

Brunner v Jackson Natl. Life Ins. Co. of N.Y.

2014 NY Slip Op 32825(U)

October 31, 2014

Supreme Court, Suffolk County

Docket Number: 14-5353

Judge: Arthur G. Pitts

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 43 - SUFFOLK COUNTY

P R E S E N T :

COPY

Hon. ARTHUR G. PITTS
Justice of the Supreme Court

MOTION DATE 4-9-14 (#001)
MOTION DATE 5-15-14 (#002 & #003)
ADJ. DATE 5-29-14
Mot. Seq. # 001 - MG
Mot. Seq. # 002 - MG
Mot. Seq. # 003 - MD

-----X
JENNIFER S. BRUNNER, and JILL FIFIELD,
individually and as Administrators of the
ESTATE OF RAYMOND E. FIFIELD, JR.
ESTATE OF RAYMOND E. FIFIELD, JR.,
RAYMOND W. FIFIELD, and STEPHANIE
FIFIELD,

Plaintiffs

- against -

JACKSON NATIONAL LIFE INSURANCE
COMPANY OF NEW YORK and SUSAN K.
SCHNEIDER,

Defendants
-----X

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Upon the following papers numbered 1 to 53 read on these motions for preliminary injunctive relief and this cross motion to pay proceeds into court; Notice of Motion/ Order to Show Cause and supporting papers 1 - 16; 17 - 35; Notice of Cross Motion and supporting papers 44 - 51; Answering Affidavits and supporting papers 36 - 43; 52 - 53; Replying Affidavits and supporting papers ; Other ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the motions (seq. 001 and seq. 002) by plaintiffs and the cross motion (seq. 003) by defendant Jackson National Life Insurance Company of New York hereby are consolidated for purposes of this determination; and it is

ORDERED that the motion by plaintiffs for a preliminary injunction restraining defendant Jackson National Life Insurance Company of New York from disbursing funds maintained in connection with a certain individual retirement account annuity owned by decedent Raymond Fifield is granted; and it is

ORDERED that the motion by plaintiffs for preliminary injunctions restraining defendant Susan Schneider from transferring, pledging, hypothecating, encumbering, withdrawing, disposing of or gifting certain funds previously belonging to decedent Raymond E. Fifield which were transferred to her after his death, during

the pendency of this action and until further order is issued is granted on the condition that plaintiffs post an undertaking; and it is further

ORDERED that plaintiffs shall file an undertaking in the amount of \$5,000 with the Office of the Suffolk County Clerk so that, in the event it is finally determined that plaintiffs were not entitled to injunctive relief, they shall pay to defendant Susan Schneider all actual damages and costs sustained due to the preliminary injunctions; and it is

ORDERED that the cross motion by defendant Jackson National Life Insurance Company of New York for, inter alia, an order granting it leave to make payment into Court of the benefit owed under an individual retirement account annuity issued to decedent Raymond E. Fifield and discharging it from all liability in connection with the claims asserted in this action is denied, without prejudice.

In August 2010, Raymond E. Fifield submitted an application with defendant Jackson National Life Insurance Company of New York for a traditional individual retirement account (IRA) annuity, which allegedly was funded by rolling over approximately \$260,000 from an IRA account with Oppenheimer Funds. The application listed Raymond E. Fifield's adult children, plaintiffs Jennifer Brunner, Jill Fifield, Raymond W. Fifield and Stephanie Fifield, as the primary beneficiaries of such annuity. On August 16, 2010, an IRA annuity, with an account number ending in 2269, was established by Jackson National Life Insurance Company of New York (Jackson National) for Raymond E. Fifield. The following year, Raymond E. Fifield established another IRA annuity, bearing an account number ending in 4848, with MetLife Investors Company (MetLife) by rolling over approximately \$65,000 in funds from a money market account. As with the Jackson National annuity, plaintiffs were designated by their father as the beneficiaries of the MetLife annuity. He also allegedly designated plaintiffs as the beneficiaries of a group life insurance policy issued by Prudential Group Life Insurance ending in policy number 0902, and of a group life insurance policy issued by The Standard Life Insurance Company of New York ending in policy number 3912.

