

Fears v Lefkowitz

2024 NY Slip Op 31247(U)

April 4, 2024

Supreme Court, New York County

Docket Number: Index No. 654869/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

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MADELINE FEARS,

Plaintiff,

- v -

GARY LEFKOWITZ, JACOB LEFKOWITZ, PAUL
LEFKOWITZ, MORGAN STANLEY & CO. LLC

Defendant.

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INDEX NO. 654869/2023

MOTION DATE 12/29/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 63, 64 were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss the complaint as to Defendants Gary Lefkowitz, Jacob Lefkowitz and Paul Lefkowitz is granted.

Background

This is an action arising out of a change to the beneficiaries of an Individual Retirement Account belonging to Michael Lefkowitz who is now deceased. Plaintiff, Madeline Fears (“Plaintiff”) was the Decedent’s life partner and at one point was the designated primary beneficiary of the IRA, held with Defendant Morgan Stanley. The Complaint alleges that around October 2020, while the Decedent was hospitalized, Defendant Gary Lefkowitz, brother of the Decedent, effected a change removing Plaintiff as primary beneficiary and designating him and his sons, Defendant Jacob Lefkowitz and defendant Paul Lefkowitz as equal primary beneficiaries.

Plaintiff subsequently commenced this action alleging that the distribution of the IRA to the Lefkowitz Defendants departs from the Decedent’s long standing estate plan and alleging

that the beneficiary designation change was improper. Plaintiff therefore seeks a declaratory judgment finding that the 2020 Form was ineffective, unauthorized, and improper, awarding Plaintiff her beneficial interest in the IRA. Defendants Lefkowitz move to dismiss Plaintiff's complaint.

Discussion

Preliminarily, Defendants Gary Lefkowitz, Jacob Lefkowitz, and Paul Lefkowitz move to dismiss on the grounds that Plaintiff lacks personal jurisdiction over each of them. Specifically, Defendants argue the Complaint alleges no facts as to the Lefkowitz Defendants' contacts with New York, except for Defendant Gary Lefkowitz' bar admission in New York. Defendants contend the only contact with New York is Plaintiff's residence and otherwise, all facts relating to the matter occurred in New Jersey where Decedent lived, was treated for his various health issues, hospitalized, and eventually passed away. As such, Defendants contend Plaintiff's complaint should be dismissed pursuant to CPLR 302.

In opposition, Plaintiff contends the Court has jurisdiction over Defendant Gary Lefkowitz as he is a member in good standing before the Bar of the State of New York. Plaintiff argues that as Defendant Gary Lefkowitz was and remains a practicing attorney licensed through the New York Bar and thus avails himself to jurisdiction of these Courts on the basis licensure is akin to a business registration. Next, Plaintiff argues that pursuant to CPLR 302 the Defendants are subject to jurisdiction in New York because "forcing the change of the IRA account beneficiary to Defendants Lefkowitz was no doubt the proximate cause of the injury in New York." Moreover, Plaintiff contends that as the Defendants Lefkowitz are the apparent named beneficiaries on the New York Morgan Stanley IRA account, this Court has jurisdiction over them pursuant to CPLR 302.

The Court finds Plaintiff has failed to establish personal jurisdiction over the Lefkowitz Defendants. When assessing whether there is personal jurisdiction over a defendant pursuant to the "transacts any business" clause of New York's long-arm statute, courts must ask "whether what the defendant did in New York constitutes a sufficient 'transaction' to satisfy the statute". See *State of New York v. Vayu, Inc.*, 39 N.Y.3d 330 [2023]. Examination of a defendant's actions in New York is primarily a fact-based inquiry that requires an assessment of whether the non-domiciliary's activities in the state were purposeful. *Id.* "Purposeful activities," this Court has explained, are "volitional acts by which the non-domiciliary 'avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Id.* Moreover, the constitutional inquiry "focuses on 'the relationship among the defendant, the forum, and the litigation'". Significantly, "it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction." See *Williams v Beemiller, Inc.*, 33 N.Y.3d 523, 529 [2019]. Thus, the United States Supreme Court has "upheld the assertion of jurisdiction over defendants who have purposefully 'reach[ed] out beyond' their State and into another", while clarifying that the relationship between defendant and the forum state must arise out of defendant's own contacts with the forum and not "contacts between the plaintiff (or third parties) and the forum State." *Id.*

While it is undisputed that Defendant Gary Lefkowitz is barred in New York, this alone is not enough to establish personal jurisdiction in a matter that does not arise out of Mr. Lefkowitz practice of law. Furthermore, the Court finds that even in the light most favorable to plaintiff and assuming Plaintiff's allegations to be true, that Defendants were involved in the changing of a New York IRA account and subsequently the beneficiaries of a New York IRA account, does not rise to the level of purposeful activities necessary for New York's long arm

statute to apply. Lastly, Plaintiff alleges this change occurred while the defendant was hospitalized in Englewood Hospital, and that the IRA beneficiary forms were changed while Decedent was in New Jersey. As such, the allegedly tortious acts occurred in New Jersey, the Court finds CPLR 302 does not confer jurisdiction here.

Accordingly, it is hereby

ORDERED that Defendants GARY LEFKOWITZ, JACOB LEFKOWITZ, PAUL LEFKOWITZ GARY LEFKOWITZ, JACOB LEFKOWITZ, PAUL LEFKOWITZ are dismissed from this action; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

4/4/2024

DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED		
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION		
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
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<input type="checkbox"/>	SUBMIT ORDER
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CHECK IF APPROPRIATE:

<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN
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<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
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