

NEW YORK COURT OF APPEALS

Aoki v. Aoki

27 N.Y.3d 32 (N.Y. 2016) · Decided March 31, 2016

OPINION

PIGOTT, J.

OPINION OF THE COURT Pigott, J. This appeal involves a challenge to the validity of two partial releases of testamentary powers of appointment executed by the decedent Hiroaki (Rocky) Aoki, the founder of the Beni-hana restaurant chain.

The Appellate Division’s order declaring the partial releases valid should be affirmed. I. Rocky formed the Benihana Protective Trust (BPT) in 1998 to hold stock and other assets relating to Benihana. In creating the trust Rocky named his attorney, Darwin Dornbush, and *36two of his children, Kevin and Kana, as trustees.¹ The trust instrument, which was prepared by attorney Norman Shaw, contained a provision that granted Rocky an unlimited power “to appoint any of the principal and accumulated net income remaining at his death,” with such power of appointment being “exercisable only by a provision in [Rocky’s] Will specifically referring to and exercising the power.” In July 2002, Rocky married Keiko (Ono) Aoki.

Shortly after the wedding, Kevin and Kana met with Dornbush to express their concerns that Rocky had married Keiko without first having Keiko execute a prenuptial agreement. Dornbush arranged a meeting with Kevin, Kana and Rocky the following day. During that meeting, it was agreed that a potential solution to the problem was that Keiko execute a postnuptial agreement.

Efforts to get Keiko to sign a postnuptial agreement, however, proved fruitless. When it became clear that Keiko would not execute such an agreement, Shaw proposed that Rocky execute a partial release of his power of appointment whereby Rocky could appoint only his descendants at the time of his death.

On September 23, 2002, Kevin, Kana and Rocky met with Dornbush. Rocky reviewed a “final draft” of the partial release (September release), and Rocky executed the partial release the following day. As relevant here, the September release provides as follows: “I hereby irrevocably partially release that power of appointment so that, from now on, I shall have only the following power: “I shall have a testamentary power to appoint any of the principal and accumulated net income remaining at my death to or for the benefit of any one or more of my descendants.

My right to select appointees from among my descendants, to decide the share of the appointive property that each appointee shall receive, and to decide the terms (in trust or otherwise) upon which each appointee shall take the appointive property, shall be unlimited in all respects. My

power of appointment shall be exercisable only by a provision in my Will specifically referring to and exercising the power” (emphases supplied).

Three months later, due to changes in IRS regulations, Rocky executed a second release (December release) that further irrevocably restricted his power to appoint by excluding any descendants who were nonresident aliens.

In August 2003, Rocky retained attorney Joseph Manson to draft a codicil to his will. The codicil, which made no mention of the September or December releases, appointed Keiko to receive 25% of the trust assets upon Rocky’s death, and income from the remaining 75% for the rest of her life. It also provided that upon Keiko’s death, Keiko had the power to bequeath the principal to one or more of Rocky’s descendants in her will.

At Manson’s request, Shaw provided an opinion as to whether Rocky’s exercise of the power of appointment in the codicil was valid. Shaw’s opinion was that the portion of the codicil granting Keiko a beneficial interest in the trust was invalid because the September release rendered Keiko an impermissible appointee of the trust. Weeks later, Rocky executed an affidavit stating that he did not realize that, by executing the September and December releases, he could no longer leave his Benihana stock to Keiko or any other party, and, had he known that that was the effect of the documents, he would not have signed them.² Four years later, in September 2007, Rocky executed a new last will and testament, whereby he attempted to exercise his power of appointment consistent with the August 2003 codicil.

However, Rocky also hedged his bets, stating that if it was determined that the exercise of his power of appointment in that regard was “invalid because, contrary to my desires, the [September and December releases] are found to be valid,” then he exercised his power 50% in favor of his daughter, Devon, and 50% in favor of his son, Steven. Rocky died in July 2008, survived by Keiko and his six children.

At no time prior to his death did Rocky attempt to have either the September or December releases declared invalid. ³⁸II. The BPT trustees commenced this proceeding seeking a determination as to the validity of the September and December releases. Devon and Steven interposed an answer. Keiko also answered, asserting in one of her five affirmative defenses that the releases were invalid as “the product of fraud” or having been “obtained through fraudulent devices.” At the conclusion of discovery, Devon and Steven moved for summary judgment seeking an order declaring the releases valid and dismissing Keiko’s affirmative defenses.

