

Lebenthal & Co., LLC v Estate of Obradovich

2017 NY Slip Op 31390(U)

June 29, 2017

Supreme Court, New York County

Docket Number: 153364/2013

Judge: Debra A. James

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

LEBENTHAL AND CO., LLC,
Interpleader-Plaintiff,

-against-

Index No. 153364/2013
Motion Date: 06/27/17
Motion Seq. No.: 003

ESTATE OF MILAN LAZAR OBRADOVICH BY
LORI McNEELY, ESQ., AS ADMINISTRATOR
OR THE ESTATE, BRANKO
OBRADOVICH, ZELJKA STOJANOVIC a/k/a
ZEHJKA STOJANOVIC, ANNE MIELE and
JOHN DOE (A fictitious name designating
any unknown person who may claim an
interest in the subject property),

Interpleader-Defendants.

The following papers, numbered 1 to 4 were read on this motion for an order directing release of the funds, currently held by the Interpleader-Plaintiff Lebenthal and Co., LLC on behalf of the Estate of Milan Lazar Obradovich by Lori McNeely, Esq., as administrator of the estate.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED
1
2, 3
4

Cross-Motion: Yes No

Upon the foregoing papers,

In this interpleader action, by Order of this court dated June 28, 2017, interpleader defendant Lori M. McNeely, as Administrator of the Estate of Milan Obradovich, has been substituted in place and stead of Milan Lazar Obradovich, Deceased.

The Order dated April 14, 2014 of this court restrained and

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

enjoined interpleader plaintiff Lebenthal and Co., LLC from transferring the traditional IRA rollover account (the account) with an account number of LEBxxx37 of interpleader defendant Milan Lazar Obradovich, or any of the funds contained therein, pending further order of this Court or any other court of competent jurisdiction.

Interpleader defendant Lori M. McNeely, as Administrator of the Estate of Milan Obradovich, now moves for an order, pursuant to CPLR 1006(f) directing that interpleader plaintiff Lebenthal and Co., LLC release of all funds, it currently holds, now on behalf of interpleader defendant Lori M. McNeely, Esq., an attorney licensed to practice law in the State of New Jersey, as the Administrator of the Estate of Milan Lazar Obradovich, to Lori M. McNeely, Esq. and thereafter be dismissed from the action and be discharged from all further liability.

Interpleader defendant Lori M. McNeely has submitted proof of service of this motion upon plaintiff Lebenthal & Co., LLC, Branko Obradovich, Zeljika Stojanovic a/k/a Zeljika Stojanovic, and Anne Miele. The movant has also submitted an affirmation in support of the motion, and annexed a copy of a Order Approving Settlement In the Matter of Milan Obradovich, an incapacitated person, through his guardian Lori M. McNeely v Miele, Docket Number 14-01929, filed on March 17, 2016 (NJ Superior Court, Chancery Division, Mercer County) and of a General Release and

Settlement Agreement entered into as of December 30, 2015 between plaintiff Milan Obradovich, an incapacitated person, through his guardian Lori M. McNeely, Esq. and defendant Lebenthal & Co, LLC.

In partial opposition, interpleader-plaintiff Lebenthal & Co., LLC opposes the motion only to the extent that any order directing that the funds be turned over by Lebenthal & Co., LLC to the Estate of Milan Obradovich, by Lori M. McNeely, Esq., provide for the deduction of \$15,000 from such sums as compensation for the firm of Daniels, Porco, & Lusardi LLP, the attorneys for interpleader plaintiff Lebenthal & Co, LLC, and administrative expenses as per the foregoing General Release and Settlement Agreement dated December 30, 2015.

Interpleader defendant Anne Miele opposes the motion and argues that the restraint should remain on the account on the grounds that interpleader Lebenthal & Co., LLC made improper distributions of funds from the account, for which it has made no accounting. Miele also makes other allegations that after the power of attorney that was issued to her by Obradovich was voided in connection with the New Jersey proceeding that adjudged Obradovich an incapacitated person, and appointed McNeely his guardian, other social security and pension direct deposits belonging to Obradovich were misappropriated by unknown persons and other funds of Obradovich wrongfully diverted by an alleged co-guardian. Miele alleges Obradovich died shortly thereafter,

and that the only interest of interpleader defendant ZEHJIKA Stojanovic, his daughter, a beneficiary of the estate, is in obtaining funds therefrom, rather than seeking the proper safeguard of its assets.

In reply, interpleader defendant McNeely argues that this court should afford the Order Approving Settlement of the New Jersey court full faith and credit. Interpleader McNeely also alleges that Miele has not standing with respect to the account, and that furthermore, it was Miele who misappropriated Obradovich's funds during the time that she was his caretaker, and accepted his power of attorney.

This court judicially notices that in the Matter of Milan Obradovich, an incapacitated person, Docket 14-01929, by Order to Show Cause with Temporary Restraints, filed on April 2, 2015, the Superior Court of New Jersey, Chancery Division, Mercer County, issued an order "immediately revoking all powers of attorney, advance directives, medical powers of attorney, living wills... and IRS Forms 2828 authorizing Anne Miele to act as agent[] for Obradovich...restraining all withdrawals from financial and bank accounts...by Ann Miele..with assets formerly belonging to Milan Obradovich...ordering Ann Miele...provide a complete and accurate accounting of all financial transactions engaged in on behalf of Milan Obradovich". As Miele does not contest that the New Jersey court had personal jurisdiction over her, her remedy is before

such courts. Interpleader Lebenthal was a party as well to such proceeding, and to the extent that Miele contests the determinations of that court and challenges the transactions allegedly made by interpleader plaintiff Lebenthal & Co., Inc., Miele's remedy is in such New Jersey court proceeding. (See Bruno v Bruno, 83 AD3d 165 [1st Dept 2011]).

This court finds that the General Release and General Settlement Agreement remained enforceable after the death of Obradovich. (See In re Rhinelanders' Estate, 290 NY 31 [1943]). Moreover, this court concurs with movant that the Order Approving such Settlement Agreement issued by the court of sister state New Jersey is entitled to full faith and credit by this court. (See Susi Contracting Co., Inc. v Hartford Acc. & Indem. Co., 213 AD2d 299 [1st Dept 1995]).

Accordingly, it is hereby

ORDERED and ADJUDGED that interpleader defendant LORI M. McNEELY'S motion for an order pursuant to CPLR 1006(f) is GRANTED and the movant is directed to settle order on ten days notice.

Dated: June 29, 2017

ENTER:

~~DEBRA A. JAMES~~ J.S.C.