

Yablon v Fulvio

2025 NY Slip Op 34802(U)

December 11, 2025

Supreme Court, New York County

Docket Number: Index No. 151037/2025

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH

PART 12M

Justice

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SOPHIE ROSE YABLON, individually and as beneficiary and named Non-Independent Trustee of the Sophie Rose Yablon 2022 Trust, and as the sole beneficiary of the Sophie Rose Yablon 2006 Trust,

Petitioner,

- v -

GENNARO JOHN FULVIO and PAUL E. YABLON, as named Independent Trustee and Non-Independent Trustee, respectively on the Sophie Rose Yablon 2022 Trust and of the Sophie Rose Yablon 2006 Trust,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 14, 15, 16 were read on this motion to/for REMOVE - FIDUCIARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 were read on this motion to/for DISMISSAL

By amended notice of petition (mot seq 001), petitioner Sophie Rose Yablon, individually and as beneficiary and named non-independent trustee of the Sophie Rose Yablon 2022 Trust, and as the sole beneficiary of the Sophie Rose Yablon 2006 Trust ("petitioner") brings this special proceeding pursuant to CPLR Articles 4 and 77, for an order pursuant to EPTL 7-2.6 (a) (1) removing respondents Gennaro John Fulvio ("Fulvio") and Paul E. Yablon ("Paul") as independent and non-independent trustees, directing Fulvio to appoint petitioner as a non-independent trustee, directing discovery and a hearing on the accounting.

By notice of motion (mot seq 002), respondents seek dismissal of the petition pursuant to CPLR 3211 (a) (7) and (10). By notice of cross-motion (mot seq 002), petitioner also seeks an order prohibiting respondents from using trust funds to defend themselves in this proceeding and

directing that petitioner be reimbursed for the fees she has expended, and will expend, in enforcing her rights.

Upon the foregoing papers, the petition and motions are consolidated for decision and determined as follows:

I. Verified Petition (Mot Seq 001)

The Sophie Trust (“Trust”) at issue here was created under the laws of the State of Connecticut, as of March 15, 2022, pursuant to the decanting of the Sophie Rose Yablon 2006 Trust (NY St Cts Elec Filing [NYSCEF] Doc No. 1 ¶ 4). Fulvio is a CPA and an independent trustee of the Trust (*id.* ¶ 5). Paul is the petitioner’s father and a non-independent trustee of the Trust (*id.* ¶ 6). Jill Yablon is the mother of petitioner and is also a non-independent trustee of the Trust. Jill and Paul were divorced by December 9, 2022 (*id.* ¶ 7).

Paul established the Trust in 2006 which was decanted in 2022 (*id.* ¶ 8). Pursuant to the terms of the Trust, Sophie is the sole beneficiary of the income and principal (*id.* ¶ 10). Article I (1) of the Trust provides that “the Independent Trustee shall, from time to time, pay to or for the benefit of Sophie Rose Yablon so much of the income and principal of the trust, in such amounts as to the Independent Trustee shall determine in his absolute discretion (*id.*). Article I (2) provides that the trustees shall give Sophie notice, at least 30 days before her 21st birthday, of her right to compel distribution of the trust (*id.*). Article II (2) (b) provides that, in the event Sophie does not exercise her right to compel distribution within six months of her 21st birthday, then the Independent Trustee shall appoint Sophie a non-Independent Trustee upon Sophie attaining the age of 25 (*id.*). On March 15, 2022, Fulvio was appointed as independent trustee of the Trust (*id.* ¶ 11).

Petitioner alleges that Fulvio willfully neglected his fiduciary obligations to her by permitting substantive decisions to be made by Paul and doing his bidding regarding Sophie (*id.* at 13). She further alleges that Fulvio failed to appoint her non-independent trustee when she turned 25 on November 21, 2023 (*id.* ¶ 18). He was reminded by petitioner's counsel on December 3, 2024, to appoint a non-independent trustee, and he has failed to do so (*id.* ¶ 19). Fulvio responded that he had authority to refuse to make the appointment stating, "he is of the understanding [Sophie] is making unhealthy lifestyle choices" (*id.*). She alleges that Fulvio refused Sophie's request that the Sophie Trust reimburse her for medical expenses and responded "I will not be reimbursing you as you are gainfully employed and a very successful young associate at [JP Morgan]" (*id.* ¶ 22). Pursuant to Paul and Jill's divorce agreement, each of them is obligated to pay half of the monthly maintenance of the marital apartment, i.e. \$12,618.44 each. From August 2024 through December 2024, Fulvio used Sophie Trust funds to pay Paul's half to Brown Harris, the managing agent for the co-op (*id.* ¶¶ 24-25). On December 3, 2024, petitioner made a Beneficiary Request for the accounting of the Sophie Trust, which were not responded to (*id.* ¶¶ 27-29).

Petitioner further alleges that there is a conflict of interest as Fulvio acts as Paul's personal accountant and performs accounting and other related services for business entities owned or controlled by Paul, for which Fulvio receives substantial fees, compensation and other benefits from Yablon (*id.* ¶ 31). By reason of Fulvio's financial hardship with Paul, Fulvio at all times has been under the domination and control of Paul and failed to act independently as required of an independent trustee (*id.* ¶ 32).

II. Respondents' Motion to Dismiss (Mot Seq 002)

In support of their motion Respondents submit an affirmation by Fulvio disputing any breach of fiduciary claims. Fulvio attests that the distributions of income and principal following the decanting of the Trust, in the amount of \$134,000 were remitted and paid to Sophie, for health, education, and to allow her to maintain a standard of living that she was accustomed to (Fulvio aff ¶ 5). Over the last five years, trust funds in the amount of \$302,000 were remitted and paid to Sophie, which included the \$134,000 over the last three years (*id.*). Fulvio further claims that he did not breach any fiduciary duty when he authorized the use of funds in the amount of \$63,092, to satisfy the carrying charges of the apartment as Sophie was residing there with her boyfriend and Jill (*id.* ¶ 7). Moreover, he attests that the decanting of the 2006 trust into the 2022 trust was authorized and permitted by and pursuant to Article VI of the 2006 Trust, and the Independent Trustee's Resolution and Deed of Distribution executed by Paul and Jill (*id.* ¶ 8). He further asserts that the decision not to appoint Sophie as independent trustee was exclusively based upon his understanding and belief based upon credible evidence that she was making unhealthy lifestyle choices including drug use, multiple domestic incidents involving the police, cohabiting with a man 20 years old than her that may be in the country illegally and mental health struggles, which she did not refute (*id.* ¶ 9). Additionally, he states that the trust holds a membership ownership in a Connecticut limited liability company, and the beneficiaries of the trust are not entitled to inspect the books, records and/or other information of the companies pursuant to Conn Gen Statute § 34-255i (*id.* ¶ 11). He further states that the email to petitioner on January 16, 2025, is a not a breach of fiduciary duty, or a defamation claim, as petitioner did not refute the contents of the e-mail or state any damages (*id.* ¶12). Respondents argue that petitioner's claim that Paul aided and abetted Fulvio's breach of fiduciary duty is not an actionable cause of action in the State of Connecticut

(Rosh aff at 10). Lastly, they claim that the petition should be dismissed pursuant to CPLR 3211 (a) (10) for failure to join Jill, one of the trustees to the 2006 and 2022 Trust, as a necessary and indispensable party (*id.* at 11).

III. Petitioner's Opposition and Cross-Motion (Mot Seq 002)

In opposition, petitioner first argues that the petition clearly states appropriate grounds of relief (Ramsdell aff at 11). She further argues that the respondents are misleading the court by asserting the funds were used for her use and occupancy of the apartment only after their wrongful acts were discovered (*id.* at 12). Third, she contends that the fiduciary relationship by itself grants her the right to obtain the remedy of accounting regardless of whether monetary damages are sought (*id.* at 14). She further argues that respondents' arguments regarding her right to review the annual financial statements disregards Fulvio's obligations to have her designated as a non-independent trustee of the Trust (*id.* at 17-18). Regarding the arguments made by respondents alleging defamation, petitioner argues that she is not seeking to recover damages for defamation, but the e-mail is evidence of Fulvio's wrongful conduct (*id.* at 18). Petitioner further claims that the Connecticut Appellate Court recognizes the viability of an aiding and abetting claim (*id.* at 19-20). She further argues that she sufficiently alleged the wrongful acts committed by Paul and Fulvio warranting their removal as trustees (*id.* at 21-22). Lastly, she argues that Jill is not a necessary party because the petition states that Jill does not object to any relief sought, and Fulvio and Paul committed the wrongful acts, and if Jill should be named as a necessary party, the court can summon her instead of granting dismissal (*id.* at 23-24).

IV. Analysis

Respondents' Motion to Dismiss (Mot Seq 002)

Respondent's motion to dismiss the petition on the ground that it fails to state a claim for breach of fiduciary duty is denied. When reviewing a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must determine whether a petition has a cognizable claim, not whether one is stated (*see Leon v Martinez*, 84 NY2d 83,87-88 [1994] [the court must accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory]). The allegations in the instant verified petition that Fulvio breached his fiduciary duty by failing to appoint the petitioner as an independent trustee, in addition to the allegations that he used the trust funds to pay Paul's portion of the maintenance of the apartment, and failed to provide an accounting upon petitioner's request, sufficiently state a claim for breach of the trustee's fiduciary duty.

CPLR 3211 (a) (10) provides for dismissal where there is a failure to name a necessary party. Respondents argue that Jill Yablon, a non-independent trustee, is a necessary party. Upon CPLR 1001(a), a necessary party is one whose nonjoinder will jeopardize the outcome of the action in either two ways: (1) complete relief cannot be accorded between the existing parties to the action; or (2) the absent party may be inequitably affected by the judgment. This Court finds that while Jill Yablon may be a proper party, she is not a necessary party. A proceeding to remove a fiduciary, if entertained by the court, requires only one indispensable party – the fiduciary himself or herself (*see Estate of Bergner*, NYLJ LEXIS 4464, *10 [Sur Ct, Nassau County 2000]). There is no requirement in proceedings for removal and for information brought against Fulvio and Paul that any other party be joined (*id.* at *10-11). Respondent's reliance on *Carrington Asset Holding*

Co., LLC v American Home Mortg. Servicing, Inc. is meritless, as the court stated, “[A] party is necessary if its presence is absolutely required in order to assure a fair and reasonable trial” (2010 WL 4350461 [Conn Super Ct 2010] [citations omitted]). The relief that petitioner seeks can be provided without Jill Yablon’s joinder, and she would not be inequitably affected by any judgment awarded herein. She would not be properly added as a respondent, as petitioner seeks no relief against her, and if she does not want to join in this suit against the trustees for an accounting, she should not be forced to do so. Moreover, she presumably is aware of this action, and could, if so inclined, seek to intervene pursuant to CPLR 1013.

As the motion to dismiss is denied in all respects, respondents are directed to file their respective answer to the within petition within 10 days of service upon them of this decision and order.

The Claims of the Petition (Mot Seq 001)

The removal of a fiduciary is a matter within the discretion of the court (*see Duell v Duell*, 258 AD2d 382, 383 [1st Dept 1999]) and is considered a serious remedy to be granted only sparingly (*see Matter of Duke*, 87 NY2d 465, 473 [1995]). CPLR 7701 permits the bringing of a special proceeding to determine a matter relating to any express trust, unless there are exceptions that are inapplicable here. The law is settled that CPLR 7701 should be broadly construed to cover any matter of interest to trustees, beneficiaries or adverse claimants concerning the trust (*see Matter of Wells Fargo Bank v Nover Ventures, LLC*, 173 AD3d 626, 627 [1st Dept 2019]). A proceeding brought pursuant to CPLR 7701 is governed generally by CPLR Article 4 and the same summary judgment standards that apply to actions also apply to special proceedings brought under CPLR Article 4 (*see Matter of Bank of N.Y. Mellon*, 202 AD3d 465, 467 [1st Dept 2022]). CPLR 409 (b) provides that the court in a special proceeding “shall make a summary determination upon

the pleadings, papers and admission to the extent that no triable issues of fact are raised. The court may make any orders permitted on a motion for summary judgment.” CPLR 410 provides that “if triable issues of fact are raised, they shall be tried forthwith ...”. EPTL 7-2.6 provides that the Supreme Court has power “suspend or remove a trustee who has violated or threatens to violated his trust [...] or who for any reason is a person unsuitable to execute the trust” (see EPTL 7-26 [a] [2]). “An individual seeking removal [of a trustee] bears the burden of demonstrating that the trustee has violated or threatens to violate his or her trust or is otherwise unsuitable to execute the trust” (*Matter of Epstein*, 202 AD3d 669, 673 [2d Dept 2022] [citations omitted]). “The party seeking a trustee’s removal must bear the burden of proof, by clear and convincing evidence” (*Yonke v D’Angelo*, 2024 NY Slip Op 32349 [U], *27 [Sup Ct, NY County 2024]).

