

Matter of Schulte

2023 NY Slip Op 32949(U)

August 24, 2023

Surrogate's Court, New York County

Docket Number: File No. 2005-4582/C

Judge: Rita Mella

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

August 24th 2023

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In the Matter of the Application of SANDRA SCHULTE,
as Co-Trustee with Fiduciary Trust Company
International of the Marital Trust Created for the Benefit
of Sandra Schulte under Article V of the Trust Agreement
Dated April 8, 2002, as Restated and Amended by

DAVID A. SCHULTE, JR.,
Deceased, as Settlor,

DECISION and ORDER

File No.: 2005-4582/C

for an Order Compelling the Estate of David A.
Schulte, Jr., to Distribute Certain Assets and for Other Relief.

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In the Matter of the Application of Sandra Schulte, as
Limited Administrator c. t. a. of the Estate of

DAVID A. SCHULTE, JR.,
Deceased,

File No.: 2005-4582/H

For Issuance of Letters of Limited Administration c. t. a.
with Expanded Authority.

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M E L L A, S.:

Papers Considered

Numbered

On Motion to Renew and Reargue:

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At the call of calendar on March 10, 2023, the court denied a motion by Sandra Schulte
(Sandra) as Limited Administrator c. t. a. (*see* SCPA 702, 1418) of the estate of her spouse,
David Schulte. Sandra's motion sought leave to reargue and renew, pursuant to CPLR 2221, two
motions, one by her to amend the estate's cross-claim and another by respondent 1125 Park

Avenue Corporation (1125 Park or Co-op) for summary judgment to dismiss that cross-claim.

These motions were resolved by the court in 2022. Sandra's motion also sought leave to renew a prior motion to dismiss of 1125 Park determined in a decision and order of this court from 2016.

The court had resolved all three motions in favor of 1125 Park in the following context.

Sandra originally brought the underlying petition as co-trustee of a marital trust (the Trust) to which, by decedent's will, the cooperative shares appurtenant to Penthouse C at 1125 Park Avenue, in which Sandra and decedent had resided and in which Sandra continues to reside, were to be distributed. That petition sought the injunctive relief of directing 1125 Park to transfer these cooperative shares to the Trust, which benefits Sandra during her life. Sandra claimed that the denial of the share transfer to the Trust was made in bad faith to improperly favor a board member of 1125 Park. Decedent's Executor, his daughter from a prior relationship, Holly Ellison, was made a respondent and had filed a cross-claim against 1125 Park mirroring the allegations of bad faith transfer denial against 1125 Park that Sandra had sought to remedy as co-trustee.

1125 Park initially took the position that Sandra lacked standing as co-trustee to seek redress for the alleged bad faith refusal to transfer the Penthouse C shares to the Trust. 1125 Park previously moved to dismiss on this basis and sought confirmation of the proper standard to be applied in assessing share transfer decisions to a trust benefiting an immediate family member under the proprietary lease for Penthouse C. The proprietary lease provided that, for share transfers to financially responsible immediate family members, the co-op "shall not unreasonably withhold [its] consent."

That prior motion to dismiss was resolved in a decision and order of this court dated April 14, 2016 (the 2016 Decision), which determined that transfers to a trust benefiting an

immediate family member could not be treated the same as those directly to immediate family members (*Matter of Schulte*, NYLJ, April 18, 2016, at 19, col 2 [Sur Ct, NY County]). The business judgment rule applied to such transfers to trusts, rather than the “not unreasonably withheld” standard for transfers to immediate family members (*id.*). That decision also determined that Sandra as co-trustee did not have a sufficient interest in the apartment or the shares appurtenant thereto to make the share transfer denial claims against 1125 Park, and, due to this lack of standing, the motion was granted, dismissing her claims as co-trustee (*id.*). Sandra’s instant motion sought renewal under CPLR 2221 of this prior motion to dismiss resolved in the 2016 Decision, asserting an intervening change in the governing law.

The Executor did not pursue the estate’s cross-claim and subsequently sought its discontinuance. This prompted Sandra to seek to represent the estate of decedent, to whom as shareholder the duties of 1125 Park ran, and, in 2018, the court granted Sandra Limited Letters of Administration c. t. a. to prosecute the cross-claim originally interposed by the Executor.

After completing discovery, 1125 Park moved for summary judgment claiming there were no facts supporting Sandra’s claimed improper favoritism of a board member in denying the share transfer to the Trust. In response, Sandra moved to amend the estate’s cross-claim to add claims that 1125 Park had improper personal animus toward her amounting to bad faith. The court, in a decision and order dated November 23, 2022 (the 2022 Decision), denied the motion to amend as prejudicial to 1125 Park and additionally for the reason that the amendments sought to made to the cross-claim were palpably insufficient (*Matter of Schulte*, NYLJ, Dec. 5, 2022, at 17, col 1 [Sur Ct, NY County]). The court also granted 1125 Park summary judgment dismissing the estate’s cross-claim, agreeing with 1125 Park that no evidence raised a question of fact on Sandra’s claim of bad faith grounded on improper favoritism in denying the share

transfer to the Trust (*id.*).

At the March 10, 2023 calendar call, Sandra sought to both reargue and renew these motions to amend and for summary judgment resolved in the 2022 Decision. As noted above, she also moved to renew consideration of 1125 Park's motion to dismiss Sandra's claims as co-trustee against 1125 Park, which had resulted in the 2016 Decision.¹

Reargument

As to Sandra's motion for reargument, the court denied the motion because Sandra did not establish that the court overlooked or misapprehended any issues of fact or points of law in the 2022 Decision resolving the motions to amend and for summary judgment (CPLR 2221[d]; *see Cortlandt Street Recovery Corp. v Bonderman*, 75 Misc 3d 469 [Sup Ct, NY County 2022]; *Havison v Port Auth. of NY & NJ*, 69 Misc 3d 344 [Sup Ct, NY County 2020]).

Renewal

The court denied Sandra's motion to the extent that it sought renewal of the motions which resulted in the 2016 Decision and the 2022 Decision because it was premised on a misapplication of three cases² which she claimed expressed a change in the relevant law that would have changed the court's prior determinations (*see* CPLR 2221[e][2] [Renewal "shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior

1 Certain statements in movant's submissions suggested that she may have been seeking to reargue the motion to dismiss resulting in the 2016 Decision. However, movant conceded at oral argument that reargument of the prior motion to dismiss was not sought "within thirty days after service of a copy of the order determining the prior motion and written notice of its entry" as required by CPLR 2221(d)(3) (*see Independent Chemical Co. v Puthanpurayil*, 165 AD3d 578 [1st Dept 2018]).

2 Those three are: *Estate of Del Terzo v 33 Fifth Ave. Owners Corp.*, 136 AD3d 486 (1st Dept 2016), *affd in memo opn* 28 NY3d 1114 (2016); *Olcott v 308 Owners Corp.*, 189 AD3d 687 (1st Dept 2020); and *Kotler v 979 Corp.*, 191 AD3d 473 (1st Dept 2021).

determination.”)].³ Two of these cases were decided after the court’s 2016 Decision, but all were decided before the 2022 Decision.

Far from announcing a change in the law or a new legal standard as Sandra argued, these courts merely applied the standard for approving the transfer of shares of stock allocated to a cooperative apartment to an immediate family member as set forth in the proprietary leases in those cases. Those cases are not authority for the proposition that movant seeks to establish, namely, that the business judgment rule does not apply under the circumstances here. Sandra ignored that these three cases do not involve transfers to trusts. Contrary to Sandra’s argument, the fact that Sandra sought to transfer the shares of stock to the Trust, and not to herself as surviving spouse, is not a “distinction without a difference,” and viewing it as such is not “elevating form over substance,” as detailed in the 2016 Decision.

Additionally, the court found that the new facts upon which movant relied – specifically, that (1) her financial condition has improved substantially since she had requested that the shares be transferred to the Trust; (2) her conflicts with the 1125 Park’s board have been resolved; and (3) 1125 Park’s board may have approved the transfer of cooperative shares to a trust in the past and she would provide any guarantees necessary to cover any maintenance or charges – even if true, did not provide a basis for granting the motion to renew. Such facts would not have changed the court’s determination of the motions (*see Ghoneim v Vision Enterprises Mgmt, LLC*, 165 AD3d 893 [2d Dept 2018]; *Fardin v 61st Woodside Assoc.*, 125 AD3d 593 [2d Dept 2015]; *ATIFA v Shairzad*, 56 AD3d 703 [2d Dept 2008]).

For these reasons, the court denied Sandra’s motion to renew and reargue in its entirety.

³ Renewal motions must also be identified as such (CPLR 2221[e][1]) and contain justification for failure to present the new facts or arguments on prior motion (CPLR 2221[e][3]).

Finally, also before the court on March 10, 2023 was Sandra's petition, pursuant to SCPA 702, to expand her Limited Letters of Administration c. t. a. to include the authority to seek to sublet Penthouse C to herself in her individual capacity and to seek approval of such sublease from 1125 Park. She also sought expanded authority to litigate denial of any subsequently requested sublease. Both the Executor and 1125 Park appeared and opposed the application. The court denied the petition because such expanded authority was not needed in order to protect an asset of the estate (*see Matter of Stoller*, 4 Misc 3d 538 [Sur Ct, NY County 2004]).

This decision, together with the transcript of the March 10, 2023 proceedings, constitutes the order of the court.

Dated: August 24, 2023



SURROGATE