

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

IN THE MATTER OF THE ESTATE OF
HARRIET COHEN,

Deceased.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PROBATE PART
BERGEN COUNTY
DOCKET NO. P-218-22

OPINION

Argued: December 16, 2022

Decided: May 1, 2023

Appearances: Cole Schotz, P.C. (Warren A. Usatine, Esq., Christopher Massaro Esq., and Michael D. Sirota, Esq., appearing) for Plaintiff James S. Cohen.

Critchley, Kinum & Luria, LLC (Michael Critchley, Esq., appearing) and Klehr, Harrison, Harvey, & Bransburg, LLP (William A. Harvey, Esq., appearing *pro hac vice*, and Carol Ann Slocum, Esq., appearing) for Defendant Samantha Perelman.

HON. EDWARD A. JEREJIAN, P.J.Ch.

This matter has been opened to the Court by way of Verified Complaint and Order to Show Cause, pursuant to the requirement of R. 4:83-1, filed on April 29, 2022, by Cole Schotz, P.C., attorneys for Plaintiff James S. Cohen (“Plaintiff”) as Executor of the Estate of Harriet Cohen (“Harriet’s Estate”) and as Trustee of the Harriet Cohen Living Trust, dated November 2, 2001, amended and restated most recently on March 9, 2007, (“Harriet’s Revocable Trust”), and requesting the matter be determined summarily pursuant to R. 4:67-1.

Defendant Samantha O. Perelman (“Defendant”), by and through her attorneys Critchley,

Kinum & Luria, LLC, and Klehr, Harrison, Harvey, & Bransburg, LLP, filed a contesting Answer to the Verified Complaint on June 27, 2022.

Background

Plaintiff is the son of Harriet Cohen (“Decedent”) and Decedent’s Spouse, Robert Cohen (“Robert”). Plaintiff’s late sister, Claudia Cohen (“Claudia”), was Defendant’s Mother. Defendant is the granddaughter of Decedent and Robert. Claudia predeceased Decedent and Robert on June 5, 2007. Robert passed on February 1, 2012, leaving a Last Will and Testament dated July 17, 2009 (“Robert’s Will”) and the revocable trust named the Robert B. Cohen Living Trust (“Robert’s Revocable Trust”) dated April 12, 1993, which was amended and restated on March 31, 2010. Robert’s Will was admitted to probate on February 8, 2012, by the Surrogate of Bergen County. Plaintiff served as the Executor of Robert’s Estate and Trustee of Robert’s Revocable Trust.

The history of litigation between Plaintiff and Defendant is protracted and contentious. Trial in the matter involving Robert’s Estate lasted over eighty-five trial days in the Bergen County Chancery Division, Probate Part, and involved over fifty witnesses, whereupon on June 24, 2014, the Court rendered a 114-page decision finding that Robert’s Will was the true and valid last will and testament of Robert Cohen and that Robert was domiciled in New Jersey at the time of his death. Cohen v. Perelman, 2014 WL 2921601, *56 (Ch. Div., June 24, 2014), aff’d 2018 WL 6034978 (App. Div., Nov. 19, 2018), certif. denied, 237 N.J. 187.

Decedent Harriet Cohen passed on July 5, 2020, and Decedent’s Will was admitted to probate by the Surrogate of Bergen County on July 17, 2020. Plaintiff was appointed as Executor of Harriet’s Estate and Trustee of Harriet’s Revocable Trust.

In accordance with the administration of Decedent’s Estate, an intermediate accounting was performed covering the period from Decedent’s passing through the closing of the account on

August 9, 2021 (“The Accounting”). The Accounting listed that Decedent maintained a 21.5% interest in the property located at 691 North County Road, Palm Beach, Florida (the “Palm Beach Property”). On February 8, 2022, Plaintiff submitted a proposed plan of distributions identifying how the Estate’s assets were to be distributed. As a result, issues arose in connection with the administration, including a dispute over ownership of the Palm Beach Property.

In attempt to avoid similar litigation and the astronomical expenses which were incurred during the previous litigation over Robert’s Estate, and after months of negotiation, the parties entered into a settlement agreement (the “Settlement Agreement”) on September 13, 2021, relating to the administration of Decedent’s Estate.

Under the terms of the Settlement Agreement, Plaintiff asserts Defendant released her rights to make any claims to receive the undivided 21.5% interest held by Harriet’s Estate and/or Harriet’s Revocable Trust in the Palm Beach Property.¹

Plaintiff alleges that Defendant has breached the terms of the Settlement Agreement by

¹ It should be noted that under the terms of the Settlement Agreement, the Parties each received substantial consideration.

Plaintiff received half of the insurance proceeds of the James S. Cohen Irrevocable Trust (valued at approximately \$2,650,000.00 at the time the Settlement Agreement was signed) and half of the insurance proceeds of the Claudia Cohen Survivor Trust (valued at approximately \$1,750,000.00 at the time the Settlement Agreement was signed) for a total amount of approximately \$4,400,000.00.

Defendant, in exchange for purportedly relinquishing her rights to the property received substantial benefits pursuant to the Settlement Agreement, including the right to use the Palm Beach Property for twenty-one (21) days per year. Defendant also received the net proceeds from the sale of two properties owned by Decedent or Harriet’s Revocable Trust, with the first located at 349 Booth Avenue, Englewood Cliffs New Jersey (“Englewood Property”) and the second located at Unit 2AB located at 11-15 East 70th Street, New York, New York in the building known as The 70-71 Madison Condominium (“New York Property”).

Defendant also received under the Settlement Agreement all of the assets held under the 1992 Trust and the Claudia Cohen Survivor Trust upon her execution of the appropriate Receipt, Release, Refunding and Indemnification Agreements with respect to each Trust.

Defendant received the other half of the insurance proceeds of the James S. Cohen Irrevocable Trust (also valued at approximately \$2,650,000.00 at the time the Settlement Agreement was signed) and the other half of the insurance proceeds of the Claudia Cohen Survivor Trust (also valued at approximately \$1,750,000.00 at the time the Settlement Agreement was signed) for a total amount of approximately \$4,400,000.00 as well.

Defendant also received jewelry from Harriet’s Estate appraised at approximately \$2,016,870.00, which was distributed following Defendant’s signing of the appropriate Receipt, Release, Refunding and Indemnification Agreement.

failing to release her rights to the Palm Beach Property. Accordingly, Plaintiff is seeking (i) declaratory judgment prohibiting Defendant from asserting any claims, rights, or interests to the 21.5% interest in the Palm Beach Property pursuant to the Settlement Agreement, (ii) declaring that Defendant maintains no interest in the property except as is expressly stipulated in the Settlement Agreement, (iii) compelling Defendant to execute ancillary probate documents associated with the distribution of Decedent's Estate and Robert's Estate, (iv) further compelling Defendant to file a notice of Withdrawal dismissing the petition for administration regarding Robert's Estate in Florida Courts, (v) awarding Plaintiff attorney's fees for the costs associated with the action, and (vi) requesting this Court clarify that the Entire Controversy Doctrine under R. 4:30A does not preclude Plaintiff from bringing any future actions relating to the Estate, Revocable Trust, or any other Trusts involving the Parties.

