

Matter of Leyden
2018 NY Slip Op 30663(U)
April 13, 2018
Surrogate's Court, New York County
Docket Number: 2009-0481/L
Judge: Rita M. Mella
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court

APRIL 13, 2018

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In the Matter of the Petition of Joel Leyden, as Beneficiary
of the Article FIFTH (C) Trust under the Will of

BERNARD LEYDEN,

DECISION and ORDER

File No.: 2009-0481/L

Deceased,

to Enforce the Terms of a Stipulation, Compel Distributions
from the Trust, Impose Sanctions and Surcharges, and
Other Related Relief
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M E L L A , S . :

The following papers were considered in deciding this motion for summary judgment:

Papers

Numbered

Notice of Motion for Summary Judgment in a Proceeding to Enforce the Terms of Stipulation and Comply with a Court Order, and Affirmation in Support with Exhibits	1,2
Affirmation in Opposition.....	3

Joel Leyden, the beneficiary of a trust created under the will of his father, Bernard
Leyden, has moved for summary determination of his petition to enforce an order of this court
directing his brother, Brian Leyden, as trustee, and the latter's attorney, as escrow agent, to
comply with the terms of an agreement.

The history of the litigation related to this trust is discussed in prior decisions of this court
dated June 13, 2014, December 2, 2013 and July 28, 2011 and will not be repeated in detail here.
It should be noted, however, that most of the proceedings have involved requests by Joel Leyden
for distributions from the trust.

Following one such request for a distribution, the parties entered into a stipulation, dated

December 17, 2013, pursuant to which the trustee agreed to place \$30,000 in escrow, of which \$10,000 was to go to attorneys fees and \$20,000 was to be used for purposes consistent with the stipulation (namely, to aid Joel Leyden in overcoming legal obstacles to his return to Israel).

When the trustee and his attorney failed to keep such funds in escrow, Joel Leyden brought a proceeding seeking, inter alia, compliance with the stipulation. In response, the court directed, in a decision and order of June 13, 2014, that the monies be placed in escrow consistent with the stipulation. Specifically, the June 13, 2014 court order read: "The Trustee is directed to place \$30,000 in escrow with his attorneys, such funds to be used pursuant to and under the same terms as agreed upon in the Stipulation." The stipulation requires that the \$20,000 "shall be available to satisfy any legal obligation discovered upon, or arising from, Joel Leyden's return to Israel."

Approximately three years after the court order issued, Joel Leyden's attorney approached the escrow agent with a copy of an unsigned agreement between Joel Leyden and his ex-wife regarding certain legal issues that were to be addressed before he could return to Israel. In response, the escrow agent refused to release the \$20,000, contending that this un-executed contract was insufficient basis for such release, and that, in any event, it would not be prudent to release the funds at this juncture, since the trust was about to terminate and Joel Leyden would need those funds for his retirement.

In June 2017, petitioner commenced the instant proceeding seeking to enforce the June 13, 2014 order and contending that despite the December 2013 stipulation's recognition that the escrowed fund was to be devoted to his return to Israel, the escrow agent refused to release the funds. Arguing that there are no issues of fact, petitioner has moved for summary judgment (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d

557 [1980]) directing the trustee to release the fund from escrow and imposing sanctions and surcharges.

Discussion

This court recognizes that the trustee has been inundated with excessive requests from the trust beneficiary, Joel Leyden, and that, when asked to intercede, this court has most often declined to substitute its judgment for that of the trustee. Here, however, the funds were placed in escrow pursuant to the parties' stipulation and the court's order and it was not within the trustee's discretion to withhold the distribution of the funds simply because the agent considered the distribution to be imprudent (*Sasidharan v Piverger*, 145 AD3d 814 [2d Dept 2016]). Rather, the escrowee was obliged to honor the terms of the escrow agreement. It is true that the escrow agent questioned the relevance of the un-executed agreement, and purported to justify her retention of the funds in part on account of that expressed concern. However, an executed agreement regarding the legal obligations related to Joel Leyden's return to Israel was not a requirement contemplated by the stipulation, as a pre-condition of the release of funds. Therefore, it was not a sufficient ground for the escrow agent to continue to withhold the funds (see, e.g., *Mobil Oil Corp. v Livingston*, 37 AD2d 796 [4th Dept 1971]). Nor were Joel Leyden's future needs as a retiree grounds for the escrow agent to refuse to release the funds, since the December 2013 stipulation had contemplated that the funds were to be used specifically toward Joel Leyden's return to Israel.

Petitioner's motion is, therefore, granted to the extent that the escrow agent is directed to turn over \$20,000 to Jonathan E. Neuman, Esq., attorney for Joel Leyden, within 30 days of the date of this decision. This payment is in compliance with and in full satisfaction of the terms of

the December 17, 2013 agreement and the June 13, 2014 order.

The failure of an escrow agent to comply with an escrow agreement, to the extent it is a breach of contract and breach of fiduciary duty, may be ground for the imposition of sanctions and/or surcharges. However, such a matter is wholly within the discretion of the court. There being no showing of bad faith on the part of the trustee or escrow agent here, petitioner's request for sanctions and surcharges is denied.

This decision constitutes the order of the court.

Clerk to notify.

Dated: April 13, 2018


SURROGATE