

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

IN RE THE LIQUIDATION OF THE HOME INSURANCE COMPANY

HOME DOCKET NO. 03-E-0106

In Re Liquidator Number: 2005-HICIL-15

Proof of Claim Number: CLMN380542

Claimant Name: Madelyn Miller

CLAIMANT'S REPLYING AFFIDAVIT

STATE OF NEW YORK)

) ss.;

COUNTY OF NEW YORK)

Madelyn Miller, being duly sworn deposes and says:

1. I am the pro se Claimant in this matter and make this affidavit in reply to the liquidator's opposition to and in further support of my motion.

2. What I attempted to say in my previous affidavit in support of this motion regarding the opinion of Judge Thomas Adams on the state of the law pertaining to the disputed interest was that it was a ruling made on the State Supreme court level and not on an appellate level. As such, it is not significant as a legal precedent (binding precedent/binding authority) as defined in Black's Law Dictionary (Seventh Edition on page 1195).

3. The liquidator attempts to utilize the doctrines of res judicata and full faith and credit under the United States Constitution to his advantage in this proceeding. He states on page two of his opposition papers dated July 21, 2006 that, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of

action..." Yet, a party seeking to take advantage of these doctrines has the burden of proving the prior proceedings, which the liquidator did not do. Instead, the liquidator totally ignored and continues to ignore the mandate of 28 USC 1738 pertaining to the authentication of judicial proceedings.

4. Even in the cases cited by the liquidator himself, Ely v. DeRosier, 123 N.H. 249, 459 A.2d 280 and Wilson v. Shepard, 124 N.H. 392, 469 A.2d 1359, where challenges were made to the foreign judgments introduced in New Hampshire, it is apparent from reading the cases that the judgments in question were duly authenticated.

5. Also, the liquidator quotes from Ely v. DeRosier, supra, stating that full faith and credit must be given to a foreign judgment in New Hampshire if the "foreign court had jurisdiction over the subject matter and the person" (liquidator's opposition papers—page one). However, the court in that case is referring to jurisdiction over the defendant, as is the authority on which it relies --Paragon Homes, Inc. v. Gagnon, 110 N.H. 279, 266 A.2d 207. These situations are not analogous to that of Claimant, who was a plaintiff.

6. Yet, contrary to the liquidator's contention that claimant does not raise any jurisdictional issues, she does. Professor Steven H. Gifis of Rutgers, the State University of New Jersey, School of Law at Newark, on page 274 of Barron's Law Dictionary, (Copyright 1996 by Barron's Educational Series, Inc.), defines jurisdiction as, "the power to hear and determine a case...In addition to the power to adjudicate, a valid exercise of jurisdiction requires fair notice and an opportunity for the affected parties to be heard..."

7. In Claimant's Written Submission of June 2, 2006 (pages 2-3), she stressed that she received no notice whatsoever regarding the Appellate Division Clerk's rejection of her appellate papers, and had no opportunity to cure her alleged "default" before the dis-

missal of her appeal. She argued that because of the circumstances surrounding the dismissal of her appeal, she was deprived of a full and fair opportunity to litigate her claim in New York. This is an argument of jurisdictional infirmity if one is to utilize the definition provided by Professor Gifis.

8. However, Claimant should not be in the position of having to attack rulings of foreign courts, which the liquidator has not even proven pursuant to 28 USC 1738.


MADELYN MILLER

Sworn to before me this 27th day of July, 2006



FELIX CUADRADO
Notary Public, State of New York
No. 01CU5031590
Qualified in Bronx County
Commission Expires August 8, 2006

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Claimant's Replying Affidavit has been forwarded via First Class Mail this 27th day of July, 2006 to Thomas Kober at 59 Maiden Lane, New York, New York 10038, to the Office of the Attorney General, Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301, and to The Home Insurance Company in Liquidation, P.O. Box 1720, Manchester, New Hampshire 03105-1720.



Madelyn Miller