Defendant opposes Plaintiff's allegations and, to the contrary, asserts that Plaintiff is in breach of his duties as the Executor of Harriet's Estate and Trustee of Harriet's Trust by not transferring the interest in the Palm Beach Property to Defendant. Defendant also argues that she did not release her right to receive any property to which she is entitled as a beneficiary of Harriet's Estate or Harriet's Revocable Trust when signing the Settlement Agreement, and the attempted diversion of that interest is a violation of Plaintiff's fiduciary obligations. Defendant further claims that the matter is time-barred pursuant to 4:5-8 since the Complaint was not filed within four months after the Will was admitted to probate.²

Analysis

R. 4:83-1 requires that, "unless otherwise specified, all actions in the Superior Court, Chancery Division, Probate Part shall be brought in a summary manner." Further supplementing

² It should be noted that Defendant cited R. 4:5-8 but appears to have intended to cite to R. 4:85.

this Rule is R. 4:95-2, which directs that a “summary action pursuant to R. 4:83 may be brought by executors, administrators, guardians or trustees for instructions ... as well as for advice and directions in making distributions from the estate.” Plaintiff’s procedure in bringing this action is in accordance with these requirements.

R. 4:67-1 provides that summary disposition “is intended to accomplish the salutary purpose of swiftly and effectively disposing of matters which lend themselves to summary treatment,” so long as the defendant is provided “an opportunity to be heard at the time plaintiff makes his application.” Pressler & Verniero, Current N.J. Court Rules, cmt. 1 to R. 4:67-1 (2023).

Further, Plaintiff seeks Declaratory Judgment, provided under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62.

N.J.S.A. 2A:16-53 provides:

“Questions determinable and rights declarable.

A person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

In addition, N.J.S.A. 2A:16-55 provides in relevant part:

“A person interested as or through an executor, administrator, trustee...or other fiduciary...may have a declaration of rights or legal relations in respect thereto, to:

...

c. Determine any question arising in the administration of the estate, trust or guardianship, including the construction of wills and other writings.”

The Settlement Agreement involves interpretation of a contract that governs the administration of an Estate and Revocable Trust, and given the plain reading of the agreement, a Declaratory Judgment action is appropriate.

A settlement agreement is a binding contractual agreement that, if valid, waives the rights of the parties to the agreement from bringing claims before the Court. The release of claims can either be a general release or specific release. When the terms of the agreement are clear, then the court maintains the function of enforcing the agreement “as written and not to make a better contract for either party.” U.S. Pipe & Foundry Co. v. American Arbitration Ass’n., 67 N.J. Super 384, 393, 170 A.2d 505 (App. Div. 1961).

Plaintiff argues that Defendant has released her rights to Decedent’s interest in the Palm Beach Property through the unambiguous terms of Paragraph 24(F) of the Settlement Agreement.

Paragraph 24(F) provides:

[Defendant]’s rights and interest in the Palm Beach Property as set forth in Section 3.3(A)(4)(d) of Robert’s Revocable Trust including, without limiting any other rights, interests or obligations that [Defendant] may have expressly provided by Section 3.3(A)(4)(d), the following: **(i) her right to make use of the Palm Beach Property for a period of not more than twenty-one (21) days per year**; and **(ii) her right to receive a portion of the sale proceeds in the event of a sale of the Palm Beach Property as provided therein.** The Parties acknowledge that [Defendant]’s portion of the proceeds of any sale shall be reduced by the amount of all legal fees, other professional fees and expenses described more fully in Section 3.3(A)(4)(d) of Robert’s Revocable Trust and the Parties acknowledge that such fees and expenses total fifty-three million, seven-hundred forty-nine thousand, eight hundred and three dollars (\$53,749,803). **For the avoidance of doubt, [Defendant] agrees to comply with all conditions and obligations imposed upon her by Section 3.3(A)(4)(d) and to refrain from asserting any Claims, rights, or interests with respect to the Palm Beach Property other than as may be necessary to enforce the rights and interests provided to her by Section 3.3(A)(4)(d).** [Emphasis Added].

Plaintiff claims that the “avoidance of doubt” language in subparagraph (F) was intended to confirm that Defendant was releasing all claims by requiring her to “refrain from asserting any claims, rights or interest, with respect to the Palm Beach Property.” Plaintiff also takes the position that Defendant’s interest in the Palm Beach Property is limited to the rights Defendant held under Section 3.3(A)(4)(d) of Robert’s Trust, which entitles Defendant to usage of the Palm Beach

Property for twenty-one (21) days per year.

