COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Re: *IMO the Estate of Evelyn Chambers*
C.A. No. 2018-0630-SEM

Dear Counsel and Litigants:

In this estate matter, two siblings filed a petition titled "Petition for Challenging Validity of a Will" naming their mother's estate and their third sibling, the current executor of the mother's estate, as respondents. The respondents moved to dismiss, while the petitioners moved to compel production of documents. For the following reasons, I recommend that the motion to dismiss be granted in part and denied in part. I further recommend that the motion to compel be denied without prejudice, with leave to renew with information added regarding the discovery served and the response and production (or lack thereof) by respondents.

I. Background

This estate matter boils down to a dispute between three siblings (Respondents Sheldon S. Chambers, Executor of the Estate of Evelyn Chambers, individually, and on behalf of the estate ("Respondents")[1] and Petitioners Victoria and James Chambers ("Petitioners")) as to the administration of their mother Evelyn's estate. Evelyn died on November 13, 2017 and left behind three versions of a Last Will and Testament.[2] One version, dated August 30, 2000, was admitted to probate by Sheldon in December 2017, with letters issued to him as executor on December 8, 2017.[3]

In the petition filed on August 23, 2018, Petitioners raise concerns about the form and execution of the will admitted to probate,[4] the witnesses to the will,[5] and the way in which the will was admitted to probate.[6] The Petition further avers that

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[1] I occasionally use first names in this final report for clarity and intend no familiarity or disrespect.
[2] Unless otherwise noted, the facts recited herein are taken from the Petition. Docket Item ("D.I.") 1.
[3] *In the Matter of Evelyn Chambers*, 168119 RR, D.I. 1-3. "Because the Register of Wills is a Clerk of the Court of Chancery, filings with the Register of Wills are subject to judicial notice." *Arot v. Lardani*, 2018 WL 5430297, at *1 n.6 (Del. Ch. Oct. 29, 2018) (citing 12 *Del. C.* § 2501; Del. R. Evid. 202(d)(1)(C)).
[4] In example, averring that "there is no testator's or witnesses signatures" under the acknowledgement and that the "cut and paste" throughout could have been done by Sheldon's "notary friends". D.I. 1 at ¶ 4.
[5] *See id.* (alleging that the witnesses "are unknown to the petitioners" even though "[t]he decedent had a very small circle of friends … who … would have been her witnesses").
[6] *See id.* at ¶ 5 (alleging that "[t]he respondent coerced a cousin, Tracy Calhoun, who took her co-worker, who had never met the decedent, to sign off as witnesses").

after he was appointed as executor, Sheldon breached his fiduciary duties, breached agreement(s) with Petitioners, and failed to reimburse James for funeral expenses.[7]

Respondents filed a motion to dismiss the Petition on October 23, 2018 arguing that the Petition fails to state a claim for which relief can be granted because it is time-barred under 12 *Del. C.* § 1309(a). Respondents also seek fees and costs in connection with responding to this action. Petitioners opposed dismissal, contending that the Petition is not time-barred due to a timely-filed action in the Justice of the Peace Court (that was later dismissed for lack of subject matter jurisdiction) and highlighting various other allegations in the Petition that do not go directly to challenging the will at issue (i.e., claims for specific distributions and allegations of breaches of various agreements and fiduciary duties).[8] Petitioners also filed a motion to compel, titled "Request for Information."[9] Respondents declined to submit either a reply brief in further support of the motion to dismiss or a response to the motion to compel.[10] The motion to dismiss and motion to compel were, thus,

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[7] *See id.* at ¶ 6
[8] *See* D.I. 11-12, 19-20.
[9] D.I. 7-9.
[10] Respondents explained via letter on February 11, 2019 that no response was filed to the motion to compel "because [Respondents] anticipated a decision to be made on the Motion to Dismiss, thereby extinguishing a need to respond and mitigating legal costs to [Respondents]." D.I. 18. Respondents further noted that counsel for Respondents "intends to respond to Petitioners [*sic*] Motion to Compel if necessary, however, [Respondents] believe the decision to [*sic*] the Motion to Dismiss governs whether a response to the Motion to Compel is required." While I appreciate Respondents' cost concerns, I do not endorse Respondents' unilateral decision to ignore Petitioners' motion. Respondents should have responded to the motion or filed a motion for

deemed submitted for decision on February 11, 2019.

