

Goldfarb v Goldfarb

2023 NY Slip Op 32668(U)

August 2, 2023

Supreme Court, New York County

Docket Number: Index No. 159702/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

Justice

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DANIEL B. GOLDFARB

Plaintiff,

- v -

MARC GOLDFARB,

Defendant.

-----X

INDEX NO. 159702/2022

MOTION DATE 08/02/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Upon the foregoing documents, Plaintiff's motion for summary judgment is granted.¹

Plaintiff Daniel Goldfarb commenced this action against his brother, Defendant Marc Goldfarb, to recover money owed pursuant to the terms of their family trust. The trust was established in 2006 with the goal of providing all the trust's beneficiaries with comfortable housing and terminated upon the death of parties' father, Samuel Goldfarb. Defendant was the trustee. Under the terms of the trust, upon Samuel's death, three-hundred thousand dollars became due to Plaintiff, outright, with additional twice-yearly payments to Plaintiff from the trust's income. *See* NYSCEF Doc. No. 3 at 5. Payments were subject to stipulation that any contestation of Samuel Goldfarb's will or trust revoked all right to receive payment from the trust. *Id.* at 19. Plaintiff moves for summary judgment pursuant to CPLR § 3212.

Pursuant to CPLR § 3212, "...where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the

¹ The Court would like to thank Chris Markos for his assistance in this matter.

existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure so to do, and the submission of a hearsay affirmation by counsel alone does not satisfy this requirement.” *Zuckerman v City of New York*, 49 NY2d 557 [1980].

The point of issue between parties revolves around a spring 2021 loan from the trust to Plaintiff by Defendant, as trustee. At that time, Samuel Goldfarb was deceased for several months, and documentary evidence indicates that Samuel’s will went into probate on February 5, 2021. *See* NYSCEF Doc. No. 63 at 2. Defendant argues that the loan was given from the trust in lieu of the three-hundred thousand dollars Plaintiff would have otherwise been due. Plaintiff claims that the loan is distinguishable from the three-hundred thousand due under the express terms of the trust because Plaintiff never contested the will and their father had passed, thus satisfying both requirements for payment.

Here, the documentary evidence clearly shows that, between the moment of Samuel Goldfarb’s passing in October 2020 and when the will went into probate in February 2021, Plaintiff had several months to contest the validity of the will. Plaintiff did not do so, however, and the will was upheld on February 5, 2021, requiring Defendant, as trustee, to pay Plaintiff the lump sum at that time. *Id.* at 2. From this timeline, alone, Plaintiff was definitively due the money owed under the trust beginning February 2021; Defendant contests this by reason of Plaintiff’s consent to waive the three-hundred thousand in exchange for their loan.

Defendant’s argument that the loan was given in lieu of the money otherwise due to Plaintiff under the trust pursuant to an oral agreement is precluded by General Obligations Law § 5-701. In compliance with § 5-701 Defendant and Plaintiff entered into the loan agreement via two written instruments in April 2021, however, there is nothing on the documents indicating Plaintiff consented to the loan in place of the three-hundred thousand that was already due in

February of that year and no such written documents have been presented to the Court. N.Y. Gen. Oblig. Law § 5-701 (McKinney); *See also* NYSCEF Doc. No. 16. Additionally, “evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.” *W.W.W. Assoc., Inc. v Giancontieri*, 77 NY2d 157, 162 [1990]. Thus, any oral agreement between the parties relating to the loan was void unless specifically accounted for in the written agreements executed. Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment is granted; it is further

ORDERED that Defendant, individually, and as Trustee of the “Susan Goldfarb 2006 Irrevocable Family Trust” (“Susan Trust”) and the “Daniel Goldfarb 2007 Irrevocable Trust” (“Daniel Trust”), established pursuant to the terms of the Susan Trust, pay Plaintiff \$300,000.00, together with interest from February 5, 2021; it is further

ORDERED that Defendant pay Plaintiff future income from the Susan Trust every six (6) months in compliance with the express terms of the Susan Trust; it is further

ORDERED that with regard to damages based on the Susan Trust’s income, that an assessment of the Trust’s income prior to this decision is directed; it is further

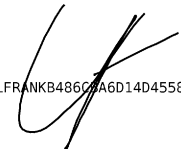
ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office, who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office 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; and it is further

ORDERED that Defendant’s counterclaims under this action is dismissed; it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

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8/2/2023
DATE

LYLE E. FRANK, 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