

Matter of Aoki

2023 NY Slip Op 32120(U)

June 27, 2023

Surrogate's Court, New York County

Docket Number: File No. 2008-2604/H/I

Judge: Rita Mella

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

June 27th 2023

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter of the Application of Devon Aoki and Steven
Aoki as Beneficiaries of the Trust Created under Article VIII
of the Will of

DECISION and ORDER

ROCKY H. AOKI, also known as
Hiroaki Aoki,

File No.: 2008-2604/H/I

Deceased,

to Revoke the Letters of Trusteeship Issued to Keiko
Ono Aoki as Trustee of the Trust.

-----X
In the Matter of the Judicial Settlement of the First Intermediate
Account of Proceedings of Keiko Ono Aoki as Trustee of the
Trust under Article VIII of the Will of

ROCKY H. AOKI, also known as
Hiroaki Aoki,

File No.: 2008-2604/F

Deceased.

-----X
In the Matter of the Judicial Settlement of the Second
Intermediate Account of Proceedings of Keiko Ono Aoki as
Trustee of the Trust under Article VIII of the Will of

ROCKY H. AOKI, also known as
Hiroaki Aoki,

File No.: 2008-2604/K

Deceased.

-----X
M E L L A, S.:

The following papers were considered on the motion in limine filed by Devon Aoki, Steven
Aoki, and the Guardian ad litem in these matters:

<u>Documents Considered</u>	<u>Numbered</u>
Notice of Motion in Limine to Bar Relitigation, etc. by Devon Aoki and Steven Aoki and Guardian ad Litem (GAL), with Affirmation of David C. Rose, Esq., Attaching Exhibits	1, 2
Memorandum of Law in Support of Motion in Limine	3
Keiko Ono Aoki's Memorandum of Law in Opposition to Motion	4
Affirmation of Jordan Pietzsch, Esq., in Opposition, Attaching Exhibits	5
Reply Memorandum of Law in Further Support of Motion in Limine	6
Reply Affirmation of Joshua Weigensberg, Esq., in Further Support, Attaching Exhibits	7

At the call of the calendar on May 12, 2023, in these removal and contested trust accounting proceedings, the court granted in part and denied in part the motion in limine filed by Devon Aoki and Steven Aoki (Devon and Steven) and the guardian ad litem (GAL) appointed for the remainder beneficiaries of the trust created under the will of decedent Rocky Aoki (The Trust).¹ Their motion sought an order declaring that suspended testamentary trustee Keiko Ono Aoki (Keiko), Decedent's surviving spouse, be barred from relitigating certain adverse factual determinations, conclusions, and outcomes (the Findings) made in other proceedings.

Previously, the court suspended Keiko's letters of trusteeship upon the petition of Devon and Steven substantiating possible waste and bad faith that put the Trust's assets at risk; an interim trustee has been serving pending the trial on removal (*see Matter of Aoki*, NYLJ, March 16, 2020, at 23, col 4 [Sur Ct, NY County]; *Matter of Aoki*, NYLJ, March 17, 2020, at 30, col 6 [Sur Ct, NY County]). Keiko has also sought judicial settlement of her accounts as decedent's testamentary trustee, to which objections have been lodged by Devon and Steven and the GAL. On consent of the parties, the issues raised in the removal and the testamentary trust accountings will be tried jointly by the court.

In their motion here, Devon and Steven and the GAL seek to preclude by the doctrine of collateral estoppel, Keiko's re-litigation of the Findings as they relate to Keiko's conduct as Chief Executive Officer (CEO) of Benihana of Tokyo, LLC (BOT). BOT is wholly owned by The Trust, and thus, under *Matter of Hubbell* (302 NY 246 [1951]) and its progeny, Keiko is accountable as trustee for the administration of BOT. The other proceedings commenced in Federal Court and before the American Arbitration Association involved BOT's many disputes

¹ Two other motions were returnable on May 12, 2023, in these proceedings and were also resolved from the bench. Those were cross-motions concerning challenges to the parties' privilege logs. A decision is being issued separately memorializing the court's determination of

with Benihana, Inc. (BI), an entity not affiliated with decedent's family, that desired to purchase BOT (BOT-BI Cases).

The history of the BOT-BI Cases, including the Findings that resulted, will not be fully recounted here because the substance of this motion, styled as one in limine regarding evidence at the upcoming joint trial, was implicitly resolved in the court's prior decision determining the partial summary judgment motion of Devon and Steven in the removal proceeding (*see Matter of Aoki*, 2022 NY Slip Op. 31938(U) [Sur Ct, NY County]). That decision held that the Findings in the BOT-BI Cases could be used as evidence to establish movants' prima facie case for removal (*id.* at n 5), but that Keiko should be permitted her day in court to explain how the Findings nonetheless reflect management and litigation decisions made in good faith, in furtherance of her obligation to make the Trust's assets productive (*id.*).

The same holds true for resolution of this motion in limine: the BOT-BI Cases are part of the history of Keiko's administration of the Trust, and as such, the Findings made therein can be used as evidence at trial. Keiko herself, as confirmed in her opposition papers, is not contesting that the Findings in the BOT-BI Cases were made, but rather is requesting that she be allowed an opportunity to explain how her actions in running BOT and battling BI in various proceedings were prudent and made in good faith. Thus, to the extent that Devon, Steven, and the GAL seek to prevent Keiko from re-litigating the Findings, their motion is granted.

To the extent that Devon, Steven, and the GAL attempt to argue that the Findings in the BOT-BI Cases are determinative of whether Keiko as trustee administered all the assets in good faith, however, the motion in limine is denied for the same reasons set forth in the prior summary judgment decision (*see Matter of Aoki*, 2022 NY Slip Op. 31938(U) [Sur Ct, NY County]).

those motions from the bench.

Under these circumstances, there is no need for the court to engage in a collateral estoppel analysis.

This decision, together with the transcript of the May 12, 2023 proceedings, constitutes the order of the court.

Dated: June 27, 2023


SURROGATE