

**Matter of Baker**

2022 NY Slip Op 32493(U)

July 13, 2022

Surrogate's Court, Bronx County

Docket Number: File No. 2020-1091/A

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

July 13, 2022

ESTATE OF PATRICK BAKER, Deceased  
File No.: 2020-1091/A

Santander Bank, N.A. ("Santander"), a defaulting party in this discovery proceeding, moves for an order "declaring as moot and no force and effect": (i) the order entered herein on October 19, 2020, to the extent that it enjoins Santander from transferring funds in a certain bank account and (ii) the decree entered herein on January 6, 2021, to the extent that it directs Santander to deliver all funds in said account to the estate's administrator. Santander also seeks a declaration that an execution issued to enforce the decree, and the subsequent levy thereon initiated by City Marshal Alfred Locascio, are void *ab initio* because they derive from a defective transcript of the decree filed in the Bronx County Clerk's office. The estate's administrator opposes Santander's motion.

As an initial matter, Santander was served with process in this proceeding and defaulted. Therefore, Santander is bound by the court's October 19, 2020 order and subsequent decree unless it succeeds with a motion or petition to vacate its default (see *Matter of Plantone*, 13 Misc3d 482 [Sur Ct, Orange County 2020]).

Here, the court is constrained from vacating Santander's default because such relief is not requested in its motion, which notably does not include a general relief clause (see CPLR 2214 [a]; CPLR 5015 [a][1];

Howell v. City of New York, 165 AD3d 567 [1<sup>st</sup> Dept. 2018]; Tirado v. Miller, 75 AD3d 153 [2d Dept 2010]). Even if the court were to construe Santander's motion as seeking a vacatur of its default, that application would fail because the bank does not demonstrate a reasonable excuse for its default or sufficiently set forth a meritorious defense (see CPLR 5015 [a][1]; CPLR 317; DiLorenzo v. A.C. Dutton Lumber 67 NY2d 138 [1986]; James v. Hoffman, 158 A.D.2d 398 [1<sup>st</sup> Dept. 1990 ]; Mjahdi v. Maguire, 21 AD3d 1067 [2d Dept 2005]).

Furthermore, the court lacks jurisdiction to determine that branch of Santander's motion requesting declaratory relief with respect to the execution and Marshal Locascio's levy. The court can only consider such an application in the context of a properly commenced separate proceeding (see In re Estate of Bergen, 149 Misc. 2d 702 [Sur Ct, Rensselaer County 1991; Estate of Michael Pavese, 2002 NYLJ LEXIS 2715 [Sur Ct, Nassau County 2002]; Matter of Piccione, 57 NY2d 278 [1982]).

On this state of the record, Santander's motion is denied, in its entirety, without prejudice. Additionally, the preliminary injunction previously issued by this court pending the hearing and determination of Santander's motion is hereby vacated.

Reviewing the record, the court discovered that a clerical error was made when it issued a transcript of the decree to the administrator on May 11, 2021. As such, the transcript does not accurately reflect the relief granted in the decree. In the interest of justice, it is incumbent upon the

court to address this patent clerical error because the administrator docketed the defective transcript with the Bronx County Clerk.

The transcript itself is not a judgment of the court, but a paper that is supposed to contain the essential information of the decree, certified by the Chief Clerk. Under SCPA 603 (2), the *decree* acquired the “*like effect* [emphasis added] of a judgment entered in the supreme court” when the administrator docketed it with the Bronx County Clerk. In other words, docketing the transcript allows the administrator to enforce the decree as a supreme court judgment, using all of the collection procedures available under Article 52 of the CPLR, including the remedy of an execution, which cannot be issued by this court (see SCPA 605; *In re Lupoli*, 275 AD2d 44 [2d Dept 2000]; *Civitano v. Beovich*, 184 Misc. 2d 505 (Sur Ct, Nassau County 2000)).

The decree clearly states that Santander is only obligated to turn over funds in a certain bank account, in an amount not to exceed \$481,660.91. The decree further directs that if there is less than \$481,660.91 in the account, another respondent, Eileen B. Trott (“Trott”), becomes individually liable to pay the difference between \$481,660.91 and the amount of funds in the account (the “deficiency”), along with statutory interest. As the court imposed no liability against Santander for the deficiency, no such liability is reflected in the decree.

It was clerical error when the transcript issued to the administrator did not indicate in its “Remarks” section that Santander’s only

obligation was to turn over funds which were in a certain bank account titled in Trott's name, an amount not to exceed \$481,660.91 (see SCPA 603 [1]; Matter of 9281 Shore Rd. Owners Corp. v. Comm. of Finance of the City of NY, 39 Misc3d 768 [Sup Ct, Kings County 2013]). Instead, Santander's name and address were inserted in the section of the transcript designated for the "Names Of Parties Against Whom Decree of Payment Has Been Made", without explanation, creating the erroneous impression that the decree held Santander jointly and severally liable with Trott for payment of the deficiency.

The court possesses inherent authority to put its records in proper form and correct its own clerical errors, *sua sponte*, when doing so does not affect a substantial right of a party (see CPLR 5019 [a]; Sokiloff v. Schor, 176 AD3d 120 [2d Dept 2019]; In re Henderson, 157 NY 423 [1898]; US Bank N.A. v. Ashley, 202 AD3d 1142 [2d Dept 2022]; Ladd v. Stevenson, 112 NY 325 [1889]; Herpe v. Herpe, 225 NY 323, 327 [1919]; Kiker v. Nassau County, 85 NY2d 879 [1995]; In re Surpless, 237 AD 893 [2d Dept 1933]).

In this instance, correcting the transcript to accurately reflect the relief granted by the decree does not affect a substantial right of a party, as the administrator never had a right to collect a judgment against Santander for the deficiency (see Parkinson v. Bono, 300 AD2d 640 [2d Dept 2002]; Rodriguez v. Long Island College Hosp., 289 AD2d 556 [2d Dept 2001]). The amendment only puts the parties back in positions that are

consistent with the decree and the court's underlying decision entered on December 22, 2020 (see *In re Degeorge*, NYLJ, Mar. 15, 1994 at Pg. 25, col. 2 [Sur Ct, New York County 1994]).

For the reasons stated herein, the transcript of decree issued to the administrator on May 11, 2020 is hereby vacated. The Chief Clerk is directed to revise the transcript in accordance with the foregoing and mail a copy of the amended transcript to the administrator's counsel, Oshrie Zak, Esq., waiving any applicable fee. The Chief Clerk is further directed to mail a copy of this decision, constituting the order of the court, to the parties' respective counsel and to City Marshal Alfred Locascio.

Proceed accordingly.

Enter:

A handwritten signature in black ink, appearing to read "Nelida Malave-Gonzalez", written over a horizontal line.

HON. NELIDA MALAVE-GONZALEZ