

Matter of Wellington Trusts

2013 NY Slip Op 30713(U)

March 27, 2013

Surrogate's Court, Nassau County

Docket Number: 117708/1965

Judge: III., Edward W. McCarty

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

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In the Matter of the Judicial Settlement of the Final Account
of Proceedings of the

WELLINGTON TRUSTS.

File No. 117708/1965
File No. 167490/1974
File No. 329415
File No. 329418
File No. 329419

Dec. No. 28472
Dec. No. 28473
Dec. No. 28474
Dec. No. 28475
Dec. No. 28476

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Before the court is a trustee's motion to bifurcate liability and damages in an upcoming trial of five contested trust accounting proceedings. The accounts were filed by JPMorganChase Bank, N.A. and its co-trustees, where applicable. The objectant to all five accounts is Sarah P. Wellington, a trust beneficiary. For the reasons set forth below, the trustee's motion is denied.

BACKGROUND

Sarah P. Wellington (hereinafter, "Sarah"), is the daughter of Thomas D. Wellington, who is deceased (hereinafter, "Tom"), and the granddaughter of Herbert G. Wellington, Sr., (hereinafter, "Herbert, Sr.") and Elizabeth Wellington (hereinafter, "Elizabeth"), both also deceased. The trusts herein referred to as the Wellington Trusts, or the Trusts, were created pursuant to four instruments: (1) an inter vivos trust agreement executed by Herbert, Sr. on August 15, 1961 (hereinafter, the "1961 Trust Agreement"); (2) Herbert Sr.'s Last Will and Testament (hereinafter, "Herbert Sr.'s will"); (3) the Last Will and Testament of Herbert's wife, Elizabeth (hereinafter, "Elizabeth's will"); and (4) the Last Will and Testament of Herbert Sr.'s younger son, Tom (hereinafter, "Tom's will"). Prior to Tom's death, JPMorganChase Bank, N.A. (hereinafter, "JPMorgan"), served as co-trustee of the Trusts for almost forty years.

Herbert, Sr. had appointed his older son, Herbert Wellington, Jr. (“Herb”), as co-trustee while Elizabeth had appointed Herbert Sr.’s and Herb’s business partner, Robert Merrill (hereinafter, “Robert”), as co-trustee. While Tom was alive, there were three trusts for his benefit, under the 1961 Trust Agreement (hereinafter, “Tom Trust #1”), one under Herbert Sr.’s will (hereinafter, “Tom Trust #2”) and one under Elizabeth’s will (hereinafter, “Tom Trust #3”). Under the 1961 Trust Agreement, upon Tom’s death, one-fourth of Tom Trust #1 flowed into a trust for the benefit of Sarah (hereinafter, “Sarah Trust #1”) (and the other three-fourths to trusts for her half-siblings). Upon Tom’s death, Tom exercised powers of appointment granted to him under Herbert Sr.’s will and under Elizabeth’s will and created four new trusts, one for each of his four children, funded with the assets from Tom Trust #2 and Tom Trust #3. Sarah’s trust is known as “Sarah Trust #2.” Following Tom’s death, JPMorgan continued, along with Herb, to serve as co-trustee under the 1961 Trust Agreement until Herb’s resignation in 2004. JPMorgan has served as sole trustee of Sarah Trust #2, following the renunciation of her half-siblings as co-trustees.

THE ACCOUNTS

In August 2003, JPMorgan and its co-trustees filed petitions seeking approval of their Accounts for Tom Trust #1, Tom Trust #2, Tom Trust #3, Sarah Trust #1 and Sarah Trust #2. The petitions were served on all interested parties, including but not limited to Sarah and her half-siblings. Only Sarah filed objections.

OBJECTIONS TO THE ACCOUNT

Sarah alleges that JPMorgan breached its fiduciary duties to her by: (1) causing substantial losses in the trusts failing to diversify the trusts’ assets; and (2) failing to make appropriate distributions to her from the income and/or principal of the trusts. More specifically,

the expert report filed in support of Sarah's objections alleges that JPMorgan failed to sell certain assets, failed to diversify among different classes of assets, and failed to diversify within classes of assets. Sarah seeks equitable and monetary damages in the form of restitution, retroactive distributions, return of commissions, surcharges, attorneys' fees, diversification, removal of the fiduciary and appointment of a successor trustee or co-trustee.

