

Horton v Drakes

2016 NY Slip Op 32030(U)

June 7, 2016

Surrogate's Court, Nassau County

Docket Number: 359267G

Judge: Margaret C. Reilly

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This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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Joleen S. Horton, Administrator of the Estate of

DECISION

**FANNIE J. STONE a/k/a
FANNIE JANNIE STONE,**

**File No. 359267G
Dec. No. 31674**

Petitioner,

against

**Richard Drakes, Jacqueline Fountain, Gloria Johnson,
Sherman L. Roberts, Thomas Jackson, John Doe,
Jane Doe, and all other Occupants,**

Respondents.

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PRESENT: HON. MARGARET C. REILLY

The following papers were considered in the preparation of this decision:

Petition to Recover Possession of Decedent’s Real Property and for a Decree Awarding Money Judgment for Fair Use and Occupancy...	1
Order to Show Cause.	2

The Administrator of the Estate of Fannie J. Stone, moves by way of an order to show cause and a petition for an order and decree to recover real property of the decedent, known as 100 Glenmore Avenue, Hempstead, New York; issuing a warrant of eviction, and awarding a money judgment against respondents for use and occupancy of the real property. The administrator now seeks an order and decree, pursuant to New York Real Property Actions and Proceedings Law (RPAPL) §711 (1), SCPA §1901(2)(h), and EPTL §11-1.1(b)(5): (1) awarding to Joleen Horton, as the administrator of the estate of Fannie J. Stone, possession of the Glenmore Avenue property; (2) issuance of a warrant of eviction to the Sheriff of Nassau County to remove from the Glenmore Avenue property

each of the respondents, Richard Drakes, Jacqueline Fountain, Gloria Johnson, Sherman L. Roberts, Thomas Jackson, John Doe, Jane Doe, and all other occupants; and (3) awarding a money judgment against each of the respondents, including the respondents whose identities are presently unknown, in favor of the administrator in an amount equivalent to the cumulative fair use and occupancy of the Glenmore Avenue property from May 18, 2009 through the date of delivery of possession to the administrator. No opposition was filed.

The decedent died intestate, a resident of the Town of Hempstead, at the age of 100, on May 18, 2009. She was survived by the following eleven distributees: her daughter, (1) Andree H. Cheek; the children of decedent's predeceased son, Johnny Horton, namely, (2) Joleen S. Horton, a/k/a Joleen Susan Chichester, (3) Rhonda Ann Chichester, (4) Erik Chichester, and (5) Mandy Beth Chichester; the children of decedent's predeceased grandson, Wayne Thornton, namely, (6) Lee Charmin Thornton, (7) Mia Thornton-Carmichael, (8) J.C. Thornton, and (9) Ian-Wayne Thornton; and the children of decedent's predeceased son, Joseph Horton, namely, (10) Kevin Horton and (11) Diane Druseilla Smith.

Multiple distributees filed multiple petitions for letters of administration and letters testamentary, all of which were opposed. Following extensive negotiations, a stipulation of settlement was executed and approved by this court. The twelve parties to the agreement, including the eleven distributees plus Dorian Chichester, a one-third legatee under an instrument offered for probate, agreed to the appointment of Joleen S. Horton as the administrator of decedent's estate. The parties further agreed that after payment of

debts and administrative expenses, the administrator would pay 1/12th of the net estate to each of the parties under the terms of the settlement agreement.

Letters issued to the administrator, Joleen S. Horton, on June 20, 2014. Following the appointment of the administrator, her counsel discovered a recorded Treasurer's Deed to the decedent's real property, known as 100 Glenmore Avenue, Hempstead, New York (hereinafter referred to as "the Glenmore Avenue property"). The Treasurer's Deed, dated March 27, 2014 and recorded April 10, 2014, was from Raymond J. Calame, as Treasurer of the Incorporated Village of Hempstead, to Karolye White, as grantee, for \$5,402.65. By a verified petition dated July 22, 2014 and filed by the administrator with this court, the administrator sought an order and decree, pursuant to SCPA §2103(3) and RPAPL §1501, directing the grantee to turnover and deliver the Glenmore Avenue property to the administrator, and declaring null and void, setting aside, vacating and canceling the Treasurer's Deed.

On October 9, 2015, this court (Decision# 31070) issued a Decision and a Decree Invalidating and Setting aside the Deed dated November 5, 2015. On November 17, 2015, the Decree was recorded in the Nassau County Clerk's Office.¹

SCPA §1901(2)(h), provides that the court may authorize or direct the disposition of a decedent's real property. Disposition may include a direction to enter into possession of any real property, receive the rents and apply them as directed by the court.

¹ To further ensure that the Glenmore Avenue property comprises part of the estate, counsel for the administrator obtained a current title and lien search of the Glenmore Avenue property and provided a copy to the court. According to the search, the decedent's estate is the sole owner of the Glenmore Avenue property.

EPTL §11-1.1(b)(5), which pertains to the powers of fiduciaries, and provides, in relevant part, that in the absence of contrary or limiting provisions, and unless property is specifically disposed of, a fiduciary is authorized to take possession of, manage, sell, lease, or mortgage property and collect the rents.

RPAPL §711(1), which provides that a special proceeding may be brought against a tenant who continues in possession of a property beyond the term of the lease and without permission of the landlord. Eviction proceedings which involve a decedent's estate fall under the jurisdiction of this court (*see Matter of Rice*, 8 Misc 3d 1001A [Sur Ct, Nassau County 2005]). Pursuant to SCPA §1902 and EPTL §11-1.1, a fiduciary has the "right to possess and manage the decedent's realty so that he may sell the property in accordance with the statutory authority with which estate fiduciaries are imbued as well as to collect the rentals thereof, and otherwise preserve the asset and make it productive to all those with a beneficial interest therein" (*Estate of Pastorelli*, NYLJ, Nov. 21, 2002, at 25, col 5 [Sur Ct, Suffolk County]; *see also Matter of Rice*, 8 Misc 3d 1001A, [Sur Ct, Nassau County 2005]).

The administrator's petition was brought pursuant to RPAPL §711. The petition states that the respondents began residing in the Glenmore Avenue property following the death of the decedent pursuant to a month-to-month tenancy agreement with an unknown individual. However, from the date of decedent's death, on May 18, 2009, until the issuance of letters of administration to Joleen S. Horton, on June 20, 2014, no one was empowered to act on behalf of the estate or grant a tenancy agreement to the respondents. Accordingly, the facts presented to the court fall under RPAPL §713, which governs

special proceedings where there is no existing landlord-tenant relationship, rather than under RPAPL §711. Under RPAPL §713, a 10-day Notice to Quit must be served on the respondents.

In view of the foregoing, the administrator's petition is **DENIED**. This constitutes the Decision and Order of the Court.

Dated: June 7, 2016
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Michael J. Brescia, Esq.
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