

Matter of Alumnae Assn. of St. Luke's Hosp. Sch. of Nursing
2017 NY Slip Op 30637(U)
March 24, 2017
Supreme Court, New York County
Docket Number: 158918/16
Judge: Nancy M. Bannon
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

-----X

In the Matter of

Index No. 158918/16

ALUMNAE ASSOCIATION OF ST. LUKE'S HOSPITAL
SCHOOL OF NURSING, A Beneficiary of the
Jane A. Osborne Trust

DECISION AND ORDER

MOT SEQ. 001

-----X

NANCY M. BANNON, J.:

I. INTRODUCTION

The petitioner, Alumnae Association of St. Luke's Hospital School of Nursing (the Association), petitions the court to (a) invoke its cy pres authority to release restrictions placed upon the distribution of assets to it from the Jane A. Osborne Fund (the Fund), a charitable trust created under the last will and testament of Mary Cleora Osborne, (b) direct that those assets instead be paid to the St. Luke's Nurses Benefit Trust (SLNBT), and (c) direct the trustee of the Fund and Mt. Sinai St. Luke's, which acts as a conduit of those assets from the Fund to the Association, to account to it with respect to all Fund assets.

The Attorney General appears in this proceeding and expressly states that he has no objection to the relief sought in the petition. Mt. Sinai St. Luke's appears in the proceeding, but takes no position as to the merits of the petition.

The petition is granted in its entirety, without opposition.

II. BACKGROUND

A. The Association, The Fund, and the SLNBT

The Association is a not-for-profit membership corporation, incorporated in 1898, whose members are alumnae of the St. Luke's Hospital School of Nursing. The Association's certificate of incorporation recites that it was incorporated "[t]o promote the interests of St. Luke's Hospital Training School for Nurses, to raise the standard of nursing generally, to cultivate social intercourse among the Alumnae of said school, to assist the members of such corporation in obtaining professional employment, to aid them in promoting and protecting their rights and interests, and to provide a fund for the benefit of sick, infirm or disabled nurses, graduates of the said school."

The Association is the beneficiary of the Fund, which is a testamentary charitable trust created under the will of Mary Cleora Osborne, dated October 26, 1949. Specifically, that will bequeathed certain funds to what was then known as St. Luke's Hospital, "to be received by said Hospital and held and administered as a fund created by me and to be known as the 'Jane A. Osborne Fund'; and the income and avails therefrom shall be paid by the said Hospital to the Alumnae Association of St. Luke's Hospital School of Nursing from time to time, as shall be proper and convenient."

The SLNBT is a New York charitable trust engaged in

activities that are substantially similar to the charitable activities of the Association. The SLNBT is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and has agreed to carry out the purpose and mission of the Association. The terms of the trust that established the SLNBT recite that it was:

"created and shall be operated solely and exclusively for charitable and educational purposes . . . to provide a fund from which the Trustees may draw upon for the benefit of graduates of the St. Luke's Hospital School of Nursing of New York City (hereinafter referred to as the "School"), providing specifically for the relief and support of the sick, disabled, aged, indigent or needy graduates of the School, and to assist financially, through payment of tuition or through direct grants in aid, in the education and support of graduates of the School and while pursuing courses of graduate study at any accredited institution of higher learning located in the United States In addition, and at the Trustees' sole discretion, the Trust may be operated for charitable and educational purposes to support and in furtherance of the medical nursing profession at large, to assist retired, disabled, elderly and/or indigent nurses or former nurses with financial and/or medical needs, to promote and advance the nursing profession and work conditions, to educate and/or to establish an educational fund to provide scholarship and grants for training or schooling for nurses and individuals studying to be professional nurses." (emphasis added).

B. The Petition

The petition alleges that, inasmuch as the St. Luke's Hospital School of Nursing ceased operations in 1974, no graduates have become alumnae since that year, and the Association's membership has dwindled accordingly. As a consequence, the board of directors and the membership of the

Association recommended by an overwhelming vote that the Association be dissolved and a plan be effectuated to ensure that the legacy and intent of the Association is carried out. Thus, on May 24, 2014, the membership approved a plan of dissolution and distribution of assets, which was formally approved by the Attorney General on September 9, 2015. The plan of dissolution and distribution provides that the Association is to wind up its affairs and turn over its assets to the related SLNBT.

The petition further alleges that, historically, St. Luke's Hospital, upon receipt of monies from the Fund, has paid over Fund assets to the Association only intermittently, in varying degrees and intervals, and only after repeated requests by and persistent follow-up inquiries from the Association. Moreover, St. Luke's Hospital has not provided the Association with an accounting of Fund assets or required disbursements. The petition alleges that, in 2013, St. Luke's merged with Mt. Sinai Medical Center and several other hospitals and facilities, becoming Mt. Sinai St. Luke's. It further alleges that, as of February 2016, the trustee of the Fund advised the Association that the Fund held principal assets in the sum of \$207,496.

