

Matter of Neumann v Neuman
2013 NY Slip Op 33780(U)
July 11, 2013
Supreme Court, New York County
Docket Number: 158014/02
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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In the Matter of the Application of REGINA NEUMANN
a/k/a KRISTINA NEUMANN, As Beneficiary and INDEX NO. 158014/02
Grantor, to Remove Hubert G. Neumann as Trustee of the
Regina Kristina Neumann Trust pursuant to
EPTL 7-2.6(a)(2),
Petitioner,
-against-

HUBERT G. NEUMAN as Trustee of the Regina
Kristina Neumann Trust,
Respondent.

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JOAN A. MADDEN, J.

This is a petition seeking an order pursuant to CPLR 7701 and EPTL § 7-2.6 dissolving the Regina Kristina Neumann Trust (the "Trust") and returning all assets to Regina Neumann a/k/a Kristina Neumann or, in the alternative, appointing a new, neutral Trustee to properly administer the Trust. Respondent Hubert G. Neumann is petitioner's father and the Trustee of the Regina Kristina Neumann Trust. Petitioner is moving by order to show cause for a mandatory preliminary injunction compelling respondent Trustee to release \$237,000 for repairs allegedly required for the properties at 70 Greene Street, Brooklyn and 879 Union Street Brooklyn, and \$11,005.00 to pay A-Z Building Maintenance Corp.

Petitioner submits an expert report of Paul Gressin, a licensed building inspector, who inspected the Greene Street and the Union Street properties on February 21, 2013. He states that in the Greene Street property, he found a "severe mold problem" in the basement which he believes is putting the tenants "at risk." Petitioner states that respondent Trustee was notified and "hired someone to paint the basement with bleach. This has accomplished nothing." Petitioner

also states that due to a missing gas meter, the tenants are paying to heat the common areas of the building, and as a result of the mold problem, the tenants of the basement apartment are seeking to move. She states that the Union Street property also has “significant problems,” including replacing the windows facing the front of the building because they leak cold air. Petitioner states that respondent was notified of these problems no later than November 2012 when the petition was filed, but he has done nothing. Petitioner submits a statement from the tenants of the basement duplex in the Union Street building as to the condition of the apartment, and those tenants are currently withholding partial rent. The report from the building inspector, Paul Gressin, includes a cost estimate of \$237,000 to place the two buildings into “good repair.” Petitioner also states that the company that maintains the properties, AZ Maintenance, has not been paid and is owed at least \$11,500.

Petitioner requests the court’s intervention to compel the Trustee to release \$237,000 toward making the repairs and \$11,005 to pay AZ, while the underlying petition and cross-motion are pending. She asserts that she had satisfied each element required for a preliminary injunction. First, as to the likelihood of success on the merits, petitioner argues the inspector’s report demonstrates that respondent has not ameliorated many of the serious problems with the properties and the repairs he did make were ineffective. Second, as to irreparable injury absent injunctive relief, petitioner asserts the inspector’s report demonstrates multiple problems with the properties which respondent has ignored and affect the tenants’ safety. Also, at least one tenant is withholding rent, and if the problems with the apartment are not addressed, petitioner asserts she will be unable to make her mortgage payments. Finally, petitioner argues that the equities favor her, since respondent has access to the funds required to make the repairs but is not doing

so, and respondent will suffer no harm if compelled to provide the money, since he is required to perform his duties as Trustee.

In opposition, respondent argues that petitioner's motion is procedurally and substantively defective. Respondent asserts that petitioner fails to perceive that she is the beneficiary of an irrevocable *inter vivos* trust and not the owner or manager of the properties at issue. Respondent argues that as the beneficiary of the Trust, which is the owner of the properties, petitioner's rights are protected, but limited. Respondent states that in March 2013, petitioner commenced another action against him in Surrogate's Court, New York County, to compel a judicial accounting, which is the third action against him, "each seeking virtually identical relief with respect to the Trust and respondent's conduct as Trustee of the Trust." The two other actions seek to remove respondent as Trustee, including a petition to terminate the trust, which would allow petitioner to recover any potential losses she may have sustained from respondent's alleged mismanagement of the trust properties. Respondent asserts that what petitioner may not do, but what she insists on doing, is to insinuate herself in the day-to-day operations of the Trust, including the release of Trust funds as requested in the instant motion.

