

Matter of Marwaha

2010 NY Slip Op 31458(U)

June 14, 2010

Sup Ct, Monroe County

Docket Number: 2008-1889/B

Judge: Edmund A. Calvaruso

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SURROGATE'S COURT OF THE STATE OF NEW YORK - MONROE COUNTY

In the Matter of the Estate of

Hardyal D. Marwaha

Deceased.

DECISION AND ORDER

File No. : 2008-1889/B

APPEARANCES

Boylan, Brown, Code, Vigdor & Wilson, LLP (Scott M. Mooney, Esq. of counsel) attorney for Petitioner and Claimant, Harbhajan D. Marwaha. *Silver & Feldman* (Sammy Feldman, Esq. of counsel) attorney for Respondent, Sameer Marwaha, Respondent and Administrator c.t.a.

DECISION

Decedent died on May 31, 2008 and his Will nominated his older brother, the Petitioner herein, as executor. The Petitioner renounced his appointment and Sameer Marwaha, a son of the decedent, was appointed as Administrator c.t.a. upon this Court's decree admitting the Will to probate dated September 8, 2008. Pursuant to NYCRR §207.20©, the fiduciary filed a List of Assets on May 13, 2009 showing the estate assets total \$127,859.

On or about July 8, 2009, the Petitioner presented a verified claim to the estate for the sum of \$100,008.60 representing an indebtedness owed to him by the decedent. However, prior to the filing the claim with the estate, the residuary beneficiaries executed the receipts and releases indicating that the majority of the estate assets had been equally distributed between the Respondent and the decedent's other son. Although his claim was not presented to the estate within seven months of the issuance of letters, the Petitioner argues his claim is valid, the fiduciary had knowledge of it, and the distributions were made in bad faith.

In his Answer, the Respondent flatly denies the decedent owed monies to the Petitioner. Furthermore, the fiduciary argues the distributions were proper and made in good faith as he was unaware of the claim as it was not timely filed.

A hearing was convened on March 23, 2010 in which the parties stipulated to the thirty-one pieces of documentary evidence. In addition to the testimony of the Petitioner, his son, his wife and the Respondent, audio recordings of conversations between the Respondent and the Petitioner's son were received into evidence. The cumulation of the evidence presented, both documentary and testimonial, indicates both that the claim presented by the Petitioner is valid and that the fiduciary knew of the claim, albeit perhaps not the specific amount, and made estate distributions despite such knowledge.

In determining the validity of a claim presented against the estate of a decedent, the court is to take into consideration all of the facts and surrounding circumstance, such as the

relationship of the parties and the nature of the claim presented. *Estate of Truitt*, 234 NYLJ 68 (N.Y. Sur. Ct. 2005). The Petitioner has the burden of proving his claim by clear and convincing evidence. *In re Gorden*, 8 N.Y.2d 71 (1960). Because of the death of the debtor and his inability to testify, the quality of evidence required is of a high degree: the proof must be clear and convincing; and the claimant must establish (his) claim in every essential detail." *Fiebrantz v Estate of McCormick*, 43 AD2d 794, (4th Dept.1973), affd. 35 NY2d 888 (1974); *In re McNally's Estate*, 54 A.D. 2d 1103 (4th Dept. 1976).

The Petitioner presented into evidence thirty-one documents, twenty-five of which were checks written by the Petitioner (from August 3, 2005 through May 17, 2007) payable to a Bank of America home equity line of credit that was issued to the decedent. The memorandum line of many checks reference the decedent's line of credit. Other cancelled checks received into evidence show payment by the Petitioner of the decedent's property taxes, legal bills, credit card and a direct payment to the decedent for \$10,000. Additionally, a check drafted by the decedent payable to the Petitioner for \$50,000 was received into evidence.

While the Petitioner was initially disqualified by the Court pursuant to CPLR 4519 from testifying with regard to the transactions represented by the checks, the disqualification was waived upon the cross-examination wherein the Petitioner was asked of the decedent's intentions regarding the installments of the line of credit and other payments made by the Petitioner. By calling the adverse party to testify concerning a personal transaction with the decedent, the estate waived the benefit of CPLR §4519. *Cole v. Sweet*, 187 NY 488 (1907); *Matter of Woods's Estate*, 52 NY 2d 139 (1981). The Petitioner testified that the decedent intended the payments made on his behalf to be a loan as he was experiencing financial distress. Furthermore, Petitioner described the check payable to him for \$50,000 from the decedent as partial payment for the monies advanced to the decedent. Through his testimony and documentary evidence, the Petitioner validated his claim for the monies he advanced for the decedent. The bank statements illustrate a systematic paydown of the decedent's line of credit as each of the Petitioner's checks were received by Bank of America.

The Respondent intimated that perhaps the payments made by the Petitioner were either a gift or evidence of a debt owned by the Petitioner to the decedent. In the foregoing respect, in the absence of other proof, a presumption arises from the delivery of a check that it was delivered in payment of an antecedent debt. *Koehler v Adler*, 78 NY 287 (1879). However, evidence of delivery of the funds and proof that there was no pre-existing debt, establishes prima facie a loan. *Nay v. Curley*, 113 NY 575, 21 NE 698. Petitioner stated on both direct and cross-examination that he owed no money to the decedent. Additionally, the suggestion that the funds were a gift must also fail as there is nothing offered in the way of federal gift tax returns and the law does not presume in favor of a gift. *Grey v. Grey*, 47 NY 552 (1872). The same analysis holds for the other four payments the Petitioner made for the decedent's attorney's fees, property taxes and credit card issued by Bank of America, as the Petitioner was not indebted to the decedent and the payments cannot be presumed to be a gift. The Petitioner met his burden of establishing the claim under SCPA §1809 and was not significantly rebutted.

The SCPA does not explicitly state a time frame by which a claim must be presented to

the estate fiduciary. SCPA §1802 provides that if a claim is not presented within seven months of the issuance of letters, the fiduciary is not liable for any estate distributions made in good faith. Contrary to the Respondent's argument, SCPA §1802 does not act as a statute of limitations to bar claims presented after the seven-month period or constitute a prohibition against making distributions within the seven-month period, but merely provides added protection to both a creditor who presents a claim within the seven-month period and to a fiduciary who waits until the expiration of the period to make distributions to beneficiaries. *Matter of Lee*, 107 Misc 2d 928 (Surr. Ct. Suffolk Co.1981); *In re Estate of Bailey*, 147 Misc 2d. 36 (Surr. Ct. Bronx Co. 1990).

However, the fiduciary cannot be relieved of liability on the ground of good-faith distributions if he had reason to know of the claim's existence within the seven-month period. *Matter of Lee*, 107 Misc 2d 928 (Surr. Ct. Suffolk Co.1981). Here, the Respondent's "ostrich" approach to the existence of his uncle's claim did not constitute good faith. (*see* 6 Warren's Heaton, Surrogate's Court Practice §71.02[2]© at 71-13 [7th ed]). The Respondent testified during the hearing that he received copies of the checks and the decedent's line of credit bank statements before he made the distributions. Other witnesses stated the Respondent was presented with the documentation in June of 2008, eleven months prior to the distributions from the estate. Additionally, the audio recordings of phone conversations, which were received into evidence, between the Respondent and the son of the Petitioner recount several occasions wherein the Respondent adamantly acknowledged the decedent's debt to the Petitioner.

At the very least, whenever there are any clues, good faith requires an investigation to determine the existence of possible claims against the estate. *Matter of Swaab*, 40 Misc 2d 767 (Surr. Ct. New York Co.1963); *Matter of Frommelt*, 154 Misc. 81 (Surr. Ct. Kings Co. 1935). Good faith requires the fiduciary to recognize claims of which he has actual knowledge and those of which he must be deemed to have knowledge because of information possessed by him which should reasonably lead him to knowledge of the claim. *Matter of Snitkin*, 151 Misc. 118, 120-121 (Surr. Ct. New York Co. 1934); *Matter of Ebenstein*, 116 Misc. 543 (Surr. Ct. Bronx Co.1921).

The Petitioner met his burden of establishing his claim under SCPA §1809 and the estate was unconvincing in its attempt to prove the claim to be without merit. As such, the Respondent's contention that the distributions to himself and his brother were made in good faith and therefore shield him from liability of the claim must fail. Based upon the forgoing, the executor shall be surcharged in the amount of \$100,008.60 or in the alternative, the residuary legatees shall refund said amount forthwith to the estate on a pro rata basis, for purposes of paying the claim in full.

This decision shall constitute an Order of this Court.

Dated: June 14, 2010
Rochester, New York

Edmund A. Calvaruso
Hon. Edmund A. Calvaruso
Monroe County Surrogate

ENTER