

JP Morgan Chase Bank, N.A. v Woodlawn Cemetery
2020 NY Slip Op 32454(U)
July 27, 2020
Supreme Court, New York County
Docket Number: 150433/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 150433/2020

JP MORGAN CHASE BANK, N.A.,

MOTION DATE 02/13/2020

Petitioner,

MOTION SEQ. NO. 001

- v -

THE WOODLAWN CEMETERY, THE PRESBYTERIAN HOSPITAL IN THE CITY OF NEW YORK, THE COMMUNITY SERVICE SOCIETY OF NEW YORK, CHILDREN'S AID, THE NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN and LETITIA JAMES, as ATTORNEY GENERAL of the STATE of NEW YORK,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 18 were read on this motion for

JUDGMENT - DECLARATORY

ORDER

Upon the foregoing documents, it is

ORDERED that the petition requesting permission to invade the principal of an express trust pursuant to CPLR §§ 7701, et seq. (Special proceeding relating to express trust), for the care, maintenance, renovation and repair of a certain burial plot of land with mausoleum and improvements thereon known as Lot No. 12885 in Sections 137 and 147 on the records of Woodlawn Cemetery (the "burial plot"), on deposit with petitioner pursuant to the Trust Agreement for the perpetual maintenance and care of the burial plot, dated December 14, 1918, between Kate A. Harbeck (Decedent) and petitioner's predecessor (the "Trust"), as altered by the

judgments dated January 31, 1939, March 6, 1963, and November 9, 1972, is granted, without opposition; and it is further

ADJUDGED, DECLARED and ORDERED in furtherance of the care, maintenance, renovation and repair of a burial plot of land with mausoleum and improvements thereon known as Lot No. 12885 in Sections 137 and 147 on the records of Woodlawn Cemetery, petitioner JP MORGAN CHASE BANK, N.A. has permission to invade the principal of the Trust up to the entirety of the principal to pay for the services required for the care, maintenance and renovation of the Mausoleum; and it is further

ORDERED that upon the exhaustion of such Trust principal, petitioner shall submit an affidavit of final account pursuant to CPLR § 7702.

DECISION

On or about December 4, 1918 Kate A. Harbeck (decedent) executed an agreement with petitioner JPMorgan's predecessor in interest Central Union Trust Company of New York for the perpetual maintenance and care of "a certain burial plot of land with mausoleum and improvements thereon, situate in Woodlawn Cemetery in the City of New York known as lot No. 12885 in Sections 137 and 147 on the records of said Woodlawn Cemetery."

The decedent passed away On December 31, 1930 and her will was admitted to probate on April 20, 1931. The residuary clause of her will directed that her residuary estate be left to five

charitable organizations. Such organizations or their successor are named as respondents herein.

By judgment dated January 31, 1939, a first and second supplemental account of the Trust was settled for the period between December 4, 1918 and February 14, 1936 (the "1939 Judgment"). The 1939 judgment directed that if there was insufficient income to utilize for the proper maintenance or care of the Mausoleum, petitioner-trustee was to hold such income until it had sufficient amounts to perform such acts, or if the trustee deemed it unnecessary to utilize any unused income, the trustee was directed to pay such unused income to respondent charities.

By judgment dated October 1963, a second judicial accounting of the Trust was settled for the period February 14, 1936 to March 6, 1963 (the "1963 Judgment"). The 1963 Judgment enforced the income and invasion directives of the 1939 Judgment.

By Judgment dated November 9, 1972, the investment restriction was lifted, and the trustee was granted permission to invade the principal to the extent necessary to comply with certain tax distribution requirements.

Between 1963 and 2018, the Trust generated approximately \$6,00 per year in income, which was used for general maintenance of the Mausoleum. During that period, petitioner paid the

Cemetery approximately \$2,700 for the designated tasks. As the income exceeded such amount by \$100,000, petitioner distributed such excess income to respondent charities between 1963 and 2018.

Petitioner has continued to use the Trust income to maintain the burial plot with Mausoleum, but such costs have escalated. The Mausoleum has fallen into disrepair due to the degradation of the its gutter system, and the consequent flaking of internal mosaics, with potential structural damage, arising from water leaks. The Cemetery contacted petitioner and requested \$15,000 for repairs, including filling mortar gaps, cleaning the gutters and applying caulking to open areas. The Cemetery advised petitioner that its not-for-profit foundation, Friends of the Woodlawn Cemetery, would pursue grants for the maintenance. However, the Cemetery has not responded to petitioner's request for written estimates for the repair work. From an independent contractor, petitioner has obtained an estimate of (i) \$75,000 for the scaffolding of the entire building; (ii) \$250,000 for flashing to ensure future leaks are prevented; and (iii) \$25,000 for cleaning and sealing the building. As of March 31, 2019, the total amount of Trust income is \$15,474.76.

Petitioner has submitted proof of service of the notice of petition and petition and proof of service of this motion upon

respondents The Woodlawn Cemetery, the Presbyterian Hospital in the City of New York, The Community Service Society of New York, Children's Aid, and the New York Society for the Prevention of Cruelty to Animals, and the Attorney General of the State of New York. Petitioner has further submitted an affidavit of facts, in the form of the Verified Petition for a Judgment pursuant to CPLR Article 77. Respondents have neither answered nor appeared.

Petitioner has demonstrated that it has become impracticable or impossible to cover the costs of the care, repair and maintenance of the burial plot with Mausoleum from the Trust income, as required under the terms of the Trust, as amended by the 1939, 1963 and 1972 Judgments. Therefore, pursuant to CPLR 7701, et seq., this court shall grant petitioner's application and allow petitioner to invade the Trust principal up to the entirety of such funds, to pay for the required maintenance.

7/27/2020
DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE