

Kaylie v Kaylie

2023 NY Slip Op 31940(U)

May 25, 2023

Supreme Court, New York County

Docket Number: Index No. 151662/2022

Judge: Laurence L. Love

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

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

Justice

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LEE KAYLIE

Petitioner,

- v -

GLORIA KAYLIE,

Respondent.

-----X

INDEX NO. 151662/2022

MOTION DATE 03/03/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 35, 36, 37 were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, the instant motion is resolved as follows:

In an Order dated, October 26, 2022, this Court denied the instant Petition finding as follows:

The following reads on a Petition for an accounting. “Petitioner Lee Kaylie, as Beneficiary of the Robert O. Kaylie 2017 Family Trust, brings this special proceeding against Respondent Gloria Kaylie, as former Trustee. Roberta Kaylie, Grantor of the Trust and Lee [Kaylie]’s mother, learned that over \$200,000 of the Trust’s funds at Citibank was withdrawn from three separate Trust accounts. Roberta asked Gloria [Kaylie] for an explanation and to perform an accounting for the benefit of the Trust’s beneficiaries, including Lee, and Gloria has refused to do either.”

Respondent Gloria Kaylie submits an answer (see NYSCEF Doc. No. 14), and an affidavit.

“I am the Respondent in this special proceeding [...]. I am the former trustee of the Roberta O. Kaylie 2017 Family Trust. I was contacted ... by the grantor of the trust, my daughter, Roberta O. Kaylie. Nevertheless, because the trust is for the benefit of my grandchildren, I requested that Roberta promptly provide me with the corresponding Citibank account statements and account closing

documents. However, Roberta failed to respond and did not provide me with the documentation I had requested. However, it seems that Citibank may have mistakenly identified to me the Trust's accounts as my personal accounts. Nonetheless, following further investigation, last month, the funds that had been on deposit at closing were restored to the trust in full in the total amount of \$211,393.69, plus interest in the amount of \$164.61 that would have accrued on the funds from August 10, 2021. Indeed, as Roberta is well aware, my late husband Harvey and I have always taken all possible measures to protect our grandchildren's interests. Over the years, we have provided them, by a conservative estimate, tens of millions of dollars, hoping to ensure them a lifetime of financial security. Nevertheless, motivated by disputes about family business matters, Roberta has engaged in increasingly hostile and litigious behavior towards me over the past several years – particularly since Harvey's passing. For example, Roberta instigated pre – contest discovery in the Nassau County Surrogate's Court probate proceedings for Harvey's will, which has been underway for three years. Consistent with Roberta's other recent conduct, Roberta was uncooperative with my investigation into the closure of the Trust's Citibank accounts. In addition to ignoring my requests for account information that I needed to conduct my investigation and needlessly requiring the involvement of counsel, my attorney has informed me that Roberta further would not provide a copy of the Trust agreement unless, in exchange, Roberta receives full access to inspect the books and records of Landy Realty, LLC – a commercial entity that is unrelated to the Trust. It is clear from Roberta's demands for unrelated business records and her persistent lack of cooperation with my investigation that her actual purpose in this proceeding is to use Petitioner's position as beneficiary of the Trust in order to obtain a collateral advantage or leverage against me in long – standing and unrelated disputes regarding family business matters. At present, the Trust funds have been fully restored, Citibank has provided Petitioner with all records pertaining to the Trust's closed accounts, and I am no longer the trustee of the Trust. Under these circumstances, an accounting is plainly unnecessary" (see NYSCEF Doc. No. 8 Pars. 2, 3, 5, 11, 15 – 19).

Respondent's memorandum of law states, "Petitioner needlessly commenced this special proceeding against his grandmother Gloria, at the apparent behest of his mother, Roberta Kaylie (Gloria's daughter) ..., to compel an accounting of the Roberta O. Kylie 2017 Family Trust, even

though all [Robert O. Kaylie] Family Trust funds are indisputably accounted for” (see NYSCEF Doc. No. 7 P. 5).

A review of the Trust shows Roberta O. Kaylie as Grantor and Gloria Kaylie as Trustee (see NYSCEF Doc. No. 17 P. 46).

Petitioner’s Reply Affirmation states, “[o]n April 22, 2022, Citibank produced documents in response to our subpoena. The documents indicate that Gloria withdrew the Trust’s monies as two bank checks that were issued to Gloria, which were cashed on August 13 and August 17, 2021, respectively. This was confirmed because Citibank contemporaneously recorded Gloria’s correct driver’s license information, and because the signatures for Gloria’s name appeared to be the same as the signature that was used on her letter to Roberta, dated January 6, 2022” (see NYSCEF Doc. No. 16 Par. 17).

Petitioner submits checks for \$5,223.77 and \$6,339.04 in relation to the Village of Atlantic Beach and Donald Clavin Jr, RCVR of Tax (see NYSCEF Doc. No. 29).

Petitioner does not submit checks in the range of \$200,000.

Petitioner’s footnote states, “the Citibank production also included checks made out to the Village of Atlantic Beach in relation to the Trust’s real estate holdings, including for a home at 30 Genesee Blvd, Atlantic Beach, NY 11509, and checks to Donald Calvin Jr, a tax receiver” (see NYSCEF Doc. No. 16 P. 4).

Petitioner provides the Trust Agreement (see NYSCEF Doc. No. 17), a Citibank subpoena (see NYSCEF Doc. No. 12), an affirmation from an employee from Citibank (see NSYCEF Doc. No. 13), and various email exchanges and letters (see NYSCEF Doc. Nos. 18 – 28).

Respondent’s memorandum of law in opposition states, “it appears that Citibank may have mistakenly identified to Gloria the Trust’s accounts as her personal accounts. And, upon further

investigation, last month, the funds were restored to the Trust in the total amount of \$211,393.59 plus interest in the amount of \$164.61 that would have accrued on the funds dating back to August 10, 2021. The RK Family Trust has irrefutably been made whole by the restoration of those funds, thus obviating any purported need on the part of Petitioner for an accounting of those funds. Finally, as Petitioner alleges in his Petition, Gloria is no longer a trustee of the RK Family Trust, having been removed without cause from that position by Roberta in December 2021. Therefore, Gloria does not have access to any of the Trust's accounts or assets that would require resolution in this Article [78] special proceeding" (see NYSCEF Doc. No. 7 P. 9 – 10).

Petitioner does not show misappropriation of any funds and further does not provide an affidavit of how a misappropriation may have occurred. As Respondent is no longer a trustee and no funds have been misallocated, the intrusion of an account stated is not warranted at this time.


Petitioner now moves for leave to reargue. A motion to reargue is addressed to the sound discretion of the court and is designed to afford a party an opportunity to demonstrate that the court overlooked or misapprehended the relevant facts or misapplied controlling principles of law (see, *Schneider v. Solowey*, 141 AD2d 813 [2d Dept 1988]; *Rodney v. New York Pyrotechnic Products, Inc.*, 112 AD2d 410 [2d Dept 1985]). A "motion to reargue is not an opportunity to present new facts or arguments not previously offered, nor it is designed for litigants to present the same arguments already considered by the court" (see, *Pryor v. Commonwealth Land Title Ins. Co.*, 17 AD3d 434 [2d Dept 2005]; *Simon v. Mehryari*, 16 AD3d 664 [2d Dept 2005]).

Petitioner argues that the Court overlooked binding precedent that Petitioner, as a beneficiary to the Trust has an absolute right to an accounting of same, *See, Koppel v. Wien, Lane & Malkin*, 125 A.D.2d 230 (1st Dept. 1986); *Dawes v. J. Muller & Co.*, 111 N.Y.S.3d 605, 607 (1st Dept. 2019); However, Petitioner has, at this time, received complete bank records in response

to her subpoena, resolving the irregularities raised in the Petition. Respondent had been removed from her position as trustee of the Roberta O. Kaylie Family Trust and the sole other asset of said trust appears to be Roberta O. Kaylie’s personal home. As such, leave to reargue is denied and it is

ORDERED that the instant motion is DENIED in its entirety.

5/25/2023
DATE


LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE