

Matter of Rubenstein

2011 NY Slip Op 34350(U)

December 23, 2011

Surrogate's Court, New York County

Docket Number: File No. 2009-4193

Judge: Nora S. Anderson

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New York County Surrogate's Court
DATA ENTRY
Date: 12-23-2011

SURROGATE'S COURT : NEW YORK COUNTY

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Probate Proceeding, Will of

SARAH RUBENSTEIN,

File No. 2009-4193

Deceased.
-----X

A N D E R S O N , S .

In this contested probate proceeding in the estate of Sarah Rubenstein, the nominated executor under an earlier will moves for leave to file objections pursuant to SCPA §1410.

Sarah Rubenstein died August 29, 2009, at the age of 92. She is survived by three nieces, Gail Ash, Karen Ash, and Carol Garfield, and a nephew, Richard Ash. Gail, Karen and Richard are the children of one predeceased sister; Carol is the child of another sister.

Decedent's last will, dated August 18, 2009, has been offered for probate by Gail, the nominated sole executor. The will states that Sarah leaves her Water Mill, NY, house jointly to Gail and Karen, and her personal effects and residuary estate to Gail, Karen and Carol in equal shares. In her prior will, dated April 11, 2007, Sarah left the house to Habitat for Humanity, \$25,000 to Gail, \$100 each to Karen and Richard, and her residuary estate to Carol, and nominated her great-nephew, David Garfield (Carol's son), as sole executor. Both wills have in terrorem clauses.

The estimated value of the probate estate is \$2,600,000, approximately one-half of which consists of the Water Mill realty.

Habitat for Humanity filed objections to the propounded instrument on grounds of lack of due execution, lack of testamentary capacity, undue influence and fraud. David Garfield, as the executor nominated under the previous will, moves to file objections which are similar, although not identical, to those filed by the charity.

Objections may be filed by any person whose interest in the property or estate of a decedent would be adversely affected by the admission of a will to probate, except that a nominated fiduciary in the prior instrument, whose only interest adversely affected by the propounded instrument is in commissions, cannot file objections without the court's authorization for good cause shown (SCPA §1410). The requirement of good cause was added in a 1971 amendment to the statute to protect against the possibility that persons named in prior instruments, having only commissions at stake, might stymie the progress of probate without good cause (Mem of Surrogates' Assn, 1971 NY Legis Ann, at 9).

Movant asserts that his desire to file objections is not motivated by his own financial interests, but instead, by a desire to insure that the testamentary wishes of his great-aunt are honored. He maintains that his close relationship with her

until the end of her life puts him in a position to assist the court in determining her wishes.

Movant further argues that his proposed objections are meritorious and not merely speculative. He alleges that decedent's capacity was diminished in the weeks prior to her death; that the propounded will was prepared by and executed under the supervision of a lawyer chosen by Gail; that the lawyer communicated with decedent mostly through Gail; that the new will differs substantially from the testamentary plan in decedent's prior will; that Gail poisoned the relationship between decedent and Carol; and that Gail and Karen made it difficult for Carol and David to have meaningful access to decedent. Movant presents decedent's medical records and deposition testimony in support of these allegations.

Finally, movant notes that the only other objectant, Habitat for Humanity, has an interest only in the estate realty, and may settle or withdraw its objections without assuring that decedent's wishes are vindicated in full.

Movant has met the common law criteria for showing good cause to file objections. Specifically, he has shown that he had a long and close relationship with the testator which would enable him to assist the court in determining her true intentions (Matter of Silverman, 91 Misc 2d 125; Matter of Molnar, 76 Misc 2d 126). Further, his allegations raise substantial issues about

the validity of the propounded will. Although Gail disputes these allegations, they cannot be resolved at this stage of the proceeding. Moreover, movant's allegations "are not bare conclusory allegations but are supported by some evidence [and thus] constitute good cause" to file objections (Matter of Marks, 142 Misc 2d 733,736; see also Matter of Astor, 21 Misc 3d 400; Matter of Doyle, NYLJ, Feb 14, 1990, at 22, col 5).

Accordingly, the court grants movant leave to file objections to probate.

This decision constitutes the order of the court.


S U R R O G A T E

Dated: December **23**, 2011