

**New York State Office of Victim Serv. v Kuklinski**

2013 NY Slip Op 32671(U)

October 22, 2013

Sup Ct, Albany County

Docket Number: 3226-13

Judge: Joseph C. Teresi

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

NEW YORK STATE OFFICE OF VICTIM SERVICES,  
on behalf of James Osterhault, the crime victim, and all  
other victims of respondent's crimes,

Petitioner,

**DECISION and ORDER**  
**RJI NO.: 01-13-110371**  
**INDEX NO.: 3226-13**

-against-

ROBERT KUKLINSKI, DIN # 04-A-5665,

Respondent.

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Albany County Supreme Court All Purpose Term, September 30, 2013  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J.:**

In 2004, Respondent was convicted of Criminal Sexual Act in the First Degree, Sexual Abuse in the First Degree, Sexual Misconduct, Forcible Touching, and Endangering the Welfare of a Child. Respondent was thereafter sentenced, as a second child sexual assault felony offender, to concurrent terms of imprisonment the maximum term of which was a twenty four year determinate prison term followed by five years of post release supervision. He remains incarcerated.

Since his incarceration Respondent's mother, Mary Ann Kuklinski, passed away intestate. She was survived by three children: Respondent, Michael Kuklinski, and Regina Drago (hereinafter "Ms. Drago").<sup>1</sup> On April 15, 2013, Ulster County Surrogate Court granted limited letters of administration to Michael Kuklinski (hereinafter "Administrator") for the Estate of Mary Ann Kuklinski (hereinafter "Estate"). On May 8 and 21, 2013, Ms. Drago and Respondent respectively "renounced" their interests in their late mother's real Property.<sup>2</sup> Such renunciations were made explicitly in favor of title to the Property vesting in the Administrator. Then, on May 23, 2013, the Administrator executed and filed a deed transferring the Property from the Estate to himself individually (hereinafter "Deed").

Thereafter, on June 7, 2013, Petitioner commenced this Executive Law §632-a proceeding seeking injunctive relief. Petitioner also seeks "an order to compel [the Administrator]... as well as all other garnishees, to immediately take all steps necessary to remove the cloud on the title of the [Property] created by the subject defective [D]eed, and to immediately take all steps necessary to vest respondent with full title to his 1/3 share in the [Property]; and for an order by which the Court sets a schedule compelling the garnishees to report to the Court and petitioner, every four weeks from the date of any Court order granting such relief, on what steps were taken and what further steps then need to be taken in order to vest

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<sup>1</sup> Although Michael Kuklinski and Regina Drago were not named as respondents, both were served as "prospective garnishees." Neither raised an issue regarding their party status or service of the pleading. As such, these issues are waived and will not be further addressed.

<sup>2</sup> Such property is located at 38 Oxbow Road at Kerhonkson, Town of Rochester, Ulster County, New York, and will hereinafter be referred to as the "Property."

respondent with full title to his 1/3 share of the [Property].”<sup>3</sup> Respondent has not opposed the petition. The Administrator likewise consents to the injunction Petitioner seeks, but opposes its second “remove the cloud on title” demand for relief. To the extent the petition seeks a preliminary injunction prohibiting the Estate from transferring any of Respondent’s interests it holds, it is granted on consent. Petitioner also demonstrated its entitlement to an injunction relative to its “remove the cloud on title” assertions, but not to the specific relief it seeks.

To the extent Petitioner’s “remove the cloud on title” demand for relief seeks a preliminary injunction, Petitioner is authorized to seek such relief. (Executive Law §632-a(6)(a); New York State Crime Victims Bd. ex rel. Hayes v Sookoo, 77 AD3d 1227 [3d Dept 2010]; New York State Crime Victims Bd. ex rel. Organek v Harris, 68 AD3d 1269 [3d Dept 2009]).

As is well established, when seeking a preliminary injunction CPLR §6301 requires the movant to demonstrate a “likelihood of success on the merits, irreparable harm in the absence of an injunction and a balancing of the equities in [its] favor.” (Moore v Ruback's Grove Campers' Ass'n, Inc., 85 AD3d 1220, 1221 [3d Dept 2011]; Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839 [2005]; New York State Crime Victims Bd. v. Majid, 193 Misc.2d 710 [Sup Ct, Albany County]). Importantly, “a preliminary injunction is a provisional remedy, interlocutory in nature, designed to maintain the status quo until adjudication of the merits.” (Moore v Ruback's Grove Campers' Ass'n, Inc., supra 1221).

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<sup>3</sup> During the pendency of this proceeding Petitioner moved to amend/supplement its petition, with the foregoing quoted demand for relief. Because no objection to such motion was made, Petitioner’s motion to amend is granted as uncontested. The quoted language demand will hereinafter be referred to as “remove the cloud on title.”

