

<b>Matter of de Sanchez</b>
2019 NY Slip Op 31011(U)
April 17, 2019
Surrogate's Court, New York County
Docket Number: 2001-3187/A/B/C/D/E/F/H/I/J/K/L/M
Judge: Nora S. Anderson
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SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court

Date: APRIL 17, 2019

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In the Matter of the Accounts of Separate  
Trusts Created Under Agreements dated  
September 16, 1927, and October 5, 1927,  
between

ELIZABETH L. de SANCHEZ,  
  
as Grantor,

File No. 2001-3187/  
A/B/C/D/E/F/H/I/J/K/L/M

and Central Union Trust Company of New  
York, as Trustee, for the benefit of  
Emilio Sanchez Laurent, et al.  
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A N D E R S O N , S .

This is a motion by the petitioner/trustee to compel expert witness disclosure in related contested trustee accounting proceedings.

In 1927, Elizabeth de Sanchez, as grantor, under agreements with Central Union Trust Company of New York, as trustee, created seven inter vivos trusts for the benefit of grantor's children and their issue. JPMorgan Chase Bank, N.A., the successor trustee, has filed its account for each of the trusts for various time periods. Two groups of objectants (referred to collectively as "objectants"), represented by separate counsel, have filed substantially similar and global objections to the trustee's management of the trusts, alleging that the trustee, in making its investment decisions, failed to consider or protect the interests of remainderpersons; failed to communicate with objectants regarding their investment needs and objectives and with respect to substantive issues about the trusts; failed to

apply the prudent person and prudent investor standards applicable to the trusts at various time periods; and failed to adhere to its own policies regarding periodic investment reviews. Objectants further allege that the trustee made self-serving investments in trustee-sponsored funds without considering other possible investments and failed to disclose the trustee's conflict of interest. Finally, objectants allege that the trustee breached its fiduciary duty to distribute trust assets properly.

Prior to trial, the trustee demanded and received disclosure regarding objectants' proposed expert witnesses. However, the trustee argues that the disclosure provided is insufficient under the controlling statute, CPLR 3101(d)(1).

CPLR 3101(d)(1) requires a party, upon request, to

"identify each person whom the party expects to call as an expert witness at trial and [to] disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion."

Objectants collectively named six proposed expert witnesses. There is no dispute that the disclosure of the experts' identity and qualifications is adequate. The trustee argues, however, that objectants' disclosure as to the substance of the facts and opinions on which these expert witnesses are expected to testify, the grounds for their opinions, and the relevant standards which

they will apply fall short of the "reasonable detail" required by the statute. In particular, the trustee argues that the objectants fail to identify which of the approximately one thousand investments made during the administration of these trusts were imprudent, how much loss was incurred by each such investment, and the particular fiduciary standard or practice which was violated by each such investment. The trustee argues that this level of particularity is required by the statute and necessary in order to prepare adequately for trial.

Article 31 of the CPLR requires full disclosure of "all matter material and necessary..." to the litigation (CPLR 3101[a][1]). Materiality is determined by reference to the issues framed by the pleadings (*Mavroudis v State Wide Ins. Co.*, 102 AD2 864 [2d Dept 1984]). Trial courts, in exercising their broad discretion to supervise disclosure, apply a rule of reason (*NBT Bancorp v Fleet/Norstar Fin. Group*, 192 AD2 1032 [3d Dept 1993]).

Objectants do not challenge individual investment decisions as improper. Rather, the thrust of the objections is that the trustee failed to consider the investment needs and objectives of the remainder beneficiaries and to develop an investment strategy to serve those objectives. While an individual investment might be illustrative of this alleged failure, the issue framed by the pleadings is not about the impropriety of individual investments

*per se*. The demand for an analysis of each individual investment and the consequent loss, if any, is thus based on a distortion of the issues raised in the objections. Such disclosure is thus not material to the issues as framed and is beyond the scope of what the statute requires.


Even if such specifics were material, however, the degree of particularity which the trustee seeks is more than the statute requires. Disclosure of the subject matter on which an expert is expected to testify and the substance of the grounds for his or her opinion is required, but not the detailed facts and opinions themselves (*see, e.g., Delta Fin. Corp v Morrison*, 14 Misc 3 428, 827 NYS2 [Sup Ct, Nassau County, 2006]). Although a bare statement of the expert's ultimate conclusion is insufficient (*Richards v Herrick*, 292 AD2 874 [4<sup>th</sup> Dept 2002]), objectants have provided sufficient "reasonable detail" of the experts' anticipated testimony to satisfy the statutory requirements (*see, e.g., Krygier v Airweld, Inc.*, 176 AD2 700 [2d Dept 1991]). Objectants have also sufficiently identified the standards which their experts will apply by referring to the applicable standards under New York law at the relevant times and by use of widely-understood terms as "fiduciary duties" and "best trust practices."

Although disclosure of reports prepared by experts is not required (*Richards v Herrick*, 292 AD2 874 [4<sup>th</sup> Dept, 2002])

objectants nonetheless provided the trustee with two such reports during settlement negotiations. Objectants assert that the reports, which contain more detailed information than their initial response to the discovery demand, suffice to fulfill their disclosure obligations. However, the reports are marked confidential and for settlement purposes only. Objectants are directed to provide copies of these reports to the trustee without such limitation.

A secondary argument made by the trustee, *i.e.*, that objectants' appear to be planning to offer duplicative expert testimony, is speculative and is reserved for trial.

This decision constitutes the order of the court.



S U R R O G A T E

Dated: April 17 , 2019