

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present:

Hon. Thomas Feinman
Justice

ROBERT L. SESSA,

Plaintiff,

- against -

SUNNY SESSA, LEONARD V. SESSA,
DENISE SESSA and S&M CATERERS, INC.,

Defendants.

TRIAL/IAS, PART 6
NASSAU COUNTY

INDEX NO. 600616/15

X X X

MOTION SUBMISSION
DATE: 3/31/16

MOTION SEQUENCE
NOS. 1, 2

The following papers read on this motion:

Notice of Motion and Affidavits..... X
Notice of Cross-Motion and Affidavits..... X
Affirmation in Opposition..... X
Reply Affirmation..... X

The defendants, Sunny Sessa, Leonard V. Sessa, Denise Sessa and S&M Caterers, Inc., move for an order, pursuant to CPLR §3212, granting defendants summary judgment on the grounds that there are no triable issues of fact to be decided by a jury regarding defendants' liability, or, in the alternative, pursuant to CPLR §3211, dismissing the complaint and all claims and cross-claims as against defendants for failing to state a cause of action upon which relief can be granted, or, in the alternative, pursuant to CPLR §3211(a)(5), as the claims brought are barred by the applicable statute of limitations pursuant to Florida statutes, whose law should apply here, and by the legal doctrines of waiver and estoppel. The defendants submit a Memorandum of Law in support of their motion. The plaintiff, Robert L. Sessa, cross-moves for an order pursuant to CPLR §3212, granting summary judgment to plaintiff, and denying defendants' motion for summary judgment. The plaintiff submits a Memorandum of Law in support of plaintiff's cross-motion, and opposition to the defendants' motion. The defendants submit a reply affirmation and Memorandum of Law in support of defendants' reply. The plaintiff submits a reply affirmation and Memorandum of Law in support of plaintiff's reply.

The plaintiff initiated this declaratory judgment action to compel the defendant, Sunny Sessa, to sell all the shares she owns in the defendant corporation, S&M Caterers, Inc., (hereinafter referred to as the "corporation"), to either the corporation or the other remaining shareholders. The plaintiff claims that upon Leonard Sessa's death, Sunny Sessa was no longer entitled to hold shares in the corporation as she was not a Permitted Transferee, and was not in compliance with the Shareholder's Agreement as she did not agree to be bound by it.

The plaintiff provides that the corporation operates as a catering hall formerly known as "Leonard's of Great Neck", formed by plaintiff's father, Leonard Sessa, whereupon his death, 65 shares of the stock held by Leonard Sessa, pursuant to the Leonard Sessa Revocable Trust Agreement, (hereinafter referred to as the "Trust"), were distributed as follows: "(a) Thirty-Five (35) shares to Defendant Sunny Sessa (the third wife of Leonard Sessa); (b) Fifteen (15) shares to Defendant Denise Sessa (Plaintiff Robert Sessa's sister), and (c) Fifteen (15) shares to Plaintiff, Robert Sessa." The plaintiff also provides the officers and/or directors of the Corporation include "Defendant Leonard V. Sessa (Plaintiff's brother), Defendant Denise Sessa (Plaintiff's sister) and Defendant Sunny Sessa (Plaintiff's step-mother)." The defendants, by way of opposition, point out that the defendant, Sunny Sessa, was not the third wife of the decedent, but rather the second wife of the decedent for approximately twenty-seven years after the demise of the decedent's first wife.

The plaintiff refers to Section 3.2 of the Shareholder's Agreement which provides: "The Shareholders recognize and acknowledge ... the desire that the Shares continue to be owned only by Leonard Sessa, a Trust for the benefit of Sunny Sessa and descendants of Leonard Sessa."

The plaintiff also refers to Section 4.3(a) of the Shareholder's Agreement entitled "Purchase of Shares in the Event of Death of a Shareholder", which provides as follows:

*"In the event of the death of a Shareholder during the term of this Agreement, if pursuant to the deceased Shareholder's Last Will and Testament, or, in the absence of such Last Will and Testament, pursuant to the laws of distribution and descent applicable to such Shareholder, the Shares owned by the deceased Shareholder are to be transferred to a Permitted Transferee, then such Permitted Transferee(s) shall be the owners of such Shares, provided however that such Permitted Transferee(s) must agree in writing to be obligated by the terms of this Agreement. In the event of the death of a Shareholder during the term of this Agreement if the Shares of such deceased Shareholder are not to be transferred to a Permitted Transferee (or if such Permitted Transferee(s) do not agree in writing to be bounded by the term of this Agreement) then the legal representatives of the deceased Shareholder's estate of his transferees shall be obligated to sell to the Corporation or to the Remaining Shareholders all of the Shares owned by the deceased Shareholder on the date of the deceased Shareholder's death."* (emphasis added)

