

Sanctity/SafeMoneyMetrics

From: Philip T. Simpson [pts@Robinsonbrog.com]
Sent: Monday, July 02, 2007 2:59 PM
To: Sanctity/SafeMoneyMetrics
Cc: A. Mitchell Greene; Alexandra C. Siskopoulos
Subject: E/O Jacobson

Dear Marlee,

We made a motion asking the Court to order Diane to distribute your "seat" (membership and 90,000 shares of stock). The motion was scheduled for argument on June 19.

On June 19, I appeared in court. Len Steinman and Barbara MacGrady appeared for Diane and Joe Gaffney appeared for Shelby. The Judge remarked that this was a complicated case, and we agreed to have a conference with one of the court's law assistants -- Jessica Amalar.

During the conference, we (me, Steinman, and Gaffney) agreed that Diane would distribute the seats, one seat to each daughter. (It was not clarified whether this meant that Shelby's seat would come into the estate to be distributed out, or that Shelby's seat would simply be deemed to be Shelby's for her own use and benefit.)

Steinman and Gaffney agreed that Shelby would transfer all of the net cash she has collected from her seat (dividends and lease income), to Gaffney's escrow account. Shelby was also to provide an accounting of moneys received and monies paid out (to herself? for taxes?) within 30 days. Gaffney was in agreement with the seat transfer and with putting the cash into his escrow account, and with accounting, but said he needed to speak with Shelby to get her consent.

The chief objection that Steinman and MacGrady had raised to distributing the seats was that Diane needs a substantial reserve.

Diane wants to keep all of the cash in reserve until all issues are decided. The total cash is estimated to be \$1.6 million, comprised of \$1.2 million that Diane is holding, and some \$400,000 that Shelby is holding. Note: All estate taxes (but not all income taxes) have been paid and the specific bequests to the grandchildren have been paid and Blank Rome has been paid (at least \$500,000).

Gaffney said Shelby wanted to be reimbursed for funeral expenses, and Steinman or MacGrady said that Diane would do that when Shelby provided a copy of the funeral bill. Gaffney said that Shelby had given it to her prior lawyer who had given it to Diane's lawyer and that Shelby no longer had a copy of it and couldn't remember the name of the funeral home. Steinman and/or Gaffney agreed to try to locate the funeral bill.

Gaffney also wanted Diane to pay his legal fees. (These payments would be subject to your objections and I took no position about them.)

I said I would get the pro-forma regarding damages to everyone no later than July 19. I pointed out that the damages we are claiming are not against the estate, but against Shelby and Diane.

We left the conference with the understanding that, subject to Shelby's confirming agreement to Gaffney, we would prepare a short stipulation of the agreement.

The next day or the day after that, Gaffney called to say that Shelby was in agreement. I believe MacGrady was to prepare a stipulation. I was away on Friday and Monday.

While I was away, I got a voice-mail from Jessica Amalar telling me that the judge wanted to have a conference call and would I set it up. I managed to reach her from the road on Monday. She didn't tell me any details of what the call was to be about. I arranged with my secretary and MacGrady to set up the conference call.

During the conference call, Ms. Amalar said that, in discussing this with the judge, the judge said that we had gotten ahead of ourselves.

Diane as executor could not distribute the seats because the seats would only be "in" the estate under the stipulation between Diane and Shelby to which you (Marlee) have objected. If you withdrew your objections to the stipulation, then the seats would be in the estate and could be distributed.

This took everyone by surprise. I said that the parties could still agree to distribute the seats, but Ms. Amalar did not seem to understand that. After the conference call I called MacGrady to tell her again that the parties could agree among themselves to distribute the seats.

I called her again last week to repeat that, and to repeat that all three daughters wish to have their seats to do with what they wish. She said she would have to speak with Steinman and Diane. She has not gotten back to me and I will call her this pm.

The summary judgment motion regarding your objections to the stipulation between Diane and Shelby has still not been decided. I think the court (judge or law assistants) would prefer not to have to decide it, and they may have thought that raising the technical point that the seats are not in the name of the estate could push you to agreeing to an overall settlement.

The bottom line is that you, Diane, and Shelby can still agree to distribute the seats. They would not be titled in the name of the estate in any event, and since there are no other interested parties, if you three agree, then you can do it.

Phil

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