

Matter of Leon Wagner 2011 Trust No. 1

2023 NY Slip Op 34769(U)

December 12, 2023

Surrogate's Court, Suffolk County

Docket Number: File No. 2023-1181

Judge: Vincent J. Messina

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SURROGATE COURT - STATE OF NEW YORK
SUFFOLK COUNTY

SHORT FORM ORDER

PRESENT:

HON. VINCENT J. MESSINA
SURROGATE

MOTION DATE: 06/27/2023
SUBMIT DATE: 10/25/2023

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In the Matter of the Petition of
HARRY WAGNER, as the Trustee of the

File #: 2023-1181

LEON WAGNER 2011 TRUST NUMBER 1,

Petitioner's Attorney:
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Created by Agreement Dated January 25,
2011, for the Turnover of Property
Withheld, Pursuant to SCPA 2103.

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SUFFOLK COUNTY

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DOREEN A. QUINN
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Upon the following papers numbered 1 to 12 read on this motion
to dismiss; Notice of Motion and supporting papers (1-6);
Answering affidavits and supporting papers (7-11); Replying
affidavits and supporting papers (12); it is

ORDERED that, for the reasons set forth herein, the motion
for an order dismissing the petition pursuant to CPLR 3211(a)(4)
is granted.

Before the court is a pre-answer motion by respondent, Hal
Shapiro, the trustee of the Willett Family 2012 Trust, pursuant to
CPLR 3211(a)(4) seeking to dismiss a miscellaneous petition filed
in this court on the grounds that there is a similar action pending
in the Supreme Court of the State of New York or in the alternative
to stay this action pending resolution of the Supreme Court Action.
For the reasons set forth below, the motion to dismiss is granted.

Order

Estate of LEON WAGNER 2011 TRUST NUMBER 1.

Background

On January 25, 2011, Leon Wagner created the "Leon Wagner 2011 Trust Number 1." This trust is irrevocable and benefits Leon's issue. On June 1, 2012 Leon Wagner created another trust, the "2012 Willett Trust," to benefit his then partner, Leesa Willett, and her issue. Leon Wagner and Leesa Willett were married in 2014 and divorced in 2022.

Pursuant to Article II(C) of the 2012 Willett Trust, this trust terminates if Leon and Leesa 1) "cease to be in a committed relationship," and 2) Leesa commences a legal action against Leon "claiming any additional property rights or assets as a result of their relationship," and upon its termination, the trust assets pour over into the 2011 Wagner Trust. Leon and Leesa are currently engaged in litigation in a matrimonial action in Supreme Court, New York County. In the Supreme Court action, Leesa is seeking a declaration that the 2012 Willett Trust and its assets are her own separate property.

In the underlying miscellaneous proceeding, petitioner, Harry Wagner, is the trustee of the Leon Wagner 2011 Trust, and is seeking the turnover of assets from the trustee of the 2012 Willett Trust, respondent herein. Petitioner asserts that both of the above-mentioned termination conditions have been satisfied and that thus the assets of the 2012 Willett Trust must now be turned over to the trustee of the 2011 Wagner Trust.

The Motion

Respondent has moved to dismiss the instant petition pursuant to CPLR 3211 (a)(4) arguing that while this proceeding is not identical to the action pending in Supreme Court, it should be dismissed as the two actions arise out of the same subject matter and seek the same relief, to wit, the disposition of the assets of the 2012 Willett Trust. Allowing this case to move forward, respondent argues, could subject him as trustee of the 2012 Willett Trust, to inconsistent obligations. Movant urges the court to dismiss this instant proceeding due to the pendency of the pending New York County action.

Petitioner opposes the motion arguing that the mere fact that the 2012 Willett Trust is a subject of the matrimonial action does not warrant dismissal or a stay of this proceeding. It is unclear,

Order

Estate of LEON WAGNER 2011 TRUST NUMBER 1.

petitioner argues, whether the matrimonial action will in fact make any determination concerning the 2012 Willett Trust, as the pleadings in that action do not reference the trust. Petitioner argues that the matrimonial action does not include all of the parties necessary to obtain complete relief, such as the trustees of the respective trusts and the beneficiaries of the 2011 Wagner Trust. Thus, petitioner argues, while the Supreme Court could grant relief to Leesa or Leon, it could not grant relief concerning the ownership of the trust assets, as neither Leon nor Leesa have any ownership interests therein. Finally, petitioner argues that the relief requested in the two matters is not identical. For these reasons, petitioner argues, the within proceeding is ineligible for dismissal under the applicable statute.

In reply, respondent argues that the issues in this action are intertwined with the issues pending in the matrimonial action, and if this court is not inclined to dismiss this action, then consolidation of the two proceedings in Supreme Court, which has concurrent jurisdiction over trust matters, would be appropriate.

Discussion

CPLR 3211(a)(4) provides, in relevant part, that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . there is another action pending between the same parties for the same cause of action in a court of any state or the United States; the court need not dismiss upon this ground but may make such order as justice requires . . ."

The Appellate Division, Second Department has held that "[p]ursuant to CPLR 3211 (a) (4), a court has broad discretion in determining whether an action should be dismissed on the ground that there is another action pending between the same parties for the same cause of action (see *Jadron v 10 Leonard St., LLC*, 124 A.D.3d 842; *Whitney v Whitney*, 57 NY2d 731, 732; *Cherico, Cherico & Assoc. v Midollo*, 67 AD3d 622). A court may dismiss an action pursuant to CPLR 3211 (a) (4) where there is a substantial identity of the parties, the two actions are sufficiently similar, and the relief sought is substantially the same (see *Scottsdale Ins. Co. v Indemnity Ins. Corp. RRG*, 110 AD3d 783; *Matter of Willnus*, 101 AD3d 1036). It is not necessary that "the precise legal theories presented in the first action also be presented in the second action" (*Matter of Willnus*, 101 AD3d at 1037; see also *Syncora*

Order

Estate of LEON WAGNER 2011 TRUST NUMBER 1.

Guar. Inc. v J.P. Morgan Sec. LLC, 110 AD3d 87; *Simonetti v Larson*, 44 AD3d 1028). The critical element is whether both suits arise out of the same subject matter or series of alleged wrongs (see *Scottsdale Ins. Co. v Indemnity Ins. Corp. RRG*, 110 AD3d at 784; *DAIJ, Inc. v Roth*, 85 AD3d 959; *Cherico, Cherico & Assoc. v Midollo*, 67 AD3d at 622)."

Thus, it is clear that neither the legal theories nor the parties need be exactly the same. Rather, the most important analysis is whether or not the matters "arise out of the same subject matter or series of alleged wrongs (*Scottsdale Ins. Co. v Indemnity Ins. Corp. RRG, supra*)."

The public policy supported by the statute is also clear. The statute is designed to ". . . prevent duplicative or inconsistent results when parties brought more than one action for relief in the same or different jurisdictions" (see *Kevorkian v. Harrington*, 158 Misc. 2d 464; *Frank Pompea, Inc. v Essayan*, 36 AD2d 745).

As previously stated, there is no dispute that the New York County action was commenced in the calendar year prior to this proceeding. A review of the petition indicates that petitioner's grounds for bringing the instant proceeding in this court is that he is a resident of Suffolk County (SCPA 207(1)), although the Supreme Court that is currently handling the matrimonial matter would have concurrent jurisdiction.

Even though the causes of action and the parties are not identical, the relief sought, i.e. the distribution and the ownership of the assets of the 2012 Willett Trust, is substantially similar in each matter. Were this court to deny the motion to dismiss, there is a real potential for the duplicative or inconsistent results that the statute was enacted to prevent. Moreover, petitioner's argument that necessary parties are missing from the New York County action is easily remedied by an application to amend the pleadings and/or join additional parties.

While under a different fact pattern joinder or some other remedy may be utilized rather than dismissal, dismissal is the sole remedy available to this court in this proceeding. Unlike Supreme Court, which has subject matter jurisdiction over all the issues in both matters, this court's jurisdiction is limited. Lastly, the court notes that were the matters to be consolidated, consolidated actions are generally tried where the first action

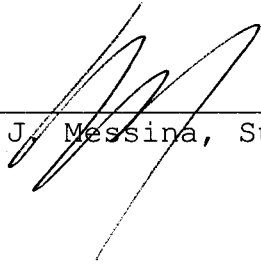
Order

Estate of LEON WAGNER 2011 TRUST NUMBER 1.

was commenced (See *Reckson Assocs. Realty Corp. v. Blasland, Bouck & Lee*, 230 A.D.2d 723).

Applying the foregoing to the within proceeding, it is clear that dismissal is the appropriate remedy herein, such remedy ". . . clearly being the preferable result to having identical causes of action prosecuted at the same time in separate actions" (*Frank Pompea, Inc. v. Essayan*, 36 A.D.2d 745, 746).

Dated: Dec 12, 2023



Vincent J. Messina, Surrogate

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