Alternatively, respondent argues that petitioner's request for a preliminary injunction should be denied as she has not established the elements necessary for such relief. He argues she offers only "conjecture and conclusory statements" in an attempt to support her claims, which are contradicted by respondent's evidence showing that he "has properly maintained the Properties in the past and will continue to do so in the future." In response to petitioner's report from the building inspector, respondent states that soon after receiving the report, he sent it to AZ Maintenance for an opinion as to any potential work to be done and the estimated cost.

Respondent, however, provides no information about AZ's response or opinion and does not address petitioner's allegation that he hired someone to paint bleach on the basement walls. Also, he gives no details as to AZ's response or /opinion.

As to the \$11,005 allegedly due to AZ Maintenance, respondent states that he has "continued the process of resolving all outstanding balances owed to AZ, including having open invoices paid from Trust funds." He states that in February and March 2013, he arranged for funds to be transferred from the Trust account to AZ as payment for at least 24 open invoices. It is therefore unclear whether petitioner's allegation as to the \$11,005 balance is accurate. Respondent also states that he has discovered that there may be errors in AZ's record keeping and that the current balance owed, after accounting for his recent payments, is about \$450.

In view of the parties' conflicting allegations, a hearing a necessary to resolve the issues as to whether petitioner is entitled to a mandatory injunction compelling respondent Trustee to release \$237,000 for repairs required for the 70 Greene Street building and the 879 Union Street building, and \$11,005.00 to pay A-Z Building Maintenance Corp. Notably, the inspector's report is not limited to the mold in the basement of the Greene Street building, but covers a variety of conditions in both buildings. The report further states that during the inspection "several people advised me that the person coming to maintain the buildings was often inebriated and accompanied by others in the same condition, resulting in the occupants not feeling safe, and the work not being done or not been done properly."

The court notes that the issues in the underlying petition (motion seq. no. 1) involve some of the identical conflicting allegations raised in this motion. In a separate order, this court is directing a hearing on the petition and one hearing shall be held as to the petition and the instant

motion.

Accordingly, it is

ORDERED that the motion is granted only to the extent that the issue as to whether petitioner is entitled to a mandatory injunction compelling respondent Trustee to release \$237,000 for repairs required for the properties at 70 Greene Street, Brooklyn and 879 Union Street, Brooklyn, and \$11,005.00 to pay A-Z Building Maintenance Corp. is referred to a JHO and/or Special Referee to hear and report; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date on the calendar of the Special Referee Part (which is posted on the website of this court at www.nycourts.gov/supctmanh at the References link under Courthouse procedures), and this matter shall be assigned to an available Special Referee to hear and report as specified above; and it is further

ORDERED that petitioner's attorney shall within thirty (30) days of this decision and order submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (which can be accessed at the References link of the Court website) containing all the information called for therein and that, as soon as practicable thereafter, the Special Referee Clerk shall advise counsel of the date fixed for the appearance on the matter upon the calendar of the Special Referee Part; and it is further

ORDERED that the parties shall appear at the hearing, including with all witnesses and

evidence they seek to present, and shall be ready to proceed on the date fixed by the Special Referee Clerk subject only to an adjournment that may be authorized by the Special Referee Part in accordance with the rules of that Part; and it is further

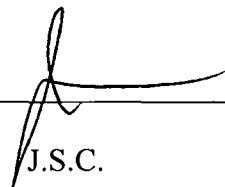
ORDERED that the hearing shall be conducted in the same manner as a trial before a Justice with a jury (CPLR 4320(a)) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completed; and it is further

ORDERED that the motion to confirm or reject the Report of the JHO/Special Referee shall be made within the time specified in CPLR 4403 and Section 202.44 of the Uniform Rules for Trial Courts; and it is further

ORDERED that upon moving to confirm or reject the Report of the JHO/Special Referee, the parties shall notify this court and the instant motion will be restored to this court's calendar.

DATED: July 11, 2013

ENTER;



J.S.C.

HON. JOAN A. MADDEN
J.S.C.