Thereafter, in July 2013, Raymond E. Fifield was admitted to Southside Hospital and underwent coronary bypass surgery. Discharged in September 2013, he was re-admitted to Southside Hospital just three weeks later with congestive heart failure. Raymond E. Fifield remained a patient at Southside Hospital until November 24, 2013, when he was transported via ambulance to New York Presbyterian Hospital for a heart transplant.

On the morning of December 10, 2013, still awaiting a heart transplant, Raymond E. Fifield passed away. On that same day, defendant Susan Schneider allegedly presented forms to William Anderson, a representative of Invest Financial Corporation, removing Raymond E. Fifield's children as the beneficiaries of the IRA annuities with Jackson National and MetLife and designating her as the sole beneficiary. Schneider was Raymond E. Fifield's girlfriend the last four years of his life, and Anderson was his financial advisor. The change of beneficiary forms for the IRA annuity accounts purportedly were signed by the decedent on December 7, 2013. Schneider also filed forms indicating she was the beneficiary of a \$62,000 benefit owed to Raymond E. Fifield under a group life insurance policy issued by Prudential Group Life Insurance and of a \$25,000 benefit owed on a group insurance policy issued by The Standard Life Insurance Company to the Bay Shore Firemen's Exempt Benevolent Association. And she allegedly appeared at the Bay Shore Fire Department to collect an allotment owed the decedent for his prior service as a board member. In addition, Schneider allegedly filed a form on December 10 with the Teachers Federal Credit Union, where Raymond E.

Fifield had an individual account for which his son was the designated beneficiary, changing the account into a joint account. Purportedly signed by Raymond E. Fifield and dated December 10, 2013, the form directed that his individual account at Teachers Federal Credit Union ending in 0957 be converted to make Schneider a joint member. Plaintiffs allege Schneider withdrew more than \$20,000 from the decedent's individual account at Teachers Federal Credit Union after it was converted to a joint account. Moreover, in early 2014, the funds from the decedent's annuity account with MetLife were distributed to Schneider, as were the benefits owed under the subject life insurance policies issued by Prudential Group Life Insurance and The Standard Life Insurance Company.

Subsequently, in March 2014, plaintiffs commenced this action against Jackson National and Schneider, alleging, in part, that the change of beneficiary form presented to Jackson National was not executed by Raymond E. Fifield. Alternatively, plaintiffs assert that Schneider exercised undue influence over the decedent in the days before his death, and that she fraudulently induced him to execute the change of beneficiary forms and the form for converting his individual account at Teachers Federal Credit Union to a joint account. Simultaneous with the filing of the summons and complaint, plaintiffs moved by order to show cause for a preliminary injunction, as well as for a temporary restraining order, prohibiting Jackson National from disbursing the funds maintained in the subject annuity account owned by Raymond E. Fifield.

Shortly thereafter, in April 2014, plaintiffs filed an amended summons and complaint. Like the original complaint, the first cause of action seeks a judgment declaring that the change of beneficiary form submitted by Schneider to Jackson National was void and that plaintiffs are the beneficiaries of Raymond E. Fifield's IRA annuity account ending in 2269. The second cause of action alleges the change of beneficiary forms submitted by Schneider were void, as they were submitted after Raymond E. Fifield's death, and seeks a declaration that plaintiffs are the beneficiaries of the subject MetLife annuity account, the life insurance policy issued by Prudential Group Life Insurance, and the life insurance policy issued by The Standard Life Insurance Company. The third cause of action alleges the form changing the decedent's bank account was not executed during his lifetime, and the fourth cause of action alleges the change of beneficiary forms and the change of bank account form submitted by Schneider were either executed by Schneider or were the product of fraud. The fifth cause of action asserts Raymond E. Fifield was heavily medicated during the last months of his life, and that the change in beneficiary forms and change in ownership form executed days before his death were the result of Schneider's undue influence over him. The sixth cause of action alleges Schneider forged the decedent's signatures on such forms. In addition to seeking declaratory relief, plaintiffs seek damages against Schneider on the third, fourth, fifth and sixth causes of action. Jackson National's answer to the amended complaint interposes a counterclaim and a cross claim for attorneys fees.

