

Matter of Braunstein

2024 NY Slip Op 33697(U)

October 11, 2024

Surrogate's Court, New York County

Docket Number: File No. 2013-2586/A

Judge: Rita Mella

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This opinion is uncorrected and not selected for official publication.

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

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Petition to Compel the Account of BARBARA
SHEY BRAUNSTEIN and WILLIAM ZOUSMER as
Co-Trustees of the MICHAEL BENNETT BRAUNSTEIN
IRREVOCABLE TRUST Dated November 2, 2002
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DECISION and ORDER
File No.: 2013-2586/A

MICHAEL BENNETT BRAUNSTEIN,
Grantor.

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M E L L A, S.:

This is a contested proceeding by Lisa Braunstein Zola (Petitioner), one of two presumptive remainder beneficiaries of the irrevocable trust created by Michael Bennett Braunstein on November 2, 2002 (Trust) to compel an accounting by co-Trustees Barbara Shey Braunstein and William Zousmer (Respondents).

Relevant Facts

Michael Bennett Braunstein (Grantor) established the Trust for the lifetime benefit of his wife, Respondent Braunstein, with the remainder to be held in further trust for the benefit of his two daughters, Petitioner and Julie Lynn Braunstein Finkelstein. The Grantor died on May 2, 2013, and the Trust was funded with an \$8 million life insurance policy on Grantor's life. For present purposes, two provisions of the Trust Agreement require mention. First, in Article TWELFTH, the Agreement provides: "The Trustees shall not be required at any time to file any account in any court, nor shall the Trustees be required to have any account judicially settled." Second, the Trust Agreement provides in Article FIFTEENTH that the "validity and construction" of the Trust are governed by Connecticut law.

The record reflects that Petitioner and her mother, Respondent Braunstein, were involved in a dispute relating to the administration of Grantor's estate of which Respondent Braunstein was the fiduciary. Before the parties settled that dispute in August of 2021, Petitioner requested and received information about the administration of the Trust. Thereafter, Respondents provided to Petitioner an informal account for the period covering June 26, 2013, to December 31, 2021, in the form required by Connecticut courts. After Petitioner raised concerns, Respondents addressed those concerns and rectified some entries, resulting in an amended informal account for the same period, which also met the requirements for accountings in Connecticut courts (Revised Account). Petitioner's sister, the other presumptive remainder beneficiary of the Trust, consented to the Revised Account and signed a Receipt, Release and Refunding Agreement. Respondents subsequently provided some additional information requested by Petitioner, but she refused to consent to the Revised Account and filed the instant petition, alleging that Respondents had not provided some of the information requested.

Respondents filed an "Answer and Objection," challenging this court's jurisdiction and asserting that Connecticut law applied and precluded the court from directing the accounting here in view of the Article TWELFTH provision relieving them from any duty to account. The court issued a Scheduling Order, dated April 18, 2023, setting forth a briefing schedule for the parties to address two discrete issues: whether this court has jurisdiction over the Trust, and, if so, whether Connecticut law applies. These legal issues having been fully briefed, the court now determines them.

Discussion

The court addresses first whether it has jurisdiction to adjudicate the instant petition. On questions of jurisdiction, the court must look to SCPA 207 (1) which states:

“The surrogate’s court of any county has jurisdiction over the estate of any lifetime trust which has assets in the state, or of which the grantor was a domiciliary of the state at the time of the commencement of a proceeding concerning the trust, or of which a trustee then acting resides in the state or, if other than a natural person, has its principal office in the state. The proper venue for proceedings relating to such lifetime trusts is the county where (a) assets of the trust estate are located, or (b) the grantor was domiciled at the time of the commencement of a proceeding concerning the trust, or (c) a trustee then acting resides, or, if other than a natural person, has its principal office.”

Here, it is undisputed that: (1) Respondent Braunstein has resided in New York County at all relevant times, and (2) the assets of the Trust are held in accounts at a financial institution located in New York County. Based on the foregoing, this court concludes that it has jurisdiction over the Trust and that venue is proper in New York County (*see Matter of Wahlstrom-Johnson*, NYLJ, Dec 8, 2006, at 29, col 6 [Sur Ct, NY County 2006]; *see also Matter of Manice*, NYLJ, March 27, 1996, at 32, col. 2 [Sur Ct, NY County 1996]).

As for whether Connecticut law applies, as previously stated, the Trust expressly states in Article FIFTEENTH that its “validity and construction is to be governed by the laws of the State of Connecticut.” In addition, there are at least two more references in the Trust to the application of Connecticut law. In *Shannon v Irving Trust Co.* (275 NY 95, 102 [1937]), the Court of Appeals explained that when the intent of a grantor is “expressly stated in the body of the trust instrument” with respect to the issue of what law is to control the trust, “[t]he instrument should be construed and a determination of its validity made according to the law chosen by the settlor.” As a result, New York courts will apply the laws of other jurisdictions when a grantor has clearly expressed an intent to do so (*see, e.g., Matter of Chappell*, 25 Misc 3d 704, 707 [Sur Ct, NY County 2009] [New York courts will recognize a settlor’s direction to apply another state’s law

to determine issues regarding a Trust]; *Matter of Manice, supra*; see also *Matter of Wheat v First Natl City Bank*, 41 Misc 2d 723, 725 [Sup Ct, NY County 1963]). Here, the Grantor's choice of law is clear, and, for this reason, this court holds that Connecticut law applies. The cases cited by Petitioner do not require a different result.

The question of whether Connecticut law applies is important because, according to Respondents, under the law in Connecticut which, unlike New York, has adopted the Uniform Trust Code, a grantor may relieve trustees from having to render judicial accounts and such "waiver-of-account" provisions in trust instruments are enforceable. Respondents reason that, in view of the waiver provision in Article TWELFTH, a Connecticut probate court applying Connecticut law would likely dismiss the instant compulsory accounting petition, while in New York, courts would decline to enforce such provision. Based on this argument, Respondents invite this court to refrain from exercising jurisdiction in this proceeding and to reserve for a Connecticut court the issue of the enforceability of the waiver-of-account provision. However, there is no support in Respondents' submissions or in the caselaw for their argument that this court should abstain from deciding this question. If New York has jurisdiction over a trust, nothing prohibits its courts from deciding questions of construction or enforceability of such trust's provisions through the application of the law of another jurisdiction (*see, e.g., Matter of Manice, supra*).

Nonetheless, the conclusion that Connecticut law applies does not necessarily result in the summary dismissal of this compulsory accounting petition, as Respondents suggest. The Connecticut law upon which Respondents rely for the proposition that trustees may be relieved from a duty to file a judicial account by the instrument creating the trust does not apply here. At all relevant times, Section 45a-177 of the Connecticut General Statutes has applied in that regard

only to testamentary trusts. Likewise, Conn Gen Stat Ann § 45a-499kkk(d) and (g) do not permit a grantor to waive a trustees' duty to account. The law in Connecticut, in fact, specifically allows a beneficiary of an inter vivos trust to obtain an accounting so long as the court concludes that "cause has been shown that an accounting is necessary" (*see* Conn Gen Stat Ann. § 45a-175[c][1]).

Moreover, even under Connecticut common law a provision in an inter vivos trust relieving a trustee from her duty to account would not deprive the court of the power to order an account when faced with credible allegations of breach of fiduciary duty (*see Hall v Taylor*, 2009 Conn Super Lexis 2660 [Conn Superior Court judicial district of New Haven, Docket No. CV084009225S [Oct 1, 2009]). This makes sense because relieving a trustee of a duty to account would be antithetical to the very foundation of fiduciary relationships (*see Bogert, Trust and Trustees* § 965 at 111 [3d ed 2010] ["noting that because there can be no fiduciary relationship without accountability, and no trust without a fiduciary relationship, the settlor of a trust cannot relieve the trustee of the fundamental duty to account..."]).

On this record, however, Petitioner has not provided sufficient cause to justify putting the Trust through the expense of a judicial accounting. Despite having received an informal account and then the Revised Account, Petitioner does not allege that Respondents breached their fiduciary duty in any way. In fact, she does not identify a single issue related to the Trust's administration. Nor does Petitioner dispute Respondent's contention that she has received "substantial documentation and information," including tax returns, financials statements and documents supporting administration expenses. Petitioner simply states as a basis for seeking the accounting that Respondents "provided some of the documents and information requested

and refused to provide others.” Petitioner does not specify the nature of the information she seeks, much less describe its importance to the transactions reflected in the Revised Account.

Under these circumstances, the court concludes that Petitioner has failed to establish the necessity of a judicial accounting (*see* Conn Gen Stat Ann § 45a-175 [c][1]). The result would be the same under New York law, which gives the court discretion to direct an accounting if it is in the best interests of the estate (*see* SCPA 2205 [1]; *Matter of Mastroianni*, 105 AD3d 1136 [3d Dept 2013]; *see also Matter of Taber*, 96 AD2d 890 [2d Dept 1983] [“In a proceeding to compel a fiduciary to account, the Surrogate acts in [her] discretion, governed by what is deemed to be in the best interest of the estate”]).¹

For the reasons set forth above, the petition to compel Respondents to file a judicial accounting is denied.

This decision constitutes the order of the court.

Clerk to notify.

Dated: October 11, 2024



SURROGATE

¹ The definition of “estate” includes the property of a Trust (*see* SCPA 103[19]).