II. Analysis

Pending before me are Respondents' motion to dismiss and Petitioners' motion to compel. I address each in turn.

A. Respondents' Motion to Dismiss Should Be Granted in Part and Denied in Part.

Respondents seek dismissal under Rule 12(b)(6) for failure to state a claim arguing that Petitioners' claims are time-barred under 12 *Del. C.* § 1309(a). The standards governing a motion to dismiss for failure to state a claim are well settled:

> (i) all well-pleaded factual allegations are accepted as true; (ii) even vague allegations are "well-pleaded" if they give the opposing party notice of the claim; (iii) the Court must draw all reasonable inferences in favor of the non-moving party; and ([iv]) dismissal is inappropriate unless the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances susceptible of proof.[11]

Likewise, the scope and application of 12 *Del. C.* § 1309(a) is clear. Section 1309(a) provides:

> Any person interested who shall not voluntarily appear at the time of taking the proof of a will, or be served with citation or notice as

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protective order or to stay discovery pending the motion to dismiss. *See Terramar Retail Centers, LLC v. Marion #2-Seaport Tr. U/A/D June 21, 2002*, 2018 WL 6331622, at *7 (Del. Ch. Dec. 4, 2018) ("parties are not entitled to grant themselves unilateral stays of discovery"); *Kahn v. Tremont Corp.*,1992 WL 205637, at *2 (Del. Ch. Aug. 21, 1992) ("there is no hard and fast rule that affords to defendants a right to a stay simply because a case dispositive motion has been filed"). Nevertheless, I decline to recommend that the Court grant the motion to compel as unopposed given my concerns explained in Section II.B below.

[11] *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002) (internal quotation marks and citations omitted).

> provided in § 1303 of this title, shall, at any time within 6 months after the entry of the order of probate, have a right of review which shall on the person's petition be ordered by the Court of Chancery. Upon such review, there shall be the same proceedings as upon a caveat, and the allowance of the will and granting of letters may be affirmed or the will rejected and the letters revoked.

This Court has declared that this "statute is clear and unambiguous. It is a special statute of limitations as to wills. Any person seeking a review of an instrument proven as a will shall, within six (6) months after the proof of the will, file a petition seeking the review."[12] Section 1309(a) is so clear and unambiguous that this Court has consistently declined to permit any tolling or leniency in its limitations period.[13]

I find *Moore v. Graybeal*[14] particularly instructive and relevant to this action. There, Chancellor Allen was asked to determine whether an untimely challenge in this Court under 12 *Del. C.* § 1309 could be "saved" by a first-filed, timely action in the District Court for the District of Delaware. Similar to Petitioners' posture here, in *Moore*, the petitioners first filed in federal court (within six (6) months) and refiled in this Court (outside the six (6) month period) after dismissal by the federal court for lack of subject matter jurisdiction. Despite finding the prospect of "saving" the

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[12] *Shuttleworth v. Abramo*, 1991 WL 160260, at *3 (Del. Ch. Aug. 15, 1991).
[13] *See, e.g.*, *Matter of Estate of Bates*, 1994 WL 586822, at *1 (Del. Ch. Sept. 23, 1994) (explaining that the statute is strictly construed and "even fraud does not toll" the six month period) (internal citations and quotation marks omitted); *Moore v. Graybeal*, 1989 WL 17430, at *6 (Del. Ch. Feb. 24, 1989) (finding that the Savings Statute did not apply to a petition to review a will brought timely in the wrong forum), *aff'd*, 567 A.2d 422 (TABLE), 1989 WL 114316, at *1 (Del. Aug. 25, 1989).
[14] 1989 WL 17430.

petitioners from the consequences of filing in an improper venue "inviting," Chancellor Allen declined to do so for two reasons. First, because Delaware's Savings Statute (10 *Del. C.* § 8118) only applied to actions commenced under Title 10, Chapter 81 and "the time within which a will review proceeding is to be commenced is not set forth in Chapter 81 of Title 10 and thus is not subject to Section 8118."[15] Second, because Chancellor Allen found that the language of 12 *Del. C.* § 1309 is inconsistent with the purpose of a savings statute. He explained:

> In this instance, the legislature *created* a right: the right to have Court of Chancery review of a will admitted to probate in this State. An *attribute of the right created* is that it exists in the hands of a certain kind of person (a person "interested"), and for a set period ("within six months" after proof of a will is admitted by the Register in Chancery). At the conclusion of the time determined, the right, by the act of its creation, ceases to exist. This situation is quite different from a situation in which a common law right exists or a statutory right is created with an indefinite life. Here, there is no right that is being subjected to a limitation upon its remedy; rather, the legislature has seen fit to create a limited right. Moreover, an action for review of a will is not "duly commenced" when it is commenced in any court other than the Court of Chancery for similar reasons. This conclusion both as to timing and as to forum flows from the specific language the legislature used in creating the right to review.[16]

Under this sound jurisprudence, Respondents are correct that Petitioners' challenges to the will admitted to probate are time-barred. The will was admitted to probate in December 2017. A challenge to its validity could be entertained by this

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[15] *Moore v. Graybeal*, 1989 WL 17430, at *6.
[16] *Id.*

Court if instituted on or before June 2018. This action, however, was not instituted until August 2018; approximately two (2) months outside of the period legislatively defined for doing so. That Petitioners initially filed an action in the Justice of the Peace Court does not "save" this untimely action, for the reasons explained in *Moore*. Thus, insofar as the Petition challenges the will admitted to probate, it is time-barred under 12 *Del. C.* § 1309(a).[17]

Respondents ask the Court to dismiss the entirety of this action as time-barred pursuant to 12 *Del. C.* § 1309(a). This request is, presumably, based on the narrow title of the Petition: "Petition for Challenging Validity of a Will." However, because "[t]he Court of Chancery is a court of equity, which at its core, deals in concepts of fairness[,]"[18] I take direction from the Court to undertake all efforts "to ensure that [Petitioners get] a chance to be heard."[19] In doing so, Petitioners' "pro se pleadings may be judged by a 'less stringent standard' than those filed by an attorney[.]"[20] And, I can "look to the underlying substance of [Petitioners'] filings rather than

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[17] I note that Petitioners' most recent submission requests that I "grant [Petitioners] the ability to present oral arguments, should the Respondent refuse to settle out of Court." D.I. 19. But, because the time-bar in Section 1309(a) is unquestionably applicable, I find that oral argument on this motion to dismiss would have been unnecessary and inefficient for all involved. Further, I find no prejudice to Petitioners from not being able to present oral argument at this stage because I recommend that the Petition survive in part and the motion to compel be denied without prejudice to renew. I make no finding or recommendation now as to whether oral argument on future motions would be prudent.

[18] *Kelly v. Fuqi Int'l, Inc.*, 2013 WL 135666, at *6 (Del. Ch. Jan. 2, 2013).

[19] *Id.* (internal citations omitted).

[20] *Id.* (internal citations omitted).

rejecting [them] for formal defects[.]"[21] Looking to the underlying substance is particularly important when review of a *pro se* litigants' filings with "forgiving eyes" makes it apparent that they have met "their obligation to 'allege sufficient facts to state a plausible claim for relief' or 'to present and support cogent arguments warranting the relief sought.'"[22]

I find that, despite the title of the Petition, Petitioners have pled facts and claims outside the scope of the time-barred validity challenge under 12 *Del. C.* § 1309. As I read the Petition with "forgiving eyes", I see (in addition to the validity claims that I recommend be dismissed), requests that the Court direct the executor to comply with agreements as to the distribution of non-probate assets and to reimburse Petitioners for certain expenses incurred prior to the decedent's death. I also see allegations that the executor has breached his fiduciary duties and certain agreements with Petitioners. These claims are not subject to the time-bar in 12 *Del. C.* § 1309(a), the only basis on which Respondents have sought dismissal.[23] Therefore, I recommend the motion to dismiss be granted in part, dismissing the

[21] *Sloan v. Segal*, 2008 WL 81513, at *7 (Del. Ch. Jan. 3, 2008).
[22] *Hall v. Coupe*, 2016 WL 3094406, at *2 (Del. Ch. May 25, 2016) (internal citations omitted).
[23] I make no findings as to the sufficiency of these pleadings or the merits of any of Petitioners' non-12 *Del. C.* §1309 claims. I find only that there are sufficient allegations that are not relevant to 12 *Del. C.* § 1309 and, presumably, support other claims. Because these allegations are outside 12 *Del. C.* § 1309 and unaddressed by the Motion to Dismiss, I cannot make a recommendation as to their disposition.

challenges to the validity of the will admitted to probate as time-barred under 12 *Del. C.* § 1309(a) and denied in part as to any other claims. I recommend that denial in part be without prejudice for Respondents to move to dismiss the non-12 *Del. C.* § 1309(a) claims within twenty (20) days of this decision becoming an order of the Court.

