UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12215-RGS

In re:

BOSTON REGIONAL MEDICAL CENTER, INC.

BOSTON REGIONAL MEDICAL CENTER, INC.

v.

HANSON S. REYNOLDS, et al.

and

FIRST LUTHERAN CHURCH and THE
FIRST CHURCH OF CHRIST, SCIENTIST

MEMORANDUM AND ORDER ON INTERVENERS' OBJECTIONS TO THE BANKRUPTCY COURT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

August 9, 2004

STEARNS, D.J.

This objection to a Bankruptcy Court's Proposed Findings of Fact and Conclusions of Law (PFF & CL) involves a dispute over the distribution of the remainder of the estate of Elizabeth Krauss. The objectors are the interveners in the Bankruptcy Court proceeding, The First Lutheran Church and The First Church of Christ, Scientist (Churches), each of whom make a claim to one-half of one-third of the remainder bequeathed by Ms. Krauss to the Boston Regional Medical Center (BRMC). On March 21, 1975, Ms. Krauss executed

her will. The provision which is in dispute stated as follows.

> I give, devise, and bequeath all of the rest, residue, and remainder of my property, real and personal, and wherever situate, . . . as follows: (i) one-third (1/3) to the New England Sanitarium & Hospital of Stoneham, Massachusetts [now known as BRMC], *to be used to provide a bed for indigent patients*; (ii) one-third (1/3) to The Christian Science Board of Directors of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, to be used for the Relief Fund; and (iii) one-third (1/3) to First Lutheran Church of Boston, 299 Berkley [sic] Street, Boston, Massachusetts.
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> (Emphasis added).

In 1989, Ms. Krauss was found incompetent by the Massachusetts Probate Court. On August 2, 1996, defendants Hanson Reynolds, an attorney, and Gary Rose, a great-nephew of Ms. Krauss, were named as successor co-guardians. In attempting to bring order to Ms. Krauss's tangled finances, the co-guardians proposed the creation of two trusts, the Krauss Revocable Trust and the Krauss Charitable Remainder Annuity Trust, into which her considerable real estate holdings would be transferred and then sold to provide funds for her care. The trusts were created as a tax avoidance device given the substantial capital gains tax that would have been owed had Ms. Krauss's long-held properties been sold directly.[1] On July 29, 1997, Reynolds and Rose filed an Estate Plan Petition in the Probate Court pursuant to G.L. c. 201, § 38. The appended trust documents provided first for the payment of the bequests Ms. Krauss had bestowed on her relatives, and then consistent with her will, divided the remainder of her estate into three equal portions to be distributed, respectively, to BRMC and the Churches. The trust documents, however, deleted the restriction that the bequest to BRMC "be used to provide a bed for

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[1]The propriety of this arrangement, and its benefit to Ms. Krauss (and ultimately her beneficiaries), are not matters of dispute.

indigent patients."

Notice of the Petition was served on all interested parties, including the Churches, and on the Attorney General of Massachusetts (in his role as the overseer of charitable trusts). On August 14, 1997, the Probate Court appointed a former Probate Judge as guardian *ad litem* for Ms. Krauss. None of the interested parties objected to the estate plan, and on October 10, 1997, the Probate Court allowed the Petition. In 1998, a Petition to Revise the Estate Plan by creating a second Charitable Remainder Annuity Trust was filed with the Probate Court, again for tax purposes. Notice was given to the interested parties, and, as before, no objections were lodged. (The Churches, among others, filed an affirmative assent to the allowance of the Petition with the Probate Court). On February 12, 1998, the Probate Court allowed the second Petition. The provisions for the distribution of the remainder of the estate in one-third shares to the Churches and BRMC were not affected by the allowance of either Petition.

Ms. Krauss died on March 1, 1998. Nearly a year later, on February 4, 1999, BRMC, which had fallen into financial difficulty, ceased caring for patients and brought a petition under Chapter 11 of the Bankruptcy Code seeking liquidation. Under the reorganization plan ultimately confirmed by the Bankruptcy Court, BRMC continued its corporate existence pending the distribution of its marshaled assets to its creditors, upon completion of which, it is to be dissolved.[2]

Two related actions are at the heart of the Bankruptcy Court's PFF & CL. The first

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[2]The Bankruptcy Court has determined that the liabilities of BRMC's estate exceeded its assets by some $30 million.

was a Complaint brought on behalf of BRMC seeking the turnover of its one-third remainder bequest from the Krauss estate. The second was a Counterclaim filed by the Churches seeking to reform the trust instruments by reinserting the "to be used to provide a bed for indigent patients" restriction contained in Ms. Krauss's will.[3] So reformed, the Churches argued, the gift to BRMC failed, as BRMC was no longer able to care for patients. After a bench trial, the Bankruptcy Court concluded that the Churches' Counterclaim should be dismissed and that judgment should enter for BRMC on its turnover Complaint. The Bankruptcy Court determined that while the dispute was not a "core" proceeding, it was "related to" BRMC's bankruptcy case because of its potential affect on BRMC's estate. See U.S.C. §§ 1334(b), 157(a) & (c)(1). See also In re Guild and Gallery Plus, Inc., 72 F.3d 1171, 1178 (3rd Cir. 1996) (to determine whether a civil proceeding is related to bankruptcy the court examines whether the outcome of that proceeding could conceivably have any effect on the bankrupt estate). Because the interveners refused to consent to a final adjudication by the Bankruptcy Court, it submitted its decision to this court as a PFF & CL for de novo review.[4]

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[3]Simultaneously, the Churches moved for relief in the Probate Court without, however, seeking relief from the Bankruptcy Court's automatic stay. This misadventure, and the displeasure expressed by the Bankruptcy Court with the Churches' attorneys, have been the subject of much contentious comment, although the matter as will be seen has little bearing on the outcome of the case.

[4]The distinction between core and non-core proceedings has a significant impact on the standard of review that is applied by both the district court and the Court of Appeals. In reviewing a Bankruptcy Court's determination of a core proceeding, that Court's findings of fact will be accepted by the district court unless clearly erroneous. On appeal of a district court's review of a core proceeding, the Court of Appeals "cede[s] no special deference to the district court's initial review," but rather, "look[s] directly to the bankruptcy court's decision, examining that court's findings of fact for clear error and its

The Bankruptcy Court's PFF & CL are set out in forty-seven exhaustive pages. In essence, Judge Kenner concluded that the Counterclaim was barred by the doctrine of claim preclusion because the request "to reform [the] bequests in the three trusts is, in essence, an attempt to relitigate, and to collaterally attack the orders on, the Petition to Make an Estate Plan and the Petition to Revise Estate Plan; and therefore, under the doctrine of res judicata, the counterclaim is barred by the Probate Court orders that granted the relief sought by the Petitions." PFF & CL, at 27. Applying Massachusetts law, see Nottingham Partners v. Trans-Lux Corp., 925 F.2d 29, 32 (1st Cir. 1991), Judge Kenner concluded that all three elements of claim preclusion had been met: "(1) the identity or privity of the parties to the present and prior actions; (2) identity of the cause of action; and (3) prior final judgment on the merits." Gloucester Marine Railways Corp. v. Charles Parisi, Inc., 36 Mass. App. Ct. 386, 390 (1994). With respect to BRMC's turnover Complaint, Judge Kenner rejected the interveners' argument that BRMC's equitable interest in its share of the remainder was impressed by a quasi-trust and could therefore be used only for charitable purposes (and not for paying creditors). Instead, she adopted BRMC's argument

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conclusions of law de novo." In re Bank of New England Corp., 364 F.3d 355, 361 (1st Cir. 2004). In a non-core proceeding, the Bankruptcy Court's findings and conclusions are simply recommendations that are given no deference by the district court, which is obligated to review the record and make its own determination as to those matters as to which a timely and specific objection has been made. 28 U.S.C. § 157(c)(1). (To this rule, I might posit a quasi-exception. Where the record lends itself to two plausible, but competing inferences, the choice of one over the other based on a credibility determination by the Bankruptcy Court will be noticed.). When considering a district court's determination of a non-core proceeding, the Court of Appeals will treat the district court as the trial court, accepting its findings of fact unless clearly erroneous. The district court's conclusions of law are reviewed de novo. See Copelin v. Spirco, Inc., 182 F.3d 174, 180-181 (3d Cir. 1999).

that its interest in the trusts vested upon Ms. Krauss's death at a time when it was still functioning as a charitable hospital. She further concluded that there was no inconsistency between an entity's performance of its charitable mission and paying its creditors, as in a modern economy the one would be virtually impossible without the other.

