

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 20-00367

PRESENT: PERADOTTO, J.P., CARNI, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

LAURIE KADAH, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

MAYADA KADAH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HASSAN KADAH, DECEASED, GINA KADAH, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF RONALD KADAH, DECEASED, ALICIA S. CALAGIOVANNI, AS ADMINISTRATOR C.T.A. OF THE ESTATE OF ANN M. KADAH, DECEASED, LAMISE KADAH CARANO, DIANNE KADAH, DEFENDANTS-RESPONDENTS, ANDREW KADAH, DEFENDANT-APPELLANT, ET AL., DEFENDANTS.

SCOLARO, FETTER, GRIZANTI, MCGOUGH & KING, SYRACUSE (DOUGLAS J. MAHR OF COUNSEL), FOR PLAINTIFF-APPELLANT.

ADAMS LECLAIR LLP, ROCHESTER (JEREMY M. SHER OF COUNSEL), FOR DEFENDANT-APPELLANT.

MACKENZIE HUGHES, LLP, SYRACUSE (RYAN T. EMERY OF COUNSEL), FOR DEFENDANT-RESPONDENT MAYADA KADAH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HASSAN KADAH, DECEASED.

COSTELLO, COONEY & FEARON, PLLC, SYRACUSE (ROBERT W. CONNOLLY OF COUNSEL), FOR DEFENDANT-RESPONDENT ALICIA S. CALAGIOVANNI, AS ADMINISTRATOR C.T.A. OF THE ESTATE OF ANN M. KADAH, DECEASED.

Appeals from a judgment (denominated order) of the Supreme Court, Onondaga County (Anthony J. Paris, J.), entered February 14, 2020. The judgment, inter alia, granted the motion of defendant Mayada Kadah, as personal representative of the estate of Hassan Kadah, to dismiss the complaint and to dismiss the cross claims of defendant Andrew Kadah.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by denying the motion to the extent that it sought dismissal of the declaratory judgment cause of action and cross claim, reinstating that cause of action and cross claim, and granting judgment in favor of defendant Mayada Kadah, as personal representative of the estate of Hassan Kadah, as follows:

It is ADJUDGED and DECLARED that the estate of Hassan

Kadah is the owner of 100% of International Controls & Measurement, Corp. stock,

and as modified the judgment is affirmed without costs.

Memorandum: In this action seeking declaratory and injunctive relief arising from a dispute over the ownership of shares in a business named International Controls & Measurement, Corp., plaintiff Laurie Kadah (Laurie) and defendant Andrew Kadah (Andrew) (collectively, appellants) each appeal from a judgment that, inter alia, granted the motion of defendant Mayada Kadah, as personal representative of the estate of Hassan Kadah (estate), to dismiss Laurie's complaint and Andrew's cross claims pursuant to CPLR 3211. We agree with the estate that, contrary to appellants' contentions, Supreme Court did not err when, in essence, it gave a final order from a Florida court that previously determined the ownership issue against appellants the same preclusive effect that the order would have in Florida as a matter of full faith and credit (see US Const, art IV, § 1; *Miller v Miller*, 152 AD3d 662, 664-665 [2d Dept 2017]; *Matter of Bennett*, 84 AD3d 1365, 1367 [2d Dept 2011], *lv denied* 19 NY3d 801 [2012]; see also *Allie v Ionata*, 503 So 2d 1237, 1242 [Fla 1987]; *Wade v Clower*, 98 Fla 817, 829, 114 So 548, 552 [1927]; *In re Estate of Walters*, 700 So 2d 434, 435 n 1 [Fla Dist Ct App 1997]). The court nonetheless erred in granting that part of the motion seeking dismissal of the declaratory judgment cause of action and cross claim rather than declaring the rights of the parties (see *Matter of Expressview Dev., Inc. v Town of Gates Zoning Bd. of Appeals*, 147 AD3d 1427, 1431-1432 [4th Dept 2017]). We therefore modify the judgment accordingly. Finally, in light of the foregoing, we conclude that the court properly granted that part of the motion seeking dismissal of the preliminary injunction cause of action and cross claim (see *Wachtel v Park Ave & 84th St., Inc.*, 180 AD3d 545, 546-547 [1st Dept 2020]).

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court