Movant argues, however, that the expert report provides a simplified analysis of the alleged damages suffered and does not address how the Trusts should have been invested in the alternative, thus rendering it impossible for JPMorgan to respond with a calculation of purported damages by its own expert. The trustee maintains that even if Sarah proves liability, it would be impossible at this stage to determine what stocks should have been sold and when, and which classes and types of assets should have been reallocated, if any.

MOTION TO BIFURCATE LIABILITY AND DAMAGES

In anticipation of the upcoming trial on the contested accountings, the present motion to bifurcate the liability portion of the trial and the damages portion of the trial was filed by JPMorgan. JPMorgan filed affidavits and a reply brief in support of the motion. The requested bifurcation would limit the first phase of the proceedings solely to liability issues. It is argued that this is necessary due to the complexity of the issue of damages. If the trial is bifurcated, and JPMorgan is found to have breached its fiduciary duties to Sarah, the court would then address the issue of damages.

An affirmation in support of JPMorgan's motion to bifurcate was filed by counsel for Peter L. Wellington (hereinafter, "Peter"), and Margaret Wellington Constantine (hereinafter, "Margaret"). Peter and Margaret are two of the three presumptive remainder beneficiaries of the trusts for the benefit of Sarah, and they are also the primary beneficiaries of the parallel trusts

whose accounting proceedings are uncontested. Counsel also represents the adult children of Peter and Margaret; the children are contingent remainder beneficiaries of Sarah's trusts as well as beneficiaries of the trusts for the respective benefits of their parents. Counsel's affirmation indicates that he concurs with the motion for bifurcation, in the hope that bifurcation will enable the avoidance of unnecessary trust expenses and lead to a speedier resolution of the conflict.

OPPOSITION TO THE MOTION

Sarah filed a memorandum of law in opposition to JPMorgan's motion to bifurcate, in which she disputes the affidavit filed by JPMorgan's expert, who argues that this is an unusually complex case. Sarah maintains that the proceeding is essentially a simple and direct one, turning on whether JPMorgan failed to appropriately manage the Wellington Trusts. She argues that "liability and damages in this matter are so interwoven as to be indistinguishable. This is a case about damages, and damages are perhaps the best evidence of liability." Sarah asserts that bifurcation would be inefficient and would further delay these accounting proceedings, which were originally filed in 2004.

ANALYSIS

The trustee correctly notes that pursuant to CPLR 603, courts have been granted the authority to bifurcate the trial of any claim or issue. A bifurcated trial is not necessarily the most efficient way to try a proceeding involving damages and liability, and it lies in the discretion of the court to make that determination (*See, e.g., Johnson v Hudson River Construction Co.*, 13 AD3d 864 [3d Dept 2004]). The court notes that neither party has cited a decision in which a court directed bifurcation of liability and damages where the sole issue before the court was whether there was a breach of fiduciary duty to properly invest and distribute assets.

Bifurcation is inappropriate where "defendant has failed to establish that it will result in a

more expeditious resolution of the matter” (*Madden v Town of Greene*, 27 Misc 3d 432, 433-434 [Sup Ct, Chenango County 2010]). Moreover, where the extent of injuries has a major bearing on the issue of liability, bifurcation of liability and damages is inappropriate and unwarranted (*Maddem v Town of Greene*, 27 Misc 3d 432 [Sup Ct, Chenango County 2010]). A bifurcated trial is not appropriate where the evidence to be presented on the issue of damages would also serve to substantiate liability (*See, e.g., Tate v Stevens*, 275 AD2d 1039 [4th Dept 2000]).

Although counsel for Peter and Margaret has expressed his hope that bifurcation may lead to a quicker resolution, no direct connection between bifurcation and a quick resolution has been presented. Movant’s primary argument is that it would be difficult and extremely costly to refute the analysis of damages presented by Sarah’s expert, which he characterizes as simplistic and erroneous. JPMorgan would therefore prefer to address that issue only if there is an initial finding of liability.

The court finds that movant has failed to establish that bifurcating liability and damages will lead to a more expeditious resolution of these much delayed proceedings. More significantly, the court finds that the nature and extent of damages are essential to the issue of liability, because the damages are being presented as the evidence of liability.

CONCLUSION

The motion to bifurcate the trial is denied.

This constitutes the decision and order of the court.

Dated: March 27, 2013

EDWARD W. McCARTY III
Judge of the
Surrogate’s Court