III. DISCUSSION

A. CY PRES

The Association requests the court to invoke its cy pres

authority to release all parties from the directives set forth in the provisions of the Maria Cleora Osborne will referable to it, and direct that all Fund assets be paid over to the SLNBT.

EPTL 8-1.1(c), which codifies the doctrine of cy pres, provides that

"whenever it appears to [the] court that circumstances have so changed since the execution of an instrument making a disposition for religious, charitable, educational or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition, the court may, on application of the trustee or of the person having custody of the property subject to the disposition and on such notice as the court may direct, make an order or decree directing that such disposition be administered and applied in such manner as in the judgment of the court will most effectively accomplish its general purposes, free from any specific restriction, limitation or direction contained therein."

Thus, a court having jurisdiction over a charitable disposition may invoke the cy pres power to modify the disposition on its own initiative if those conditions are met. See Board of Trustees of Museum of Am. Indian, Heye Found. v Board of Trustees of Huntington Free Lib. & Reading Room, 197 AD2d 64, 79 (1st Dept. 1994). Specifically, "[w]hen a court determines that changed circumstances have rendered the administration of a charitable trust according to its literal terms either 'impracticable or impossible,' the court may exercise its cy pres power to reform the trust in a matter that 'will most effectively accomplish its general purposes.'" Matter of Wilson, 59 NY2d 461, 472 (1983), quoting EPTL 8-1.1(c)(1); see Matter of Lally, 112 AD3d 1099,

1100 (3rd Dept. 2013); Matter of Post, 2 AD3d 1091, 1093 (3rd Dept. 2003).

The Association established that circumstances have changed since 1974, inasmuch as its membership is small and dwindling, and that it will soon have no members left, necessitating its dissolution. The Association also demonstrated that SLNBT has essentially superseded it in the provision of support for graduates and nurses affiliated with Mt. Sinai St. Luke's, as well as related functions, and that SLNBT has agreed to continue the Association's beneficent works. It has further shown that the principal remaining in the Fund is limited, and that the application of cy pres so as to release the Fund and Mt. Sinai St. Luke's from the relevant provisions of the subject will, and direct that Fund assets be paid to SLNBT, would best effectuate the settlor's intent in creating the Fund. See Matter of Post, supra; Lefkowitz v Lebensfeld, 68 AD2d 488 (1st Dept. 1979).

B. ACCOUNTING

Where beneficiaries of a charitable trust are clearly identified as intended beneficiaries, sharply defined, and limited in number, and have a preference in the disposition of the trust, they have a "special interest" in the enforcement of the trust, and the right to an accounting. Alco Gravure v Knapp Found., 64 NY2d 458, 465 (1985); Lucker v Bayside Cemetery, 114

AD3d 162, 170 (1st Dept. 2013). The Association, as the sole named, intended beneficiary and distributee of Fund assets, has established that it has such a special interest, and thus established its entitlement to an accounting from both the Fund and Mt. Sinai St. Luke's. See generally Alco Gravure v Knapp Found., supra; Lucker v Bayside Cemetery, supra.

IV. CONCLUSION

Accordingly, it is

ORDERED that the petition is granted, without opposition; and it is further,

ORDERED that Mt. Sinai St. Luke's and the trustee of the Jane A. Osborne Fund are released from the obligation set forth in Paragraph NINTH, Subparagraph "c," of the Last Will and Testament of Mary Cleora Osborne dated October 26, 1949, requiring "income and avails" from the Jane A. Osborne Fund to be forwarded to the Alumnae Association of St. Luke's Hospital School of Nursing, and it is further,

ORDERED that Mt. Sinai St. Luke's and the trustee of the Jane A. Osborne Fund are directed to pay, to the St. Luke's Nurses Benefit Trust, all corpus, principal, income, and pending

distributions from the Jane A. Osborne Fund that are earmarked or required to be held or distributed for the benefit of the Alumnae Association of St. Luke's Hospital School of Nursing; and it is further,

ORDERED that Mt. Sinai St. Luke's and the trustee of the Jane A. Osborne Fund are directed, within 60 days of this order, to account to the Alumnae Association of St. Luke's Hospital School of Nursing for all principal, income, losses, profits, expenses and distributions for the 10-year period commencing on April 1, 2007, or since the date of the last account, whichever is earlier.

This constitutes the Decision and Order of the court.

Dated: 3/24/17

ENTER: 
J.S.C.

HON. NANCY M. BANNON