Respondents also ask for "legal fees and costs associated with answering Petitioners' Petition for Challenging Validity of a Will" due to the "unwarranted expense to the Estate of Evelyn Chambers, including legal fees and costs associated with responding to Petitioners' submission."[24] The so-called American Rule dictates that each party is responsible for its own legal fees.[25] But, this Court does recognize several exceptions allowing fee shifting, including the bad faith conduct of a party to the litigation[26] and where fees are authorized by statute.[27] Likewise, the right of a party to recover court costs "depends on statutory authority, express or implied [and] Court of Chancery Rule 54 provides that costs shall be allowed as of course to the prevailing party unless the Court otherwise directs."[28]

While the motion to dismiss does not specify the statutory or common-law

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[24] D.I. 6 at ¶6 and p.4.
[25] *Arbitrium (Cayman Is.) Handels AG v. Johnston,* 705 A.2d 225, 231 (Del. Ch. 1997).
[26] *Id.*
[27] *See, e.g.*, 10 *Del. C.* § 348(e).
[28] *Comrie v. Enterasys Networks, Inc.*, 2004 WL 936505, at *4 (Del. Ch. Apr. 27, 2004) (internal citations and quotation marks omitted).

exception to the American Rule that would support fee shifting in this action, nor the authority through which cost shifting is sought, the context of the motion (based solely on 12 *Del. C.* § 1309) leads me to believe that 12 *Del. C.* § 1309(b) is at play. 12 *Del. C.* § 1309(b) permits this Court to determine "the costs occasioned by" review of a will pursuant to 12 *Del. C.* § 1309(a) and decree payment of those costs. When, like here, there is no review of the will admitted to probate, I find that (b) does not apply. To the extent Respondents are also seeking shifting of fees or costs under another unspecified exception, statutory authority, or Court of Chancery Rule 54(d), I recommend that the request be denied, without prejudice, to renew at the conclusion of this matter with specific reference to the authority under which the request is made.

B. Petitioners' Motion to Compel Should Be Denied.

Petitioners' motion to compel seeks production of "all receipts, expenditures, settlement costs, and other related statements in the settlement of the Estate of Evelyn Chambers"[29] But, there is nothing in the motion indicating that Petitioners served requests for production on Respondents under Court of Chancery Rule 34 prior to filing the motion nor that Respondents objected, failed to timely respond, or failed to produce discoverable information (which is required in support of a motion

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[29] D.I. 7.

to compel).[30] Further, the substance of Petitioners' filing is more akin to a request for production under Court of Chancery Rule 34 than a motion to compel under Court of Chancery Rule 37. For example, it is titled "Request for Information" and requests information from Respondents "within 15 days of the date of this letter."[31] It appears to ask nothing of the Court. Therefore, I recommend that the motion to compel be denied without prejudice to renew with information added regarding the discovery served and Respondents' response and production (or lack thereof).

III. Conclusion

For the foregoing reasons, I find that Petitioners' challenge to the validity of the will admitted to probate is time-barred. But, because review of the Petition with "forgiving eyes" raises the prospect of additional claims not subject to the same time-bar, I find that the Petition should survive in part. I further find that Petitioners' motion to compel appears to be premature at this time. Accordingly, I recommend the motion to dismiss be granted in part, dismissing the challenges to the validity of the will admitted to probate as time-barred under 12 *Del. C.* § 1309(a) and denied in part as to any other claims. I recommend that denial in part be without prejudice for Respondents to move to dismiss the non-12 *Del. C.* § 1309(a) claims within twenty

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[30] *See* Ct. Ch. R. 34(b) ("The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof[.]").
[31] *Id.*

(20) days of this decision becoming an order of the Court. I further recommend that Respondents' request for shifting of fees and costs be denied, without prejudice, to renew at the conclusion of this proceeding and Petitioners' motion to compel be denied without prejudice to review with information added regarding the discovery served and Respondents' response and production (or lack thereof).

This is my final report in this matter and exceptions should be taken in accordance with Rule 144.

Respectfully,

/s/ Selena E. Molina

Master in Chancery