Defendant claims that Paragraph 24(F) of the Settlement Agreement only pertains to the interest Defendant possessed under Robert's Revocable Trust, not to what Defendant would be eligible to receive as a residuary beneficiary of Harriet's Estate or Harriet's Revocable Trust. Accordingly, Defendant argues there are two independent interests distributed under the terms of the Settlement Agreement. The first interest is that which is held by Robert's Revocable Trust and is governed under Paragraph 24(F), to which Defendant alleges she maintains limited rights to, and the second interest is that which is held by Harriet's Estate or Harriet's Revocable Trust and is governed under Paragraph 24(G), to which Defendant contends she is entitled to fully and never waived her rights.³

Paragraph 24(G) of the Settlement Agreement, provides:

[Defendant]'s right to receive any amount of the Reserve or any other assets that are distributable to [Defendant] from Harriet's Estate and Harriet's Revocable Trust pursuant to this Agreement. The Parties acknowledge that [Defendant] is not releasing her right to receive any property to which she is entitled as a beneficiary of Harriet's Estate or Harriet's Revocable Trust[.]

Defendant asserts that Paragraph 24(G) of the Settlement Agreement should govern the distribution of the interest in the Palm Beach Property, thereby granting Defendant the rights to the property since Defendant did not disclaim or release any rights to the property to which she was entitled to under Harriet's Estate or Harriet's Revocable Trust.

Plaintiff argues the entire purpose of the Settlement Agreement was to resolve issues

³ It should be noted that on August 26, 2021, Defendant's attorney purportedly sent an email to Plaintiff's counsel, in which Defendant's attorney acknowledged that Plaintiff was to receive the Estate's interest in the Palm Beach Property, indicating "the Florida property was specifically devised to Jim, as you know." Although this correspondence would seemingly give support to Plaintiff's contentions, Defendant disputes the e-mail's accuracy and instead calls it a "mistake." In addition, Defendant argues that the integration clause of the Settlement Agreement should prohibit the Court from considering the e-mail. The Court did not consider or rely on the e-mail in rendering its' decision but mentions it as it was part of the pleadings.

pertaining to Harriet's Estate and Harriet's Revocable Trust, including Decedent's 21.5% interest in the Palm Beach Property, not Robert's interest.

The terms of Paragraph 24(F) of the Settlement Agreement are specific as they relate to the Palm Beach Property. It clearly states that "[for] the avoidance of doubt [Defendant]..." is "not to assert any further Claims, rights, or interests with respect to the Palm Beach Property," again, outside what is necessary to enforce the rights and interests, which entitles her to twenty-one (21) days personal usage each year.

The terms of Paragraph 24(G) are general. It preserves Defendant's right to receive other property she is entitled to from Harriet's Estate or Harriet's Revocable Trust, but not the Palm Beach Property to which she waived her interest in under Paragraph 24(F).

Specific language in a contract controls over general language. Gil v. Clara Mass Med. Ctr., 450 N.J. Super. 368, 379 (App. Div. 2017) (quoting DVC Holdings, Inc. v. ConAgra, Inc., 889 A. 2d 954, 961 (Del. 2005). The specific terms of the release are clear, especially when the agreement is read as a whole. Porreca v. City of Millville, 419 N.J. Super. 212, 233 (App. Div. 2011) (quoting Cumberland Cty. Improvement Auth. V. GSP Recycling Co., 358 N.J. Super. 485, 497 (App. Div.), certify. Denied, 177 N.J. 222 (2003)).

The parties entered into the Settlement Agreement involving Harriet's Estate and Harriet's Revocable Trust after months of negotiation to prevent endless litigation and the very consternation the parties sought to avoid by settling. Defendant, in entering that agreement, renounced all claims that she may have had to the Estate's interest in the Palm Beach Property outside of her personal usage for twenty-one (21) days per year.