Concomitant with their filing of the amended complaint, plaintiffs, by order to show cause, made a motion for preliminary injunctions prohibiting Schneider, along with any person, firm or entity acting on her behalf, from transferring or disposing of the funds from the Jackson National and MetLife annuity accounts, from the Prudential Group Life and The Standard Life insurance policies, from the bank account with Teachers Federal Credit Union, from any joint accounts held with Raymond E. Fifield, and from any other accounts distributed to her as the designated beneficiary of Raymond E. Fifield. An affidavit of Jill Fifield alleges, among other things, plaintiffs learned after the commencement of this action that additional assets belonging to their father were transferred to Schneider following his death. It further alleges that every change of beneficiary form, as well as the change of bank account form, were filed by Schneider after Raymond E. Fifield's death. In addition to seeking preliminary injunctive relief, plaintiffs sought, and obtained, temporary

restraining orders against Schneider enjoining her from transferring or disposing of any funds distributed or obtained by her in connection with such annuities, life insurance policies, or bank account, or obtained from any other account for which she was the designated beneficiary of or owned jointly with the decedent.

Jackson National, then, cross-moved for an order granting it leave to pay into court the money owed on the IRA annuity owned by the decedent and dismissing it from all liability on the ground that it is only a disinterested stakeholder, since the actual controversy is between plaintiffs and Schneider. Jackson National further sought permission to charge against the amount deposited with the court the costs and disbursements, including attorney's fees, it incurred in connection with the action. Plaintiffs oppose the branch of the cross motion seeking to charge costs and disbursements against the amount paid into court.

Schneider opposes plaintiffs' pending motions for preliminary injunctions, arguing that the action is motivated by plaintiffs' resentment over her relationship with their father. She alleges in an affidavit that she and Raymond E. Fifield lived together as husband and wife, that he was estranged from his children, and that she was his sole caregiver during the months before his death. According to Schneider, in December 2013, the decedent requested that she contact Anderson to get the necessary paperwork to change the beneficiary designations for his annuity accounts and life insurance policies. She alleges the decedent "wanted to leave his grandchildren his major IRA account for their college education." Schneider further alleges that, having been told by Anderson the paperwork to make the grandchildren his beneficiaries was "complicated," the decedent named her the beneficiary of the account because he trusted she would "get this money to his grandchildren." She denies she coerced or exercised undue influence over Raymond E. Fifield, and alleges she was not present when he executed the change of beneficiary forms. Schneider's affidavit in opposition to plaintiffs' motions does not address the allegations concerning the change in ownership of the decedent's individual account at Teachers Federal Credit Union.

A preliminary injunction is a drastic remedy that should not be granted unless a clear legal right to such relief is established under the law and the undisputed facts (*see Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334, 786 NYS2d 107 [2d Dept 2004]; *Blake Agency v Leon*, 283 AD2d 423, 723 NYS2d 871 [2d Dept 2001]; *see also Trump on the Ocean, LLC v Ash*, 81 AD3d 713, 916 NYS2d 177 [2d Dept], *lv dismissed* 17 NY2d 875, 932 NYS2d 425 [2011]). The purpose of a preliminary injunction is to maintain the status quo between the parties and prevent the dissipation of property that could render a judgment ineffectual, not to determine the parties' ultimate rights (*see Perpignan v Persaud*, 91 AD3d 622, 936 NYS2d 261 [2d Dept 2012]; *Putter v Singer*, 73 AD3d 1147, 1149, 901 NYS2d 382 [2d Dept 2010]; *Ruiz v Meloney*, 26 AD3d 485, 810 NYS2d 216 [2d Dept 2006]). It may be issued if the moving party shows the party to be enjoined threatens harm to the moving party's rights and such harm could render a judgment ineffectual (*see S.J.J.K. Tennis, Inc. v Confer Bethpage, LLC*, 81 AD3d 629, 916 NYS2d 789 [2d Dept 2011]; *Dixon v Malouf*, 61 AD3d 630, 875 NYS2d 918 [2d Dept 2009]; *Ruiz v Meloney*, 26 AD3d 485, 810 NYS2d 216). However, a preliminary injunction may not be granted in an action seeking only money damages (*see Credit Agricole Indosuez v Rossiyskiy Kredit Bank*, 94 NY2d 541, 708 NYS2d 26 [2000]; *Mar v Liquid Mgt. Partners, LLC*, 62 AD3d 762, 880 NYS2d 647 [2d Dept 2009]).

