

Matter of Schwartz
2016 NY Slip Op 32056(U)
July 1, 2016
Surrogate's Court, Nassau County
Docket Number: 2015-384840C
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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Discovery Proceeding, Estate of

PAUL CHARLES SCHWARTZ,

Deceased.

-----x

PRESENT: HON. MARGARET C. REILLY

DECISION

File No. 2015-384840C

Dec. No. 31526

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

Petition Pursuant to SCPA § 2103 filed September 21, 2015..... 1

Emergency Order to Show Cause dated September 21, 2015..... 2

Affirmation of Emergency filed September 21, 2015. 3

Affirmation of Matthew S. Seidner in Support filed September 21, 2015. 4

Affidavit of Charles Schwartz filed October 15, 2016 in Opposition to
 Petitioner’s Order to Show Cause. 5

Memo of Law in Opposition to Petitioner’s Order to Show Cause filed
 October 15, 2016. 6

Affirmation to Amended Petition Filed October 27, 2015. 7

Verified Answer to Petition, Counterclaim and Jury Demand filed
 February 2, 2016. 8

Reply Affirmation in Further Support filed February 2, 2016..... 9

Verified Answer to Counterclaim filed February 22, 2016..... 10

I. PROCEDURAL HISTORY

Before the court is a petition, pursuant to SCPA §2103, filed on September 21, 2015, by Harold J. Schwartz, who is the preliminary executor and a distributee of the estate of Paul Charles Schwartz. The “wherefore” clause of the petition seeks the following relief:

“WHEREFORE, petitioner requests that CHARLES SCHWARTZ, above named respondent be cited to show cause why an order should not be made pursuant to SCPA 2103 requiring him to attend and give testimony with regard to assets which are in his possession or control which were assets of the decedent and for him to deliver to the Petitioner on behalf of the Estate of PAUL CHARLES SCHWARTZ any such property determined to be an asset of the Estate or why an order should not be made vacating and setting aside the

aforesaid transfers and that this Court grant such other and further relief as may be deemed just and proper under the facts and circumstances.

Petitioner further respectfully requests that this Court grant Petitioner all of the relief sought in my Emergency Order to Show Cause and for such other relief that this Court deems just and proper.”

On September 21, 2015, Harold J. Schwartz filed an emergency order to show cause seeking this additional relief:

(1) Enjoining and restraining Charles Schwartz, individually and as a member and/or owner of: Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz that contains property or assets that were under the control of the decedent within three years of the decedent’s death, from alienating and/or transferring any property under the control of Charles Schwartz or any of the above entities, except to transfer such property back to the decedent’s estate;

(2) Appointing a receiver of rents and income for the properties and assets improperly transferred by Charles Schwartz pursuant to an invalid power of attorney;

(3) Enjoining and restraining all named beneficiaries, including: Charles Schwartz; Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part, and/or any agent or individual acting on behalf of said parties from taking any distributions or payment for services from any assets that were under the control of the decedent from three years prior to his date of death;

(4) Nullifying the June 24, 2013 power of attorney granted by the decedent to Charles Schwartz;

(5) Determining that all transactions from the decedent to: Charles Schwartz; Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part, are deemed

invalid as a result of the invalid power of attorney;

(6) Reinstating title of the assets transferred from the decedent to: Charles Schwartz; Georgiacps; LLC, CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part;

(7) Compelling: Charles Schwartz; Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part, to file with the court for its approval a formal accounting from the date of the purported power of attorney, June 24, 2013, to the present, within 15 days;

(8) Compelling: Charles Schwartz; Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part, to supply information concerning the assets and affairs pertaining to property transferred from the decedent to: Charles Schwartz; Georgiacps, LLC; CIF Management, LLC; FLSchwartz Properties, LLC; and/or any other entity operated, controlled, or managed by Charles Schwartz, in whole or in part;

(9) Compelling the imposition of a constructive trust;

(10) Surcharging Charles Schwartz for losses to the decedent's estate;

(11) Issuing letters testamentary to Harold J. Schwartz as the sole executor of the estate or, alternatively, naming Harold J. Schwartz and Pennie Isabella as co-executors of the estate; and

(12) Awarding Harold J. Schwartz attorney's fees of not less than \$20,000.00.

