

Matter of Tran (Truong)
2016 NY Slip Op 32372(U)
December 2, 2016
Surrogate's Court, New York County
Docket Number: 2012-1785/G
Judge: Nora S. Anderson
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December 2, 2016

SURROGATE'S COURT : NEW YORK COUNTY

In the Matter of the Application of
Mac Truong as Creditor of the Estate of

File No. 2012-1785/G

TRUONG TRAN,

Deceased,

to Determine the Validity of Claims.

A N D E R S O N , S .

In this proceeding to determine the validity of claims against the estate of Truong Tran, the respondent temporary administrator moves for summary judgment dismissing the petition on grounds of res judicata and collateral estoppel. Petitioner cross-moves for summary judgment and seeks sanctions against the temporary administrator for bringing this motion. For the reasons stated here, the respondent's motion to dismiss is granted, and the petitioner's cross-motion is denied in its entirety.

The genesis of this dispute arises from a soured business deal between decedent, Truong Tran, and petitioner, Mac Truong. Decedent was a prosperous businessman in South Viet Nam before emigrating to the United States at the close of the Vietnamese conflict. His interests in South Vietnamese shipping companies Vishipco and Dai Nam (collectively "Vishipco Lines") were nationalized by the new Vietnamese government. Decedent gave petitioner Mac Truong, then a law student in the United States,

powers-of-attorney to seek compensation from the Vietnamese government for the loss of his interests in Vishipco Lines, in return for which petitioner would receive a portion of any recovered funds. Accordingly, petitioner successfully settled decedent's claims with the government and, in 1986, using transfer licenses from the United States Treasury Department, transferred the settlement proceeds to accounts at Merrill Lynch, where they remained in the name of Vishipco Lines. United States Treasury Department Regulations (under the Trading with the Enemies Act) blocked access to the funds until 1995, at which time decedent and petitioner disagreed with the disposition of the now available funds. Petitioner unilaterally, and without decedent's knowledge, transferred the funds to new accounts at Schwab, in his own name or names of his family members. Upon learning this, decedent revoked petitioner's powers-of-attorney, and transferred the funds to new accounts. In light of the competing claims of decedent and petitioner, Schwab denied either access to the funds.

Petitioner then sued Schwab in New York Supreme Court for, *inter alia*, conversion and conspiracy; Schwab interpleaded decedent and Vishipco Lines as third-party defendants; decedent asserted cross-claims against petitioner for breach of contract, conversion, breach of fiduciary duty, and for an accounting. Petitioner, in turn, filed cross-claims against decedent for

conversion, fraud, libel and slander and breach of contract. Schwab's claims were dismissed but Schwab continued to retain custody of the funds pursuant to a stipulation between the parties. While the case was pending, petitioner filed a second lawsuit in New York Supreme Court against decedent and others for fraud and conversion. In a detailed decision and order dated April 3, 2000, the Supreme Court (Cozier, J.) consolidated the two actions and granted decedent's motion for summary judgment dismissing petitioner's cross-claims (*Truong v Charles Schwab*, Index No. 04650/97, Decision and Order Apr. 3, 2000 [Sup. Ct., NY County]). Justice Cozier found against petitioner on his claim that decedent had converted funds belonging to him, relying on undisputed facts that petitioner had never asserted a right of ownership in Vishipco Lines; that he derived his authority to act on behalf of decedent and Vishipco Lines exclusively from his agreement to act for decedent under the powers-of-attorney which decedent had granted to him; and that "[a]ll of the interpleaded funds on deposit in the various Schwab accounts are traceable to the original recovery proceeds, together with interest, dividends and other accretions" (*id.*, at 20-21). Justice Cozier rejected petitioner's claim that he derived any interest in the funds pursuant to licenses issued to him by the Treasury Department (*id.* at 18-19). The judge further found that petitioner breached his fiduciary duty as decedent's agent when he transferred the

settlement funds to his personal accounts without consent of his principal, when he failed to account, and when he repudiated the authority vested in him by decedent after he recovered the funds and obtained the Treasury Department licenses. Based on his breaches, the court found that petitioner had forfeited his right to compensation from the decedent in the form of commissions or otherwise. Accordingly, the court granted decedent's motion for summary judgment in its entirety; declared that Vishipco Lines was the lawful owner of the interpleaded assets; dismissed petitioner's affirmative defenses and cross-claims; and ordered him to account. The decision clearly rejected petitioner's claim, which he reasserts in this proceeding, that decedent was entitled to only a small portion of the funds in the Schwab accounts.¹ Petitioner appealed Judge Cozier's decision and the rulings against him were affirmed in all respects, including the finding that he was "not entitled to any part of the disputed funds" as a commission (*Truong v Schwab*, 289 AD2 98 [1st Dept 2001]).