First, Petitioner demonstrated that the crime victim, James Osterhautd (hereinafter “Osterhautd”), has a likelihood of success in his civil action against Respondent. “A criminal conviction is prima facie evidence . . . of its underlying facts in a subsequent civil action.” (S.T. Grand, Inc. v City of New York, 32 NY2d 300, 303 [1973]; Dona v Levin, 263 AD2d 602 [3d Dept 1999]).

Petitioner similarly demonstrated Osterhautd’s likelihood of success on, what it describes as, “remov[ing] the cloud on title.” In support of its “remove the cloud on title” argument, Petitioner claims that the Deed is “defective” because Respondent did not renounce his interest in the Property within EPTL § 2-1.11(c)(2)’s “nine months after the effective date of the disposition.” Despite such showing, which is uncontested, the late renunciation does not render the Deed defective. Rather, EPTL § 2-1.11(i) explicitly recognizes an individual’s right to otherwise “release or renounce any property or interest therein arising under any other section of this chapter.” While Respondent has not complied with EPTL § 2-1.11(c)(2)’s renunciation, he has “released or renounce[d]” his interest in accord with EPTL § 2-1.11(i). Because his purported renunciation “is in writing, signed and acknowledged... [it] meets the requirements of a valid instrument of transfer in New York and there is no reason why it should not be given effect as such (see, e.g., GOL 5-703).” (Matter of Estate of Lee, 155 Misc 2d 689, 694 [Sur Ct, New York County 1992]).

Such transfer, however, violates Debtor and Creditor Law §273. This section “provides that a conveyance made without fair consideration is fraudulent as to creditors if the transferor is or will be rendered insolvent.” (Shelly v Doe, 249 AD2d 756, 757 [3d Dept 1998]). “When a transfer has been made without consideration, the initial burden to establish solvency is on the

transferor.” (Id. at 757). Although it is uncontested that Respondent’s purported renunciation was made without consideration, Respondent offered no proof of his solvency. Neither did the Administrator. The Administrator did state, however, that Respondent’s mother paid for the attorney who represented him on the charges for which he is now incarcerated. Such statement, while not direct proof of insolvency, is a strong indication of it. As such, on this record it appears that Osterhault has a likelihood of success in a Debtor and Creditor Law §273 proceeding to set aside Respondent’s transfer of the Property, i.e. “remove the cloud on title.”

Equity also favors injunctive relief. Executive Law §632-a’s provisions were specifically drafted “to provide avenues to allow crime victims to be compensated for their losses.” (New York State Crime Victims Bd. ex rel. Organek v Harris, supra 1271). The State has “a compelling interest in ensuring that victims of crime are compensated by those who harm them.” (Simon & Schuster, Inc. v Members of New York State Crime Victims Bd., 502 US 105, 118 [1991]). Moreover, the legislative history of Executive Law §632-a recognized that the statute was passed to “ensure that convicted criminals who have or gain the ability to pay are held financially accountable to their victims.” (Ciafone v Kenyatta, 27 AD3d 143, 147 [2d Dept 2005], quoting Governor's Mem approving L 2001, ch 62, 2001 NY Legis Ann, at 45). Despite the pressing mortgage issue the Administrator raised, the above legislative concerns cause the equities to weigh in favor of Osterhault obtaining injunctive relief.

Lastly, Petitioner established Osterhault’s irreparable injury. The Property appears to be Respondent’s only significant asset. With no injunction in place the Property could again be transferred. Such second transfer would potentially sever Osterhault’s ability to reach the Property in collecting on his claim against Respondent “before a court can determine whether

[the Administrator] is required to pay [Respondent's portion of the Property] over to his victims." (New York State Crime Victims Bd. v Majid, supra at 715).

Accordingly, the petition for a preliminary injunction is granted, but only to maintain the status quo. It is hereby Ordered that:

The Administrator of the Estate of Mary Ann Kuklinski is hereby enjoined from transferring the Property, and

The Administrator of the Estate of Mary Ann Kuklinski is hereby enjoined from placing, or causing to be placed, any liens on the Property, and

The Estate of Mary Ann Kuklinski is hereby enjoined from transferring any assets to Respondent, and

The Estate of Mary Ann Kuklinski is hereby enjoined from transferring that portion of any asset which has vested in, or may become payable to, Respondent.

This Decision and Order is being returned to the attorneys for the Petitioner. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: October 22, 2013  
Albany, New York

  
JOSEPH C. TERESI, J.S.C.

**PAPERS CONSIDERED:**

1. Order to Show Cause, dated June 7, 2013; Petition, dated June 6, 2013, with attached Exhibits A-C.
2. Affidavit of Michael Kuklinski, dated July 9, 2013.
3. Notice of Motion, dated August 6, 2013; Affidavit of Edward Scher, dated August 6, 2013, with attached Exhibits A-G.
4. Affidavit of J. Philip Zand, dated August 13, 2013, with attached Exhibits A-B.