The plaintiff also refers to Section 4.5(c) of the Shareholder's Agreement which provides as follows:

"Each Shareholder shall have and at all times retain the right to give, sell or otherwise Transfer all or any portion of his or her Shares to any one or more of: (i) any of his or her adult issue; (ii) custodians or guardians for his or her minor issue,

provided that each such guardian or custodian shall be an individual who is either the Shareholder or any of his or her adult issue; and (iii) trusts of which each and all of the income beneficiaries and the remaindermen shall be members of the group composed of the Shareholder, his spouse and his issue provided the trustee is either the Shareholder or any of his or her adult issue ...”

The plaintiff provides that pursuant to the Trust, plaintiff, Robert Sessa, currently holds 20% of the outstanding shares of the corporation; defendant, Leonard V. Sessa holds 25%; defendant, Denise Sessa holds 20%; and defendant, Sunny Sessa holds 35%. The plaintiff submits that the structure of the Shareholder Agreement permitted shares to go into a Trust for defendant, Sunny Sessa’s, benefit, “but that the remaindermen must be part of the Sessa family bloodline.” To support plaintiff’s claim that the shares should go to the family “bloodline,” plaintiff refers to the second “WHEREAS” clause contained in the Shareholder’s Agreement which provides that “the corporation has always been a family business, within the Sessa family, and the Shareholders want to ensure the capital stock of the Corporation remains within the Sessa family.” The plaintiff further asserts that the defendant, Sunny Sessa does not fall into any of the categories set forth in Section 4.3 of the Shareholder’s Agreement, and is not a “Permitted Transferee,” in essence, because the defendant, Sunny Sessa, is not part of the “Sessa family bloodline.”

The defendants submit that the defendant, Sunny Sessa, is a “Permitted Transferee.” More specifically, pursuant to Section 4.5(a)(iii) of the Shareholder Agreement, the defendants provide that the Shareholder Agreement provides that only the spouses of *descendants* of Leonard Sessa are required to remit their shares once they are no longer married, and there is no provision requiring the spouse of Leonard Sessa, who was still married to the decedent upon his death, to remit her shares. The defendants also refer to Section 4.3(a) of the Shareholder Agreement which provides as follows:

*“In the event of the death of a Shareholder during the term of this Agreement, if pursuant to the deceased Shareholder’s Last Will and Testament ... pursuant to the laws of distribution and descent applicable to such Shareholder, the Shares owned by the deceased Shareholder are to transferred to a Permitted Transferee, then such Permitted Transferee(s) shall be the owners of such Shares, provided however that such Permitted Transferee(s) must agree in writing to be obligated by the terms of this Agreement. (emphasis added).*

A “Permitted Transferee” is defined in Section 4.5(a) of the Agreement as follows:

“Each Shareholder shall have and at all times retain the right to give, sell or otherwise Transfer all or any portion of his or her Shares to any one or more of:

- (i) Any of his or her adult issue;
- (ii) Custodians or guardians for his or her minor issue ...
- (iii) Trusts of which each and all of the income beneficiaries and the remaindermen shall be members of the group composed of the Shareholder, *his spouse*, and his issue, provided that the Trustee is either the Shareholder or any of his or her adult issue ...” (emphasis added).

Here, the defendants have demonstrated the following matters. As per Section 4.5 of the Shareholder's Agreement, a "Permitted Transferee(s)" includes the shareholder's spouse, the defendant, Sunny Sessa, who was Leonard's spouse at the time of his death. Sunny Sessa consented to be subject to the Shareholder's Agreement. Pursuant to the Shareholder's Agreement, the spouse must surrender their shares when they are "no longer married to a *decedent* of Leonard Sessa" (emphasis added), back to the estate, and does not contain any restrictions to an individual "married to Leonard Sessa." As per the language of the Trust, dated June 7, 2011, its final amendment, Leonard Sessa left 35 shares of the stock to his wife, defendant, Sunny Sessa, 15 shares to defendant, Denise Sessa, his daughter, and 15 shares to plaintiff, his son, Robert Sessa. Accordingly, as the defendant, Sunny Sessa, consented to be subject to the Shareholder's Agreement, was his wife and was married to the decedent at the time of his death, Sunny Sessa is a "Permitted Transferee," and entitled to retain her shares in the corporation, her distribution of the shares of the Trust.

