

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: *David Lawrence, et al. v. Seth M. Forster, Trustee*
C. A. No. 12458-MZ

Dear Counsel:

This case centers on a discrete dispute between two brothers regarding the distribution of life insurance proceeds under their father's trust. The brothers' litigation tactics have converted that single dispute into a procedural morass evoking Russian nesting dolls. Pending in this case are exceptions to a Master's final report granting in part and denying in part David Lawrence's petition to enforce a mediation agreement with his brother Seth Forster ("First Petition"). Those exceptions are stayed pending resolution of exceptions to a second Master's final report denying Forster's motion to enforce a second settlement agreement on the same dispute ("Second Motion").

While two sets of exceptions on two requests for relief borne out of two attempts to resolve the underlying dispute were pending, Lawrence filed another petition, this time to remove Forster as trustee (“Third Petition”). Lawrence also asks that the Court expedite decision on the Third Petition. Forster opposes expedition. In this final report, I recommend the Court deny the motion to expedite.

The Third Petition asks the Court to solve the same problem underlying the First Petition and the Second Motion: the brothers’ inability to work together to distribute their father’s life insurance policies. Lawrence seeks to expedite the Third Petition because he suspects Forster has commingled and dissipated Lawrence’s portion of the life insurance proceeds while this case has been pending.¹ Lawrence would not accept Forster’s redacted bank statements as proof that Forster still holds Lawrence’s funds. In response, Forster affirmed that he has not spent Lawrence’s funds and provided redacted bank records. Forster’s counsel alleged he reviewed unredacted bank records that indicate Forster still holds all of Lawrence’s funds. I have also reviewed unredacted bank records *in camera*.

¹ In the Third Petition, Lawrence also alleges “it is possible” that taxes have not been paid on the 2016 taxable event of cashing in the life insurance policies, and that penalties and interest may therefore be accruing. Third Pet. ¶ 25. Forster argues in opposing expedition that Forster cannot file the necessary tax documents unless Lawrence provides his Social Security Number, which Lawrence refuses to do. Whether Lawrence must provide his Social Security Number is of central importance to the Second Motion.

This Court does not set matters for an expedited hearing unless there is a showing of good cause why that is necessary.² To make the necessary showing, a plaintiff must articulate a sufficiently colorable claim and show a sufficient possibility of a threatened irreparable injury to justify imposing on the defendants and the public the extra (and sometimes substantial) costs of an expedited proceeding.³

Substantively, I conclude that Lawrence has not shown a sufficient possibility of threatened irreparable injury. Even if Lawrence's suspicions of dissipation were supported, the suspected harm – dissipation of funds – is not irreparable. And Lawrence's suspicions are, at least at this stage, refuted by bank records and representations by a member of the Delaware bar indicating Forster has not dissipated Lawrence's funds. Lawrence has failed to justify expedition.

Procedurally, expediting consideration of the Third Petition would be a doomed attempt to put the largest Russian nesting doll inside the smallest one. In my view, Vice Chancellor Montgomery-Reeves is currently tasked with determining if the brothers reached a settlement agreement on the terms of the original mediation agreement. If she determines they did not, she must determine if and how the Court should enforce that mediation agreement, as Lawrence

² *In re SunGard Data Sys., Inc. S'holders Litig.*, 2005 WL 1653975, at *1 (Del. Ch. July 8, 2005).

³ *Id.*

originally requested. If Vice Chancellor Montgomery-Reeves enforces either agreement, then the funds would be distributed according to her order and the Third Petition would be moot.

For the foregoing reasons, I recommend the Court deny Lawrence's motion to expedite his petition to remove Forster as trustee. This is a final report pursuant to Court of Chancery Rule 144.

Respectfully,

/s/ Morgan T. Zurn

Master in Chancery