

Sutton v Mathews

2020 NY Slip Op 33872(U)

November 13, 2020

Supreme Court, New York County

Docket Number: 652939/2019

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

-----X

STEVEN SUTTON,

Plaintiff,

- v -

DONETTE MATHEWS, CHAN HAMILTON, MILES
HAMILTON

Defendant.

-----X

INDEX NO. 652939/2019

MOTION DATE 9/2/2020

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 50, 51

were read on this motion to/for

REMOVAL/TRANSFER

In this action to recover unpaid attorneys' fees, defendants Donette Mathews (Donette) and Chan Hamilton (Chan) move pursuant to CPLR 325(e) to remove the action to the Surrogate's Court, Bronx County, for joinder with the proceedings pending in that court entitled The Estate of Donald Hamilton, under File No. 2019-380, and to stay the action pending a determination of this motion. The plaintiff opposes the motion.

Donette is the Executor of two estates, that of Stella Pennington, who died in 1996, and that of Pennington's son, Donald Hamilton, who died in 2014. In her last will and testament, Pennington had left real property in the Bronx to Donald Hamilton and the three defendants in equal shares. However, Donald Hamilton concealed the will, obtained letters of administration, conveyed the property to himself, mortgaged the property and retained the mortgage proceeds. After his death, in 2016, the mortgagor, CIT Bank commenced a foreclosure action in the Supreme Court, Bronx County. In August 2016, Donette and Chan retained the plaintiff to represent them in the foreclosure action. Although he is included in the retainer agreement, defendant Miles Hamilton was not a signatory to that agreement. The retainer describes a "hybrid" fee arrangement wherein the plaintiff would be paid an hourly fee of \$325 and also 25% of the net proceeds of the sale, less any hourly fees paid. The defendants paid a \$5,000 retainer fee. The plaintiff withdrew from that representation in July 2018. At that time, the property had

not been sold. Around the same time, Donette retained counsel to assist her in becoming the Executor of Pennington's estate, and to represent both estates' interest in the foreclosure action. In August 2018, Donette was appointed Preliminary Executor of Pennington's estate and in March 2019, she was issued Letters Testamentary in Donald Hamilton's estate, both by the Surrogate of Bronx County. In March 2019, Hamilton's estate entered into a contract of sale of the property, the only asset of the estate, and title closed in April 2019. The Surrogate Court proceedings are still pending. This action ensued. The plaintiff asserts that, notwithstanding the extensive legal work he performed in the foreclosure action, the defendants have not paid him any hourly fee or any percentage of the sale proceeds. The defendants do not dispute that some amount is due the plaintiff but argue that he is not entitled to any sale proceeds since he did not procure the sale.

By order dated April 24, 2020, this court denied the plaintiff's motion for summary judgment. The court further denied, without prejudice, a purported cross-motion by the defendants seeking, *inter alia*, a transfer of the action to the Surrogate's Court. The cross-motion was procedural improper as the defendants had not filed a Notice of Cross-Motion. The court noted, however, that the defendants made a "colorable argument" for such a transfer. This motion, seeking that relief, ensued. The motion is granted.

Article VI, § 12 of the New York State Constitution provides that the Surrogate's Court shall have jurisdiction of "all actions and proceedings relating to the affairs of decedents, probate of wills, administration of estates and actions and proceedings arising thereunder or pertaining thereto... and such other actions and proceedings... as may be provided by law." NY Const. Art. VI, § 12(d); see SCPA 201, et seq. SCPA 202 expressly provides that the Surrogate's Court may also exercise jurisdiction over "incidental" matters, and SCPA 209(4) expressly provides that such incidental jurisdiction authorizes the court "[t]o determine a decedent's interest in any property claimed to be property available for distribution under his [or her] will" or "to determine the rights of any persons claiming an interest therein, as against the decedent, or as between themselves, and to construe any instruments made by him [or her] affecting such property." Indeed, "for the Surrogate's Court to decline jurisdiction, it should be abundantly clear that the matter in controversy in no way affects the affairs of a decedent or the administration of his [or her] estate." Matter of Piccione, 57 NY2d 278, 288 (1982); see Matter of Stern, 91 NY2d 591 (1998); Wagenstein v Shwarts, 82 AD3d 628 (1st Dept. 2011). Contrary to the plaintiff's contention, that is not an apt description of this action. Rather, the subject matter

of the action, attorneys' fees arising from the sale of the property of an estate, is clearly related to the administration of the decedents' estates, such that it falls within the jurisdiction of, and is better addressed by, the Surrogate's Court. See Matter of Steinberg, 262 AD2d 80 (1st Dept. 1999); Rosenman & Colin v Winston, 205 AD2d 451 (1st Dept. 1994); see also Matter of Estate of Tarka, 293 AD2d 396 (1st Dept. 2002); Matter of Driscoll, 273 AD2d 381 (2nd Dept. 2000).

The relief sought in the instant action is not limited to "independent matters involving controversies between living persons," such that the Surrogate's court does not have jurisdiction. Matter of Piccione, supra at 291; Matter of Goldstick, 177 AD2d 225 (1st Dept. 1992). The plaintiff is not akin to a creditor asserting a claim against a distributee of the estate. See Matter of Lainez, 79 AD2d 78 (2nd Dept. 1981), affd 55 NY2d 657 (1981). Rather he is asserting a claim against the proceeds of the sale of the estate's property based upon work done on behalf of the estate and its distributees. See Rosenman & Colin v Winston, supra. The action, therefore, concerns the disposition of property in which the estate has a potential interest and relates to the administration of the estate. See Matter of Piccione, supra. Thus, the matter is more appropriately adjudicated by the Surrogate's Court. See Wagenstein v Shwarts, supra; Carmel v Shor, 250 AD2d 475 (1st Dept. 1998). Indeed, "[t]he Surrogate's Court is in a unique position to determine the amount of fees owed to the plaintiff in light of the extensive litigation that has taken place in that court." Rosenman & Colin v Winston, supra at 451; see Matter of Steinberg, supra; Matter of Estate of Tarka, supra; Matter of Driscoll, supra. Furthermore, "the interests of judicial economy dictate a strong preference for removal to Surrogate's Court of all matters affecting the administration of a decedent's estate." Lawrence v Miller, 48 AD3d 1, 5 (1st Dept. 2007).

The court has considered the plaintiff's remaining contentions and finds them to be without merit.

The defendants' application for a stay of this action pending the determination of this motion is denied as moot.

Accordingly, it is,


ORDERED that the defendants' motion is granted to the extent that this action is removed from the Supreme Court, New York County, and transferred to the Surrogate's Court,

Bronx County, for joinder with the proceedings initiated in that court entitled The Estate of Donald Hamilton, under File No. 2019-380, and is otherwise denied; and it is further,

ORDERED that the defendants shall serve upon and file with the Clerk of this Court a certified copy of this order within 30 days of this order; and it is further,

ORDERED that the Clerk of this Court, upon the service upon him of a certified copy of this order and the filing thereof in his office, shall forthwith deliver to the Clerk of the Surrogate's Court, New York County, all papers and records in the above captioned action and certified copies of all minutes and entries.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

11/13/2020
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE