

Matter of Hassine

2020 NY Slip Op 30710(U)

March 5, 2020

Surrogate's Court, New York County

Docket Number: 2009-3748/C

Judge: Nora S. Anderson

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New York County Surrogate's Court
DATA ENTRY DEPT.
MAR - 5 2020

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

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In the Matter of the Accounting of Samuel
Hassine as Executor of the Estate of

DAVID HASSINE,

File No. 2009-3748/C

Deceased.

-----X
In the Matter of the Application of
Steven Hassine and Jaclyn Hassine,
Individually and as the Sole Residuary
Beneficiaries and First Substitute
Executors of the Estate of

DAVID HASSINE,

File No. 2009-3748/D/E

Deceased,

For a Decree Revoking Letters
Testamentary Issued to Samuel Hassine
under the Last Will and Testament of
David Hassine, Deceased, and Appointing
Steven Hassine and Jaclyn Hassine as
Successor Executors.

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A N D E R S O N , S .

This is a contested consolidated proceeding in the estate of David Hassine to (1) settle the executor's account, and (2) remove the executor and appoint successor co-executors. Days before the January 15, 2020 date marked final for trial, Steven Hassine and Jaclyn Hassine bring this motion to vacate two pre-trial stipulations -- a Joint Stipulation of Undisputed Facts and a Joint Statement of Issues (the "Stipulations") -- submitted by their prior counsel, Ansell Grimm & Aaron, P.C. (the "prior firm") and to adjourn this years-long litigation for an

additional 90-days, in order to re-open discovery and allow their new counsel additional time beyond the 60-days already given to prepare for trial. At the call of the calendar, the court denied the motion in its entirety.

Stipulations

Movants assert two bases upon which the court should vacate the Stipulations: (1) the Stipulations are the result of a mistake on the part of the prior firm; and (2) the prior firm lacked authority to enter into the Stipulations. Specifically, movants assert that, when the executor's counsel first circulated drafts of the Stipulations in July 2019, movants had expressed their disagreement with various aspects of the drafts to the lawyer at the prior firm who had long represented them, and they believed that he was editing the drafts accordingly. They further assert that, after that lawyer unexpectedly left the prior firm in September 2019, and until October 29, 2019, movants were not aware that the attorneys at the prior firm who took over the case had submitted the unedited versions of the Stipulations to the court.

It is well-settled that a "stipulation will not be destroyed without a showing of good cause therefor, such as fraud, collusion, mistake, accident, or some other ground of the same nature" (*Matter of Frutiger*, 29 NY2d 143 [1971] [internal quotation marks and citation omitted]). No showing of mistake has

been made here. Movants have not even identified what mistakes they claim were made in the Stipulations. Rather, essentially, they assert that there was a mis-communication between them and the attorneys who took over their case after their long-standing attorney left the prior firm. This is insufficient to set aside the Stipulations, especially where, as here, such mis-communication could have been avoided or remedied (see *Matter of Nori-Alyce Y. v Mark Y.*, 100 AD3d 1116 [3d Dept 2012]).

Nor have movants established that the prior firm was without authority to enter into the Stipulations. In executing the Stipulations, which relate to undisputed facts and joint issues for trial, the prior firm was exercising its judgment as to their content, which counsel is called upon to do in managing litigation (see *Salesian Soc. v Ellenville*, 41 NY2d 521 [1977]). Accordingly, movants have provided no basis upon which to vacate the Stipulations.

Additional Adjournment

This is movants' second "eve of trial" request for an adjournment. Days before the November 6, 2019 trial date, movants and the prior firm sought a 60-day adjournment because movants wished to seek new counsel. In order to afford movants the opportunity to appear by counsel of their choosing, this request for an adjournment was granted. The parties were informed, however, that no further adjournments would be granted (*Matter of*

Hassine, NYLJ, Nov. 27, 2019, at 29, col 2 [Sur Ct, NY County]).

Nonetheless, movants now seek an additional 90-day adjournment to conduct additional discovery, including amending their expert's reports and conducting depositions of eight more witnesses. In so doing, movants in effect seek to vacate the note(s) of issue which they themselves filed pursuant to 22 NYCRR 202.21(d). This section provides, in relevant part, that, "Where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings."

Here, the additional discovery sought by movants relates to no circumstances post-dating the filing of the note(s) of issue. Indeed, all such discovery could have been conducted before the lawyer at the prior firm, who had long represented them and with whom they do not claim to have had any mis-communication, filed a motion for summary judgment and two note(s) of issue asserting that discovery was complete. Moreover, "substitution of attorneys, which occurred after the filing of the note of issue . . . [does not] constitute the necessary 'unusual or unanticipated circumstances' under this rule" (*Schroeder v IESI NY Corp.*, 24 AD3d 180 [1st Dept 2005]). Accordingly, there is no basis upon which to adjourn the trial for additional discovery.

As for new counsel's time to prepare for trial, movants assert that they retained new counsel on November 8, 2019 -- more than 60 days before the scheduled January 15, 2020 trial.

Considering that a 60-day adjournment had previously been granted and that ample time was available to new counsel to prepare, this too is not a basis upon which to further adjourn the trial (see *Pronti v Golik*, 24 AD3d 899 [3d Dept 2006]).

Accordingly, the motion was denied.

This decision constitutes the order of the court.

Dated: *March 5*, 2020

NSA
S U R R O G A T E