

**Stevens v Cahill**

2015 NY Slip Op 31956(U)

October 20, 2015

Surrogate's Court, New York County

Docket Number: 2013-2228/C

Judge: Rita M. Mella

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

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New York County Surrogate's Court

Date: October 20, 2015

HANA NINA STEVENS,

Plaintiff

-v.-

WILLIAM A. CAHILL, JR., as Ancillary Administrator  
CTA and ALICIA HEINIGER as Ancillary Executor  
of the Estate of

PATRICK HEINIGER,

Deceased, and

HODET CORP.,

Defendants.

DECISION AND ORDER

File No.: 2013-2228/C

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M E L L A, S.:

Papers Considered

Numbered

|   |      |
|---|------|
| First Amended Notice of Motion, dated August 17, 2015, to Compel Further Examination of Plaintiff, etc., with Supplemental Affirmation of Evan A. Belosa, Esq., dated August 17, 2015 | 1, 2 |
| Notice of Motion, dated July 29, 2015, to Compel Further Examination of Plaintiff etc., with Affirmation of Evan A. Belosa, Esq., dated July 28, 2015, with Exhibits 1 through 6      | 3, 4 |
| Defendants' Memorandum of Law, dated July 29, 2015, in Support of Motion to Compel Further Examination of Plaintiff, etc., with Exhibit A   | 5    |
| Defendants' Reply Memorandum of Law, dated September 28, 2015, in Further Support of Their Motion to Compel   | 6    |
| Reply Affirmation of Wm. Lee Kinnally, Jr., Esq., dated September 25, 2015, With Exhibits A and B   | 7    |

| <u>Papers Considered (con't)</u>   | <u>Numbered</u> |
|--|-----------------|
| Notice of Petitioner's (Plaintiff's) Motion to Compel Production of Documents et al., dated July 31, 2015, with Affirmation of Timothy E. Hoeffner, Esq., dated July 31, 2015, in Support, attaching Exhibits A through Z                        | 8, 9            |
| Memorandum of Law, dated July 31, 2015, in Support of Motion to Compel   | 10              |
| Affirmation of Wm. Lee Kinnally, Jr., Esq., dated September 21, 2015, in Opposition to Motion to Compel, attaching Exhibits 1 through 4  | 11              |
| Defendants' Memorandum of Law, dated September 22, 2015, In Opposition to Motion to Compel   | 12              |
| Petitioner's (Plaintiff's) Reply Memorandum of Law, dated September 28, 2015, in Further Support of Motion to Compel   | 13              |
| Defendants' Notice of Motion, dated September 11, 2015, to Strike Plaintiff's Objections and Compel Deposition of Employee, with Affirmation of Evan A. Belosa, Esq., dated September 10, 2015, With Exhibits 7 through 10                       | 14              |
| Petitioner's (Plaintiff's) Cross-Motion, dated September 22, 2015, For a Protective Order, with Affirmation of Timothy E. Hoeffner, Esq., Dated September 22, 2015, attaching Exhibits A through Q   | 15, 16          |
| Memorandum of Law, dated September 22, 2015, in Support of Petitioner's (Plaintiff's) Cross-Motion for a Protective Order  | 17              |
| Defendants' Notice of Motion, dated July 28, 2015, for a Commission to Take Discovery from DHL USA in Florida, with Affirmation of Steven G. Eckhaus, Esq., dated July 28, 2015, attaching Exhibits A through D                                  | 18, 19          |
| Respondents' (Defendants') Memorandum of Law, dated July 29, 2015, in Support of Motion for a Commission   | 20              |
| Stipulation, dated July 28, 2015, of All Parties to Seal Exhibit 4 to the Affirmation of Evan A. Belosa, Esq., dated July 28, 2015   | 21              |
| Stipulation, dated September 25, 2015, of All Parties to Seal Exhibit B to the Affirmation of Timothy A. Hoeffner, Esq., dated July 31, 2015, and Portion of Exhibit N to the Affirmation of Timothy A. Hoeffner, Esq., dated September 22, 2015 | 22              |

At the call of the calendar on September 29, 2015, the court resolved as follows the various discovery motions by both sides in this action for replevin and declaratory judgment by plaintiff Hana Nina Stevens against defendants, Hodet Corporation and the ancillary fiduciaries of the estate of decedent Patrick Heiniger. This action, concerning, among other things, the ownership of a bank account, artwork, and the shares of Hodet Corp., which in turn is alleged to own a New York condominium, was transferred to this court from Supreme Court.

#### Plaintiff's Motions

The court denied plaintiff's motion to compel further evidence from defendants regarding their claim of undue influence in light of defendants' statements that they already have disclosed all nonprivileged information regarding this defense.

That portion of plaintiff's motion seeking email correspondence between defendants' counsel and a non-party, who was not represented by counsel for the defendants, was denied, except to the extent that contact information for this person was directed to be turned over to plaintiff's counsel.

The motion by plaintiff seeking to compel disclosure of a December 27, 2012 email between an attorney and an officer of Hodet Corp., which was represented by the firm of that attorney, was denied. Although the privilege log incorrectly stated the operative privilege shielding disclosure to be attorney work product, the court gave leave to defendants to serve an amended privilege log asserting the attorney-client communication privilege as the basis for withholding it.

Finally, the court denied plaintiff's motion to compel proper answers to certain interrogatories because those interrogatories improperly requested facts that merely would or did

support a legal conclusion.

### Defendants' Motions

Without objection, the court granted defendants' motion for an open commission to take discovery from DHL USA in Florida.

The court granted defendants' motion to compel the examination of plaintiff's employee in New York, unless the parties agree to conduct it in a different place, within 30 days, without the need to serve a subpoena.

Defendants' motion to compel was granted only to the extent of directing the plaintiff to appear for a further examination at a deposition for no more than four hours, limited to the following subjects, unless previously asked and answered: (1) artwork in New York at the time of decedent's death; (2) the location of any artwork which was in New York at the time of decedent's death; and (3) the invoices from the Shafrazi Art Gallery for four works of art, their use by her attorney A.R.G., Esq., and Stevens's communications with A.R.G., Esq. concerning these invoices, the Gallery, the proposed bills of sale and a proposed affidavit prepared by this attorney regarding them. The court notes that this last area of permitted inquiry of plaintiff includes questions regarding documents which the court compelled disclosure of in a separate decision issued on October 7, 2015. A protective order was granted to plaintiff only to the extent of enforcing these limits to her examination at a continued deposition. Defendants' motion was otherwise denied.

### Motion to File Exhibits Under Seal

The court also granted on consent the request to file under seal Exhibit B to the Hoeffner Affirmation of July 31, 2015, Exhibit B and portions of Exhibit N to the Hoeffner Affirmation of


September 22, 2015, and Exhibit 4 to the Belosa Affirmation of July 28, 2015. The good cause to seal is the avoidance of theft, and the court perceives no countervailing public interest in access to the information contained within these documents (22 NYCRR 216.1).

Discovery Deadlines

Finally, the court extended the discovery deadlines, with all fact discovery to conclude no later than November 20, 2015, and discovery with respect to experts to conclude no later than December 31, 2015.

This decision together with the transcript of the September 29, 2015 proceedings constitute the order of the court regarding the discovery motions; sealing orders signed.

Dated: October 20, 2015

  
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