

**Sills v Royston**

2020 NY Slip Op 34506(U)

January 17, 2020

Supreme Court, Steuben County

Docket Number: 79987

Judge: Patrick F. McAllister

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT : STEUBEN COUNTY

Index Nos. 79987 & 86951

AUDREY E. SILLS, as Executor of the ESTATE  
of ANGELINE V. SILLS,

Plaintiff,

-v-

JOAN ROYSTON,

Defendant.

DECISION and ORDER

AUDREY E. SILLS, as Executor of the ESTATE  
of ANGELINE V. SILLS,

Plaintiff,

-v-

FLEET NATIONAL BANK, JOAN ROYSTON,  
KIRK RICHARDSON and COMMUNITY BANK,  
NA f/k/a WILBER NATIONAL BANK,

Defendants.

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CLERK'S OFFICE

The Plaintiff through her attorney, Paul Argentieri, Esq., seeks to enforce a settlement agreement and secondarily to dissolve the Sill Revokable Trust. The motion was scheduled for oral argument on January 10, 2020. However, only Paul Nunes, Esq., the attorney for Fleet Bank, appeared for the motion. The court eventually received confirmation from all the attorneys that they were willing to have the court decide the motion on the papers submitted. Jonathan Fellows, Esq. is the attorney for Community Bank and Ronald Benjamin, Esq. represents Joan Royston and Kirk Richardson.

In support of Plaintiff's motion the court received and reviewed the following submissions:

- Notice of Motion;
- Affidavit by Audrey Sills sworn to December 12, 2019

[attachments: Decision and Order,  
 Letter from Paul Argentieri dated November 4, 2019,  
 gmail by Paul Argentieri dated November 8, 2019,  
 gmail by Ronald Benjamin dated November 8, 2019,  
 gmail by Paul Argentieri dated November 12, 2019,  
 gmail by Ronald Benjamin dated November 13, 2019,  
 gmail by Paul Argentieri dated November 14, 2019,  
 gmail by Paul Argentieri dated November 15, 2019,  
 General Release (unsigned),  
 Letter from Ronald Benjamin dated November 10, 2019,  
 Stipulation and Order Approving Settlement and Final  
 Disbursement of Trust Assets (unsigned),  
 Letter from Jonathan Fellows dated December 6, 2019,  
 gmail by Ronald Benjamin December 10, 2019,  
 Notice of Motion,  
 Affidavit by Audrey Sills sworn to December 12, 2019,  
 email by Paul Argentieri dated December 13, 2019,  
 email by Paul Nunes dated December 13, 2019, and  
 email by Paul Argentieri dated December 13, 2019]

In response to, or in opposition to, the Plaintiff's motion the court received and reviewed the following submissions:

Affidavit of Jonathan B. Fellows sworn to January 6, 2020  
 [attachments: Decision and Order dated August 3, 2019,  
 letter from Ronald Benjamin dated November 19, 2019, and  
 (Draft) Stipulation (unsigned)]; and  
 Affirmation in Opposition by Ronald Benjamin affirmed December 16, 2019.

Background:

The above-referenced lawsuits involve over twenty years of litigation. There is a third related case E2019-1139CV . In the fall of 2019 the parties through their respective attorneys started discussion of a global settlement of these ongoing matters. According to the Plaintiff a settlement agreement was reached whereupon the Plaintiff would receive \$300,000 from the Sills Trust in full satisfaction of all claims. The Defendants, Joan Royston and Kirk Richardson, agree that there were negotiations, but allege that no agreement was ever reached. According to the Defendants the negotiations fell apart over the issue of taxes that would be owed by the trust and fees associated with closing the trust.

Discussion:

CPLR §2104 deals with stipulations. It reads as follows:

“An agreement between parties or their attorneys relating to any matter in an action, other than one made between counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.”

There is no question that the parties did not reach any agreement in open court. Therefore, if there is an agreement the court must find the terms of the agreement were set forth in writing.

