

**Novak v Citi Personal Wealth Mgt.**

2023 NY Slip Op 32664(U)

August 1, 2023

Supreme Court, New York County

Docket Number: Index No. 650165/2023

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT:** HON. NANCY M. BANNON **PART** **42**

*Justice*

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ALEXANDER D NOVAK,  
Plaintiff,  
  
- v -

INDEX NO. 650165/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

CITI PERSONAL WEALTH MANAGEMENT, CITIGROUP  
GLOBAL MARKETS, INC. and LEAH R. NOVAK individually  
and as Executrix of the Estate of Sheila R. Shayon,  
Deceased,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for SUMMARY JUDGMENT.

The plaintiff in this declaratory judgment action was the spouse of Sheila R. Shayon, now deceased, from whom he had been separated pursuant to a 2002 separation agreement. By the agreement, the plaintiff, *inter alia*, waived any right to any retirement accounts of Shayon. Defendant Leah R. Novak (Leah) is the executor of Shayon’s estate. At the time of her death on December 22, 2021, Shayon had a retirement account with defendant Citi Personal Wealth Management with a balance of approximately \$465,000. The parties seem to now agree that there is no designated beneficiary on the subject account. However, the designated beneficiary of Shayon’s prior account with Fidelity Investments, which was opened in 2004 and rolled over into the Citibank account in 2020, was defendant Leah and the alternate beneficiary was a friend of Shayon. Shayon’s last will and testament, dated November 27, 2021, was admitted to probate and letters testamentary were issued to Leah on June 1, 2022. The will left a substantial cash bequest to a friend and then left the bulk of the estate to Leah. Plaintiff is not a beneficiary under the will and is barred by the separation agreement from exercising any spousal right of election against the estate.

When Citibank became aware of the dispute between the plaintiff and Leah regarding the account, it informed Leah by letter dated December 14, 2022, that it would require a court order or decree before distributing any account proceeds.

On January 11, 2023, the plaintiff commenced this action seeking a judgment declaring that he is the lawful beneficiary of the Citibank account. The plaintiff alleged that Citibank had informed him by letter that he was the beneficiary of the account. Leah answered and asserted affirmative defenses and two counterclaims against the plaintiff – for breach of contract (failing to execute a stipulation directing Citibank to pay the account to the executor as per the separation agreement) and unjust enrichment (should the plaintiff receive the account proceeds). Defendants Citi Personal Wealth Management and Citigroup Global Markets, Inc. (Citibank) answered and asserted affirmative defenses.

Defendant Leah now moves, in effect, for summary judgment dismissing the complaint and granting her counterclaims, for a declaration that “the estate is the lawful beneficiary of the account and the proceeds of the account should be paid to the Executor” and sanctions in the form of attorney’s fees and costs. The plaintiff opposes the motion but concedes in his affidavit that after filing the instant complaint he became aware through documentation provided by Citibank on April 14, 2023, that he is not the named beneficiary on the account. He would not oppose distribution of the proceeds to the estate.

It is well settled that the proponent of a motion for summary judgment pursuant to CPLR 3212 must establish entitlement to judgment as a matter of law (see Zuckerman v City of New York, 49 NY2d 557 [1980]) by submitting proof in admissible form demonstrating the absence of triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). If the movant fails to meet this burden and establish his or her claim or defense sufficiently to warrant a court’s directing judgment in the movant’s favor as a matter of law (see Alvarez v Prospect Hosp., 68 NY2d 320 [1986]; Zuckerman v City of New York, *supra*; O’Halloran v City of New York, 78 AD3d 536 [1<sup>st</sup> Dept. 2010]), the motion must be denied regardless of the sufficiency of the opposing papers. See Winegrad v New York Univ. Med. Ctr., *supra*; O’Halloran v City of New York, *supra*. This is because “summary judgment is a drastic remedy, the procedural equivalent of a trial. It should not be granted if there is any doubt about the issue.” Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr., 161 AD2d at 480 (1<sup>st</sup> Dept. 1990) (quoting Nesbitt v Nimmich, 34 AD2d 958, 959 [2<sup>nd</sup> Dept. 1970] [internal citations omitted]).

The motion is granted only to the extent that the complaint is dismissed as to Leah since she has demonstrated by, *inter alia*, submission of the Fidelity and Citibank account documents executed by Shayon and Shayon's separation agreement with the plaintiff, that the plaintiff is not entitled to the relief requested in his complaint. Indeed, he now concedes as much and has not produced any document to warrant a different conclusion. The only possible beneficiary of the account is Leah, individually, if she is ultimately found to be the intended beneficiary of the subject account by reason of her being named as sole beneficiary of the Fidelity account. If not, the proceeds would be distributed through the estate. That is, the proceeds of the estate may pass directly to her individually, outside the estate, or go through the estate and distributed as per Shayon's will in the probate proceeding. She has not established as a matter of law that the account proceeds are property of the estate and is thus not entitled to judgment so declaring.

Nor is Leah entitled to summary judgment on her counterclaims. As for the breach of contract claim, she is not a party to the separation agreement she claims was breached and thus has no standing to assert that claim. As for the unjust enrichment claim, the plaintiff has not and will not receive any account proceeds. As such, he has not been enriched, unjustly or otherwise. The court declines to impose sanctions against the plaintiff since there was no frivolous conduct on his part within the meaning of 22 NYCRR 130-1.1(a).

To the extent that Leah also seeks, in the alternative, an order transferring the matter to New York County Surrogate's Court, as briefly mentioned at the close of the Memorandum of Law, that application is denied without prejudice. The relief sought in the instant action was limited to "independent matters involving controversies between living persons," such that the Surrogate's Court did not have jurisdiction. Matter of Piccione, 57 NY2d 278, 291 (1982); see Matter of Goldstick, 177 AD2d 225 (1<sup>st</sup> Dept. 1992).

The parties are encouraged to continue settlement discussions.

Accordingly, upon the foregoing papers, it is

ORDERED that the motion of defendant Leah R. Novak, individually and as the Executrix of the Estate of Sheila R. Shayon, deceased, is granted to the extent that the complaint is dismissed as against her, and the motion is otherwise denied without prejudice.

This constitutes the Decision and Order of the court.

*Nancy M. Bannon*  
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8/1/2023  
DATE

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NANCY M. BANNON, J.S.C.

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