

**Matter of Klemm**

2005 NY Slip Op 30564(U)

September 23, 2005

Supreme Court, New York County

Docket Number: 110192/05

Judge: Lottie E. Wilkins

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PART 18

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In the Matter of the application of Federico Matias  
Klemm,

Index No. 110192/05

Petitioner,

DECISION

Pursuant to Letters Rogatory issued by the National  
Court of First Instance for Civil Matters in Buenos  
Aires, Argentina directing Deutsche Bank to disclose  
information regarding the accounts owned or co-owned  
by the deceased Federico Jorge Klemm and to provide  
an accounting of such funds, and to freeze such funds  
and assets owned or co-owned by Federico Jorge  
Klemm and held by Deutsche Bank,

Respondent,

For use in a civil action pending before the national  
Court of First Instance for Civil Matters for the City of  
Buenos Aires, captioned "Estate of Federico Jorge  
Klemm."

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**Lottie E. Wilkins, J.:**

Petitioner moves, pursuant to CPLR 328(a), for permission to serve letters  
rogatory issued by a Judge of the National Court of First Instance for Civil Matters in  
Buenos Aires, Argentina on July 7, 2005. In those Letters, the Argentinian court  
essentially directs Deutsche Bank, the respondent with a place of business in New York,  
to disclose information concerning accounts at Deutsche Bank or any of its affiliates  
worldwide which were owned, directly or indirectly, by the deceased Federico Jorge  
Klemm and/or certain corporate entities with which the deceased was associated.

Respondent opposes the petition and cross-moves for a stay claiming that it has made an application to the Argentinian court to amend the letters rogatory due to omissions that were allegedly made by petitioner in its presentation of the letters to that court. In 2003, a set of related but significantly different letters were considered by another Justice of this Court who denied petitioner's application to serve them (see, Matter of Klemm, Sup Ct, NY County, May 23, 2003, James, J., Index No. 100669/03; see also, Matter of Klemm, Sup Ct, NY County, November 12, 2003, James, J., Index No. 100669/03 [denying reargument]).

By way of context, the dispute in the Argentinian court appears to be shaping up as a rather bitter will contest pitting petitioner, who is the brother of the decedent, against the Fundación Federico Jorge Klemm, which claims to be sole heir of decedent's estate. Whether or not Argentinian law allows a testator to disinherit close family members like a brother is a question far outside the purview of this Court. For purposes of this Court's function under CPLR 328(a), the primary question to be answered is whether the Court has been presented with valid letters rogatory from a foreign court which should be served on a New York domiciliary in order to assist the foreign court in its efforts to obtain information.

In the previous New York proceeding, another Justice denied petitioner's request to serve letters rogatory when it appeared that those letters sought to have

Deutsche Bank transfer funds and provide an accounting, relief which appeared to that Court to be outside the authority of CPLR 328 (see, Matter of Klemm, supra, [James, J.]). The instant letters present no such dilemma in that they do not direct the transfer of funds nor do they seek an accounting in any formal sense of the word. On their face the current set of letters appear to be nothing more than requests for disclosure of information from the Argentinian court, which is the very sort of inter-jurisdictional request for which CPLR 328 was enacted.<sup>1</sup> Indeed, the opposition does not even argue that these letters seek to accomplish purposes that are beyond the scope of CPLR 328. Therefore, the factors that prompted the Court's denial of petitioner's previous request are not present here.

Turning now to respondent's opposition and cross-motion, respondent argues that this Court should not permit service of the letters rogatory -- or should at least stay its decision in this matter -- because respondent has made an application to the court in Argentina for new or supplemental letters rogatory. Respondent claims that petitioner made certain material omissions from the Letters he tendered to the Argentinian court and that they were tendered to the wrong judge.<sup>2</sup> Respondent

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<sup>1</sup> To the extent that respondent argues that these letters seek information not in the possession or control of Deutsche Bank, obviously Deutsche Bank can respond to that effect. That possibility, however, does not render the letters invalid on their face.

<sup>2</sup> It is unclear to this Court what difference the claimed omission would make in the letters rogatory, at least in terms of the information being sought, however that is a question better left to the Argentinian court.

further alleges that it has now moved in the foreign court to correct these deficiencies and expects the court will soon issue supplemental letters, presumably from the appropriate judge. Notably, respondent's papers do not indicate that the Argentinian court has recalled or issued a stay on the letters presently before this Court. Nor is there any indication that respondent even sought some sort of emergency relief from the court in Argentina.

The cross-motion should not be granted. The difficulty with respondent's request is that it involves too many contingencies and uncertainties for this Court to act upon. While the Court does not doubt that respondent has sought relief in the Argentinian court, it cannot predict how that court will decide the motion, or if it will even consider it. There is simply insufficient information in these papers from which to draw a conclusion about the availability of the relief sought or respondent's likelihood of success. In order to issue the stay respondent seeks, this Court would have to consider issues that are clearly better left to the Argentinian court and, in the process, would likely usurp the powers of that tribunal.

In the final analysis, a New York court has been presented with a valid set of letters rogatory from a foreign court. CPLR 328(a) provides that this Court may now direct service of those letters. The 2002 decision in a related proceeding clearly demonstrates the circumstances under which this Court might elect not to direct service

of letters rogatory when they seek to accomplish ends that are more akin to enforcement of a judgment than a search for information. However, that is not the case here. On their face, these letters are a valid request for information from the Argentinian court. Although that court may choose to amend or supercede these letters at some point, there has been no official indication that it has done so or that it wishes this Court not to act upon the letters that are currently before it. In short, a superceding set of letters rogatory will have to be presented to a court in New York if and when they are signed by a judge in Argentina. If some damage is done to respondent in the meantime as a result of serving these letters, then it will be up to the Argentinian court to grant appropriate relief in the underlying proceeding. Accordingly, it is

ORDERED that the petitioner's motion is granted and the letters rogatory issued in connection with the proceeding before the Court of First Instance for Civil Matters for the City of Buenos Aires be served upon Deutsche Bank by personal service at their place of business designated for service of process in New York; it is further

ORDERED that respondent's cross-motion for a stay is denied.

This constitutes the decision and order of the Court.

**FILED**  
 OCT - 4 2005  
 NEW YORK  
 COUNTY CLERK'S OFFICE

Dated: *September 23, 2005*  
**SEP 23 2005**

*Lottie E. Wilkins*  
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 Lottie E. Wilkins, J.S.C.

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