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SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO. 2008ES1000409 (Charleston)
CASE NO. 2012ES0700998 (Beaufort)

IN THE MATTER OF ESTATE OF)
NORMAN ROBERT KNIGHT, JR.)
_____)

ORDER TO QUASH RESPONDENTS'
SUBPOENA DUCES TECUM TO
MORGAN STANLEY

2014 APR 22 AM 9:59
PROBATE COURT
BEAUFORT COUNTY, SC
FILED

On April 17, 2014, Chloe Tonney ("Tonney") filed a Motion to Quash a Subpoena Duces Tecum issued to Morgan Stanley by counsel for Respondents Norman Robert Knight, III ("Knight") and Judy Brown as Personal Representative for the Estate of Mildred C. Knight ("Brown"), pursuant to Rule 45(c) of the South Carolina Rules of Civil Procedure.

Tonney's Motion to Quash was heard on April 21, 2014, via telephone conference, by consent of all counsel. Participating in the hearing were: C. Mac Gibson, attorney for Tonney; J. Seth Whipper, attorney for Knight and Brown; and Beatrice Whitten, the court-appointed Special Administrator of the Estate of Norman Robert Knight, Jr. The attorneys consented to the hearing being audio-recorded by the Court.

On April 9, 2014, J. Seth Whipper, as attorney for Respondents Knight and Brown, issued a Subpoena Duces Tecum to the custodian of records for Morgan Stanley at 485 Lexington Avenue, New York, New York, for deposits and withdrawal records, including identity of depositors and payees beginning 2004 through 2009, pertaining to a certain Smith Barney account which had been identified at the hearing on March 31, 2014 as the "Queenie" account.

Tonney through her attorney filed the Motion to Quash asserting that the Subpoena Duces Tecum does not comply with Rule 45, SCRPC, and §3119 of the New York Civil Practice Law

and Rules, because the subpoena was issued from Charleston County, South Carolina to the records custodian for Morgan Stanley in New York, New York.

Mr. Whipper contended that Morgan Stanley operates in the County of Charleston, State of South Carolina; therefore, it is subject to the laws of the State of South Carolina regarding the subpoena at issue. With respect to the Smith Barney account in question, Mr. Whipper's argument is persuasive, and this Court would not quash the subpoena for failure to comply with Rule 45(a)(2), SCRCF.

Tonney's Motion to Quash further asserts that the subpoenaed documents are not relevant to her creditor's claim against the above-referenced estate. At the time Tonney presented her case to this Court on March 31, 2014, Mr. Whipper cross-examined her regarding checks that she issued for the benefit of her father including checks from the "Queenie" account. Additionally, Iris Albright, an employee for Family Services, Inc., a former court-appointed Conservator for Norman Robert Knight, Jr., testified that Family Services, Inc. had marshaled the assets of Norman Robert Knight, Jr., and did not find any of his assets in the "Queenie" account.

While expressing reservations as to the relevance of the subpoenaed documents, the Court stated that it would not quash the subpoena solely on the grounds asserted in the Motion and initial argument of Tonney's counsel.

In response to the Court's initial findings, as stated above, Tonney's attorney informed the Court and the other attorneys, on the record in the hearing, that Tonney was withdrawing her claim as to payments made to Bishop Gadsden Rehab., Inc., totaling \$1,622.22, marked as Petitioner's Exhibit #18 in the hearing of March 31, 2014. The checks made payable to Bishop Gadsden Rehab., Inc. came from the "Queenie" account and are part of Exhibit #18.

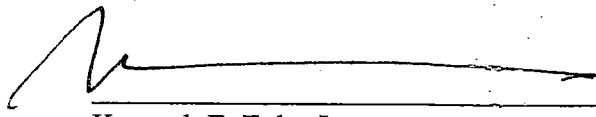
No checks from the "Queenie" account were introduced in support of any other expenses claimed by Tonney, so the withdrawal of that portion of her claim pertaining to expenses paid from the "Queenie" account renders the subpoenaed documents irrelevant to the remainder of the Tonney claim which is subject to adjudication. Enforcement of the subpoena, under these circumstances, would require the disclosure of otherwise confidential personal financial information, protected by law, to no purpose relevant to the matter before the Court.

Tonney has previously reduced the sum originally claimed in her Petition for Allowance of Claim, without objection by Respondents. Allowing her to further reduce her claim by withdrawing the amounts paid from the "Queenie" account to Bishop Gadsden Rehab., Inc., eliminates those payments as a matter for trial or defense by Respondents, and does not prejudice Respondents. Accordingly, whether the withdrawal of the subject payments is deemed an amendment of Tonney's Petition, under Rule 15, SCRCPC, or a voluntary dismissal of part of her claim, under Rule 41, it is allowed by this Court.

Because Ms. Tonney has withdrawn her claim for the \$1,622.22 in payments made to Bishop Gadsden Rehab., Inc., marked as Petitioner's Exhibit #18, this Court finds and concludes that the documents being sought under the Subpoena Duces Tecum, viz., the deposit and withdrawal records pertaining to the Smith Barney account identified as the "Queenie" account from 2004-2009, are not relevant to the remainder of Tonney's creditor's claim, and that the disclosure of such personal financial information would serve no justifiable purpose in this claim allowance proceeding. Therefore, it is

ORDERED that Tonney's Motion to Quash Respondents' Subpoena Duces Tecum to Morgan Stanley is granted;¹ and

IT IS SO ORDERED.



Kenneth E. Fulp, Jr.,
(Probate Judge for Beaufort County)
Special Probate Court Judge for Charleston County

Beaufort, South Carolina

April 22, 2014

¹ Before executing this Order, this Court received from Mr. Whipper by fax this morning a Notice of Motion and Motion for Reconsideration, on behalf of Respondents Knight and Brown, asking the Court "to reconsider its order issued after hearing on April 21, 2014." No written order had been issued before submission of the Motion. Nevertheless, the Motion states no ground that persuades this Court to reconsider the within ruling, and Respondents' Motion is denied.