

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT : QUEENS COUNTY

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Probate Proceeding, Will of

FRED C. TRUMP
a/k/a FREDERICK CHRIST TRUMP,

File No. 1999-3949/A

Deceased.
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Documents seeking various forms of relief have been submitted to the court bearing the above caption. The initial set of documents are an Order to Show Cause in support of a motion for preliminary injunction and temporary restraining order. It is accompanied by an emergency affirmation of counsel and an affidavit by Robert S. Trump.

The second set of documents contain a Notice of Petition, and a petition seeking a permanent injunction, damages and declaratory relief. Again, the petitioner is Robert S. Trump. Respondents in both sets of submissions are Mary Trump, who is petitioner's niece, and Simon & Schuster.

Essentially petitioner seeks to enjoin the respondents from publishing a book, the subject of which allegedly encompasses discussions of familial relations between various members of the Trump clan. Robert claims such publication would be violative of the terms of a non-disclosure/confidentiality agreement contained in a stipulation of settlement signed by Robert, his siblings Donald and Mary, as well as the respondent and her brother Fred. This document resolved contested probate proceedings in the estates of Fred C. Trump and his spouse Mary Trump, as well as two other related Supreme Court actions.

At the outset, the court finds that the submissions suffer from several improprieties. First, a preliminary injunction is an order obtained by motion in a pending action or special proceeding (CPLR §6301; 103(b)). The caption utilized refers to a probate proceeding which terminated in 2001 by entry of a decree and is, therefore, non-existent. Consequently, a motion seeking injunctive relief may not be made in that proceeding. To the extent the accompanying petition, bearing the same caption, is supposed to provide the jurisdictional basis for said motion, it cannot do so as that petition is fatally defective.

The petition seeks, among other things, a permanent injunction against respondents enjoining them from publishing any account of Mary's relationship with family members who are parties to the settlement agreement. Additionally, it seems a declaratory judgement that Mary is "violating her obligations under the settlement agreement" is sought.

Insofar as the petition seeks a declaratory judgment, this forum is presumptively improper as such relief should be obtained by means of an action in the Supreme Court and not a special proceeding in this court (see CPLR §3017). While it has been held that the Surrogate's Court can grant declaratory relief, such instances are rare and, crucially, involve contested issues concerning the administration of estate assets (see *In re Greenwold*, 236 AD2d 400; *Matter of Dolloff v Dolloff*, 49 Misc. 3d 440). Such a finding can not be made here because this controversy is a dispute regarding private rights and obligations which fall outside the parameters of the subject matter jurisdiction of the Surrogate's Court.

Subject matter jurisdiction of the Surrogate's Court has been expanding since the Court of Appeals seminal ruling in *Matter of Piccione*, 57 NY 2d 27. Currently, the Surrogate's Court will be found to have properly exercised jurisdiction whenever the relief sought is related to the administration of decedent's estate or will tangibly effect decedent's affairs (*Matter of Hersh*, 102 AD3d 872).

Yet the Surrogate's Court's jurisdiction is not unlimited and controversies between parties which are independent of estate affairs are not matters which are within its jurisdictional ambit (*Matter of O'Connell*, 98 AD3d 673; *In Re Estate of Lainez*, 79 AD2d 78; *Matter of Parisi*, 59 Misc. 3d 1020).

There is no bright light test applied to determine these jurisdictional issues. Each decision is sui generis and greatly depends on the facts giving rise to the legal dispute. In fact, even the specific type of relief sought is not necessarily determinative, and the same type of proceeding may or may not be found to satisfy the subject matter predicate for entertainment by the Surrogate's Court (see e.g. *Matter of Parisi*, *supra*, citing *Wagenstein v Shwarts*, 82 AD3d 628).

Turning to the specific facts contained in the pleadings, clearly the crux of the legal dispute between these parties is whether respondent Mary (and by extension, Simon & Schuster) is violating the terms of a non-disclosure/confidentiality agreement signed with petitioner which entitles him to relief. Under the scenario presented, it can not be successfully argued this dispute effects the administration of the decedent's estate.

Should Robert be successful, any relief would flow to him individually, not as a fiduciary of the Estate of Fred C. Trump. Likewise, Mary's actions are not being

challenged as a distributee, beneficiary, or creditor of the estate, but in her capacity as a signatory of an agreement with Robert. The mere fact that the terms of the agreement alleged to be violated are contained in a stipulation of settlement arrived at during a probate contest is not enough, standing alone, to empower this court to obtain jurisdiction. The irrefutable conclusion is, regardless of the outcome of this matter, the administration of this estate will not be impacted one iota.

Most saliently, the language of the subject stipulation which allegedly provides the opportunity for this court to entertain this matter apparently acknowledges this distinction. Included in the terms of the respective non-disclosure/confidentiality agreements is language that clearly recites that in the event of a breach of the provisions, an injunction may be obtained by "any court of competent jurisdiction." Meanwhile, the jurisdiction of the Surrogate's Court is retained in a separate paragraph only to "implement and carry out the terms" of the stipulation. In other words, if distribution pursuant to the stipulation would be at issue, this court maintained jurisdiction to ensure its provisions were complied with. But as to the issue at bar, another forum was contemplated.

While the respondents have not been served, lack of subject matter jurisdiction can not be cured by consent or waiver and may be raised by the court on its own motion at any time (*Financial Indus. Regulatory Auth., Inc v Fiero*, 10 NY3d 12; *In re Stern*, 91 NY2d 591; *In re Estate of Rougeron*, 17 NY2d 264).

Accordingly, the matter is dismissed.

This is the Decision and Order of the court.

Dated: June 25, 2020



SURROGATE