

Matter of Stewart

2019 NY Slip Op 30972(U)

April 15, 2019

Surrogate's Court, New York County

Docket Number: 2005-3833/C

Judge: Nora S. Anderson

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New York County Surrogate's Court

Date: APRIL 15, 2019

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

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In the Matter of the Application of
Gregory Stewart for Surcharge against
Barbara Stewart as Trustee of an Inter
Vivos Trust Created by

File No. 2005-3833/C

GREGORY STEWART,

as Grantor.

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A N D E R S O N , S .

The several Stewart Family inter vivos trusts have been the subject of a great deal of litigation in this court. This proceeding brought by the grantor/beneficiary of one of the trusts, asks the court to direct his mother, a former trustee, to account and to surcharge her for certain conduct which he alleges caused loss to the trust. Specifically, petitioner alleged that, during the time the former trustee was in office, she 1) misappropriated a silver collection belonging to the trust; 2) refused to reimburse the trust for her personal travel expenses; and 3) required the trust to incur significant legal fees to oppose self-serving positions she had taken in seeking to invalidate the trust. The proceeding was referred to Special Referee Howard A. Levine.

The former trustee moved to dismiss the petition. She argued that the claims regarding the silver collection and her air travel were barred by the doctrines of collateral estoppel and res judicata; that the trust was foreclosed from recouping

travel expenses that were borne not by the trust but by a separate entity; and that claims regarding legal fees were foreclosed by prior court determinations. She further argued that the travel and legal-fee claims were barred by the statute of limitations.

The special referee issued a report in which he characterized the proceeding as one to compel an account, which is governed by a six-year statute of limitations. He discussed each of the grounds for dismissal argued by the former trustee and concluded that she had not provided a sufficient factual or legal basis for dismissal. Specifically, he concluded that collateral estoppel and res judicata did not apply to determinations which had been made in a divorce proceeding between the former trustee and her co-trustee to which petitioner had not been a party or in privity with a party, and where, in any event, the determinations were not final. He further concluded that the statute of limitations defense was inapplicable because respondent had not formally repudiated her fiduciary obligations; that the proceeding had been initiated within the limitations period; and that, in any event, respondent had waived the defenses by not asserting it in her answer. He determined that petitioner had raised triable issues as to the trust's right to reimbursement for the travel expenses and as to whether petitioner had consented to respondent's free travel. He

similarly rejected the defenses asserted to the claim for legal fees. He thus recommended that the court deny the former trustee's motion. She now moves to reject the report.

Upon initial consideration of the special referee's report, the court remitted the matter to him *sua sponte*, asking that he address a threshold issue of standing. After the parties submitted their briefs, the special referee issued a supplemental report in which he concluded that petitioner, as beneficiary of the trust, had standing to bring the petition.

The special referee also revisited his initial characterization of the case as one to compel an account and concluded that the petition's demand for an order to account was limited to the extent that it demanded the former trustee be held responsible only for specific breaches of fiduciary duty. The proceeding was thus more "accurately and fairly characterized" as an equitable claim to impose a surcharge for specific breaches of fiduciary conduct, to which a six-year statute of limitations also applies, and which, as noted above, had been waived. He thus did not change the recommendation that the motion to dismiss be denied.

The court concurs with the special referee's recharacterization of the proceeding and with the special referee's other findings, as supported by the record, and with his conclusions of law, which are soundly reasoned. Accordingly, the referee's report is confirmed.

This decision constitutes the order of the court.



S U R R O G A T E

Dated: April 15 , 2019