

Genger v Genger
2015 NY Slip Op 31450(U)
August 3, 2015
Supreme Court, New York County
Docket Number: 651089/10
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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ARIE GINGER and ORLY GINGER, in her individual capacity and on behalf of THE ORLY GINGER 1993 TRUST,

Index No. 651089/10

Plaintiffs,

Mot. seq. no. 044

-against-

DECISION AND ORDER

SAGI GINGER, TPR INVESTMENT ASSOCIATES, INC., DALIA GINGER, THE SAGI GINGER 1993 TRUST, ROCHELLE FANG, individually and as trustee of THE SAGI GINGER 1993 TRUST, GLEN CLOVA INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP, MARK HIRSCH, and TRANS-RESOURCES, INC.,

Defendants.

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BARBARA JAFFE, JSC:

By motion sequence number 42, filed on August 11, 2014, defendant Dalia Genger, as trustee of the Orly Genger 1993 Trust, moved for an order substituting herself as plaintiff in an action by her daughter Orly Genger against the Trump Group and directing the Trump Group to pay settlement proceeds into court. (NYSCEF 1109). Oral argument was held on March 25, 2015. (NYSCEF 1275, Transcript). By interim order dated May 7, 2015, the motion was held in abeyance, pending the Surrogate Court's resolution of Orly's petition seeking the removal of Dalia as trustee of the Orly Trust. (NYSCEF 1279).

The Trump Group and Trans-Resources, LLC (collectively, Trump Group-TR) filed the instant motion seeking leave to reargue the interim order, contending that while that portion of Dalia's motion as to the payment of settlement proceeds into court was properly held in abeyance, I overlooked or misapprehended the fact that "all parties unanimously agree that all of

Orly Genger's claims, derivative or otherwise, have been settled and dismissed from this action," and that therefore, the portion of Dalia's motion seeking her "substitution in place of Orly on Orly's settled and dismissed claims against Trump Group" should be denied "without further delay," and that there is no need to await the Surrogate Court's resolution of Orly's motion to remove Dalia as trustee. (NYSCEF 1286).

Dalia opposes (NYSCEF 1356); other members of the Genger family, including Arie, Orly and Sagi, take no position.

In opposing, Dalia contends, among other things, that the motion seeks a "piecemeal determination" of her motion, and that it is based on the "false premise" that all parties agree that the Orly Trust's claims against Trump Group-TR are settled and dismissed (NYSCEF 1356, ¶ 26), and that Orly has argued in this court that the claims brought by her trust against Trump Group-TR "were not settled either by the July 2013 [confidential settlement agreement] or the August 2013 Delaware dismissal" (*Id.*, ¶¶ 29-32).

In rebuttal, Trump Group-TR argues, among other things, that Dalia "does not retreat" from statements made by her counsel at oral argument that "the settlement agreement . . . seems to confirm and be consistent with the Trump Group's position that they intended to and did settle all of the claims including, most importantly, the trust claims [against the Trump Group]," and that the only quibble is "about the timing of the settlement and/or dismissal of the Orly Trust's claims." (NYSCEF 1360 at ¶ 4, quoting NYSCEF 1275 at 7).

To obtain leave of court to reargue, a party must identify "matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." (CPLR 2221 [d] [2]).

Given the voluminous Genger family litigation, and the many related pending actions by and among the parties, varied positions have been taken by the parties throughout the years, both in this court and in others, including the Federal and Delaware courts. While I am also aware of the efforts taken by the Trump Group in extracting themselves from the Genger family's internecine war by settling their disputes with various members of the Genger family, the issues raised by the parties in these protracted and complicated litigations, even in the context of purported settlements, are convoluted and far from clear, as the parties themselves have acknowledged and conceded.

The interim order, moreover, does not constitute "a determination of the prior motion" within the meaning of CPLR 2221(d). Rather, it defers the determination of Dalia's motion pending resolution by the Surrogate Court of Orly's motion to remove her as trustee, without deciding the merits. Based on the representation of Orly's counsel made at oral argument, it appears that the Surrogate Court has appointed a guardian for the children who are the remaindermen of the Trust, and that the Surrogate has signaled her agreement that "Dalia should be removed as trustee and that she has violated her [fiduciary] obligations." (NYSCEF 1275 at 3-4). In such regard, and as I indicated in a prior order entered in a related action (index number 113862/2010): "in the event that [Dalia] is removed as trustee, she will not have standing to prosecute the instant action on behalf of the Orly Trust. Indeed, the new or successor trustee, in the exercise of sound discretion, will have to determine whether this action should be maintained or discontinued." (NYSCEF 119 at 2).

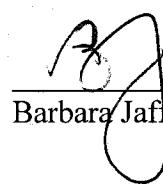
To the extent that Trump Group-TR is concerned that the claims against them "may be revived in this action" and may render meaningless their settlements with the various members of

the Genger family in the event the relief sought in their instant reargument motion is not granted (NYSCEF 1360 at 6), the entry of this order denying such relief is without prejudice to their right to oppose any subsequent motion by Dalia seeking relief relating to her prior motion.

Accordingly, based on all of the foregoing, it is hereby

ORDERED, that motion of Trump Group-TR (NYSCEF 1286, motion sequence 44) for leave to reargue the May 7, 2015 interim order (NYSCEF 1279) is denied, without prejudice.

ENTER:


Barbara Jaffe, JSC

Dated: August 3, 2015
New York, New York