

Matter of Deutsche Bank Trust Co. Ams.

2023 NY Slip Op 30906(U)

March 27, 2023

Surrogate's Court, New York County

Docket Number: File No. 2000-2491/A

Judge: Hilary Gingold

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

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In the Matter of the Judicial Settlement of the
Thirteenth Account of proceedings of

File No.: 2000-2491/A

DEUTSCHE BANK TRUST COMPANY AMERICAS
(formerly Bankers Trust Company),

as Trustee of DEUTSCHE BANK TRUST
COMPANY U.S. LARGE CAPITALIZATION
GROWTH FUND

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GINGOLD, S.

Petitioner, Deutsche Bank Trust Company Americas (hereinafter "trustee"), moves to dismiss the objections of Eric B. Stephens (hereinafter "objectant") to the Current Trust, pursuant to CPLR 3211[a][3] and [7] on the grounds that the objectant lacks capacity, and further, that the objections fail to state a cause of action.

The following papers numbered 1 through 7 were read:

	<u>PAPERS NUMBERED</u>
Notice of Motion – Affirmations – Affidavits – Exhibits	1-4
Affidavits of Service.....	5
Objections to Accounting.....	6
Affidavits of Service.....	7

In this contested accounting proceeding objectant objects to the underlying account alleging breaches of fiduciary responsibilities by the trustee and, additionally, seeks to exercise a disclaimer under the provisions of Kirsten F. Stephens' (hereinafter, "Ms. Stephens") Last Will and Testament. Ms. Stephens is the ex-wife of the objectant, and the sole beneficiary of the Current

Trust, the subject of this proceeding. The three issue of the objectant and Ms. Stephens, two of whom are minors, are the presumptive remainder beneficiaries of the Current Trust. Ms. Stephens has sole physical custody of the two minor remainder beneficiaries with the right to ultimate decision-making authority for said minors. Further, Ms. Stephens' interest in the Current Trust is not in conflict with that of any of her children for purposes of petitioner's accounting proceeding. Petitioner alleges that due to an internal administrative error, a copy of the citation intended solely for Ms. Stephens and her living issue, was mailed to objectant's address. The instant motion to dismiss these objections is unopposed.

It is well-settled that on a motion to dismiss a pleading for failure to state a cause of action pursuant to CPLR 3211(a)(7), "pleadings are to be afforded a liberal construction, allegations are taken as true, the [pleader] is afforded every possible favorable inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory" (*CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556 [1st Dept 2021]; *see Leon v Martinez*, 84 NY2d 83, 87–88 [1994]). Relief pursuant to CPLR 3211(a)(3) is available where the party opposing the pleader's objections can establish that the pleader lacks capacity and/or standing to appear before the court (*see Id.*)

Rule 207.41 of the Uniform Surrogate's Court Rules provides in part that "[o]n any accounting by an executor, administrator, temporary administrator, guardian, or trustee, any creditor or any other party interested may file objections thereto in writing within such time as shall be allowed by the Surrogate" (22 NYCRR 207.41). In this instance, the objectant lacks capacity to raise objections as he is not included in any of the classes of individuals referred to in subclauses (i) through (vii) of clause (b) of Subdivision 6 of Section 100-c of the Banking Law. The objectant is neither a current or future beneficiary of the Current Trust; has no interest in the

Current Trust; nor is he a personal representative or guardian of anyone having an interest in the Current Trust. The citation he relies upon to establish his standing to file objections was served at his residence as the result of an administrative error on the part of the petitioner. It was never the intention of the petitioner to serve citations upon a non-party, an individual with no valid claim to The Current Trust. Moreover, and most importantly, the sole beneficiary of The Current Trust is alive. Any potential to file under the disclaimer provision of Ms. Stephens' Last Will and Testament has no relevancy to the instant proceeding, again, for the very reason that Ms. Stephens is alive, and secondly, even if she were not, this court would lack jurisdiction over her estate since it is clear from the record that Ms. Stephens' primary residence is in the State of Maryland, not in New York County, New York.

Objectant, a self-represented individual, seeks to rely on papers informally dropped off at the courthouse as opposition to the instant motion. These papers have never been properly submitted in connection with the underlying matter or in opposition to the instant motion to dismiss. Likewise, objectant's telephone calls and emails are also not deemed submitted. The court does not deem any informal communication by the objectant as part of the court's record. Moreover, even if the court were willing to consider objectant's papers, it is clear from the record that objectant lacks capacity to file any objections in this proceeding (*see* SCPA 2210).

Accordingly, based on the foregoing, it is

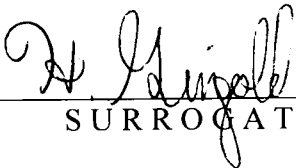
ORDERED that, trustee's motion seeking dismissal of all objections is granted in its entirety.

This decision constitutes the order of the court.

As a courtesy, the court clerk is directed to return to the objectant, forthwith, all documents not admitted into the court's record but that the objectant had previously left, informally, with the court.

The court clerk shall serve a copy of this order to all parties in this proceeding by email.

Dated: March 27, 2023



SURROGATE

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