“In evaluating a trustee’s conduct, the relevant inquiry is whether the trustee has negatively impacted the trust or failed to serve the purpose of the trust” (*Matter of Francis v Bourke Francis & Pdraig Francis Irrevocable Trust*, 230 AD3d 1239, 1241 [2d Dept 2024] [internal quotation marks and citations omitted]). “Although discord between the trustee and other involved with the trust, standing alone, is typically an insufficient basis for removal, such conflict may support removal if the conflict thwarts proper administration of the trust ...” (*Matter of Gimbel v Leonard*, 205 AD3d 538, 538-39 [1st Dept 2022] [citations omitted]).

Here, a hearing is required before determining the merits of the petition. None of the submissions establish indisputable facts that on their face would justify Fulvio and Paul’s removal as trustees. Rather, to the extent the allegations could, if proven, present possible grounds for removal, they are all disputed. Therefore, an evidentiary hearing is necessary, at which time this Court can consider the presented evidence and make factual findings as to whether Fulvio significantly breached his obligations as trustee, and can consider, as well, the appropriate remedy

for such a violation (*see Matter of Duke*, 87 NY2d at 472 [fiduciary can be removed without a hearing only where the misconduct is established by undisputed facts or concessions]).

Furthermore, the Court finds that the evidentiary materials submitted by the respondents demonstrate that the trustee provided a response to petitioner's demand for an accounting, detailing the specific dates on which funds were paid into and out of the trust, the source of the funds paid into the trust, and the recipients of the funds paid out of the trust (*see Matter of Francis*, 230 AD3d at 1240-41). Petitioner failed to submit a reply to dispute how the trustee's submissions of the accounting were inadequate. Notwithstanding the foregoing, a trial court has broad discretion over the discovery process (*see Matter of Gimbel*, 205 AD3d at 539), and CPLR 7701 also provides that a party has the right to examine the trustees, under oath, and CPLR 408 allows for disclosure in proceedings brought under CPLR Article 77.

Prohibition and Reimbursement of Legal Fees is Denied (Mot Seq 002)

Lastly, petitioner's cross-motion to prohibit respondents from using trust funds to defend themselves in this action, and to reimburse petitioner with legal fees expended is denied. Pursuant to EPTL 11-1.1 (b) (22), respondents are entitled to recover from the trust the amount of reasonable counsel fees they have incurred in this action. Trustees have been allowed to use trust assets to defend themselves against removal proceedings (*see Jessup v Smith*, 223 NY 203, 207-08 [1918]). However, counsel fees are a proper charge against a trust estate where a trustee has successfully defended against an effort to remove him or her (*see Matter of La Corte*, 7 AD3d 909, 911 [3d Dept 2004]; *see also Matter of Bishop*, 277 AD 108, 115-16 [1st Dept 1950] [a trustee's legal expenses incurred in a meritless action should be charged against the income beneficiaries who instituted the action solely for their own benefit]). Since determination of any wrongdoing on the part of the respondents is outstanding, petition's application is premature and therefore denied

(see *Matter of Birnbaum*, 112 AD2d 778, 779 [4th Dept 1985] [When a fiduciary is charged with a breach of his fiduciary duties, the payment for services in the defense of such charge 1s should not be authorized on an interim basis until the charges have been resolved]). Additionally, the branch of petitioner's cross-motion for reimbursement of legal fees are either conclusory, and unsupported by documentation in admissible form. As such, all remaining relief requested by petitioner is denied.

Accordingly, it is hereby

ORDERED that the Petition (mot seq # 001) is held in abeyance for a trial to be conducted pursuant to CPLR 410, said trial shall be scheduled upon the completion of discovery; and it is further;

ORDERED that within 10 days of service of this Order with Notice of Entry upon respondents, petition shall cause to be served upon respondents a Notice of Examination consistent with the requirements of CPLR Article 31; and it is further

ORDERED that respondents shall file an answer to the petition within 10 days of service this Order; and it is further


ORDERED that respondents' motion to dismiss the petition (mot seq # 002) pursuant to CPLR 3211 (a) (7) and (10) is denied in its entirety; and it is further

ORDERED that petitioner's cross-motion (mot seq # 002) is denied with leave to renew; and it is further

ORDERED that a copy of the Order with Notice of Entry shall be served on respondents within twenty (20) days of date of such entry; and it is further

ORDERED that the parties appear for a preliminary conference on April 1, 2026 at 10 am
at 60 Centre Street, Room 232, New York, New York.

12/11/2025
DATE


LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE