

Estate of Paragon
2019 NY Slip Op 33893(U)
December 5, 2019
Surrogate's Court, Westchester County
Docket Number: 2016-1024/E
Judge: Brandon R. Sall
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**SURROGATE'S COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER**

Application of Hideko Paragon, as Administrator of
the Estate of

DECISION & ORDER

DONALD PARAGON,

File No.: 2016-1024/E

Deceased,

to Discover Property Withheld and Belonging to
Decedent.

SALL - S.

In a proceeding pursuant to SCPA 2103, petitioner Hideko Paragon, as administrator of the decedent's estate, moves for an order pursuant to EPTL § 13-A-3.1 authorizing the release to her of the contents of any electronic communications of the decedent stored in an email account entitled paragonlawyer@gmail.com (hereinafter "the subject email account), held by Google, Inc. (Google), as custodian, for the period of March 31, 2013 to March 31, 2016. The motion is unopposed.

In his affirmation in support of the motion, petitioner's counsel states that "the decedent had established and maintained [the subject email account]," and he "conducted a significant part of his personal email correspondence using this account, and was the sole account owner for it" (Ross Affirmation, ¶ 5). He further states that "it is necessary and appropriate to obtain and review the contents of the emails sent from and received by [the subject email account] to ascertain whether any of those emails relate to or address what [the decedent's] wishes and intent were with respect to" the real property which is the subject of the instant proceeding (*id.* at ¶ 6).

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After serving a subpoena upon Google requesting the contents of the subject email account, Google responded that it would provide the requested information upon the petitioner obtaining a court order directing their release, leading to the instant motion.

The administration of digital assets in the State of New York is governed by a comprehensive statutory scheme set forth in Article 13-A of the Estates Powers and Trusts Law, and previously this court has engaged in extensive analysis of that statute (*see Matter of Coleman* (63 Misc3d 609 [Sur. Ct., Westchester County 2019]).

EPTL 13-A-3.1 provides, in relevant part, that if a court directs disclosure of the contents of electronic communications of a deceased user, the custodian thereof (Google, in this case) shall disclose to the estate fiduciary the content of an electronic communication sent or received by the deceased user if the estate fiduciary gives the custodian certain information/documents. Included among this, if requested by the custodian, is the following:

"(1) a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user; or

(3) a finding by the court that:

(A) the user had a specific account with the custodian, identifiable by the information specified in subparagraph (1);

(B) disclosure of the content of the electronic communications of the user would not violate 18 U.S.C. section 2701 et seq., as amended, 47 U.S.C. section 222, as amended, or other applicable law;

(C) unless the user provided directions using an online tool, the user consented to disclosure of the content of the electronic communications; or

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(D) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

(EPTL 13-A-3.1 [e]).

The court denies the petitioner's motion for the contents of the subject email account. Based on the subject email account itself – paragonlawyer@gmail.com – it is clear that the decedent used the subject email account, at least partially, if not primarily, in his law practice. Therefore, if the court were to grant the relief sought on this motion, it is more likely than not that the petitioner would receive the contents of email communications between the decedent and his former clients, many of which may contain information which is protected by the attorney-client privilege (*see* CPLR 4503). Under these circumstances, the court cannot allow the petitioner to have unfettered access to the contents of the decedent's emails for the period sought. Even if the petitioner exchanged emails with the respondent from the subject email account, and the contents of those emails are reasonably necessary to the administration of the estate, the contents of emails between the decedent and his former clients are not reasonably necessary to the administration of the decedent's estate.

Rather, the court concludes that it is more proper for the court to grant the petitioner access to the non-content information disclosable under EPTL 13-A-3.2, i.e., a catalogue of electronic communications sent or received by the decedent in the subject email account (unless the decedent prohibited disclosure of such). If such a catalogue reveals the existence of emails between the decedent and the respondent during the relevant time period, she may at that point file a motion seeking the contents of those specific

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email communications (see *Matter of Coleman*, 63 Misc3d 609 [Surr. Ct., Westchester County; 2019]; *Matter of Serrano*, 56 Misc.3d 497 [Surr. Ct., N.Y. County 2017]; *Matter of White*, 2017 NYLJ LEXIS 2780 [Surr. Ct., Suffolk County]),

This constitutes the decision and order of the Court.

The following papers were considered on this motion:

(1) The Notice of Motion, dated September 3, 2019, and all papers and exhibits submitted therewith.

Dated: White Plains, NY
December 5, 2019



HON. BRANDON R. SALL
Westchester County Surrogate

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