

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK_____
ELLEN AGUIAR,

Plaintiff

v.

WILLIAM NATBONY, individually and as
trustee of the THOMAS S. KAPLAN 2004
QUALIFIED TEN YEAR ANNUITY TRUST
AGREEMENT and the DAFNA KAPLAN 2003
EIGHT YEAR ANNUITY TRUST
AGREEMENT, THOMAS KAPLAN and
DAFNA KAPLAN,Defendants.

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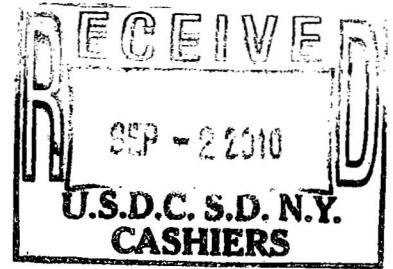
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COMPLAINT



Plaintiff Ellen Aguiar sues defendants William Natbony, individually and as trustee of the Thomas S. Kaplan 2004 Qualified Ten Year Grantor Retained Annuity Trust (the "Thomas Trust") and of the Dafna Kaplan 2003 Eight Year Grantor Retained Annuity Trust (the "Dafna Trust" and, together with the Thomas Trust, "the Trusts"), Thomas Kaplan, and Dafna Kaplan and alleges as follows:

INTRODUCTION

1. This lawsuit arises from actions taken by defendant Thomas Kaplan ("Kaplan") as a result of a bitter business dispute with his nephew, Guma Aguiar ("Guma"), a non-party to this action. As a result of this business dispute with Guma, Kaplan launched what he termed an "offensive" across "the broadest front imaginable" which included the wrongful acts against plaintiff Aguiar -- Kaplan's sister and Guma's mother -- that give rise to this action. (See Exhibit 1, December 15, 2008 E-mail from Thomas Kaplan to Ellen Aguiar.) As one aspect of Kaplan's

vindictive “offensive,” defendant William Natbony (“Natbony”), the sole trustee of the billion dollar irrevocable Trusts, and subordinate of Kaplan, who is wholly dependent upon the Kaplans for his livelihood, removed plaintiff and her issue as beneficiaries¹ of the Trusts. In so doing, Natbony breached his fiduciary duty to plaintiff Aguiar.

2. Natbony’s removal of plaintiff as a beneficiary was not the first time he breached his duties as trustee by favoring the Kaplans. Indeed, contrary to his obligation as a putative disinterested and unconflicted trustee, Natbony effectively ceded management of the Trusts to the Kaplans. Natbony allowed the Kaplans to direct the investment of the corpus of the Trusts for the Kaplans’ benefit including by investing millions of dollars in purchases of land and art at the direction of the Kaplans.

3. As a result of these improper actions by the Kaplans and Natbony, the January 7, 2009 Amendments to the Trusts that removed plaintiff and her issue as beneficiaries, are invalid and plaintiff and her issue must be reinstated as beneficiaries. In addition, and by reason of his various breaches of duty and relationship with the Kaplans, Natbony should be removed as trustee and the Court should appoint a neutral disinterested and non-conflicted successor trustee to ensure the ongoing protection of the Trusts and the beneficiaries.

PARTIES, JURISDICTION, AND VENUE

4. Plaintiff Aguiar is a resident of Broward County, Florida, and a citizen of the state of Florida. She is a person interested in the Trusts in that, until she was improperly removed as a beneficiary, she was, and thus still should be, a beneficiary of the Trusts. Plaintiff has suffered an injury in fact to her interest in the Trusts in that Natbony breached his fiduciary duty to her, and abused his fiduciary discretion, by improperly and in bad faith removing her as a beneficiary

¹ The other innocent family members who were removed as beneficiaries include: Adrianna Aguiar, Jannai Aguiar, Angelika Aguiar, Olivia Aguiar (a minor child), Jacob Aguiar (a minor child), Lilly Aguiar (a minor child) and Jonathan Aguiar (a minor child).

of the Trusts and by dissipating trust assets. As the improper or wrongful acts of the defendants related to the Trusts, and impact her interests as a beneficiary thereof, plaintiff Aguiar has standing to bring this action for wrongful removal as a beneficiary of the Trusts, for injunctive relief to prevent the dissipation of the assets of the Trusts, and further for removal of a faithless and conflicted trustee.

5. Defendant Natbony is a citizen and resident of New York State. He has served as the sole trustee of the Thomas Trust and the Dafna Trust at all times relevant to this action. The Trusts provide that they are to be construed under the law of New York. As trustee of the Thomas Trust and Dafna Trust, defendant Natbony had (and still has) a fiduciary duty to the Trusts' beneficiaries, including plaintiff Aguiar.

6. Defendant Kaplan, the Settlor of the Thomas Trust, is a citizen of New York and a resident of New York City. Kaplan is married to defendant Dafna Kaplan.

7. Defendant Dafna Kaplan is a resident of New York City, New York, and is a citizen of Italy and Israel. She is the Settlor of the Dafna Trust.

8. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because the parties are citizens of different states, or citizens of different states where citizens of a foreign state are additional parties, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Venue is proper pursuant to 28 U.S.C. § 1391(a) because one or more defendants reside in this District and because the underlying events and omissions giving rise to this action occurred in this District.

10. All conditions precedent to this action have been satisfied and fulfilled.

FACTUAL ALLEGATIONS

A. The Trusts and Natbony as Trustee.

11. The Trusts at issue in this litigation, upon information and belief, hold over two billion dollars, almost all of which constitute proceeds of the sale of Leor Exploration and Production LLC (“Leor”), a natural gas exploration company that was founded by Kaplan and Guma in 2003. Natbony and Kaplan were the directors of Leor. Leor was sold in 2007 for over 2.55 billion dollars. Almost all of the proceeds were funneled into the Trusts.

12. The Trusts are *irrevocable* Grantor Retained Annuity Trusts (commonly referred to as “GRATS”). The Kaplans, in exchange for the broad tax advantages of a GRAT, forfeited their right to manage or otherwise dictate the affairs of the Trusts. However, although the Kaplans received a tax advantage worth tens of millions of dollars, they violated the terms of the Trusts and the rules and regulations of the Internal Revenue Code by retaining and exercising effective control and ownership of the Trusts.

13. Plaintiff Aguiar and her issue were named beneficiaries of the Thomas Trust at its inception on April 6, 2004. As such, plaintiff Aguiar and her issue were entitled, at the sole discretion of a disinterested trustee, to receive income and principal after the expiration in 2014 of the Original Trust² term and during the lifetimes of Kaplan or his wife, Dafna. Plaintiff is also a remainder beneficiary in the event the Kaplans and their issue should not survive the Termination of the Thomas Trust.

14. The Dafna Trust was created on December 29, 2003, and provided that plaintiff Aguiar and her issue were remainder beneficiaries. The Dafna Trust was amended on August 8,

² The “Original Trust,” in both the Thomas and Dafna GRAT, holds the trust property for a period of ten years (in the case of the Thomas Trust) and eight years (in the case of the Dafna Trust) during which time annuity payments are made to the Settlers. Upon expiration of the annuity period, if certain conditions are met, the trust property is held by the trustee in a “Family Trust.”