

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

D33848
G/ct

_____AD3d_____

Submitted - January 12, 2012

ANITA R. FLORIO, J.P.
CHERYL E. CHAMBERS
L. PRISCILLA HALL
ROBERT J. MILLER, JJ.

2010-11055

DECISION & ORDER

In the Matter of Ira L. Gershenson, also known as Ira Gershenson, deceased.
Spencer Thomas Gershenson, et al., appellants; Deborah Sue Radice, respondent.

(File No. 2004-3938/C)

Judith Ellen Stone, Merrick, N.Y., for appellants.

Stephen Bilkis, Garden City, N.Y. (Barry M. Lasky of counsel), for respondent.

In a probate proceeding in which Spencer Thomas Gershenson and Claudia Grosso petitioned pursuant to SCPA 1420 for the construction of Article Second (B) of the will of Ira L. Gershenson, also known as Ira Gershenson, the petitioners appeal from an order of the Surrogate's Court, Queens County (Nahman, S.), dated October 14, 2010, which, in effect, denied their motion for summary judgment on their petition and determined that the bequest of a certain retirement account to, among others, the petitioner Spencer Thomas Gershenson, had adeemed.

ORDERED that the order is affirmed, with costs payable personally by the petitioners.

Contrary to the petitioners' contention, the Surrogate's Court did not err in finding that the subject bequest was a specific bequest (*see* EPTL1-2.17; *Matter of Powers*, 166 AD2d 534; *Matter of Fitzgerald*, 29 AD2d 325, 328, *affd* 23 NY2d 973). Under the circumstances herein, the Surrogate's Court also did not err in determining that the subject bequest had adeemed, by virtue of certain acts taken by the testator subsequent to the execution of the will (*see* EPTL 3-4.3; *Matter of Lucia*, 2 AD3d 638; *Matter of Powers*, 166 AD2d at 534).

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The petitioners' remaining contentions are without merit.

The respondent's request for an award of attorney's fees and sanctions is not properly before this Court, insofar as the respondent's request is based upon the filing of the Surrogate's Court petition (*see Kohn v Kohn*, 86 AD3d 630; *Kane v Rudansky*, 309 AD2d 785). Insofar as the respondent seeks fees and sanctions in connection with this appeal, we decline that request (*see* 22 NYCRR 130-1.1).

FLORIO, J.P., CHAMBERS, HALL and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court