupon apply any payment or distribution, whether of income or principal thus attempted to be sold, transferred, assigned, levied upon or taken, to the use of the beneficiary who would have been entitled thereto in the absence of such transfer, assignment, levy or encumbrance, or to the use of such beneficiary's family, as the Trustee, in his uncontrolled discretion, may deem best.

As it is undisputed that Waheed Salam is alive and residing at the Condominium, the relief sought by Petitioner is specifically disallowed by the plain meaning of the Trust Agreement.

Further, there is no provision in the Trust which would entitle Petitioner to the reinstatement of her Tenancy at the Condominium. As such, it is hereby

ORDERED that the instant Petition is hereby DENIED and DISMISSED in its entirety.

<u>2/15/2023</u> <b>DATE</b>			 <hr/> <b>LAURENCE L. LOVE, J.S.C.</b>	
<b>CHECK ONE:</b>	<input checked="" type="checkbox"/>	<b>CASE DISPOSED</b>	<input type="checkbox"/>	<b>NON-FINAL DISPOSITION</b>
	<input type="checkbox"/>	<b>GRANTED</b>	<input checked="" type="checkbox"/>	<b>DENIED</b>
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>	<input type="checkbox"/>	<b>GRANTED IN PART</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/>	<b>SUBMIT ORDER</b>
			<input type="checkbox"/>	<b>FIDUCIARY APPOINTMENT</b>
			<input type="checkbox"/>	<b>OTHER</b>
			<input type="checkbox"/>	<b>REFERENCE</b>