

Matter of Harris

2018 NY Slip Op 34571(U)

February 28, 2018

Surrogate's Court, Bronx County

Docket Number: File No. 2017-1035

Judge: Nelida Malave-Gonzalez

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FILED

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SURROGATE'S COURT,
COUNTY OF BRONX

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February 28, 2018

ESTATE OF STEVEN A. HARRIS, Deceased
File No.: 2017-1035

In this contested probate proceeding the decedent's spouse moves to quash a "subpoena" and the preliminary executor opposes that motion and cross moves to impose sanctions, asserting that the motion to quash is frivolous. Chase Bank (Chase), the entity from which documents are being sought, was served with the motion and defaulted.

The decedent died on April 24, 2017 survived by the spouse and two daughters; one daughter is the preliminary executor and the other daughter, along with the spouse, are objectants in the probate proceeding. The genesis of the motion is a letter dated December 11, 2017 sent to Chase, by an associate of the firm representing the preliminary executor, seeking, inter alia, documents related to joint accounts held by the decedent and the spouse dating from 2012 until the present (the "letter request"). The letter request indicates that the documents are sought to assist the preliminary executor in the administration of the estate and a copy of her preliminary letters testamentary are attached to the letter. Notably, there is

no indication that the spouse or her attorney were copied on the letter, though counsel for the preliminary executor was well aware that the spouse was represented by counsel.

Chase contacted the spouse initially by phone and subsequently by written correspondence dated December 15, 2017, informing her about the letter request and advising that the documents would be turned over to the preliminary executor unless Chase received a court order directing them not to do so. Thereafter the spouse and her attorney received letters from Chase's legal department, dated December 27, 2017 and January 2, 2018, respectively, informing them of Chase's obligation to turn over the documents absent a court order. Although the letters from Chase refer to a subpoena, it appears that no subpoena ever issued, only the letter request by counsel for the preliminary executor. The documents sought pursuant to the letter request are now the subject of an SCPA 2103 proceeding commenced by the preliminary executor, currently returnable on March 6, 2018.

In support of the motion the attorney for the spouse states that the spouse informed him that a subpoena had been issued to Chase, and based upon the correspondence he and his client received from Chase he believed that in fact, a subpoena had issued. He made numerous attempts to resolve this matter informally with counsel for the preliminary executor, as attached documents reveal, but given Chase's position, and the fruitless efforts to resolve this matter informally, the motion was necessary. Finally,

he argues that the documents requested pursuant to the letter request are not relevant to the probate proceeding as they concern joint assets which, ultimately, may be deemed non-estate assets, and any information concerning joint assets is obtainable in the SCPA 2103 proceeding, after jurisdiction is complete in the probate proceeding.

In opposition to the motion and in support of the cross motion, counsel for the preliminary executor acknowledges that an associate from his firm sent the letter to Chase, but insists that the letter was sent "wholly outside the context of this and any other legal proceeding." He argues, inter alia, that as no subpoena ever issued and counsel for the spouse did not attempt to resolve this issue informally prior to filing the motion and then refused to withdraw it, the motion is frivolous and sanctionable. Noting that the documents that were the subject of the letter request are relevant and currently are being sought through the commencement of an SCPA 2103 proceeding, he argues that the motion should be denied as moot and sanctions imposed.

Based upon the undisputed documents submitted in support of the motion, it is clear that Chase intended to turn over the requested documents unless prohibited from doing so by court order. Moreover, the statement that the documents requested in the letter request were somehow "not related to this or any other proceeding" is incredulous and wholly belied by the content of that letter. As counsel for the preliminary executor acknowledges, the same documents are now being sought in the SCPA

2103 discovery proceeding.

Under the circumstances, the court finds that these documents should have been sought through proper disclosure mechanisms in an appropriate proceeding, and not in the ex parte manner chosen. Given Chase's position, the spouse's motion seeking, in effect to restrain the release of any documents requested pursuant to the letter request is granted, and the cross motion is denied.

Although jurisdiction is not complete in the probate proceeding, the SCPA 2103 proceeding may move forward as the relief sought therein would not prejudice the rights of the parties over whom the court has not yet obtained jurisdiction in the probate proceeding. Accordingly, this decision constitutes the order of the court granting the motion to the extent of staying any further discovery of all parties and non-parties with respect to the issues that are the subject of both the letter request and the SCPA 2103 proceeding pending a determination of any issues raised in that discovery proceeding and denying the cross motion in all respects. Chase is hereby directed not to turn over any documents sought in the December 11, 2107 letter, until a further order of the court. Movant shall serve a copy of this order with Notice of Entry upon Chase.

Proceed accordingly.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE