IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95,	)	
Plaintiff,	)	Case No. 13 C 3643
v.	)	Judge Amy St. Eve
HERITAGE UNION LIFE INSURANCE COMPANY,	)	
Defendant.	)	

ORDER

The Court denies non-party William E. Stansbury's motion to intervene [56].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County based on the Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust ("Bernstein Trust") alleged a breach of contract claim against Heritage based on Heritage's failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein.[1] On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Before the Court is non-party William E. Stansbury's motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). For the following reasons, the Court denies Stansbury's motion brought pursuant to Rule 24(a)(2) and denies, in its discretion, Stansbury's motion brought under Rule 24(b)(1)(B).

[1] On January 13, 2014, Plaintiffs — who now include not only the Bernstein Trust, but four of the five adult children of decedent Simon Bernstein — filed a First Amended Complaint. (R. 73.)

BACKGROUND

Plaintiffs allege that at all times relevant to this lawsuit the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶ 1.) Further, Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id*. ¶¶ 2, 4.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id*. ¶ 20.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id*. ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were $1,689,070.00. (*Id*. ¶ 17.) It is undisputed that no one has been able to locate an executed copy of the Bernstein Trust. (*Id*. ¶ 19.) Jackson further alleges that Eliot Bernstein has also claimed that he and/or his children are potential beneficiaries under the policy. (*Id*. ¶ 22.) Indeed, Eliot Bernstein has filed a pro se Cross-Claim and Counter-Claim against Ted Bernstein and the Bernstein Trust. (R. 35, Cross-Claim, Counter.)

In the present motion to intervene, Stansbury maintains that he filed a lawsuit in the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein, and several Florida corporate defendants in August 2012 to collect compensation and corporate distributions arising from a Florida business venture. (R. 56, Mot. Intervene ¶ 1.) Also, Stansbury substituted the Estate of Simon Bernstein ("Estate") as a Defendant in the Florida lawsuit and asserted claims against the Estate in the Probate Court of Palm Beach, County, Florida based on this business venture. (*Id.* ¶¶ 2, 3.) Stansbury contends that because no one can locate an executed copy of the Bernstein Trust, the Bernstein Trust does not exist. (*Id*. ¶ 5.) As such, Stansbury argues that the proceeds of the life insurance policy are an asset of the Estate and should be distributed to creditors, such as himself. (*Id.* ¶ 7.)

LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under "Rule 24(a)(2) requires that the applicant claim 'an interest relating to the property or transaction that is the subject of the action.'" *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted); *see also Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) ("Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit.") (citation omitted). Rule 24(a)(2) does not define "interest," but case law makes it clear that "a mere economic interest" is not enough. *See Flying J, Inc.*, 578 F.3d at 571. As the Seventh Circuit

explains, "the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you're a creditor of one of them — does not entitle you to intervene in their suit." *Id.* "Whether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value." *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

Permissive intervention under Rule 24(b), permits "anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact," unless intervention would ""unduly delay or prejudice the adjudication of the original parties' rights." Fed. R.Civ.P. 24(b)(1)(B), (b)(3); *see also City of Chicago v. FEMA*, 660 F.3d 980, 987 (7th Cir. 2011) ("Rule 24(b) is ... about economy in litigation."). In addition, Rule 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *Bond v. Utreras*, 585 F.3d 1061, 1069 (7th Cir. 2009) (citation omitted). Permissive intervention under Rule 24(b) is within the district court's discretion. *See Foster v. Maram*, 478 F.3d 771, 775 (7th Cir. 2007).

ANALYSIS

First, Stansbury argues that he is entitled to intervention as of right under Rule 24(a)(2) because he is a creditor of the Estate, albeit an unsecured creditor. (R. 56-3, Probate Stmt. of Claim ¶¶ 1-5.) Assuming Stansbury is a creditor of the Estate based on his Florida lawsuit against certain Florida corporate entities and Ted and Simon Bernstein, being a creditor does not establish the requisite "interest" under Rule 24(a)(2), especially if the purported injury is remote. *See Flying J, Inc.*, 578 F.3d at 571; *see also City of Chicago*, 660 F.3d at 985. Here, Stansbury's claimed interest is merely an economic interest that is too remote for purposes of Rule 24(a)(2) because the Estate is not a party to this lawsuit, and Stansbury does not assert that he or the Estate are beneficiaries to the life insurance proceeds nor the Bernstein Trust. *See Flying J, Inc.*, 578 F.3d at 571. In other words, the property or transaction at stake in this lawsuit involves Simon Bernstein's life insurance policy, the beneficiaries of the policy, and the policy's proceeds — not Stansbury's compensation for a Florida business venture.

Stansbury's alleged "interest" is not only remote, but it is speculative. *Solid Waste Agency of No. Cook County v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 507 (7th Cir. 1996) ("It is not enough to show a purely theoretical possibility that the suit might impair an interest."). In fact, in the Seventh Circuit, the interest requirement under Rule 24(a)(2) incorporates Article III standing requirements. *See City of Chicago*, 660 F.3d at 984-85; *Aurora Loan Servs., Inc. v. Craddieth*, 442 F.3d 1018, 1022 (7th Cir. 2006). It is well-established that Article III standing requires a causal connection between the alleged injury and one of the party's conduct. *See Scherr v. Marriott Int'l, Inc.*, 703 F.3d 1069, 1074 (7th Cir. 2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Here, Stansbury's injury, namely, his unpaid compensation and corporate distributions, is not fairly traceable to any of the alleged conduct pertaining to the life insurance policy proceeds.

In addition, Stansbury does not have a redressable claim as required for Article III standing because he is asking the Court to interfere with the probate proceedings by determining that the life insurance proceeds are part of the Estate's assets and that these assets must be distributed to pay creditors of the Estate, such as himself. *See Swanson v. City of Cheteck*, 719 F.3d 780, 783 (7th Cir. 2013) (to have standing "it must be likely that the injury will be redressed by a favorable decision"). In short, because the remedy Stansbury seeks interferes with the probate court's control and administration of the Estate, the probate exception to federal jurisdiction applies. *See Marshall v. Marshall*, 547 U.S. 293, 311-12, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006). Thus, Stansbury does not have standing to insert his claim into this lawsuit nor does he have the appropriate "interest" under Rule 24(a)(2).

Next, Stansbury argues that he is entitled to permissive intervention under Rule 24(b)(1)(B) because his claim shares common questions of fact or law with the underlying action involving insurance proceeds. Even if Stansbury's claim shared common questions of fact or law, allowing Stansbury to intervene would not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit. *See City of Chicago*, 660 F.3d at 987. Not only does the Court lack jurisdiction to interfere with the probate court's administration of the Estate, but Stansbury's claims regarding a business venture that started sometime in 2003 would unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit. In sum, the most efficient way to handle the case before the Court is to deny Stansbury's motion to intervene. *See SEC v. Homa*, 7 Fed.Appx. 441, 447 (7th Cir. 2001) (unpublished). Therefore, the Court, in its discretion, denies Stansbury's Rule 24(b)(1)(B) motion to intervene.

Dated: January 14, 2014

AMY J. ST. EVE
United States District Court Judge