¹Petitioner's attempt to construct this argument from subsequent developments in the case is unavailing. As noted above, Justice Cozier had ordered petitioner to account, and prohibited the release of the funds pending a hearing on his account before a Special Referee. The case was reassigned to another judge who ordered Schwab to release all funds to the third-party defendants by order dated September 26, 2002. The order was never appealed and thus constitutes a final order for purposes of res judicata (see *Slater v American Mineral Spirits Co.*, 33 N.Y.2d 443 [1974] and cases cited therein).

In this proceeding, petitioner asks the court to determine that he is entitled to 1) \$4,357,415.30, representing the proceeds of the Schwab accounts paid to decedent less approximately \$200,000 which he continues to assert, despite the clear language of the Supreme Court and Appellate Division decisions quoted above, is the only amount to which decedent was entitled; 2) interest at the rate of nine percent from September 1997, when decedent received the funds, to September 2014, totalling \$18,857,291; 3) damages of \$100,000,000 for interference with his United States Treasury Department licenses, and 4) damages of \$85,000,000 for conversion, defamation, and other acts which petitioner claims were responsible for his disbarment by the Appellate Division, First Department.

The doctrine of *res judicata* bars "relitigation of adjudicated disputes," *Reilly v Reid*, 45 NY2 24, 28 (1978). Despite petitioner's exhortations to the contrary, there is no question that the doctrine applies to the first, second and third claims asserted here, where plaintiff again seeks the proceeds of the Schwab accounts, interest on the proceeds, and damages for alleged interference with his Treasury Department licenses. Petitioner's arguments that movant has failed to meet his burden of proof, that the Supreme Court decision was not final, and that, in any event, Justice Cozier's ruling is limited to a small portion of the funds in the Schwab accounts are wholly without

merit. Accordingly, petitioner's first, second and third claims are dismissed on the grounds of res judicata.

In his fourth claim, petitioner seeks damages from decedent's estate for defamation and other unspecified acts which allegedly led to his disbarment from the practice of law (*In re Truong*, 2 AD3 27 [1st Dept 2003] [suspending petitioner]; *In re Truong*, 22 AD3 62 [1st Dept 2005]) [disbarring petitioner]). However, petitioner's disbarment was based primarily on his submission of a forged document and his false testimony in a case entirely unrelated to his claims against decedent (see *In re Truong, supra*, 2 AD3 27). The Schwab litigation was at issue in the disbarment proceedings only insofar as petitioner's own litigation conduct was argued both in aggravation and in mitigation of the charges (*id.*; *In re Truong, supra*, 22 AD3 at 64-65). Relitigation of this issue is barred by the doctrine of collateral estoppel, which precludes the relitigation of an issue which is identical to a material issue in a prior proceeding and which a party had a full and fair opportunity to contest (*Kaufman v Eli Lilly & Co*, 65 NY2d 449 [1985]).

Respondent asks this court to issue an order enjoining petitioner from making further filings in connection with the estate without first obtaining permission from the court. In support of this request, movant documents petitioner's pattern of repetitious and abusive conduct in related litigation, and notes

that injunctions similar to that requested here have been issued against petitioner by numerous courts in which he has tried to relitigate the same issues he asserts here. There is no question that petitioner has engaged in an extraordinary course of repetitious litigation of these claims in both State and federal courts for nearly two decades, all leading to rulings in accord with this one. See, e.g., *Vishipco Line v Charles Schwab & Co.*, 2003 WL 1345229 (SDNY March 10, 2003)] (dismissing six cases brought by petitioner or his privies on grounds of res judicata and collateral estoppel and granting an injunction against commencement of another action against Schwab without prior court permission); *Mac Truong v Tran Dinh Truong*, Nos. 03 Civ. 3423, 3424, 3425, 2007 WL 415152 (SDNY Feb. 2, 2007) (granting motion to dismiss identical claims as raised here on collateral estoppel and res judicata grounds); *Mac Truong v Alphonse Hotel Corp. et al*, Index No. 101405/09 (Decision, Sup Court, NY County, Apr. 17, 2007) (dismissing complaint raising same claims and enjoining further lawsuits without prior court approval); *Mac Truong v Alphonse Hotel Corp. et al*, Index No. 101405/09 (Appellate Div, 1st Dept, Order, June 30, 2011) (dismissing appeal and enjoining petitioner from filing any further appeals without prior permission of the court); *Truong v Hung Thi Nguyen, et al*, 10 Civ 386 (Memorandum and Order, March 30, 2011). Since this is the first time petitioner has appeared here, the court, in the

exercise of its discretion, declines to enter an injunction at this time. However, petitioner is advised that any effort to relitigate the matter in this court will be subject to possible sanctions, since it would not constitute "no harm done" to others, including the court.

Accordingly, the motion by the temporary administrator to dismiss the petition is granted, and the cross-motion is denied in full.

This decision constitutes the order of the court.



S U R R O G A T E

Dated: *December 2* , 2016