To prevail on an application for a preliminary injunction, a movant must demonstrate, by clear and convincing evidence, a likelihood of success on the merits, irreparable injury absent the granting of the preliminary injunction, and a balancing of the equities in favor of the movant (CPLR 6301; *Aetna Ins. Co. v Capasso*, 75 NY2d 860, 552 NYS2d 918 [1990]; *East Coast Drilling, Inc. v Total Structure Enter., Inc.*, 106

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AD3d 688, 964 NYS2d 238 [2d Dept 2013]; *Perpignan v Persaud*, 91 AD3d 622, 936 NYS2d 261; *Brookhaven Baymen's Assn., Inc. v Town of Southampton*, 85 AD3d 1074, 926 NYS2d 594 [2d Dept 2011]). Here, plaintiffs sufficiently demonstrated their entitlement to injunctive relief pending the determination of this action by showing a likelihood of success on the merits, irreparable injury in the absence of preliminary injunctions, and the balance of the equities in their favor (*see* CPLR 6301; *Winchester Global Trust Co. Ltd. v Donovan*, 58 AD3d 833, 873 NYS2d 130 [2nd Dept 2009]; *Ying Fung Moy v Hoho Umeki*, 10 AD3d 604, 781 NYS2d 684 [2d Dept 2004]). Significantly, the evidence presented shows Schneider did not submit the change of beneficiary forms to the insurers or the change of account form to the credit union until after Raymond E. Fifield's death, that such forms allegedly were executed days before his death, when he was hospitalized in critical condition, and that disposition of the assets at issue threatens to render ineffectual any judgment which plaintiffs might obtain in this action.

Accordingly, the Court grants plaintiffs' applications for preliminary injunctions against Schneider enjoining her from transferring, pledging, hypothecating, encumbering, withdrawing, disposing of or gifting the funds in the subject accounts or paid under the subject policies belonging to decedent Raymond E. Fifield, which were transferred to her after his death, pending the final disposition of this action. Plaintiffs shall file an undertaking in the amount of \$5,000 with the Office of the Suffolk County Clerk so that, in the event it is finally determined that plaintiffs were not entitled to injunctive relief, they shall pay to defendant Susan Schneider all actual damages and costs sustained due to the preliminary injunctions (*see* CPLR 6312). Plaintiffs shall serve Schneider with a copy of this order, with notice of its entry, and proof of the filing of the undertaking.

Lastly, Jackson National's cross motion, pursuant to CPLR 1006, for, inter alia, an order granting it leave to pay into Court the proceeds of the IRA annuity with account number ending in 2269 purchased by Raymond E. Fifield and discharging it from liability in this action is denied, without prejudice. Although it is undisputed Jackson National is a neutral stakeholder with no interest in the IRA annuity (*see Sun Life Ins. & Annuity Co. of N.Y. v Braslow*, 38 AD3d 529, 831 NYS2d 497 [2d Dept 2007]; *Mann v John Hancock Mut. Life Ins. Co.*, 20 AD2d 608, 245 NYS2d 433 [2d Dept 1963]), it failed to present any evidence as to the amount owed the beneficiary or beneficiaries of such annuity. Jackson National also failed to support its application to charge costs and disbursements, including attorneys fees, against the amount deposited into Court with evidence establishing the amount of such costs and disbursements.

Dated: October 31, 2014


 J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION