

**IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JOHN PAUL WILTY, JR.; CHRIS WILTY;
JOSHUA WILTY; CRYSTAL WILTY;
and ASHLEY WENGER,

Plaintiffs/Counter-Defendants,

v.

PRUDENTIAL INS. CO. OF AM.,

Defendant/Counter Claimant/
Third-Party Plaintiff,

v.

BRADLEY CASEY; DILLON CASEY;
JOHN DOES (1–10); ANGELA WILTY;
and K. W., a Minor,

Third-Party Defendants.

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

Before the Court is Defendant/Counter Claimant/ Third-Party Plaintiff Prudential Insurance Company of America's ("Prudential") Motion for Temporary Restraining Order and Preliminary Injunction; the Motion was filed on September 20, 2018. (ECF Nos. 9 & 10.) A hearing on the Motion was held on September 25, 2018, wherein the parties presented arguments to the Court, and the Court found *ore tenus* that Prudential's request for injunctive relief should be granted. (ECF No. 28.) The grounds for the decision are briefly articulated below.

Temporary restraining orders (“TROs”) are a form of injunctive relief governed by Fed. R. Civ. P. 65. Regarding TROs, Rule 65 provides as follows:

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b).

Courts consider four (4) factors in deciding whether to grant a TRO: (i) whether the movant is likely to succeed on the merits; (ii) whether the movant will suffer irreparable injury in the absence of an injunction; (iii) whether the injunction will cause substantial harm to others; and (iv) whether the injunction will serve the public interest. *Servicemaster Holding Corp. v. Hall*, No. 2:13-cv-02980-JPM-dkv, 2013 U.S. Dist. LEXIS 192901, at *3–4 (W.D. Tenn. Dec. 20, 2013).

Likelihood of Success on Merits

Prudential asserts that it has a strong likelihood of success on the merits as to its claim that it is entitled to a constructive trust over the sums paid to Third-Party Defendant Angela Wilty (“Ms. Wilty”). (ECF No. 10, 12.) A constructive trust is a form of equitable restitution that may be imposed where a party improperly received an identifiable fund that does not properly belong to it. *See Cent. States, Southeast & Southwest Areas Health & Welfare Fund v. First Agency, Inc.*, 756 F.3d 954, 960 (6th Cir. 2014). The availability of such equitable relief may apply even where the payment of the benefit arises from the mistake of the plan administrator. *See State St. Bank & Trust Co. v. Denman Tire Corp.*, 240 F.3d 83, 89–90; *cf. Sun Life Assur. Co. of Canada v. Jackson*, No. 3:14-cv-41, 2015 U.S. Dist. LEXIS 16220, at *27–28 (S.D. Ohio Feb. 9, 2015).

Here, Plaintiffs allege that Ms. Wilty may be liable for the Insured's death. Moreover, local investigatory authorities have not ruled Ms. Wilty out as a suspect in the death. (ECF No. 10-2, 2:4.) A finding that Ms. Wilty willfully or intentionally caused or procured the death of the Insured would almost certainly prevent her from retaining or recovering the instant funds in dispute. Tenn. Code Ann. § 31-1-106 (Tennessee slayer statute); Miss. Code Ann. § 91-1-25 (Mississippi slayer statute); N.J. Stat. Ann. § 3B:7-1.1 (New Jersey slayer statute) Thus, the Court finds that Prudential has adequately shown a likelihood of success on the merits of its claim.

Irreparable Harm Absent Injunction

Prudential asserts that absent this Court entering the requested injunctive relief, it is likely to suffer irreparable harm in the form of dissipation of the disputed funds. (ECF No. 10, 12–13.) In support, Prudential submits evidence showing that Ms. Wilty already withdrew a substantial portion of the funds in dispute, even after being requested not to do so. (See ECF No. 10, 8.) Irreparable harm exists where the final equitable relief may be uncollectible. *Transamerica Ins. Fin. Corp. v. North Am. Trucking Ass'n*, 937 F. Supp. 630, 634 (W.D. Ky. Sept. 20, 1996). Thus, the Court finds that Prudential sufficiently asserts that absent the requested relief, it will suffer irreparable harm.

Substantial Harm to Others

Prudential asserts that the award of the requested relief does not risk substantially impacting others. (ECF No. 10, 14.) Regarding Ms. Wilty, Prudential asserts that, at most, she will suffer merely a delay in when she can access funds already in her possession (similar to if Prudential had not issued the death benefit to her but initiated an interpleader). (ECF No. 10, 14.) Regarding Plaintiffs, Prudential notes that they are already obligated to await this Court's

determination in the instant matter before receiving funds. (ECF No. 10, 14.) As to any other interested parties, Prudential asserts no harm will come from the imposition of a constructive trust. (*Id.*) The arguments are well-taken; Prudential adequately asserts a lack of substantial harm to others were the relief requested granted.

Public Interest

Lastly, Prudential asserts that the public interest is served by “by precluding a person who causes the death of the decedent from benefitting from his or her misdeeds.” (ECF No. 10, 14–15. The Court agrees; a constructive trust or unjust enrichment theory attempts to prevent ill-gotten gains in support of public policy. *See, e.g., Hoover Transp. Servs. v. Frye*, No. C2-02-25, 2002 U.S. Dist. LEXIS 22609, at *29–30 (S.D. Ohio July 17, 2002).

CONCLUSION

For the foregoing reasons, Prudential’s request for a TRO is GRANTED. Accordingly, any ascertainable funds distributed to Third-Party Defendant Angela Wilty by Prudential are hereby froze until October 9, 2018.

IT IS SO ORDERED this 25th day of September 2018.

s/John T. Fowlkes, Jr.
JOHN T. FOWLKES, JR.
United States District Judge