



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

UBS Financial Services, Inc.,

Plaintiff,

v.

Banco Popular de Puerto Rico,
Mariel Babcock, Edward Walter Smith,
in his capacity as Personal
Representative of the Estate of Mark
Richard Babcock,

Defendants.

Civil Action No.: 6:17-00607-MGL

AGREED PRELIMINARY INJUNCTION ORDER

THIS CAUSE is before the Court pursuant to Defendant Mariel Babcock's Motion for Preliminary Injunction (ECF No. 15) (the "Motion"). Plaintiff UBS Financial Services, Inc. ("UBS") does not oppose the relief requested in the Motion, though it indicates some concerns about the appropriate scope of any preliminary injunction order (ECF No. 31 and ECF No. 39). Similarly, Defendant Banco Popular de Puerto Rico ("BPPR"), has indicated that it consents to the relief sought in the Motion (ECF No. 41). Defendant Edward Walter Smith, in his capacity as Personal Representative of the Estate of Mark Richard Babcock, has filed a motion seeking dismissal from this action on the basis that he claims no interest in or to the subject individual retirement account at issue in this case (ECF 35), and thus does not take any position with respect to the Motion.

This Court has the authority in interpleader actions, pursuant to 28 U.S.C. §§ 2361 and 2283, to enjoin the prosecution of other actions affecting the property involved in this interpleader action in order to preserve the status quo as to that property. The Court recognizes that BPPR takes the position that this Court does not have subject matter jurisdiction over this action, and that BPPR does not waive its position on subject matter jurisdiction. However, the parties have agreed to the injunctive relief outlined herein in order to preserve the status quo until such time as this action concludes. Having reviewed the pleadings on file, recognizing this Court's authority to act as set forth above so long as this case remains pending, and in consideration of the parties' lack of opposition to the entry of an appropriate preliminary injunction in this case, the Court hereby GRANTS the request for a preliminary injunction and ORDERS that:

1. UBS, during the pendency of this action, is enjoined from transferring any money or assets contained in the Mark Richard Babcock Traditional IRA FBO Mariel Babcock account, under account number ending in #BLXXX32 (defined in the Complaint for Interpleader, ECF No. 1, as the "Mariel Babcock IRA Account"), and is enjoined from transferring any money or assets moved from the Mariel Babcock IRA Account to any other UBS account for Mariel Babcock, to BPPR or the Puerto Rico Commonwealth Court,¹ or acting in furtherance of any Puerto Rico garnishment order regarding the Mariel Babcock IRA Account, in connection with the action styled *Banco Popular de Puerto Rico v. Mark Richard Babcock t/c/c Richard Babcock Keene*, Civil Case No. K CD2014-0784.

2. UBS, during the pendency of this action, to the best of its ability, shall protect and preserve a balance of no more than Three Hundred Ninety-Nine Thousand Seven Hundred Thirty-

¹ Specifically, the Estado Libre Asociado de Puerto Rico, Tribunal de Primera Instancia, Sala de San Juan.

Eight and 51/100 Dollars (\$399,738.51) in the Mariel Babcock IRA Account, with any remaining balance over and above that amount to remain unrestricted for Mariel Babcock to fully access and control (including but not limited to withdraw and transfer), consistent with all agreements (including terms and conditions) and laws governing the Mariel Babcock IRA Account. As the Mariel Babcock IRA Account contains \$118,744.82 in cash and otherwise contains non-liquid securities subject to fluctuation in value based on market changes, UBS is responsible only for exercising its best efforts, using the investment strategy currently in place for the account, to protect and preserve the value of the account at the amount of \$399,738.51, and UBS is not liable for failing to maintain the value due to market forces beyond UBS's control.

3. Mariel Babcock, during the pendency of this action, is enjoined from transferring any money or assets out of the Mariel Babcock IRA Account to the extent such action would reduce the account below \$399,738.51, with any remaining balance over and above that amount to remain unrestricted for Mariel Babcock to fully access and control (including but not limited to withdrawal and transfer), consistent with all provisions in agreements (including terms and conditions) and laws governing the Mariel Babcock IRA Account;

4. All parties are enjoined from instituting or prosecuting any other action or proceeding in any state or federal court (including Puerto Rico) concerning any portion of the assets in the Mariel Babcock IRA Account, or any other UBS account owned by Mariel Babcock into which assets from the Mariel Babcock IRA Account have been transferred or moved, until such time as this action is finally adjudicated and/or dismissed by the parties or closed by the Court, provided, however, that this Order shall not be understood as staying the case *Banco Popular de Puerto Rico v. Mark Richard Babcock t/c/c Richard Babcock Keene*, Civil Case No. K CD2014-0784 or any proceeding in such case (other than proceedings to force UBS to comply with the Puerto Rican

Garnishment Order or undermine UBS's ability to abide by this Order, while this proceeding is pending, as any such effort by BPPR would be in violation of this Order); and

5. Mariel Babcock posted security with the Clerk of Court in the amount of Ten Thousand Dollars (\$10,000) on March 14, 2017, and such security will remain in place until further Order of this Court. The Court determines this to be an appropriate amount to protect the interests of any party found to have been wrongfully enjoined or restrained.

IT IS SO ORDERED.

Signed this 6th day of April 2017 in Columbia, South Carolina.

s/ Mary Geiger Lewis
Mary Geiger Lewis
United States District Court Judge