

Stfleurl v Wallace

2025 NY Slip Op 34502(U)

November 24, 2025

Supreme Court, Kings County

Docket Number: Index No. 525973/2019

Judge: Ingrid Joseph

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At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 24th day of November 2025.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF
NEW YORK COUNTY OF KINGS

-----X
MARC ANTOINE STFLEUR and GARFIELD M. STFLEUR,
individually and as Trustees of the Marie C. Souffrant Trust,
Plaintiff(s)

Index No: 525973/2019
Motion Seq. 5

-against-

ORDER

REGINA WALLACE also known as REGINA STFLEUR,
Individually and as Trustee of the Marie C. Souffrant Trust and
DENAKA L. PERRY, ESQ.

Defendant(s)

-----X

The following e-filed papers read herein:

Notice of Motion/Petition/Affidavits Annexed

Exhibits Annexed/Reply.....

Affirmation in Opposition/Affidavits Annexed/Exhibits Annexed.....

NYSCEF Nos.:

144-146; 149

147

In this matter, Denaka L. Perry, Esq. (“Perry”) moves (Motion Seq. 5) for an Order pursuant to CPLR 603 severing all claims against her from the within action. Marc Antoine Stfleur and Garfield M. Stfleur, individually and as Trustees of the Marie C. Souffrant Trust (“Plaintiffs”) have opposed the motion.

Plaintiffs commenced this action primarily to compel determination of claims related to a piece of real property located at 146 Lenox Road, Brooklyn, New York 11226, (the “Subject Premises”) pursuant to RPAPL Article 15. Pursuant to the Complaint, Plaintiffs allege that on September 20, 2010, Marie C. Souffant (“Decedent”) conveyed her interest in the Subject Premises to her children, Marc Stfleur, Garfield Stfleur, and Regina Wallace a/k/a Regina Stfleur (“Wallace”) as Co-Trustees of The Marie C. Souffrant Trust (the “Trust”). Plaintiffs assert that in addition to a Life Estate, Decedent reserved unto herself a Power of Appointment which allowed Decedent to alter the remainder of the Beneficiaries of the Trust within her sole discretion and without consent of any Trustee/Remainder beneficiary. It is alleged that pursuant to the terms of the Original Trust, Defendant Wallace was named as the sole beneficiary of the Subject Premises. However, Plaintiffs contend that on October 25, 2013, an Amendment to the Trust was created which states:

I. “Paragraph “FIRST: E” shall be amended to read as follows:

FIRST: E. After the death of the Grantor, this Trust shall terminate, and the Trustees shall pay over, transfer and distribute the balance of the Trust Estate remaining, subject to the provisions set forth above, to Grantor’s children, Regina Stfleur...Marc Stfleur...and Garfield Stfleur, in three equal shares, per stripes.

- II. Grantor exercises the power of appointment reserved or granted to her pursuant to paragraph "THIRD" of the aforementioned trust. Grantor directs that the Trustee under such trust distribute the entire trust corpus (or Trust Estate) in accordance with the terms of this Amendment."¹

Therefore, according to the Amendment to the Trust, distribution of the Subject Premises was to be to the Plaintiffs and Defendant Wallace in three equal shares following the Decedent's death. Plaintiffs allege that on that same day, Decedent also executed a new Will which reinforced Decedent's intent for the distribution of the Subject Premises to be done in accordance with the Amendment. Plaintiffs claim that following Decedent's death on June 26, 2017, that Plaintiffs and Defendant Wallace sought the legal advice of Perry, as counsel, with respect to the sale and distribution of the Subject Premises. Pursuant to the Complaint, Plaintiffs allege that in or around March of 2019, Plaintiffs and Defendant Wallace retained Perry to negotiate the terms of a Contract wherein demolition, excavation, and construction work was to be performed at the Subject Premises. Thereafter, on March 26, 2019, Marc Stfleur entered into a Retainer Agreement with Perry to handle the transfer of the title of the Subject Premises to the beneficiaries of the Trust, negotiate a sale of the Subject Premises, and to represent Marc Stfleur and the owners through the closing on the sale.

Thereafter, Plaintiffs allege that upon the advice of Perry, that Plaintiffs agreed that the Subject Premises was to be moved from the Trust into three remainder beneficiaries individually as tenants in common. However, Plaintiffs allege that on April 6, 2019, Perry asked Plaintiffs to sign off on a deed transfer, which they did, wherein Plaintiffs signed away their interest in the Subject Premises entirely to Wallace, in violation of the terms of the Trust and the Amendment to the Trust. Plaintiffs contend that Perry did not explain that they were signing away their interest. The Deed was recorded by the Office of the City Register on April 6, 2019. Following the Deed transfer, Plaintiffs claim that on or about April 12, 2019, Perry contacted Marc Stfleur and informed him that the City was requesting the Tax EIN of the Trust in order to properly record the Deed, and that on or about April 24, 2019, Perry stated that the City would only accept a transfer from the Trust directly to Wallace. Plaintiffs allege that when confronted about the transfer, Perry stated that she was only Wallace's attorney and to date has repeatedly refused to provide them with copies of everything that they had signed pertaining to the Subject Premises. Plaintiffs have asserted causes of action against Perry for fraud and legal malpractice, and against Wallace for breach of fiduciary duties. Wallace has asserted 12 counterclaims against Plaintiffs.²

¹ The Amendment instrument contains four signature blocks and four acknowledgment blocks -- two recognitions for the Grantor and for each of the three other Trustee remaindermen who were also parties to the agreement. However, actual signatures appear for only Grantor and Plaintiffs. Defendant Wallace did not sign the Amendment and claims, in a sworn affidavit, that she never received notice of the Amendment and had no knowledge that the Trust had been modified until 2019, and that she did not consent to the Amendment.

² Defendant Wallace's counterclaims include: 1) Failure to Duly Execute the Amendment to the Trust; 2) Lack of Capacity; 3) Undue Influence; 4) Fraud in the Inducement; 5) Unjust Enrichment; 6) Breach of Fiduciary Duties; 7)

In support of her motion, Perry argues that severance is warranted in the interest of judicial economy and consistency of verdicts. Perry contends that disposition of Plaintiffs claims against Wallace and Wallace's counterclaims would dispose of the claims against her entirely because if the Court finds that the counterclaims by Wallace fail or if the Amendment is deemed invalid then the deed transfer would revert back to be in accordance with the terms of the *original* Trust, which named Wallace as the sole beneficiary. Thus, the fraud and legal malpractice claims against Perry would fail because her transfer was proper. Additionally, Perry argues that severance is warranted because this action involves separate and distinct legal theories and questions of law. Perry claims that the causes of action against her are unrelated to the claims against Wallace and that she is not related to any matters involving Wallace because Perry only got involved in this dispute in 2019, whereas Plaintiffs and Wallace's issues stem back to events that occurred as early as 2010. Furthermore, Perry argues that discovery is incomplete, and the matter should be severed to avoid prejudice towards her. Perry claims that Plaintiffs would not be prejudiced if severance is granted because their claims would still be fully preserved, and they would have an opportunity to pursue them. Moreover, Perry argues Plaintiffs opposition should be disregarded as untimely.

In opposition, Plaintiffs argue that severance of claims herein is neither warranted nor appropriate under the circumstances of this case. Plaintiffs assert that courts do not have discretion to sever an action when claims are related to the same occurrence and set of facts, as in this matter. Plaintiffs contend that the crux of this litigation is the alleged fraudulent deed transfer which transferred Plaintiffs' entire interest in the Subject Premises to Wallace without consideration or their informed consent and in violation of the Trust and the Amendment to the Trust. Plaintiffs assert that the Defendants participated in the transfer and took actions that resulted in damages to them and that the causes of action against Perry would still have to be adjudicated. Plaintiff argues that Perry has failed to demonstrate that she would be prejudiced if this action is not severed because discovery is incomplete due to her and Wallace's failure to comply with discovery demands and orders, and that any delay in this action is solely the Defendants fault. Plaintiff states that Perry is not a third-party defendant and has been a part of this action since its inception, thus she has had ample time to move to sever at any point before now, but instead, Perry waited until court orders demanded her to appear for a deposition and turn over discovery, which she has not complied with, to make this motion. Furthermore, Plaintiffs argue that severance would severely prejudice them by delaying this action more.

CPLR 2214(b) provides that an opposition to a motion "shall be served at least seven days before [the time at which the motion is noticed to be heard] if a notice of motion served at least sixteen days before

Negligence in the Management of Trust Assets; 8) Failure to Account; 9) Self-Dealing; 10) Failure to Cooperate and Provide Necessary Information to A Beneficiary and Co-Trustee; 11) Disqualification of Plaintiff's counsel, Connors and Sullivan; and 12) Fraud in the Factum.

such time so demands. Subsection (c) states, “[o]nly papers served in accordance with the provisions of this rule shall be read ... in opposition to the motion, unless the court for good cause shall otherwise direct.”

Here, the Court in its discretion shall accept Plaintiffs’ late opposition papers. Plaintiffs’ opposition was filed 1 day late. The delay did not unduly prejudice Perry, who was afforded the opportunity to submit a reply. Additionally, the interest of justice and public policy would favor resolution of this matter on its merits.

In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue (see CPLR 603; *Adamow v Northport-East Northport Union Free School District*, 235 AD3d 609 [2d Dept. 2025]; *Mullen v Wishner*, 178 AD3d 830 [2d Dept. 2019]). The grant or denial of a request for severance is a matter of judicial discretion, which should not be disturbed on appeal absent a showing of prejudice to a substantial right of the party seeking severance (*Adamow* at 609; *FPG CH 94 Amity, LLC v Pizzarotti, LLC*, 218 AD3d 654 [2d Dept. 2023]). Severance is appropriate where “individual issues predominate, concerning particular circumstances applicable to each plaintiff ... [and there] is the possibility of confusion for the jury” (*Adamow* at 609; *Belair Care Center, Inc. v Cool Insuring Agency, Inc.*, 180 AD3d 739 [2d Dept. 2020]; *Gittino v LCA Vision, Inc.*, 301 AD2d 847 [3d Dept. 2003]). Severance is inappropriate where the claims against the defendants involve common factual and legal issues, and the interests of judicial economy and consistency of verdicts will be served by having a single trial (*Nieto v 1054 Bushwick Ave, LLC*, 219 AD3d 754 [2d Dept. 2023]; *New York Cent. Mut. Ins. Co. v McGee*, 87 AD3d [2d Dept. 2011]).

Here, the Court finds that Perry has not established entitlement to sever the fraud and legal malpractice causes of action asserted against her from the remaining claims and counterclaims asserted against parties herein. Contrary to Perry’s contentions, the causes of action asserted against all of the defendants present common factual and legal issues. Pursuant to the Complaint, Plaintiffs allege the existence of a scheme by the Defendants to defraud them – the interest of judicial economy and consistency of verdicts would not be served if Plaintiffs had to maintain multiple actions herein (see *Itzkowitz v Ginsburg*, 186 AD3d 579 [2d Dept. 2020]).

While Perry cites *Ambac Assurance Corporation v. Countrywide Home Loans, Inc.*, 179 AD 3d 518 (1st Dept. 2020), to support her argument that severance is warranted when resolution of the claims against one defendant is dispositive of different claims against another defendant, the court therein granted severance because the resolution of one issue did not bear or impact the resolution of the second, whereas here the issues are substantially related and share common facts. Moreover, contrary to Perry’s contentions, it is not certain that the claims against Wallace and the counterclaims against Plaintiffs would actually dispose of the claims against her entirely. Plaintiffs’ claims against Wallace and Wallace’s counterclaims against Plaintiffs stem from the validity of the Amendment to the Trust, alleged unjust enrichment, breaches

of fiduciary duties, negligence, failure to account, self dealing, disqualification of Wallace's counsel, and fraud in factum. Assuming arguendo that the court invalidates the Amendment, it would not render the fraud and legal malpractice claims as moot since the underlying question with respect to the causes of action asserted is whether Perry committed fraud and legal malpractice by transferring the Deed to Wallace in violation of the Trust and the Amendment to the Trust. Regardless of the determination of the Amendment's validity, questions of fact still remain as to whether Perry failed to exercise that degree of care, skill, and diligence commonly possessed by a member of the legal profession, with respect to her representation of both Plaintiffs and Wallace, who may have had conflicting interests, whether Plaintiffs gave their informed consent regarding the transfer, as well as whether Perry and Wallace engaged in a scheme to defraud the Plaintiffs.

Perry's arguments regarding incomplete discovery are also unavailing and the Court finds that Perry has failed to establish that she would suffer prejudice to a substantial right if the matter was not severed. While courts have found that severance is appropriate in situations where third-party defendants have not had the opportunity to produce discovery and the case is ready for trial, that is not the case here. Perry has been a participant of this action since its inception, this matter is not ready for trial, and upon review of the record, any delay in discovery seems to be due largely in part to Perry.

Accordingly, it is hereby,

ORDERED, that Denaka L. Perry, Esq.'s motion (Motion Seq. 5) for an Order pursuant to CPLR 603 severing all claims against her from the within action is denied.

Matters not addressed herein are either without merit or moot.

This constitutes the decision and order of the Court.



Hon. Ingrid Joseph J.S.C.

**Hon. Ingrid Joseph
Supreme Court Justice**