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PLF

The Perez Law Firm

BERGEN/PASSAIC COUNTY:
151 W. Passaic St., 2nd Fl,
Rochelle Park, NJ, 07662
Phone: (201)875-2266
Fax: (201)875-3094

MORRIS COUNTY:
150-152 Speedwell Ave.
Morristown, NJ, 07960
Phone: (973)910-1647
Fax: (973)910-1922

September 11, 2020

Honorable Magistrate Judge Joseph A. Dickson
United States District Court, District of New Jersey
Martin Luther King Courthouse
50 Walnut Street
Newark, NJ 07101

Applebaum v. Fabian, Gold, et al.
DOCKET: 2:18-cv-11023 (KM)(JAD) VIA ECF

Dear Honorable Magistrate Judge Joseph A Dickson,

Regarding above matter, defendants have expressed an interest in a settlement conference.[1] The undersigned hereby accepts their offer to negotiate in good faith, subject to the contents of this letter.

The undersigned is thus not consenting to a hiatus greater than the twenty one months it has taken this Court to decide the motion to amend, one year if measured from the day of oral argument in August of 2019.[2] Unfortunately, perhaps by design of the defendants and others,

[1] Presumably since there is, upon information and belief, an insurance policy available which in the Federal litigation (only) would give plaintiff the best chance to be made whole, as the defendants in this economy may experience - or will likely claim - financial difficulty.

[2] In contrast, in *Otero v. Port Authority*, CV 14-1655 (ES) (JAD), it took this Court only seven months to decide a motion to amend, such as the one filed by plaintiff in January of 2019. Similarly, in *Maximum Quality Foods v. DiMaria*, Civil Action No.: 14-6546 (JLL)(JAD)., it took this Court only six months to decide a dispositive motion. (Hyperlinks included in footnote).

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the undersigned must now come to grips with, and disclose, the reality that has befallen plaintiff widow and her children during her nearly decade-long attempt to access the Courts.

As this Court recalls, the State Court Judge explicitly ignored two independent banker depositions[3], countless hours of "tapes" and admissions by defendants themselves[4], and clearly spurious defense arguments[5], in denying plaintiff a plenary hearing which would have likely resulted in a settlement[6]. He further agreed that plaintiff-school teacher would "destroy" decedent's multi-million dollar company with a minority 40% equity stake, and permitted defendants to effectively disinherit her - and by consequence her children (who have received nothing from the estate in nearly a decade).

For over two years, plaintiff has also sought relief in Federal Court and has similarly been met with an inability to let the facts be aired to the public - with a neutral fact finder - such as to encourage settlement, since defendants in that circumstance would likely settle in lieu of disclosing their potentially criminal misdeeds.

To be sure, although not briefed by any party (and not ordered to brief same), the undersigned understands that collateral estoppel or res judicata may be an issue - and for this

[3] Who stated inter alia that they would have called the FBI on defendants had they known of certain financials which were not disclosed in connection with commercial loans.

[4] Setting forth the specifics of a payroll scheme, i.e., repayment of an unprovable alleged 600K debt to defendants, by way of illicit payroll payments. The tapes also contain incriminating admissions, e.g., "we will not report anything to anyone at the end of the day."

[5] E.g., that defendant's admitted connivance regarding concealment of the executor's financials was in reality a sinister plot to conceal from plaintiff's children, at least one of whom was "in" on the plot, the fact that grandma gave the executor a 100K life insurance proceeds she had received as a beneficiary.

[6] Since defendants would not risk making their misdeeds known to the world at a public hearing.

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reason this Court may be reluctant to engage in fact-finding, absent further guidance by the appellate division.

First, this (potential) argument unfortunately represents yet another reason advanced by our Courts over the years to deny plaintiff access to the fact-finding elements of our tribunals in almost a decade of litigation, and it **effectively punishes plaintiff for her decision to appeal**.[7] Second, as this Court recalls, the *Marshall* litigation and case law, which significantly narrowed the probate exception, entailed concurrent litigation in State and Federal Courts - there was no problem in *that* case, for *that* litigant[8], to access *two* Courts concurrently. Third, the trial court has ruled. If in fact there was a collateral estoppel issue, defendants would have prominently raised same in light of the trial court's final ruling. That they did not emphasize and thoroughly brief collateral estoppel - is probative that there is no collateral estoppel issue, and this Court may rule based on the contents of the trial Judge's opinion, and the issues briefed, in lieu of waiting for an appellate division decision which at best will result in the removal of the executor - and the right to fact finding in State Court, which plaintiff can waive once and if this Court permits fact finding (e.g. discovery, summary judgment, and potentially trial).

As such, the plaintiff widow (and by extension her disinherited children) will agree to negotiate before Your Honor - so long as these clearly culpable defendants negotiate in good faith, and that the settlement conference not result in any further delays by this Court as regards the nearly-two-year-old motion to amend filed on behalf of the disinherited and defrauded widow - the mother of decedent's three children.

Respectfully submitted.

Sincerely,
Santos A. Perez /s/
SANTOS A. PEREZ, ESQ.

SAP/mg
Cc:\\all parties of record VIA ECF

[7]Our Courts have seemingly toiled *excessively* to find *any* reason to deny plaintiff her day in Court- this truth must be made known, with courage and conviction, and with firm acceptance of the potential consequences.

[8] Who did not bear the decedent's children, in contrast plaintiff had three children with decedent.