

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY
PRESENT: Hon. Doris Ling-Cohan, Justice **Part 36**

In the Matter of the Fee Dispute between
WILLIAM A. ROOS, IV, individually, and
WILLIAM A. ROOS, IV and BARBARA R.
HILL, as trustees,

Plaintiffs,

-against-

ANDERSON KILL & OLICK, P.C. and
REYNOLDS RICHARDS,

Defendants.

INDEX NO. 112439/09

MOTION SEQ. NO. 001

The following papers, numbered 1 - 6 were considered on this motion to/for dismiss defense:

PAPERS

NUMBERED

Notice of Motion/Order to Show Cause, -- Affidavits -- Exhibits	_____	<u>1, 2</u>
Answering Affidavits -- Exhibits	_____	<u>5</u>
Replying Affidavits	_____	<u>6</u>

Cross-Motion: Yes No

FILED
MAR 25 2010
NEW YORK
COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion and cross-motion are decided to the extent set forth below.

Plaintiff William A. Roos, IV ("Roos") was a general partner of the law firm of Reynolds Richards, which later merged with Anderson Kill & Olick, P.C. (collectively referred to as "Anderson Kill"). Following Roos' departure¹ from Anderson Kill on December 31, 2005, Anderson Kill continued to perform certain legal services for Roos individually and for Roos and Barbara R. Hill, as trustees, which included legal work for: (1) the Estate of Stella G. Roos; (2) the Stella G. Roos Revocable Trust; (3) the trust under the will of William A. Roos, III; (4) plaintiff Roos' taxes; and (5) plaintiff Roos' real estate ventures. Plaintiffs were subsequently billed for the above legal services rendered by Anderson

¹ The parties dispute the circumstances surrounding Roos' departure from the law firm and the terms/agreement that resulted.

Kill. The parties thereafter discussed the invoices, and new bills, which included a discount, were prepared and sent to Roos. However, no payments were made by plaintiffs on such bills. Anderson Kill then sent plaintiffs the required packet of documents related to the fee dispute resolution program. Plaintiffs elected to participate in the fee dispute resolution program and a hearing was held before a panel of three arbitrators. An arbitration award was issued on July 29, 2009.

Plaintiffs subsequently requested a trial *de novo* on the merits, which is currently before the Court in this action. Defendants counterclaimed for breach of contract and unjust enrichment, to recover all fees for legal services performed by Anderson Kill, including fees for the legal work performed that related to the trusts and the estate.² Plaintiffs allege that defendants grossly overbilled them for the legal work that was performed.

Defendants now move to dismiss plaintiffs' second affirmative defense to defendants' counterclaims, pursuant to CPLR 3211(b). The second affirmative defense states that the Court lacks subject matter jurisdiction with regard to the legal bills incurred by the Estate of Stella G. Roos, the Stella G. Roos Revocable Trust and the trust under the will of William A. Roos, III, which should be decided in Surrogate's Court. Plaintiffs cross-move to sever that portion which relates to the Estate of Stella G. Roos, the Stella G. Roos Revocable Trust and the trust under the will of William A. Roos, III and to transfer such portion to the Surrogate's Court, New York County, for determination.

CPLR 3211(b) states that "[a] party may move for judgment dismissing one or more defenses, on the ground that a defense is not stated or has no merit." As a general matter, it is clear that this Court does not lack subject matter jurisdiction to hear the within matters relating to legal fees. This Court, as a court of general jurisdiction, has concurrent jurisdiction with the Surrogate's Court to preside over the

² The bills at issue in the arbitration accounted for approximately two-thirds of the bills at issue in this case and included legal bills related to the Stella G. Roos Revocable Trust and the trust under the will of William A. Roos, III.

issues raised in defendants' counterclaims.

While the Legislature may confer *concurrent* jurisdiction on other courts, it cannot oust the Supreme Court from jurisdiction or limit the scope of its authority in those actions. Although the Surrogate's Court is the primary forum for proceedings involving estates and intestacies, the Supreme Court's inviolate authority to hear and resolve all causes in law and equity unquestionably extends to such matters as well.

Pollicina v Misericordia Hosp. Med. Ctr., 82 NY2d 332, 338-39 (1993). In fact, plaintiffs concede this point and acknowledge that this Court has concurrent jurisdiction with the Surrogate's Court over this matter.

Thus, the issue here is which court is more appropriate to dispose of the within legal fee dispute. Plaintiffs brought the within action to challenge legal fees charged by defendants with regard to legal work done by Anderson Kill. After defendants counterclaimed for all legal fees due them, plaintiffs now seek to transfer some of the claims to Surrogate's Court, as they contend Surrogate's Court is an "expert" on legal fees associated with estates and trusts, and no hearings or trials would be necessary because plaintiffs would stipulate to have the claims resolved on the papers.³ However, the fact remains that this Court would still retain the rest of the claims with respect to legal fees of the real estate ventures and personal taxes of Roos. As plaintiffs have alleged the same defense with regard to all the legal fees, i.e. that they were overcharged for services performed by defendants, it is appropriate that all claims be heard together, as argued by defendants.

Keeping all such claims together would promote judicial economy, as this Court will have to resolve at least some of the fee dispute. While it is true that the Surrogate's Court was instituted to hear matters relating to estates and intestacies, the Supreme Court is fully capable of resolving issues relating to legal fees, no matter what kind of legal work was performed. Further, in the interests of justice, the parties should not be burdened with having to prove/defend their case in two different actions and

³ It is not clear, however, that defendants would likewise stipulate.

forums. Moreover, if it is true, as plaintiffs argue, that "it is patent what Reynolds Richards set out to do", namely, grossly overcharging plaintiffs to recoup the sum they had to pay out to plaintiff Roos for forcing him to resign, this Court will be able to so determine. R. Edward Townsend, Jr. Aff in Support of Cross-Motion and in Opp to Motion ¶ 7. Thus, the motion to dismiss plaintiffs' second affirmative defense to defendants' counterclaims is granted and plaintiffs' cross motion to sever and transfer part of the fee dispute to Surrogate's Court is denied.

Accordingly, it is

ORDERED that the motion is granted and plaintiffs' second affirmative defense to defendants' counterclaims is dismissed; and it is further

ORDERED that the action in all other respects continues; and it is further

ORDERED that all party depositions shall be completed within 45 days of the date of this decision; and it is further

ORDERED that, within 30 days of entry of this order, defendants shall serve a copy of this order with notice of entry, upon plaintiffs.

This constitutes the decision and order of the Court.

Dated: 3/22/10

FILED
MAR 25 2010
NEW YORK
COUNTY CLERK'S OFFICE
DORIS LING-COHAN, J.S.C.

Check one: FINAL DISPOSITION
Check if Appropriate: DO NOT POST

NON-FINAL DISPOSITION

J:\Dismiss\Dismiss Defenses\Roos.Anderson, dismiss affirm defense that case shd be in surr court - granted.wpd