

Rahmanan v JPMorgan Chase, N.A.

2007 NY Slip Op 34112(U)

December 5, 2007

Supreme Court, New York County

Docket Number: 0602542/2006

Judge: Richard B. Lowe

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

PRESENT: HON. RICHARD B. LOWE, III
Justice

PART 56

Index Number : 602542/2006
RAHMANAN, ANTHONY
vs
JPMORGAN CHASE, N.A.
Sequence Number : 001
DISMISS ACTION

C

INDEX NO. _____
MOTION DATE 6/19/07
MOTION SEQ. NO. _____
MOTION CAL. NO. _____
motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

FILED
DEC 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 12/5/07

HON. RICHARD B. LOWE, III
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

-----X
ANTHONY RAHMANAN, as Trustee of the Trust created
under Article SECOND, Paragraph C, of the Last Will and
Testament of CLAIRE S. ALBERTSON FITZGERALD,
EDWIN ALBERTSON, and BRUCE ALBERTSON,

Plaintiffs,

-against-

JPMORGAN CHASE, N.A., as Trustee and JPMORGAN
CHASE, N.A., as Fiduciary, SERENA COVINO, JOHN
BENNETT, MICHAEL KILKEARY, and other "JOHN DOE"
and "JANE DOE", as individuals and account managers,
consultants and other Trust Service Providers,

Defendants.
-----X

Index No.
602542/06

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HON. RICHARD B. LOWE, III:

Defendants move pursuant to CPLR 3211(a)(4) and (7) for an order dismissing all causes of action asserted against defendants.

Background

Claire S. Albertson Fitzgerald, mother of Edwin Albertson (the Income Beneficiary), died on September 10, 1981, leaving a will dated January 14, 1981 (the Will) that, among other things, established a trust (the Trust) for the benefit of her son, the Income Beneficiary. Plaintiff Bruce Albertson and non-party Scot Albertson, the sons of the Income Beneficiary, have been identified as the remaindermen under the Trust.

The Will initially appointed Lincoln First Bank, N.A. (Lincoln) and Ernest Allen as co-trustees of the trust. In 1989, however, Allen died, leaving JPMorgan Chase, as successor to

Lincoln, as sole trustee. In 2004, the Income Beneficiary's attorney and family friend, plaintiff Anthony Rahmanan, Esq., was suggested as successor trustee to manage the Trust. JPMorgan Chase then agreed to resign.

The Income Beneficiary petitioned the Surrogate's Court of the State of New York, County of Westchester (In re: Fitzgerald, File No.: 2950-1981, filed May 16, 2005) for authorization of JPMorgan Chase's resignation, revocation of the letters of trusteeship, settlement of the Trust accounts, and appointment of Rahmanan as trustee (herein, the Westchester Action).

In a decree, dated July 15, 2005, the Hon. Anthony A. Scarpino, Jr. accepted JPMorgan's resignation, revoked prior letters of trusteeship, ordered successor letters of trusteeship issued to Rahmanan, and ordered JPMorgan to turn over the Trust assets to Rahmanan and render an accounting. See Plaintiff's Opposition, Exhibit C.

In April 2006, JPMorgan Chase filed a Petition in the Westchester Action for Judicial Settlement of Account of Trustees, which provided an accounting of the Trust through December 31, 2005 (the Petition). See Newman Affirmation, Exhibit D. The Petition sought reimbursement of principal paying commissions, a tax shortfall, and attorney/legal services fees.

Rahmanan filed an objection in the Westchester Action, dated June 23, 2006 (Objection). In the Objection, Rahmanan alleges, among other things, that JPMorgan failed to exercise due care in management of the Trust, failed to pursue a suitable overall investment strategy, acted imprudently as a fiduciary, imprudently concentrated Trust assets in JPMorgan investments, made improper payments from Trust principal, and failed to faithfully administer the Will. Among other relief, the Objection prays that JPMorgan be disallowed from discharge as Trustee,

surcharged in damages, and that all improperly paid commissions be disgorged and refunded with interest. JPMorgan answered the Objection as of July 13, 2006.

On July 19, 2006, Rahmanan filed this complaint in the Supreme Court of the State of New York. The complaint alleges that JPMorgan failed to exercise due care in management of the Trust, failed to pursue a suitable overall investment strategy, breached its fiduciary duty, imprudently concentrated Trust assets in JPMorgan investments, purposely focused the Trust on high-commission investments, and conducted trades with the express purpose of generating high commissions. In this court, Rahmanan seeks lump-sum money damages on the first and second causes of action, per-transaction damages for the third through sixth causes of action, and punitive damages.

JPMorgan now moves, pursuant to CPLR 3211(a)(4), to dismiss the complaint due to the pendency of the Westchester Action. Alternatively, JPMorgan moves, pursuant to CPLR 3211(a)(7), to dismiss all causes of action asserted against individual defendants (named and unnamed), and the cause of action for breach of fiduciary duty (i.e., the first, second, and third causes of action).

Discussion

This court is vested with broad discretion in considering whether to dismiss an action on the ground that another action is pending. Whitney v Whitney, 57 NY2d 731 (1982). Generally, for the instant action to be dismissed on the ground of the pendency of the Westchester Action, that Action must have commenced first. CPLR 3211(a)(4); Izquierdo v Cities Serv. Oil Co. (Pa.), 47 Misc 2d 1087, 1090-1091 (Sup Ct, Kings County 1965), citing Avery v Title Guarantee & Trust Co., 230 App Div 519, 521 (1st Dept 1930). Here, it is undisputed that the Westchester

Action and the Objections (compare Frank Pompea v Essayan, 36 AD2d 745 [2nd Dept 1971] [counterclaim is considered a prior pending action]) were both filed before the commencement of the instant action.

The particularized rule is that to sustain this motion to dismiss, JPMorgan must demonstrate that the Westchester Action and the instant action are between the same parties, for the same causes of action, seeking substantially the same relief. Mid-State Precast Sys. v Corbetta Constr. Co., 133 AD2d 959, 960 (3rd Dept 1987), citing Kent Dev. Co. v Liccione, 37 NY2d 899, 901 (1975).

Here, the matters involve the same parties (Rahmanan and JPMorgan) and the same Trust. Rahmanan admits that the issues raised in this action “possibly” arise from the same facts and circumstances as the Westchester Action. Plaintiff’s Opposition, ¶42. Indeed, the court does not perceive, nor have plaintiffs offered, any different legal theory in this action.

As such, the only remaining question is whether the relief sought is different or whether there is some other valid reason that both actions should continue. With regard to relief, Rahmanan maintains that in this court, there is an “ability to receive damages” and the option to challenge the “overall procedures maintained by Defendant JPMorgan for the administration of Trusts in general.” Plaintiff’s Opposition, ¶¶23, 26.

These arguments are without gravitas. First, there is no mention in the complaint whatsoever of a challenge to general policies for administration of trusts. Indeed, there is no declaratory judgment sought; the complaint solely seeks money damages.

Second, there is no proof offered that the damages in this court would differ in any way from those available in the Westchester Action. Upon a plain reading of the complaint and the

Objection, both of which seek reimbursement for improper transactions, the only colorable difference in the relief sought is that, here, Rahmanan also seeks punitive damages. See e.g., Renzi v Aleszczyk, 44 AD2d 648 (4th Dept 1974) (allowing for a cause of action for punitive damages to remain while other causes of action are dismissed due to pendency of another action).

Nonetheless, it is apparent that it is within the Surrogate Court's discretion to award or refuse punitive damages where appropriate. See Flaum v Birnbaum, 177 AD2d 170, 177 (4th Dept 1992); Birnbaum v Birnbaum, 157 AD2d 177, 192-193 (4th Dept 1990); McGill v Booth, 94 AD2d 928 (3rd Dept 1983) (punitive damages cause of action transferred to Surrogate's Court); In re Estate of Mayo, 11 Misc 3d 1072(A), 2006 NY Slip Op 50525 (U) (Sur Ct, Nassau County 2006) (three of 10 causes of action for punitive damages considered and dismissed).

Moreover, the court finds no particular reason that the two actions should proceed in parallel. For instance, there is no reason to expect that, even upon amendment, any expanded relief sought in this action would not be available in the Westchester Action. Although the Surrogate's Court is a court of limited subject matter jurisdiction (NY Const, art VI, §12), the New York State Constitution confers upon it jurisdiction "over all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto ..." (NY Const, art VI, §12[d]) (emphasis added) and "such equity jurisdiction as may be provided by law" (id. at §12[e]).

Further, Section 201(3) of the Surrogate's Court Procedure Act (SCPA) provides, even where the exercise of jurisdiction is incidental to a different proceeding (see SCPA §202), that:

[t]he court shall continue to exercise full and complete general jurisdiction in law and in equity to administer justice in all matters relating to estates and the affairs of decedents, and upon the return of any process to try and determine all

questions, legal or equitable, arising between any or all of the parties to any action or proceeding, or between any party and any other person having any claim or interest therein, over whom jurisdiction has been obtained as to any and all matters necessary to be determined in order to make a full, equitable and complete disposition of the matter by such order or decree as justice requires.

There is no indication that Rahmanan may be entitled to any relief in this court that falls outside the general jurisdiction of the Surrogate's Court. See Matter of Kummer, 93 AD2d 135, 165-166 (2nd Dept 1983); see also Matter of Estate of Wiggins, 200 AD2d 813, 815 (3rd Dept 1994), affd as mod Stortecky v Mazzone, 85 NY2d 518 (1995) (Surrogate's Court makes sua sponte inquiry and finding with regard to fiduciary duty); Birnbaum, 157 AD2d at 192-193 (it is within Surrogate Court's discretion to award or refuse punitive damages); Matter of Estate of Janes, 165 Misc 2d 743 (NY Sur, Monroe County, 1995), affd as mod 223 AD2d 20 (4th Dept 1996), affd 90 NY2d 41 (1997) (court finds violation of prudent investor rule, returns commissions, and surcharges bank).

Finally, as a practical consideration, the court notes that discovery in the Surrogate's Court proceeding, including demands for documents by Rahmanan, has commenced, and is ongoing. It would be a waste of the Surrogate's Court's resources to disturb the progress of the Westchester Action, especially where, as here, this court has no greater powers to resolve this matter than our esteemed colleague in the Westchester County Surrogate's Court. Stortecky v Mazzone, 85 NY2d 518, 525 (1995) ("Surrogate's Court is authorized to exercise 'all of the powers that the supreme court would have in like actions and proceedings'") (citation omitted).

As the actions are between the same parties, concern the same transactions, and seek relief that is available in either forum, the motion to dismiss should be granted. Stanley Elec. Serv. v City of New York, 26 AD2d 951 (2nd Dept 1966).


Accordingly, it is hereby

ORDERED that the motion to dismiss is granted, and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk of the Court; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: December 5, 2007

ENTER:



J.S.C.
HON. RICHARD B. LOWE, III

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