The emergency order to show cause was signed by Surrogate Edward W. McCarty III on September 21, 2015, which ordered Charles Schwartz to appear in court on October 7, 2015 to be heard as to why the court should not enter an order granting all of the above relief. On the return date, the matter was adjourned for one week, following which both

parties filed additional papers.¹

II. BACKGROUND

Paul Charles Schwartz (the decedent) died on October 17, 2014, survived by his four children: Harold J. Schwartz; Charles Schwartz; Kenneth Schwartz; and Pennie Isabella (collectively, the decedent's children).

On June 24, 2013, the decedent executed a power of attorney naming Charles Schwartz as his attorney-in-fact. At the time the power of attorney was executed, the decedent owned various business interests, bank accounts, and the following parcels of real property in New Jersey, Texas, Florida and Puerto Rico:

A. The New Jersey Properties

1. 1059 Kells Court, Toms River, New Jersey
2. 24 Lehigh Boulevard, Jackson, New Jersey
3. 12 Nancy Road, Marlboro, New Jersey
4. 23 Northland Lane, Matawan, New Jersey

B. The Denton, Texas Properties

1. 614, 616 and 618 Londonderry Lane, Denton, Texas (contiguous properties)
2. 2206 W. Hickory Street, Denton, Texas
3. 108, 112, 200, 204, 208 and 212 Shady Shores Road, Denton, Texas (residential rental units)

C. The Lake Dallas, Texas Properties

Units 1, 2, 3 and 4 at 411 Lakeside Terrace Drive, Lake Dallas, Texas

D. The St. Augustine, Florida Properties

Ponce Landing, 826 A1A Beach Boulevard Units 8 and 30, St. Augustine, Florida

¹ A cross-motion was filed on behalf of Charles Schwartz on October 5, 2015, but it was withdrawn by stipulation on December 23, 2015.

E. Other Properties and Mortgages

1. A farm located in Coral Gables, Florida
2. Real property located in Puerto Rico
3. The petitioner states that on information and belief, the decedent also held approximately 40 mortgages on real properties located in New Jersey.

III. RELATED PROCEEDINGS

A. Proceedings in Nassau County Surrogate's Court

Kenneth Schwartz filed an administration proceeding in this court on June 12, 2015 (File No. 2015-384840). Due to the fact that Charles Schwartz subsequently commenced a probate proceeding on June 29, 2015 (File No. 2015-384840/A), counsel for Kenneth Schwartz was advised by the court to amend the administration petition to seek limited letters of administration for purposes of discovery; to date, the administration petition has not been amended. On September 3, 2015, Harold J. Schwartz filed a petition for probate (File No. 2015-384840/B), and preliminary letters testamentary issued to Harold J. Schwartz on September 21, 2015.² On the same day, Harold J. Schwartz commenced the present SCPA §2103 discovery proceeding.

B. Proceeding in the Superior Court of New Jersey

On June 5, 2015, Kenneth Schwartz brought an action in the Superior Court of New Jersey against Charles Schwartz and Georgiacps, LLC; CIF Management, LLC; and FLSchwartz Properties, LLC (collectively, the Charles Schwartz entities), asking the court to appoint a rent receiver, enjoin and restrain the defendants from taking distributions from

² The separate probate petitions filed by Charles Schwartz and Kenneth Schwartz seek probate of the same will, dated January 19, 2001. Because Harold J. Schwartz is nominated as a primary executor, and Charles Schwartz as an alternate, preliminary letters testamentary issued to Harold J. Schwartz (SCPA §1412).

assets under the decedent's control within three years of his death, reinstating the title of properties to the decedent's estate, awarding damages for waste, directing the defendants to file a judicial accounting, surcharging Charles Schwartz, disallowing payment to Charles Schwartz for acts taken as the decedent's attorney-in-fact, directing Charles Schwartz to produce the decedent's will, determining the validity of the power of attorney issued to Charles Schwartz, determining the validity of the transactions undertaken by Charles Schwartz with the power of attorney, determining that the defendants were unjustly enriched as a result of invalid transfers, and ordering the defendants to reinstate all property and assets by which they were unjustly enriched.

On June 12, 2015, Kenneth Schwartz filed an order to show cause in New Jersey which was signed, and which immediately temporarily enjoined and restrained the defendants from "alienating any real property under their control or the control of Defendant Charles Schwartz including, but not limited to, Georgiacps, CIF and FLSchwartz pending this litigation that was transferred from Paul Schwartz estate using the power of attorney dated 6/24/13." In the present petition before this court, which is dated September 16, 2015, Harold J. Schwartz stated that the order signed on June 12, 2015 was still in full force and effect in New Jersey. However, counsel for Harold J. Schwartz subsequently forwarded to this court a copy of a letter to the court and an Order of Dismissal/Disposition/Reinstatement signed on October 26, 2015 by Judge Francis R. Hodgson of the Superior Court of New Jersey. These documents reflect that the parties to the action in New Jersey entered into a stipulation of dismissal without prejudice. Accordingly, there is no related action currently pending in New Jersey.

C. Interpleader Action in Federal Court

An interpleader action in federal court was filed on April 22, 2015 by New York Life Insurance and Annuity Corporation (NY Life) regarding the payment of the death benefit

connected to the decedent's Single Premium Deferred Variable Annuity, issued to the decedent on December 23, 2003. The decedent was the owner of the policy, and the decedent designated his friend, Dorothy Grogan, as the sole primary beneficiary of the policy. Two weeks prior to the decedent's death, Charles Schwartz, as attorney-in-fact for the decedent, requested that ownership of the policy be transferred from the decedent to Charles Schwartz and Harold J. Schwartz, although Harold J. Schwartz states that he was unaware of this request. The decedent died before the request to change ownership of the policy was accepted by NY Life.

Following the death of the decedent, Dorothy Grogan made a claim to the death benefit. A claim for the death benefit was also filed by Charles Schwartz, who named as beneficiaries of the policy Harold J. Schwartz, Charles Schwartz, Kenneth Schwartz and Pennie Isabella. Charles Schwartz has taken the position that the decedent intended to name his children as beneficiaries of the policy, and that payment of the death benefit is impacted by a stipulation of settlement entered into by the decedent and Dorothy Grogan on July 19, 2012. NY Life responded to the competing claims by filing the interpleader action.³

IV. AMENDED PETITION, EMERGENCY ORDER TO SHOW CAUSE, AFFIRMATION OF EMERGENCY, AND AFFIRMATION IN SUPPORT

In connection with the Charles Schwartz entities, the petitioner presently alleges the following:⁴

³ While this parallel proceeding is only tangentially connected to the discovery proceeding before this court, the interpleader action could be impacted were this court to determine that the power of attorney issued to Charles Schwartz was void ab initio, since the request to transfer ownership of the policy was made by Charles Schwartz using the power of attorney.

⁴ The petition and the responsive papers raise multiple areas of dispute between the parties, but the court will only address those that are pertinent to the relief sought.

A. FLSchwartz

On January 15, 2014, Charles Schwartz formed FLSchwartz, a Florida entity with a principal address at Charles Schwartz' home. Although Harold J. Schwartz maintains that he has no knowledge of this LLC, the articles of incorporation list Harold J. Schwartz, Kenneth Schwartz and Pennie Isabella as managers of the LLC. The address listed in the articles of incorporation for the managers is P.O. Box 135, East Islip, New York, which Harold J. Schwartz believes is a post office box under the control of Charles Schwartz.

The St. Augustine, Florida properties were transferred to FLSchwartz by deeds prepared by Charles Schwartz on February 1, 2014 and signed by Charles Schwartz as attorney-in-fact for the decedent.

B. CIF

On June 11, 2014, Charles Schwartz formed CIF, a Texas entity. Charles Schwartz is the managing member, and his address is listed as P.O. Box 135, East Islip, New York.

By deeds dated July 11, 2014⁵ and signed by Charles Schwartz (without indicating that Charles Schwartz was signing as attorney-in-fact for the decedent), the Denton, Texas properties were transferred from the decedent to CIF, for \$1.00 each,

By deeds dated May 12, 2014 and signed by Charles Schwartz (without indicating that

⁵ All of the deeds transferring the decedent's property to CIF were prepared by "J. Kalin." Harold J. Schwartz states that neither he, Kenneth Schwartz or Pennie Isabella know the identity of J. Kalin, whose address is shown as the decedent's home address in Hewlett Harbor, New York.