Keiko opposed the motion, asserting that there was a question of fact as to whether Rocky would have signed the releases had he known that in signing them he was foreclosed from changing his mind in the future. The Surrogate dismissed four of the affirmative defenses, but allowed the fraud affirmative defense to remain.

As to that defense, the court held that there was a triable issue of fact on the issue of constructive fraud, and whether the proponents of the releases (as opposed to Keiko) could meet their burden of demonstrating that Rocky's signature on the releases was voluntary and not the result of misrepresentation or omission by attorneys Dornbush and Shaw.

The case proceeded to trial before the Surrogate, who determined that a preponderance of the evidence established that Rocky was not aware that the releases were irrevocable, and that Devon and Steven failed to meet their burden of establishing that Rocky's execution of the releases was voluntary and not the result of the "misrepresentation, omission or concealment" by Rocky's fiduciaries, Dornbush and Shaw.

The Surrogate therefore decreed the September and December releases invalid. The Appellate Division unanimously reversed the Surrogate's Court decree and declared the releases valid (117 AD3d 499, 499 [1st Dept 2014]). It ruled that the Surrogate "erroneously shifted the burden of proof to Devon and Steven to prove that the releases were not procured by fraud," pointing out that neither Dornbush nor Shaw were parties to the releases and therefore could not benefit from them (see *id.* at 503).

The Appellate Division held that the record demonstrated that Rocky understood that the releases were irrevocable (as evidenced by his deposition testimony), and that Dornbush and Shaw never represented to Rocky that the releases were anything but irrevocable (see *id.*). Nor was there any indication that Dornbush *39or Shaw "either concealed from or did not affirmatively provide Rocky with any information he needed to make an informed decision" (*id.*).

And, it was of no moment that Rocky failed to ask any questions before signing the releases, because a party who signs a document without any valid excuse for not having read it is bound by its terms (*id.*). This Court granted Keiko leave to appeal, and we now affirm. III. Keiko argues that the Surrogate properly applied the constructive fraud doctrine in shifting the burden of proof to Devon and Steven to establish that the releases were not procured by fraud.

According to Keiko, because Dornbush and Shaw, as fiduciaries of Rocky, allegedly worked to further the interests of other parties, the Appellate Division erred when it held that the burden of proof was on Keiko to establish that the releases were procured by fraud.

We disagree. It is a well-settled rule that " 'fraud vitiates all contracts, but as a general thing it is not presumed but must be proved by the party seeking to [be] relieve [d]... from an obligation on that ground' " (Matter of Gordon v Bialystoker Ctr. & Bikur Cholim, 45 NY2d 692, 698 [1978], quoting *Cowee v Cornell*, 75 NY 91, 99 [1878]).

However, an exception to that general rule provides that where a fiduciary relationship exists between the parties, the law of constructive fraud will operate to shift the burden to the party

seeking to uphold the transaction to demonstrate the absence of fraud (see *Matter of Greiff*, 92 NY2d 341, 345 [1998]).

In addressing the doctrine of constructive fraud, we have explained that when “the relations between the contracting parties appear to be of such a character as to render it certain that they do not deal on terms of equality but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from overmastering influence, or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage in a transaction is rendered probable, there the burden is shifted, the transaction is presumed void, and it is incumbent upon the stronger party to show affirmatively that no deception was practiced, no undue influence was used, *40and that all was fair, open, voluntary and well understood” (*Cowee*, 75 NY at 99-100 [emphasis supplied]).

We have applied the constructive fraud doctrine in different contexts, but in each one, the pertinent factor present is that the fiduciary stood to benefit from the transaction itself. For example, in *Matter of Gordon*, we held that there was a fiduciary relationship between an elderly nursing home resident and the nursing home, such that the law of constructive fraud applied and the burden of proof shifted to the nursing home to demonstrate that the resident’s large donation to the nursing home was freely and voluntarily made (45 NY2d at 698-700).

In *Fisher v Bishop*, we set aside a mortgage executed by an elderly farmer, which was executed on the advice of his counsel (one Wattles) and for the satisfaction of the farmer’s creditors (108 NY 25, 27-28 [1888]). In that case, the farmer’s son, with the assistance of Wattles (who had also done legal work for the farmer), executed a deed and transfer of personal property by the son to the farmer to pay off debts that he owed the farmer (see *id.* at 27).

The son thereafter absconded, leaving the surety defendants — Wattles and Bishop — to pay off the son’s debt to a third party.³ Wattles and Bishop obtained the bond and mortgage from the farmer after making repeated threats that the underlying transfer from the son to the farmer was fraudulent as against creditors (see *id.* at 27-28).

In setting aside that transaction on the ground of undue influence, we found that there was a fiduciary relationship between the farmer and Wattles: “The extent to which the [farmer] confided in the defendant Wattles is clearly shown by the fact that he had frequently employed him in business transactions and that the conveyances which he then threatened to annul and overthrow were drawn by him, and accepted under his advice and cooperation.

It was a gross breach of good faith for a person thus trusted, and who had by conducting the business, vouched for its validity and lawfulness, to turn around for the purpose of gaining a personal advantage, and assert that he had been *41engaged in an illegal transaction, which he could at his own option annul and destroy” {*id.* at 29-30 [emphasis supplied]}.

Dornbush and Shaw were clearly Rocky's fiduciaries. But that is only one part of the equation. The critical inquiry is whether they were either parties to the releases or stood to directly benefit from their execution, such that the burden shifted to Devon and Steven to demonstrate that the releases were not procured by fraud.

Here, the only individuals who stood to benefit from Rocky's execution of the releases were his descendants. Neither Dorn-bush nor Shaw were parties to the releases or stood to directly benefit from their execution (c/I Matter of Gordon, 45 NY2d at 698-700; Fisher, 108 NY at 29-30). If anything, the execution of the releases all but ensured that Dornbush and Shaw would have no interest in, nor would receive any benefit from, the trust assets.

Therefore, the Appellate Division correctly determined that, because the fiduciary exception does not apply in this case, the Surrogate had improperly shifted the burden of proof to Devon and Steven to demonstrate that the releases were not procured by fraud.

In support of their motion for summary judgment, Devon and Steven submitted copies of the releases, which, on their face, state that they are irrevocable and carefully set out their legal effect, namely, that Rocky was limiting his power of appointment to his descendants who were not nonresident aliens. Devon and Steven also submitted the deposition testimony of Rocky (taken in an unrelated action) whereby Rocky admitted that he remembered signing the releases.

Excerpts from the depositions of Dornbush and Shaw, the latter testifying that he explained to Rocky the significance of the releases and what they were meant to accomplish, were also submitted. In response, Keiko submitted, among other things, the deposition transcript of Rocky whereby he conceded that Shaw had explained to him the overall purpose of the September release.

In light of this submission, it is undisputed that Shaw explained the overall effect of the September release to Rocky, and that Rocky signed it. As Keiko points out, Rocky testified that he may have signed the releases without actually reading them, but that was not the result of any alleged misrepresentations or omissions by Dornbush and/or Shaw, the latter *42having explained to Rocky what he was signing and receiving confirmation from Rocky that he wanted to sign the releases.⁴ Absent any evidence of fraud, one who signs a document is bound by its terms (see *Da Silva v Musso*, 53 NY2d 543, 550 [1981]).

Because Keiko failed to raise a triable issue of fact that the releases were signed as a result of fraud or other wrongful conduct, the Appellate Division properly granted Devon and Steven summary judgment. Accordingly, the order of the Appellate Division should be affirmed, with costs.. Another of Rocky's children, Kyle, was added as trustee in 1999.

In 2004, Dornbush resigned as trustee and was replaced by attorney Kenneth Podziba. Thus, at the time this proceeding was commenced, the trustees of the BPT were Kevin, Kana, Kyle and

Podziba.. The record is unclear as to why Rocky executed this particular affidavit. It is not captioned and does not appear to have been prepared for use in an action or proceeding.

Notwithstanding Rocky's contentions in this affidavit, however, four years later, Rocky conceded at his deposition that Shaw had explained to him the overall legal effect of the September release.. This particular fact is contained in the Appellate Division decision (see *Fisher v Bishop*, 36 Hun 112, 113 [4th Dept 1885]).. Keiko's contention that Dornbush and Shaw had formed an attorney-client relationship with Kevin and Kana when the releases were signed, such that the attorneys were "effective parties" to the releases, is without merit.

The record establishes that Dornbush and Shaw executed the releases at Rocky's direction. Moreover, Keiko's assertion that Dornbush and Shaw possessed an "interest" in the transaction because they allegedly expected to receive profitable business from the children in the future is mere speculation.