

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - April 24, 2008

A. GAIL PRUDENTI, P.J.
HOWARD MILLER
EDWARD D. CARNI
CHERYL E. CHAMBERS, JJ.

2007-01137

DECISION & ORDER

In the Matter of Leon J. Corbin,
a/k/a Leon Corbin, deceased.
Ronnie C. Sampson, et al., respondents;
Louis A.H. Pepper, et al., appellants.

(File No. 335600)

Stuart R. Berg, P.C., Garden City, N.Y., for appellants.

Joel M. Schwartz, Manhasset, N.Y., for respondent Ronnie C. Sampson.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman and
Patrick J. Walsh of counsel), in his statutory capacity pursuant to EPTL 8-14.

In a contested probate proceeding, the named executor and successor executor under the propounded will appeal (1) from a decision of the Surrogate's Court, Nassau County (Riordan, S.), dated December 4, 2006, and (2), as limited by their brief, from stated portions of a decree of the same court dated January 3, 2007, which, inter alia, upon the decision, approved a compromise agreement among the named respondents and denied probate of the will and codicil.

ORDERED that the appeal from the decision is dismissed, as no appeal lies from a decision (*see Schicchi v Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the decree is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the respondent Ronnie C. Sampson.

May 20, 2008

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MATTER OF CORBIN, DECEASED

The Surrogate's Court did not improvidently exercise its discretion in approving the compromise agreement. As the named executor and successor executor under the will, the appellants did "not have such an interest as would prevent any compromise made among all the parties beneficially interested in the estate" (*Matter of Smith*, 44 AD2d 851, 852; *see* SCPA 2106[1][b]). Moreover, although the appellant Hyman Sheiner, the successor executor under the will, is also a beneficiary of the estate, he received a citation alerting him to the objections to probate filed by the respondent Ronnie C. Sampson, yet failed to appear in Surrogate's Court on the return date of the citation. As a result, he is bound by the terms of the decree (*see* SCPA 1411[6]).

The appellants' remaining contentions are without merit.

PRUDENTI, P.J., MILLER, CARNI and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court