Charles Schwartz was signing as attorney-in-fact for the decedent), the Lake Dallas, Texas properties were transferred from the decedent to CIF, for \$1.00 each.

C. Georgiacps

On August 18, 2014, Charles Schwartz formed Georgiacps, a New Jersey entity with Charles Schwartz as the only member and a principal address at P.O. Box 135, East Islip, New York.

By deeds dated August 29, 2014, prepared by Charles Schwartz, and signed by Charles Schwartz as attorney-in-fact for the decedent, the New Jersey properties were transferred from the decedent to Georgiacps for the consideration shown below:

1. 1059 Kells Court, Toms River, New Jersey, for \$150,000.00
2. 24 Lehigh Boulevard, Jackson, New Jersey, for \$190,000.00
3. 12 Nancy Road, Marlboro, New Jersey, for \$300,000.00
4. 23 Northland Lane, Matawan, New Jersey, for \$150,000.00

Harold J. Schwartz asserts that (a) the decedent's capacity was severely diminished when he named Charles Schwartz as his attorney-in-fact, rendering the power invalid; and (b) the power of attorney form signed by the decedent did not include the power to make gifts.

Counsel's affirmation in support asserts that Charles Schwartz, using the power of attorney, transferred nearly \$7,000,000.00 in real property from the decedent to the Charles Schwartz entities. He further states that the decedent's mental state began to significantly

deteriorate in 2009, and that by 2012 he could no longer draft business agreements or manage his personal finances. Medical reports following evaluations of the decedent were completed in October of 2013 and report “a significant decline in performance across virtually all cognitive domains” with “strong evidence for impairment in [the decedent’s] everyday life” and “dementia secondary to [the decedent’s] neurological history”

V. RELIEF REQUESTED

In the emergency order to show cause, counsel for the petitioner asks the court to grant the interim relief requested: enjoining and restraining Charles Schwartz and the Charles Schwartz entities from alienating or transferring property that was under the decedent’s control within three years of his death; appointing a receiver of rents and income for the properties and assets; enjoining distributions from the Charles Schwartz entities; nullifying the power of attorney and determining that all transactions undertaken with the power are invalid; ordering Charles Schwartz to judicially account; surcharging Charles Schwartz for losses suffered by the heirs of the decedent; compelling Charles Schwartz to disclose information and return the property to the estate; imposing a constructive trust; appointing Harold J. Schwartz as the sole executor under the decedent’s will; and awarding counsel fees of at least \$20,000.00 to counsel for Harold J. Schwartz.

In the petition pursuant to SCPA §2103, submitted in support of the emergency order to show cause, petitioner recites the relief sought in the order to show cause, but the “wherefore” clause of the petition seeks only to require Charles Schwartz to attend and give

testimony with regard to assets that are in his possession or control which were assets of the decedent, and for Charles Schwartz to deliver to Harold J. Schwarz on behalf of the estate of the decedent any such property determined to be an asset of the estate, and vacating and setting aside the transfers of all of those properties.

**VI. AFFIDAVIT OF CHARLES SCHWARTZ IN OPPOSITION,
MEMORANDUM OF LAW, AND VERIFIED ANSWER, COUNTERCLAIM AND
JURY DEMAND**

Charles Schwartz asserts that FLSchwartz is owned by the decedent's children, each of whom: (a) agreed that the Florida condos should be transferred to FLSchwartz; and (b) knew that Charles Schwartz used the power of attorney for this purpose. In support, Charles Schwartz states that in July 2014 a bank account was opened at Chase Bank for FLSchwartz, and each of the decedent's children went to the bank and became a signatory on the account. Charles Schwartz further claims that up until June of 2015, Harold J. Schwartz was negotiating with Charles Schwartz to purchase his 25% interest in FLSchwartz for \$100,000.00, as part of an agreement for Charles Schwartz to purchase Harold J. Schwartz's 25% interest in a house in Bookelia, Florida owned by the decedent's children.

Charles Schwartz maintains that the decedent granted him a power of attorney so that Charles Schwartz could help the decedent with his business affairs because the decedent could no longer bear the stress and losses of his real estate holdings. In addition to the power of attorney signed by the decedent on June 24, 2013, the decedent granted a second power of attorney to Charles Schwartz on January 30, 2014. Charles Schwartz asserts that the

decedent was fully competent when he executed both powers and that in the early part of 2014, while forgetful at times, the decedent was still actively involved in the management of his business interests and properties, driving, running errands and attending to personal matters.

According to Charles Schwartz, the decedent proposed that Charles Schwartz acquire the assets from the decedent, but Charles Schwartz was reluctant, and attempted to recruit other family members, including Harold J. Schwartz and Kenneth Schwartz, to partner with him in these acquisitions. Charles Schwartz claims that Harold J. Schwartz and the other family members did not want to acquire the properties and were aware of the acquisition by Charles Schwartz' limited liability companies, Georgiacps and CIF, of the decedent's properties in Texas and New Jersey. In his affidavit, Charles Schwartz states that the acquisition was at the agreed upon value of \$3,800,000.00, payable by interest-bearing promissory notes which are being paid off over time pursuant to an agreement between Charles Schwartz and the decedent. According to Charles Schwartz, he sent \$18,000.00 checks to each of his siblings in April 2015, which represented their respective quarterly shares of the payments due on the notes, and these checks were deposited by Harold J. Schwartz and Pennie Isabella, although not by Kenneth Schwartz. In July 2015 Charles Schwartz sent each of his siblings another check for \$18,000.00, and these checks were deposited by Pennie Isabella and Kenneth Schwartz, although Kenneth Schwartz later stated that he deposited the check by mistake.

In a verified answer, counterclaim and jury demand filed on February 2, 2016, Charles Schwartz raised the following affirmative defenses: Harold J. Schwartz failed to state a cause of action; Harold J. Schwartz failed to join necessary parties; the claims are barred by the doctrine of waiver; the claims are barred by the doctrine of estoppel; there are no damages for which Charles Schwartz is responsible and the estate beneficiaries failed to mitigate any alleged damages; the claims are barred by the doctrine of unclean hands; the transactions were in the decedent's best interests, for consideration, and valid; the claims are barred by the doctrines of consent, ratification and acquiescence; if the assets are returned to the estate, Charles Schwartz is entitled to an offset for monies paid and services performed by Charles Schwartz or on his behalf; Harold J. Schwartz's claims are barred by the course of conduct and performance among the decedent and the decedent's children; the claims are barred by the doctrine of laches; if there were damages, they are the result of the conduct of the decedent, the decedent's children and non-parties; the decedent agreed to the transactions, which are valid and enforceable; the claims are barred by the statute of limitations; and Harold J. Schwartz lacks standing to assert these claims.

In addition, Charles Schwartz brought a counterclaim based upon the work, labor and services performed by Charles Schwartz or on his behalf in connection with the disputed assets. He asks the court to: dismiss Harold J. Schwartz's petition; award damages to Charles Schwartz; and grant Charles Schwartz costs and disbursements.

VII. REPLY AFFIRMATION IN FURTHER SUPPORT

In his reply affirmation, counsel for Harold J. Schwartz notes that the Memorandum of Law submitted by counsel for Charles Schwartz on October 15, 2015, and discussed above, relates exclusively to whether the court should grant the preliminary injunction, which had already been granted by this court on September 15, 2015, and does not address the ultimate relief sought by the petitioner. Counsel argues that on this basis, the court should deem the oppositional papers to be frivolous, grant the petitioner's order to show cause in its entirety, deny the relief requested by Charles Schwartz, and award counsel fees of not less than \$20,000.00.

Harold J. Schwartz's reply affidavit, annexed to his counsel's affirmation, responds to the allegations made by Charles Schwartz concerning the involvement of the decedent's children in the disputed transactions and related matters. Specifically, Harold J. Schwartz refutes that he was a party to the actions taken by Charles Schwartz, and notes that Charles Schwartz admits to engaging in most of the transactions being challenged by Harold J. Schwartz. Harold J. Schwartz points out that these transactions, with Charles Schwartz on both ends, resulted in Charles Schwartz receiving millions of dollars of income-producing real estate in exchange for promissory notes.

Harold J. Schwartz claims that Charles Schwartz intentionally mailed out the checks for \$18,000.00 when Harold J. Schwartz and the other siblings were expecting a different check in connection with a wholly unrelated business interest, so that they would mistakenly deposit the checks and appear to participate in Charles Schwartz' transfer of estate assets.

