

Matter of Baeslack

2022 NY Slip Op 33842(U)

November 7, 2022

Surrogate's Court, Bronx County

Docket Number: File No. 2021-2289

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

November 7, 2022

ESTATE OF CHRISTEL WILHELMINE AUGUSTE BAESLACK
a/k/a CHRISTEL BAESLACK,
a/k/a CHRISTEL W. BAESLACK,
a/k/a CHRISTEL W.A. BAESLACK, Deceased
File No.: 2021-2289

Before the court in this contested probate proceeding is a motion by the petitioner's attorney to (i) withdraw as counsel and (ii) have the affirmation he submitted in support of his application sealed by the court.

Christel Wilhelmine Auguste Baeslack (the "decedent") died on July 9, 2021, survived by two sons, the petitioner, George Baeslack ("George"), and Peter Baeslack ("Peter"). George seeks to probate the decedent's purported will, dated May 14, 1997, under which he is the nominated fiduciary. Peter objects to George becoming the estate's executor.

By an order dated April 28, 2022, the court awarded preliminary letters testamentary to George. Those letters authorize George to collect assets with a total value not to exceed \$450,000, subject to George maintaining a surety bond in that amount. In addition, the letters contain an SCPA 805(3) restriction requiring George to obtain a court order before he can dispose of the estate's real property.

George initially proceeded *pro se*, but later retained Pinni Bohm, Esq. as his counsel. Peter is represented by Gary S. Basso, Esq. in this matter. By an order to show cause dated September 20, 2022, Mr. Bohm moves to withdraw as George's

counsel and to have his affirmation detailing the reasons for his application reviewed *in camera* and sealed, so as not to prejudice George. Peter, through his counsel, cross-moves for an order, inter alia: (i) denying all of the relief requested in Mr. Bohm's order to show cause; (ii) suspending or vacating the preliminary letters testamentary issued to George; and (iii) granting leave for Peter to file an application for temporary or permanent letters testamentary.

On the return date of the motion and cross-motion, a conference was held remotely before a member of the court's Law Department. During the conference, which included Mr. Bohm, George and Mr. Basso, it was agreed that the court would decide Mr. Bohm's withdrawal application first. Thereafter, it would determine the cross-motion's request for affirmative relief. Also, during the discussion George indicated that he had not decided if he opposed Mr. Bohm's motion, and he wanted to file an answer. In response, Mr. Bohm requested that the court review George's answer *in camera* and seal it as well.

The court received an affirmation from Mr. Bohm in support of his motion, which was served only upon George (the "*ex parte* affirmation"). George sent the court an unsigned response by e-mail, which could not be accepted for filing for several reasons, one of which being that it was not in proper form. Notably, Mr. Bohm attached this unsigned document as an exhibit to the *ex parte* affirmation.

Oral arguments on Mr. Bohm's motion were heard October 20, 2022. George, Peter and their respective counsel were all given an opportunity to be heard.

Prior to their start, George filed with the court a written consent to the relief sought in Mr. Bohm's motion.

After hearing the parties' oral arguments and reviewing George's written consent, this court issued an order from the bench granting Mr. Bohm's application to withdraw as counsel and immediately staying all proceedings in this estate for a period of thirty days so George can retain new counsel, should he so desire.

Additionally, all of the parties agreed on the record that this stay would not prevent George from filing an appropriate application to amend his preliminary letters so he can collect estate assets in excess of \$450,000. It was further agreed that such an application would be filed on notice to Mr. Basso.

Finally, the court marked that part of Mr. Bohm's motion requesting to seal his *ex parte* affirmation as "submitted for decision." The court's determination regarding Mr. Bohm's sealing motion is set forth below.