Nothing in Paragraph 24(F) is limited to Robert's Revocable Trust nor Harriet's Revocable Trust. Paragraph 24(G) of the Settlement Agreement does not even mention the Palm Beach

Property.

The mention of Section 3.3(A)(4)(d) of Robert's Trust in Paragraph 24(F) is in reference to the personal usage Defendant is retaining in the Palm Beach Property, not the ownership interest Robert's Revocable Trust held in the property.

Any other result would be illogical and contrary to the plain meaning of the Settlement Agreement.

Therefore, the Decedent's 21.5% interest is not distributable to Defendant under Paragraph 24(G) since it was specifically waived under Paragraph 24(F).

Plaintiff also argues that even if the Court determined that the Settlement Agreement was inapplicable to Harriet's Revocable Trust, Defendant would still have no claim to the Palm Beach Property.

Article Fourth of Harriet's Will provides that the remainder of Decedent's assets are to be distributed pursuant to the terms of Section 3.3(A) of Harriet's Revocable Trust, other than the Palm Beach Property. Defendant suggests that as a result she is entitled to the Estate's 21.5% interest in the Palm Beach Property through the residuary provision found under Section 3.6(A)(7) of Harriet's Revocable Trust.

First, Section 3.3(A) of Harriet's Revocable Trust provides:

If [Robert] survives me, my Trustee (i) shall hold in residence marital trust all of my right, title, and interest (including, without limitation, any leasehold interest and stock in cooperative housing or any leasehold interest in rented property) in all of my residences located in Englewood, New Jersey and New York, New York, and in any other property used or occupied by me as my residence, other than Palm Beach, Florida (the "Residences") which is includible in the Trust Estate and all policies and proceeds of insurance thereon and (ii) shall pay any mortgage indebtedness or other indebtedness thereon as an administration expense as provided in Paragraph A of Section 3.1 of this Agreement. If [Robert] does not survive me, my Trustee (i) shall distribute to Claudia, if she survives me, or if she does not survive me, to her descendants who survive me, per stirpes, subject to Article IV of this Agreement, the

Residences, and all policies and proceeds of insurance thereon and (ii) shall pay any mortgage indebtedness or other indebtedness thereon as an administration expense as provided in Paragraph A of Section 3.1 of this Agreement.

Unlike the Englewood and New York Properties, Section 3.3(A) explicitly states that Defendant would not be entitled to the Decedent's share of the Palm Beach Property.⁴

Section 3.6(A)(7) of Harriet's Revocable Trust Provides:

My Trustee shall distribute to CLAUDIA, if she is then surviving, or if she is not then surviving, to Samantha Perelman, if she is then surviving, subject to Article IV of this Agreement, the remaining assets of the Trust Estate after the distributions provided in subparagraphs (2) through (5) of this Paragraph A. If neither CLAUDIA nor [Defendant] is then surviving, my Trustees shall distribute from such remaining assets (a) a sum equal to one-half of the value of all assets which would have passed to CLAUDIA under this Agreement and my Will, if she had survived me, to MICHAEL SPENCER COHEN, if he is then surviving, subject to Article IV of this Agreement and (b) the balance to JAMES.

Plaintiff contends that construing Section 3.6(A)(7) of Harriet's Revocable Trust to provide Defendant the interest in the Palm Beach Property through the residuary is contradictory to Decedent's testamentary intent as the interest was excluded in Section 3.3(A).

Plaintiff also argues that it was never the intention that Defendant receive Decedent's interest in the Palm Beach Property under any circumstances, including the residuary provision of Section 3.6(A)(7) of Harriet's Revocable Trust.

⁴ It should also be noted that Defendant makes the argument that there are insufficient liquid assets to fulfill the \$10,000,000.00 gift in the benefit of Michael Cohen, who is Decedent's grandson, pursuant to the terms of Harriet's Revocable Trust and as a result Defendant raises the issue as to whether Harriet's Trust will sell its interest in the Palm Beach Property. Paragraph 24(F) of the Settlement Agreement, in pertinent part, provides:

The Parties acknowledge that [Defendant]'s portion of the proceeds of any sale shall be reduced by the amount of all legal fees, other professional fees and expenses described more fully in Section 3.3(A)(4)(d) of Robert's Revocable Trust and the Parties acknowledge that such fees and expenses total fifty-three million, seven-hundred forty-nine thousand, eight hundred and three dollars (\$53,749,803.00).

The current costs associated with litigation greatly surpass the proceeds which Defendant would be eligible to receive in the event the Palm Beach Property would be sold. Since the legal costs associated with the prior litigation total approximately \$53,749,803.00, any amount of proceeds that Defendant might have been able to receive from the sale of the property under Section 3.3(A)(4)(d) of Robert's Revocable Trust must be reduced accordingly.

Defendant argues that Section 3.6(A)(7) of Harriet's Revocable Trust grants her the 21.5% interest through the residuary. Defendant also states Plaintiff's claim violates his fiduciary duty as Executor of Harriet's Estate and Trustee of Harriet's Revocable Trust by attempting to deprive Defendant of the Palm Beach Property.

N.J.S.A. 3B:3-33.1 provides the standard for finding probable intent. It reads, in relevant part, that:

b. The intention of a settlor as expressed in a trust, or of an individual as expressed in governing instrument, controls the legal effect of the dispositions therein and the rules of construction expressed in N.J.S. 3B:34 through N.J.S. 3B:3-48 shall apply unless the probable intent of such settlor or of such individual, as indicated by the trust or by such governing instrument and relevant circumstances is contrary.

It is clear Decedent did not intend for Defendant to receive the Palm Beach Property. The Palm Beach Property was excluded from the other properties bequeathed to Defendant which were specifically stated in Section 3.3(A) of Harriet's Revocable Trust. Defendant's assertion that the Palm Beach Property would then immediately pass to Defendant under the residuary clause would be wholly illogical and contradictory to the Decedent's intent.

Defendant's argument that Plaintiff's claim violates his fiduciary duty as Executor of Harriet's Estate and Trustee of Harriet's Revocable Trust by attempting to deprive her of Decedent's interest in the Palm Beach Property is without merit. The parties voluntarily entered into a Settlement Agreement, which a dispute has arisen as to the Decedent's interest in the Palm Beach Property. Plaintiff is seeking to enforce the terms of the Settlement Agreement which, pursuant to Paragraph 32 of that agreement, provides that any disputes arising from the agreement be brought in Superior Court of New Jersey, Bergen County, Chancery Division, Probate Part. Plaintiff's claims involving the property, therefore, are not a breach of his fiduciary duties, but merely an attempt to enforce the Settlement Agreement.

Since the Court has already found that Defendant has waived her right to Decedent's 21.5% interest in the Palm Beach Property under Paragraph 24(F) of the Settlement Agreement, the ultimate disposition of the property, and whether it would have passed to Defendant or someone else under the Residuary Clause, need not be determined by this Court.

Plaintiff seeks only a declaration that Defendant expressly waived her right to the Palm Beach Property under Paragraph 24(F) of the Settlement Agreement or would be deprived from receiving it under the residuary clause, as Decedent never intended for Defendant to receive the property.

The ultimate recipient of the interest held by Harriet's Estate and/or Harriet's Revocable Trust's in the Palm Beach Property will be determined in the final accounting and administration of Harriet's Estate and Harriet's Revocable Trust.

Defendant's refusal to relinquish the claim to the property constitutes a breach of the Settlement Agreement and therefore Defendant is prohibited from asserting any claims, rights, or interests to the 21.5% interest held by Harriet's Estate or Harriet's Trust in the property and maintains no interest in the property except as provided for under the terms of Paragraph 24(F) of the Settlement Agreement, giving Defendant twenty-one (21) days personal usage of the property per year.

Plaintiff also argues that there was an implicit agreement between the parties when signing the Settlement Agreement that Defendant would execute the ancillary documents, since it is necessary for Defendant to sign the documents to confirm that Defendant has no claim, right or interest in the Palm Beach Property beyond those preserved by Paragraph 24(F) of the Settlement Agreement.

To that end, Plaintiff includes a claim for specific performance, asking this Court to compel

Defendant to execute the documents necessary to proceed with ancillary probate proceedings in Florida concerning the Decedent's Estate and Robert's Estate that Plaintiff claims are necessary to administer both Estates' interests in the Palm Beach Property.

Defendant argues the ancillary probate documents for the proceedings in Florida have nothing to do with the Settlement Agreement. Moreover, Defendant asserts that the property of Harriet's Estate and Harriet's Trust is in Florida, and therefore the ancillary probate proceedings in Florida, are appropriate.

This Court cannot compel Defendant to execute ancillary probate documents in the Florida Court since such an application is outside of this Court's jurisdiction. Therefore, the application should be heard, if necessary, as part of the Florida action, and as a result, Plaintiff's application is denied without prejudice.

Further, Plaintiff asks this Court to require Defendant to withdraw the Petition for Administration Defendant filed in Florida regarding Robert's Estate. However, Robert's Estate is not a party in this pending action, and again, this application is outside of this Court's jurisdiction and therefore is also denied without prejudice.

Plaintiff also asks this Court to confirm that the Entire Controversy Doctrine under R. 4:30A will not preclude any potential future actions involving other matters brought by Plaintiff relating to the Estate, Revocable Trust, or any other Trust involving the Parties.

Plaintiff maintains the instant action was brought to declare that Defendant has forfeited all rights held by Decedent's Estate to the Palm Beach Property and execute the ancillary probate documents and Notice of Withdrawal. Plaintiff cites to Higgins v. Thurber, 413 N.J. Super. 1, 13 (App. Div. 2010), aff'd 205 N.J. 227 (2011), where the Appellate Division noted the tendency of "an estate to be the subject of numerous independent lawsuits," and therefore, multiple actions at

various times may be brought by an estate's representative or fiduciary in further administration of the estate. Further, the same case provides that the entire controversy doctrine does not "apply to bar competent claims that are unknown, unrisen, or unaccrued at the time of the original action." Id. at 12 (quoting Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 323 (1995)).

Although the Court concurs that the nature of this litigation is unlikely to preclude further actions brought by the Estate for issues that were previously unknown or unripe, such an application is premature and cannot be decided by the Court until such an issue arises and therefore the application is denied without prejudice.

Defendant also claims that Plaintiff's application is time-barred pursuant to R. 4:85. This argument is without merit, as the rule cited by Defendant only pertains to contests of Wills or other related administrative documents. The instant matter pertains to the enforcement of a Settlement Agreement, not a Will or any related administrative documents, and Plaintiff's application is accordingly not barred under the rule.

Finally, both parties argue they should be entitled to attorney's fees and costs pursuant to the Settlement Agreement.

Paragraph 35 of the Settlement Agreement, states in pertinent part:

"[i]f any action, suit or legal proceeding is brought by any Party to enforce or redress a breach of this Agreement, in addition to all other relief awarded by a court of competent jurisdiction, the prevailing Party shall be entitled to an award of reasonable attorney's fees and costs incurred in connection with such action, suit, or legal proceeding[.]"

Generally, "a prevailing party can recover fees if they are expressly provided for by statute, court rule, or contract. Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 285 (2009) (quoting Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427 440 (2001)).

Since the Settlement Agreement expressly provides that the "prevailing Party shall be

entitled to an award of reasonable attorney's fees and costs incurred," and since Defendant has been found to be in breach of the Settlement Agreement for making a claim to Decedent's interest in the Palm Beach Property, Plaintiff is entitled to reasonable fees and costs relating to that issue, which the Court will consider following the submission of a Certification of Services.

Conclusion

For the foregoing reasons, Plaintiff's application is Granted in Part, and Denied in Part.

Defendant is prohibited from asserting any claims, rights, or interests in the Palm Beach Property, and maintains no interest in the property except as provided for under the terms of Paragraph 24(F) of the Settlement Agreement, giving Defendant twenty-one (21) days personal usage of the property per year.

Plaintiff's application compelling Defendant to execute ancillary probate documents in Florida associated with the distribution of Decedent's Estate and Robert's Estate is Denied Without Prejudice.

Plaintiff's application compelling Defendant to file a notice of Withdrawal dismissing the petition for administration regarding Robert's Estate in the Florida Courts is Denied Without Prejudice.

Plaintiff's application that the Entire Controversy Doctrine under R.4:30A, will not preclude any potential future actions involving other matters brought by Plaintiff relating to the Estate, Revocable Trust, or any other Trust involving the Parties, is Denied Without Prejudice.

Since Defendant has been found in breach of the Settlement Agreement, Plaintiff's application for attorney's fees and costs associated with this action is Granted.

FILED

MAY 01 2023

Edward A. Jerejian
P.J.Ch.

This Order has been prepared and filed by the Court.

IN THE MATTER OF THE ESTATE OF
HARRIET COHEN,

Deceased.

SUPERIOR COURT OF NEW JERSEY
Chancery Division
Bergen County

Docket No. P-218-22

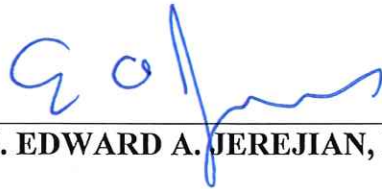
ORDER

THIS MATTER, having come before the Court by Verified Complaint and Order to Show Cause filed by Plaintiff James S. Cohen by and through his attorneys Cole Schotz, P.C. (Michael D. Sirota, Esq., Warren A. Usatine, Esq., and Christopher P. Massaro, Esq., appearing). A contesting Answer was filed by Defendant Samantha O. Perelman by and through her attorneys Critchley, Kinum, & Luria, LLC (Michael Critchley, Esq., appearing) and Klehr, Harrison, Harvey, Branzburg, LLP (William A. Harvey, Esq., appearing *pro hac vice*, and Carol Ann Slocum, Esq., appearing). The Court, having considered all papers having been filed, and oral argument having been heard, and for good cause having been shown:

IT IS on this 1st day of May, 2023, hereby **ORDERED**:

1. Plaintiff's application for Declaratory Judgment prohibiting Defendant from asserting any claims, rights, or interests in the Estate's interest in the Palm Beach Property, and declaring that Defendant has no claims, rights, or interests, to or in the Palm Beach Property, except for twenty-one (21) days of personal usage of the property per year, as provided for under Paragraph 24(F) of the Settlement Agreement, is **GRANTED**; and
2. Plaintiff's application compelling Defendant to execute ancillary probate documents in Florida associated with the distribution of Decedent's Estate and Robert's Estate, is **DENIED WITHOUT PREJUDICE**; and

3. Plaintiff's application compelling Defendant to file a Notice of Withdrawal dismissing the Petition for Administration regarding Robert's Estate in the Florida Courts is **DENIED WITHOUT PREJUDICE**; and
4. Plaintiff's application that the Entire Controversy Doctrine under R. 4:30A, will not preclude any potential future actions involving other matters brought by Plaintiff relating to the Estate, Revocable Trust, or any other Trust involving the Parties, is **DENIED WITHOUT PREJUDICE**; and
5. Plaintiff's application for fees and costs is **GRANTED**. Plaintiff shall submit a Certification of Services no later than May 12, 2023. Defendant's opposition, if any, must be submitted no later than May 20, 2023. Plaintiff may submit a reply by no later than May 24, 2023; and
6. A copy of this Order shall be served upon all parties within seven (7) days of the date hereof.



HON. EDWARD A. JEREJIAN, P.J.Ch.