The parties stipulation is enforceable where (1) it contains all the essential elements of contract, (2) it was not too vague, (3) there was no mutual mistake of material fact or other cause sufficient to invalidate the contract, such as fraud or collusion, (4) it does not violate public policy. Republic, Paiting, Sheeting & Bldg. Corp. v. P.S. Bruckel, Inc., 266 AD2d 814 (Fourth Dept. 1999). Where the terms of the agreement are ambiguous the court may consider extrinsic evidence of the parties' intent. Laing v. Laing, 282 AD2d 655 (Second Dept. 2001).

There are various e-mails and letter which indicate that the parties were working on a settlement including informing the court that they did not need a court appearance because they were settling the case. The writing that seems to most completely formalize the agreement is a November 19, 2019 letter from Ronald Benjaimin, Esq. which states:

“I am writing to advise you that the parties have settled all pending matters between them. The settlement amount is \$300,000 which will be paid by Joan Royston to the estate. We anticipate payment will be made from the trust which we want to dissolve, the balance of the trust will go to Joan and her son. Let me know what you need from Joan or her son Kirk to get the trust dissolved. Thank you for your consideration regarding the above.”

From that letter the court finds the essential elements of contract were met. The court further finds that the language was not too vague. The court further finds that nothing about the stipulated agreement would violate public policy. In fact the courts favor the parties resolving such matters. The court finds that the parties agreed to settle all pending matters. The parties further agreed to settle the claims by having Joan Royston paying the sum of \$300,000.00 to the Estate of Angeline V. Sills. The court further finds that although not a necessary part of the agreement, Defendant, Joan Royston, anticipated withdrawing the \$300,000 settlement payment from the Sills Trust and then closing the trust and dispersing the remaining money to Joan Royston and Kirk Richardson.

The “agreement” apparently fell apart when Ms. Royston discovered that the anticipated

closing of the trust would result in taxes (because gains would then be realized) and that there would be additional costs associated with closing the trust. Neither the taxes which would need to be paid nor the costs of closing the trust should be considered a mutual mistake of a material fact. Frankly the Plaintiff did not care where the \$300,000 settlement came from. Nor does the court consider the dissolution of the trust as being a necessary part of the parties' agreement. Whenever the trustees utilize funds from the trust there would be a tax due and owing unless the holdings in the trust went down in value such that there was a loss and not a gain. And whenever the trust is finally closed there will be cost associated with closing the trust. The tax issue arose because there is currently about \$124,500 in unrealized gain, so if the trust is going to be distributed that tax will need to be paid. Also, Community Bank as a co-trustee is seeking a fee of \$23,500.00. Neither the tax owed nor the costs of closing the trust were concerns of the Plaintiff, nor were they part of the agreement. The court does not consider those factors to be part of the agreement. Nor does the court consider them to be the result of fraud or collusion. Therefore the court finds that the parties did in fact enter into a binding agreement to settle all pending matters for \$300,000. Joan Royston is directed to pay the sum of \$300,000 to the Estate of Angeline V. Sill within 14 days.

The Plaintiff's motion to enforce the settlement is granted. The Plaintiff's motion to dissolve the Sils Trust by court order is denied as the court does not consider the dissolution of the trust as being part of the settlement.

NOW, therefore upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

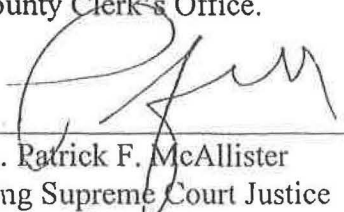
**ORDERED, ADJUDGED, and DECREED** that the Plaintiff's motion to enforce the terms of a settlement agreement be, and hereby is granted; and it is further

**ORDERED, ADJUDGED, and DECREED** that the Plaintiff's motion to dissolve the Sill's Trust be, and hereby is denied; and it is further

**ORDERED, ADJUDGED, and DECREED** that Joan Royston pay the sum of Three Hundred Thousand Dollars within 14 days of this order to the Estate of Angeline V. Sils as and for full satisfaction of all pending claims; and it is further

**ORDERED, ADJUDGED, and DECREED** that all parties sign a stipulation settling and discontinuing all actions and file the same with the Steuben County Clerk's Office.

Dated: January 17, 2020

  
 Hon. Patrick F. McAllister  
 Acting Supreme Court Justice

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