VIII. VERIFIED ANSWER TO COUNTERCLAIM

Harold J. Schwartz filed a short answer to the counterclaim, in which he denied all of the allegations made by Charles Schwartz.

IX. ANALYSIS

Before the court is a proceeding pursuant to SCPA §2103 for the purpose of discovering property withheld from the estate or to obtain information. New York requires full disclosure of all matter material and necessary in the prosecution or defense of an action (CPLR §3101[a]). Case law has broadly construed the scope of material that is discoverable, ruling that "the words material and necessary are to be interpreted liberally to require disclosure of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay ... the test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 406-407 [1968] [internal citations omitted]). The Court of Appeals' interpretation of "material and necessary" has been understood "to mean nothing more or less than 'relevant'" (Connors, Practice Commentaries, McKinney's Cons.Laws of NY, Book 7B, CPLR C3101:5). Discovery of documents is permitted even if they are not admissible in evidence, provided that the production of such documents may lead to disclosure of admissible evidence (*Fell v Presbyterian Hospital in New York at Columbia-Presbyterian Med. Ctr.*, 98 AD2d 624, 625 [1st Dept 1983]). Courts have broad discretion in supervising discovery and the setting of reasonable terms and conditions therefor (*Matter of U.S. Pioneer Execs. Corp.*, 47 NY2d 914, 916 [1979]; *Mattocks v White Motor Corp.*, 258 AD2d 628, 629 [2d Dept 1999]).

X. CONCLUSION

In this proceeding, nearly every significant fact is in dispute, yet there has been no actual discovery to date. As a preliminary executor, Harold J. Schwartz is entitled, pursuant to SCPA § 2103, to seek information concerning property which he alleges are assets of the estate (SCPA § 2103 [1] [b]; *Matter of Laflin*, 128 Misc 2d 348 [Sur Ct, Nassau County [1985]).

In the emergency order to show cause signed by Surrogate McCarty on September 21, 2015, the court granted the following interim relief:

“[P]ending the hearing and determination of the action, Charles Schwartz, Georgiacps, LLC, CIF Management, LLC, FLSchwartz Properties, LLC and/or any other entity Charles Schwartz operates, controls or manages in whole or in part that contains property or assets that were under control of the Decedent from three years prior to his death to the current date are enjoined and restrained from alienating and/or transferring any property under their control except to transfer such property back to the Decedent’s Estate; and it is further ORDERED, that pending the hearing and determination of the action, all named beneficiaries and Georgiacps, LLC, CIF Management, LLC, FLSchwartz Properties, LLC and/or any other entity Charles Schwartz operates, controls or manages in whole or in part that contains property or assets that were under control of the Decedent from three years prior to his death to the current date are enjoined and restrained from receiving any distributions or payments derived from any assets that were under the control of the Decedent from three (3) years prior to his death to the present date . . .”

The above interim relief shall remain in effect, but in accordance with CPLR §6313 (a), the court sets a hearing for the preliminary injunction and to determine the amount of the undertaking, if any, pursuant to CPLR §6313(c), on September 14, 2016 at 10:00 a.m.

The court grants that portion of the relief sought in the petition that asks the court to require Charles Schwartz to attend and give testimony with regard to assets that are in his possession or control which were assets of the decedent. The examination shall be conducted immediately following the hearing for the preliminary injunction scheduled for September 14, 2016.

The balance of the relief requested in the emergency order to show cause, namely: the appointment of a receiver of rents and income for the properties and assets; the nullification of the power of attorney and a determination that all transactions undertaken with the power are invalid; a surcharge against Charles Schwartz for losses suffered by the heirs of the decedent; an order compelling Charles Schwartz to disclose information and return the

property to the estate; the imposition of a constructive trust; the appointment of Harold J. Schwartz as the sole executor under the decedent's will; and an award of counsel fees of at least \$20,000.00 to counsel for Harold J. Schwartz; and the additional relief sought in the petition, that Charles Schwartz to deliver to Harold J. Schwarz on behalf of the estate of the decedent any such property determined to be an asset of the estate, and vacating and setting aside the transfers of all of those properties, is denied at this time without prejudice.

This decision constitutes the order of the court.

Dated: July 1, 2016
Mineola, New York

E N T E R:

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

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