

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

D26047  
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Argued - December 22, 2009

FRED T. SANTUCCI, J.P.  
THOMAS A. DICKERSON  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2009-04073

DECISION & ORDER

In the Matter of Margaret Keaveny, deceased.  
Teresa F. Keaveny, respondent; Mary P. Kiely,  
appellant.

(File No. 3762/02)

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Michael A. Mauro, Glendale, N.Y., for appellant.

Balsamo Byrne Cipriani & Ellsworth, Suffern, N.Y. (Patrick J. Carle of counsel), for  
respondent.

In a probate proceeding in which Teresa F. Keaveny petitioned pursuant to SCPA 2105 to compel the turnover of proceeds of a certain stock sale, Mary P. Kiely, as executor of the estate of Margaret Keaveny, appeals from a decree of the Surrogate's Court, Queens County (Nahman, S.), dated March 31, 2009, which, upon denying her motion for summary judgment dismissing the petition and granting the petitioner's cross motion for summary judgment, granted the petition and directed her to turn over the proceeds to the petitioner.

ORDERED that the decree is modified, on the law, by deleting the provisions thereof granting the cross motion for summary judgment, granting the petition, and directing Mary P. Kiely, as executor of the estate of Margaret Keaveny, to turn over the proceeds to the petitioner, and substituting therefor a provision denying the cross motion; as so modified, the decree is affirmed, without costs or disbursements.

There are issues of fact requiring the denial of summary judgment to both parties (*see* CPLR 3212).

SANTUCCI, J.P., DICKERSON, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

February 9, 2010

MATTER OF KEAVENY, DECEASED