

**Matter of Psilakis**

2016 NY Slip Op 32054(U)

July 1, 2016

Surrogate's Court, Nassau County

Docket Number: 2014-382398

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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**In the Matter of the Probate of the Last Will  
and Testament of**

**DECISION  
File No. 2014-382398  
Dec. No. 31405**

**CHRISTOFOR PSILAKIS,**

**Deceased.**

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**PRESENT: HON. MARGARET C. REILLY**

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The following papers have been read in the preparation of this decision:

Order to Show Cause, Dated October 1, 2015, Verified Petition & Exhibits. . .	1
Affidavit in Support of Petition (Angelo Psilakis) . . . . .	2
Affidavit in Opposition & Exhibits (Kostantino Psilakis) . . . . .	3
Affirmation in Opposition & Exhibits (Armanda) . . . . .	4
Reply Affirmation & Exhibits (O'Brien) . . . . .	5
Reply Affidavit & Exhibits (Angelo Psilakis) . . . . .	6

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The order to show cause filed by Evongelos Psilakis a/k/a Angelo Psilakis, pursuant to SCPA §711, for the revocation of Preliminary Letters Testamentary issued to Kostantino Psilakis, is **DENIED**.

Christofor Psilakis died on October 27, 2014. The decedent was not married at the time of his death, had no children, marital or adopted. The decedent was survived by a sister, Afrentoula Matsoukis, and six nieces and nephews. A brother of the decedent, Vasilios Psilakis, predeceased the decedent. Vasilios Psilakis had three sons (Kostantino Psilakis, Elangelos Psilakis (a/k/a Angelo), and George Psilakis). The decedent owned 50% of three properties at the time of his death. The other 50% was owned by the decedent's brother, Vasilios Psilakis. The decedent was the preliminary executor of the estate of Vasilios Psilakis. On May 25, 2015, Angelo Psilakis was issued letters of administration, c.t.a. for

the estate of Vasilios Psilakis.

The sole beneficiary under the purported will of Christofor Psilakis is Kostantino Psilakis. The decedent's other nephews are distributees. No one objected to the probate petition filed by Kostantino Psilakis on December 10, 2014.

An order to show cause was signed on October 1, 2015, restraining Kostantino from participating in the management of properties which are assets of the estate. The decedent and his brother, Vasilios Psilakis, were tenants in common of three properties in Long Beach, New York: (1) 534 W. Olive Street; (2) 466 E. Park Avenue; and (3) 608 W. Olive Street (which was sold). The temporary restraining order relates to the first two properties listed above. A fourth property, 428 East Harrison Street, Long Beach, owned solely by Vasilios Psilakis, is referred to in the petition. Angelo Psilakis succeeded Kostantino Psilakis as fiduciary of the estate of Vasilios Psilakis.

The grounds set forth in the Petition for the removal of Kostantino Psilakis are that he has mishandled the management of the real property which are assets of the estate. Specifically, the petitioner contends that Kostantino Psilakis: (1) collected rents in cash; (2) failed to keep records; (3) converted funds for his own use; (4) refused to cooperate in the sale of 534 Olive Street; (5) interfered in the management of the East Harrison Street property; and (6) has failed to disclose financial and medical records.

Kostantino Psilakis denies that funds were converted for his own use and that he has withheld disclosure of records. Kostantino Psilakis states that he continued the custom of Vasilios Psilakis and Christofor Psilakis of collecting rents and paying expenses in cash. He concedes that adjustments must be made between the estates of Christofor Psilakis and Vasilios Psilakis. Kostantino Psilakis posits that, if he is removed, the alternate executor should be his daughter, as the will of Christofor's indicates.

The standard for the removal of a preliminary executor is less than the standard for removal of an executor (*see Matter of Lewis*, 43 Misc 3d 1211A [Sur Ct, Nassau County 2014]). Even in the case of a preliminary executor, however, the testator's selection is entitled to great deference (*see Matter of Bodan*, 42 Misc 3d 1223 [A] [Sur Ct, Nassau County 2013]) and discretion as to removal will be exercised sparingly (*see Matter of Vermlye*, 101 AD2d 865 [2d Dept 1984]).

The grounds asserted for removal of the preliminary executor relate primarily to adjustments between the tenants in common as to income expenditures and control of the property. Issues as to the sale of the real property and adjustment of the right to income are independent of the probate proceeding. That dispute should be addressed in an accounting between Angelo Psilakis and Kostantino Psilakis, as representatives of the estates of the deceased tenants in common. In an accounting proceeding, Angelo Psilakis can request whatever interim relief he deems necessary to protect the interests of the estate of Vasilios Psilakis. The probate proceeding cannot be utilized as a vehicle to address the rights of the tenants in common.

Kostantino Psilakis is the sole beneficiary of the instrument offered for probate. Angelo Psilakis' standing to petition for removal is based upon his status as a distributee.

As an objectant, Angelo Psilakis is entitled to information regarding the assets of the estate but he is not entitled to an accounting. The issues raised concerning the management of the real property can be addressed in an accounting (*see Matter of Haber*, 2001 WL 5117878 [Sur Ct, Bronx County 2011]) after a determination on the probate, when the status of the petitioners is known.

Similarly, the details of the management of the property located at East Harrison Street, Long Beach, are the proper subject of an accounting proceeding, not properly to be

address in this probate proceeding. They should be presented in the accounting by Kostantino Psilakis, as the prior preliminary executor of the estate of Vasilios Psilakis.

In the probate proceeding, issues as to discovery and inspection, including medical records, should be raised by motion. The preliminary executor is reminded that he must keep accurate records of his administration of the estate and deposit funds in an estate account.

The petition to suspend or revoke Preliminary Letters Testamentary is **DENIED**. All stays and temporary restraining orders are hereby vacated.

The probate proceeding shall proceed forthwith. A conference shall be held on September 14, 2016, at the Nassau County Surrogate's Court, 262 Old Country Rd., 3rd Floor, Mineola, New York. The purpose of the conference is to review outstanding discovery, set a discovery schedule, and to schedule a 1404 exam.

The preliminary executor, Kostantino Psilakis, shall file an interim accounting with this court within thirty (30) days of the date of this decision. Any other relief requested by the parties shall be made by formal motion, in the proper proceedings.

This is the decision and order of the court.

Dated: July 1, 2016  
Mineola, New York

**E N T E R:**

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

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