More importantly, as per the Waiver and Release entitled "Receipt, Release and Waiver of Judicial Accounting Agreement" dated and signed by the plaintiff on December 10, 2013, (hereinafter referred to as "Waiver"), the plaintiff agreed to the distribution of the 35 shares to the defendant, Sunny Sessa, agreed that she was "entitled to said distribution from the trust estate," acknowledged the desire to make the specific distributions promptly and without delay, and more specifically, the plaintiff acknowledged that he was "willing to waive judicial settlement of the account of the Trustees and approve the Specific Distributions without judicial proceedings." The plaintiff, in accordance with the Waiver, agreed that the defendant, Sunny Sessa, is entitled to the distribution from the trust estate, and "as a condition of making the Specific Distributions; each of the Specific Distributees [plaintiff] agrees to waive any and all right, claim or cause of action to contest the validity of the Trust Agreement and/or the Will ..." and "waives, releases and forever discharges the Trustees ... from any and all claims which she, or he now has or herein after may have to contest the validity of the Trust Agreement, as amended."

Upon the foregoing, the defendants have made a *prima facie* showing of entitlement to summary judgment. The defendants have demonstrated that the defendant, Sunny Sessa, agreed to be bound by the terms of the Shareholder's Agreement, and is a "Permitted Transferee" under the Shareholder's Agreement. Moreover, the defendants have demonstrated that the plaintiff has waived his right to challenge the defendant, Sunny Sessa's, taking of the subject stock in accordance with the Waiver. (*Nassau Trust Co. v. Montrose Concrete Products Corp.*, 56 NY2d 175; *GM Acceptance Corp. v. Clifton-Fine Cent. School Dist.*, 85 NY2d 232). Additionally, the plaintiff's claims are time-barred pursuant to Florida Law. (§736.0604(2), Florida Statutes; 7-A-1.7 of the New York Uniform Trust Code). The Trust was executed in Florida, the decedent died in Florida, and the Will was probated in Florida. Furthermore, the plaintiff, by way of Waiver, agreed that venue for proceedings concerning the Trust are subject to Florida Law.

The plaintiff, in opposition, has not raised a triable issue of fact to warrant denial of this summary judgment motion, and has not demonstrated that the language in the Shareholder's Agreement "clearly and unequivocally", or by any interpretation from the four corners of the document, requires this Court to effectuate the "decedent's intent" to be, what plaintiff claims, "to keep the Corporation within the family bloodline," and ignore the provisions which provide that the defendant, Sunny Sessa" is a "Permitted Transferee," or that the defendant, Sunny Sessa agreed to be bound by the Shareholder's Agreement. Furthermore, the plaintiff's reliance on the second whereas clause which states that the "Shareholders want to ensure the capital stock of the corporation

remains within the Sessa family” is unavailing, as the defendant, Sunny Sessa, was married to the decedent at the time of his death, she was his wife. The second whereas clause does not add “bloodline” to “Sessa family” and simply states “family.” The term “family” includes a husband and wife and their children,” (Black’s Law Dictionary, Revised, Fourth Edition), and “family” in the most narrow sense of encompass a “wife”. (*Id.*, *Franklin Fire Ins. Co. v. Shadid*, Tex. Com. App. 68 SW2d 1030; *Collins v. Northwest Casualty Co.*, 180 Wash. 347, *Kemp v. Arnold*, 234 Mo. App. 154). A testamentary document “is to be construed as written and the settlor’s intention determined solely from the unambiguous language of the instrument itself.” (*Mercury Bay Boating Club v. San Diego Yacht Club*, 76 NY2d 256; *Matter of Wallens*, 9 NY3d 117; *Whitehouse v. Gahn*, 84 AD3d 949). In any event, contrary to the plaintiff’s contention, the Waiver specifically provides that the plaintiff has waived his right to challenge the defendant, Sunny Sessa’s, right to the shares in the corporation and is not a mere “acknowledgment” or “consent” of the “distribution of the shares of the Trust.” This Court will not ignore the Waiver which specifically provides that the plaintiff agreed to the accounting of the Trust, *to wit*, the 35 shares to defendant, Sunny Sessa, that the plaintiff agreed to release “and forever discharges the Trustees ... from any liability, responsibility, causes of action, as to all matters arising out of or in any way connected with the administration of the Trust,” and more specifically that the plaintiff agreed that he “waives the judicial settlement of the account.”

In light of the foregoing, this court need not address the parties’ remaining contentions.

Accordingly, the defendants’ motion for summary judgment is granted and the plaintiff’s cross-motion for summary judgment is denied.

ENTER

J.S.C.

Dated: May 23, 2016

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