On January 8, 2004, the interveners filed motions to dismiss the district court proceeding for want of subject matter jurisdiction, or alternatively, that the district court abstain and defer to the Massachusetts Probate Court, or in the final alternative, that the district court certify ten questions of law to the Supreme Judicial Court. The court heard oral argument on all three motions on January 23, 2004. On February 26, 2004, in an unpublished memorandum, the court denied all three motions and set a briefing schedule on the objections to the PFF & CL. On June 4, 2004, the court heard oral argument.[5]

After careful review of the record, the objections, and the legal arguments, I find myself essentially in agreement with the Bankruptcy Court's PFF & CL, and will therefore adopt them, except as indicated. I will first address the interveners' objections to the Bankruptcy Court's factual findings, and then those conclusions of law that are relevant to the instant decision. I will not repeat the Proposed Findings of Fact verbatim, as they are for the most part not objected to.[6]

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[5]In their additional pleadings, the interveners renew the three motions previously decided adversely to them by the court. The court's memorandum of February 26, 2004, says what needs to be said on the subject.

[6]By stipulation between the co-guardians and BRMC, the Bankruptcy Court's criticism of the co-guardians for delaying notice to BRMC of its entitlement to a share of the Krauss estate should be stricken as neither necessary to the underlying PFF & CL nor factually accurate. I will therefore strike the offending sentence on page 4 of the PFF & CL.

Objections to the Proposed Findings of Fact

¶ 6. I will modify the second sentence of this paragraph as follows to more fully reflect the content of Attorney Foster's testimony at trial: "She executed this will after consulting with Attorney John Foster, who prepared the will for her according to her instructions, including the direction that a bequest be made to [BRMC] 'to be used to provide a bed for indigent patients.'"

¶ 16. Judge Kenner accurately reported the reasons Attorney Reynolds gave for his conclusion that it was in Ms. Krauss's best interest to have the restriction removed – principally his fear that ambiguity in the language of the restriction could cause the bequest to fail with adverse tax consequences. The interveners' objection is addressed less to Judge Kenner's finding than it is to the soundness of the legal and factual assumptions upon which Attorney Reynold based his conclusion.

¶ 17. The objection quarrels with Judge Kenner's description of the efforts that the co-guardians undertook to determine Ms. Krauss's wishes with regard to the bequest by consulting her relatives. Judge Kenner's recitation is supported by the record.

¶¶ 18-19. Judge Kenner's account of the reasons offered by Attorney Reynolds for not consulting Attorney Foster – principally his belief that with the passage of time Attorney Foster's faded recollection would be of no material assistance in determining whether Ms. Krauss would have consented to the removal of the restriction – is supported by the record. Moreover, as Judge Kenner found, the relevant issue was not what Ms. Krauss was thinking in 1975, but whether, were she capable of doing so, she would at the time the Petition was filed have agreed with the advice of her guardians regarding the removal of the restriction,

a matter on which Attorney Foster (as was demonstrated at trial) could shed no light.

¶ 20. Judge Kenner accurately described the process by which the co-guardians came to the conclusion that Ms. Krauss, "when last competent, would likely have favored removal of the restriction."

¶ 22. The objection to Judge Kenner's finding is that she failed to include an editorial comment to the effect that the statement that the property would be distributed consistent with the terms of Ms. Krauss's will was misleading. I agree with Judge Kenner's implicit finding that because there had been no change in the identities of the residuary beneficiaries or their respective shares of the estate, the statement was not misleading.[7]

¶ 24. I agree with interveners that there is insufficient support in the record for Judge Kenner's finding that the 1997 Petition was served on the Churches and I will modify the first sentence in her finding by substituting the following two sentences: "On August 18, 1997, Hanson Reynolds, through his associate Phong Dinh, caused a short order of notice to be served on Ms. Krauss's heirs at law and on all persons and entities who would receive bequests under Ms. Krauss's will, including First Lutheran and the Christian Science Church, that a Petition had been filed in the Probate Court seeking to transfer Ms. Krauss's property to the two 1997 trusts pursuant to G.L. c. 201, § 38. Copies of the Petition, the trust documents, and the will were not served with the Order of Notice." I will further strike

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[7] I do not credit the interveners' argument that the removal of the restriction changed the intended beneficiary – "indigent patients" – to BRMC. The restriction was contained in a clause subordinate to the donative language, which makes clear that BRMC was the intended recipient of Ms. Krauss's largesse. The most that might be said is that the deletion converted a restricted gift (although as Attorney Reynolds noted, the restriction was fraught with ambiguity) into an unrestricted one.

the word “also” in the existing second sentence of paragraph 24.