Under 22 NYCRR 216.1, a court may seal records, in whole or in part, upon a finding of good cause that is specified in writing. In determining whether good cause has been shown, the court must consider the interests of the public as well as the parties. The right of access to court records is firmly based on common law and New York constitutional and statutory principles that civil proceedings should be open to the public (*see Danco Lab, Ltd. v. Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1[1st Dept 2000]). There is a broad presumption against sealing records, regardless of whether one or both parties have requested the sealing (*see Gryphon Dom. VI, LLC v. App Intl. Fin. Co. B.V.*, 28 AD3d 322 [1st Dept 1993]). Furthermore,

because confidentiality is the exception and not the rule, “the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access” (*Maxim, Inc. v. Feifer*, 145 AD3d 516,[1st Dept 2016]). If granted, a sealing order must be “narrowly tailored to serve compelling objectives, such as a need for secrecy, that outweighs the public’s right to access” (*Danco Lab, Ltd., infra* at 1). The *ex parte* affirmation, which was filed as a single document, consists of an affirmation from Mr. Bohm and George’s unsigned response to Mr. Bohm’s motion (“George’s answer”), attached as an exhibit. In conclusory fashion, Mr. Bohm argues that the entire *ex parte* affirmation, including its exhibit, should be sealed because “it is protected by both [the] attorney-client and work-product privileges, and by a broader standard to avoid even the possibility of prejudice to my client.”

The court agrees that any information in the *ex parte* affirmation that is subject to the privileges afforded to attorney-client communications or attorney work product should be sealed (see *The Estate of Cheney v. Diane Wells, et al.*, 2008 NY Misc LEXIS 5188 [Sur Ct, New York County 2008]; *Diaz v. Pastore*, 2020 NY Misc LEXIS 35556 [Sup Ct, Schenectady County 2020]; *In re Brownstone*, 191 AD2d 167 [1st Dept 1993]). Mr. Bohm, however, fails to meet his burden of establishing that any statements in his own affirmation are protected by the attorney client privilege (see *Gottwald v. Sebert*, 58 Misc3d 625, [Sup Ct, New York County 2014], *aff’d* 161 AD3d 679 [1st Dept 2018]) or constitute attorney work product (see CPLR 3101[c]; *Brooklyn Union Gas Co. v. American Home Assurance Co.*, 23 AD3d 190 [1st Dept 2005]).

As for Mr. Bohm's contention that the *ex parte* affirmation should be sealed "to avoid even the possibility of prejudice to my client," neither a party's embarrassment nor a general desire to avoid potentially prejudicing a party is sufficient, of itself, to establish the compelling circumstances needed for sealing a court file (see *Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016]; *In re Will of Hoffman*, 284 AD2s 92 [1st Dept 2001]; *Mancheski v. Gabelli Group Capital Partners*, 39 AD3d 499 [2nd Dept 2007]).

Nonetheless, the court notes that several portions of George's answer refer to conversations that he had with Mr. Bohm regarding strategies for addressing issues collecting estate assets held in a brokerage account formerly owned by the decedent. These references fall under the attorney-client communication and work product privileges and will be redacted by the court from George's answer before the *ex parte* affirmation is made available for public viewing.

Accordingly, this decision constituting the order of the court grants Mr. Bohm's motion to withdraw as counsel, and the matter shall be stayed for a period of thirty days from October 20, 2022, with the exception that George may file an appropriate proceeding, on notice to Mr. Basso, to amend his preliminary letters testamentary so he can collect additional estate assets. Mr. Bohm's application to seal the *ex parte* affirmation is granted to the extent that portions of George's answer will be redacted by the court to remove statements protected by the attorney-client privilege and the work product doctrine.

The Chief Clerk is hereby directed to (i) file the *ex parte* affirmation, including its redacted exhibit, as a single document, without any viewing restrictions in the court's UCMS system so it can be accessed by the public, and (ii) mail a copy of this decision and order to George Baeslack, Pinni Bohm, Esq. and Gary S. Basso, Esq.

The parties and their respective counsel shall appear on the court's calendar for a conference on December 8, 2022, at a time to be determined.

Proceed accordingly.


HON. NELIDA MALAVE-GONZALEZ
SURROGATE