

Matter of Margulies

2011 NY Slip Op 34357(U)

July 15, 2011

Surrogate's Court, New York County

Docket Number: File No. 2010/0966/B

Judge: Nora S. Anderson

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SURROGATE COURT : NEW YORK COUNTY
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In the Matter of the Probate
Proceeding in the Estate of

ARTHUR A. MARGULIES,

Deceased.

-----X
In the Matter of Cross-Petitions for
Letters of Temporary
Administration in the Estate of

ARTHUR A. MARGULIES,

Deceased.

-----X

A N D E R S O N, S .

At the call of the calendar, the petition of Sorangel Margulies for letters of temporary administration was granted. The cross-petition for letters of temporary administration by Gilbert Margulies (nominated executor and proponent of a testamentary instrument dated December 21, 2009) was denied. The court also directed that an open commission to Connecticut issue in the probate proceeding for the examination of the attesting witnesses, with costs to be borne by the estate (SCPA 1404).

Decedent died on February 19, 2010, allegedly survived by three non-marital children. The propounded instrument, executed not quite two months before decedent's death, consists of a single typewritten page signed at the end with an "X." It was not attorney-supervised, nor is it notarized or accompanied by an attesting witness affidavit.

In the instrument Sorangel and Gilbert, along with another

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individual, Susanne Bauccio, are identified as decedent's children¹. Decedent's New York City co-operative apartment is bequeathed to Gilbert; his Connecticut house is devised to Susanne; and the residuary is divided equally among Gilbert, Susanne, and Sorangel.

In September 2010 Sorangel demanded SCPA 1404 examinations of the attesting witnesses. To date Gilbert (who is propounding the instrument and has appeared thus far pro se) has failed to produce the witnesses. He has also failed to pay maintenance on the co-op, causing the co-op board to bring on a foreclosure action².

After several unsuccessful attempts to depose the attesting witnesses, and upon being notified of the foreclosure action, Sorangel sought letters of temporary administration so that she could marshal and safeguard the assets and take steps necessary to expeditiously advance the probate proceeding. More specifically, she seeks to deposit the proceeds of decedent's bank account into an estate account, thereby enabling her to satisfy the unpaid maintenance on decedent's co-op and to pay the

¹ The status of these three individuals as decedent's non-marital children has not been judicially determined (EPTL 4-1.2). Such determination will not be necessary for our purposes, however, as they appear in these proceedings in their status as beneficiaries named in the propounded instrument.

² Ironically, since Gilbert receives the co-op under the instrument, he has a strong interest in preservation of this asset.

expenses of conducting the open commission.

In support of her requested relief, Sorangel argues that there is an immediate need for a fiduciary to be appointed in view of the foreclosure action. She contends that, by his inaction with respect to the co-op and his ineffectual conduct as proponent, Gilbert has demonstrated a basic lack of understanding that disqualifies him from appointment as estate fiduciary. She points out that Gilbert has never sought preliminary letters, despite the critical need to take action in order to pay the co-op maintenance. She contends that such lack of understanding has prejudiced the estate by putting one of its most valuable assets at risk (SCPA 707 and 902).

The court notes that when Gilbert was unable to timely produce the attesting witnesses subsequent to Sorangel's demand in September 2010, he had sufficient notice that the probate proceeding would be protracted and that the estate would, therefore, need an interim fiduciary. Yet he failed to apply for preliminary letters (SCPA 1412), and, indeed, sought temporary letters at this late date only in response to Sorangel's own application for appointment.

The court additionally observes that Gilbert's inability to produce the attesting witnesses is not only prejudicial to Sorangel (who has a clear right to seek the depositions), but also to his own interests, as proponent in the probate proceeding, especially in light of the fact that he cannot rely

on the presumptions of regularity that would attach if the will had been attorney-supervised and had the support of a self-proving affidavit (Matter of Moskoff, 41 AD3d 481).

Accordingly, the court has determined that it is in the best interests of the estate for letters of temporary administration to issue to Sorangel Margulies, upon her qualifying according to law.

Settle decree.



S U R R O G A T E

Dated: July 15, 2011