¶ 27. The finding that the Churches neither objected to the Petition nor made an effort to investigate its contents is not denied by the interveners.

¶ 34. Judge Kenner accurately quotes the pleading filed by the co-guardians.

¶ 35. The finding that the Churches were served with copies of the 1998 trust document is supported by Attorney Reynold’s testimony at trial.

¶ 36. It is undisputed that the Churches executed assents to the allowance of the 1998 Petition to Revise.

¶¶ 43-45. The objections have no material bearing on the PFF & CL.

The five additional findings of fact requested by the interveners have either been waived (No. 1), are irrelevant (No. 2.), are undisputed (No.5), or assume ultimate conclusions of law (Nos. 3 and 4).

Objections to the Proposed Conclusions of Law

The interveners’ objections to Judge Kenner’s proposed Conclusion of Law focus primarily on the issues of subject matter jurisdiction and abstention that were previously considered and rejected by the court.[8] The viable issue that is open to review is Judge Kenner’s determination that the doctrine of claim preclusion (res judicata) barred the Churches from now seeking to challenge the Probate Court’s decisions approving the

[8]The court finds it somewhat disingenuous for the interveners to maintain that they are entitled to reassert these previously rejected arguments as part of their entitlement to a de novo review of Judge Kenner’s similar rulings on the same issues. Under the law of the case doctrine, a court is bound (as are the parties) to respect and follow its prior decisions barring an intervening change in the law or some exceptional circumstance. Ellis v. United States, 313 F.3d 636, 646-647 (1st Cir. 2002). In any event, the district court is not required to give any deference to the Bankruptcy Court’s proposed rulings.

Krauss Estate Plan.[9]

"Claim preclusion forecloses the litigation of all matters that were or should have been litigated in the first action. . . . The purpose of the rule is to prevent the splitting of a cause of action where the party to be precluded had both the opportunity and the incentive to litigate the matter fully in the first lawsuit." Bendetson v. Building Inspector of Revere, 36 Mass. App. Ct. 615, 618-619 (1994). See also Heacock v. Heacock, 402 Mass. 21, 23 (1988) ("The doctrine of claim preclusion makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated in the action.").

As previously noted, to operate as a bar, claim preclusion requires the satisfaction of three elements: (1) identity of the parties; (2) identity of the cause of action; and (3) finality. As BRMC points out, the Churches in their objections filed in the Bankruptcy Court conceded the correctness of Judge Kenner's rulings on the three elements. See Objections (October 7, 2003), at 24. Rather, the interveners argued that they had been misled by the

[9]Judge Kenner also addressed the merits of the Counterclaim in the event that the district court disagreed with her claim preclusion analysis, concluding that the interveners had failed to meet their heavy burden of adducing "clear and decisive proof" that because of mistake or scrivener's error, the language of the trust instruments did not conform to the settlor's desires. See Walker v. Walker, 433 Mass. 581, 587 (2001); Coolidge v. Loring, 235 Mass. 220, 224 (1920). She also ruled that the interveners lacked standing to seek reformation of the trusts. The first of these conclusions is amply supported by the factual record regarding the co-guardians' efforts to ascertain Ms. Krauss's wishes by canvassing her nearest relatives and by the reasonableness of Attorney Reynold's judgment that the removal of the restriction served both to protect Ms. Krauss's financial interests and to preserve intact her gift to BRMC. Second, it is doubtful that the Churches have any right to usurp the role of Ms. Krauss's guardian *ad litem* by attempting to assert their view of her best interests. See G.L. c. 201, § 34. Because I agree with Judge Kenner's claim preclusion analysis, I will say no more regarding her alternative grounds of decision.

co-guardians into believing that there was no need to investigate the Petitions by Attorney Reynold's written assurance that the trust property would be distributed in accordance with Ms. Krauss's 1975 will. Thus, they argued to the Bankruptcy Court that they had no incentive or motive to litigate, having reposed confidence in Attorney Reynold's representation.

In the district court, there has been a subtle, but significant shift in the interveners' position. They appear to have largely abandoned their lack of incentive to litigate argument in favor of the contention that the co-guardians' conduct constituted a fraud on the Probate Court.[10] In the first instance, this recast argument was never raised (at least in any sense that would have been apparent to Judge Kenner) during the proceedings in the Bankruptcy Court. As would be the case with a proceeding referred to a Magistrate Judge for a report and recommendation, there are sound policy reasons why an argument that was not presented to the Bankruptcy Court should not be considered by the district court on its review of a PFF & CL. Cf. Paterson-Leitch Co., Inc. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) ("[I]t would be fundamentally unfair to permit a litigant to set its case in motion before the magistrate, wait to see which way the wind was blowing, and – having received an unfavorable recommendation – shift gears before the district judge.").

Even if considered, I have considerable doubt that the fraud on the court doctrine

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[10]An evident weakness in this argument, which the interveners do not address, is the undisputed evidence that the Probate Court had before it with the Petitions copies of the will and the trust documents. It is also undisputed that Ms. Krauss's guardian *ad litem* reviewed all of the relevant documents before assenting to the creation of her estate plan.

could be stretched to fit the facts of this case. The doctrine is made of stern stuff. "A 'fraud on the court' occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense." Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989). When a fraud on the court is found, the array of remedies available to redress the harm is extensive and would not preclude the undoing of the res judicata effect of a prior judgment. See Fed. R. Civ. P. 60(b)(3) (imposing, however, a one-year limit on a motion for relief from judgment on grounds of fraud). Cf. Aoude, 892 F.2d at 1119 ("The Civil Rules neither completely describe, nor purport to delimit, the district courts' powers . . . to do what is necessary and proper to conduct judicial business in a satisfactory manner."). A fraud on the court is not, however, to be found lightly; it requires proof by "clear and convincing evidence that [the opposing] party's fraudulent conduct [was] part of a *pattern or scheme* to defraud." Rockdale Management Co. v. Shawmut Bank, N.A., 418 Mass. 596, 600 (1994) (emphasis added). See also Munshani v. Signal Lake Venture Fund II, LP, 60 Mass. App. Ct. 714, 718 (2004) ("Fraud on the court involves the most egregious misconduct . . .".). There is *no* evidence here, much less evidence of a clear and convincing nature, that the co-guardians were in league with BRMC or its eventual creditors to deceive the Probate Court into entering a judgment frustrating the right of the Churches to a fuller share of Ms. Krauss's

bequest.[11]

More fundamentally, the power to revoke or correct a decree on the grounds of a fraud practiced on the parties or the court belongs to the court which issued the decree. Even if this court were convinced that a fraud had been practiced on the Probate Court, it has no power to invalidate or correct the judgment of a state tribunal; only the Supreme Court of the United States has that power.[12] Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983).

ORDER

For the foregoing reasons, the court adopts the Bankruptcy Court's PFF & CL, as modified in this opinion, and will adopt the Bankruptcy Court's recommendations. The interveners' Counterclaim will therefore be DISMISSED and judgment will enter for BRMC on its Complaint.

SO ORDERED.

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[11] The reason that there is no evidence is apparent. When the Petitions were filed, BRMC remained a going concern. It would have taken omniscient powers for the co-guardians (or for that matter, the Churches) to anticipate the eventual bankruptcy of BRMC at the time it was determined that the removal of the restriction was in Ms. Krauss's best interest. Moreover, there is no evidence suggesting a complicitous motive on the part of the co-guardians to benefit these future creditors or to rob the Churches of their rightful inheritance.

[12] I acknowledge interveners' argument that the Bankruptcy Court's automatic stay, and its stated intention of enforcing it, has prevented them from asking the Probate Court to consider vacating or modifying its judgments. If I were convinced that an actual fraud on the Probate Court had occurred, interveners' suggestion that the court defer a decision and permit them to file a motion with the Probate Court asking it to amend or modify its decrees approving the Krauss trusts would make sense. However, as I see no merit to the argument, an abstention while the matter is litigated in the Probate Court would simply introduce further delay into what has become an unduly protracted liquidation of BRMC's bankruptcy estate.

/s/ Richard G. Stearns

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UNITED STATES DISTRICT JUDGE