

<b>Matter of Klasewitz</b>
2015 NY Slip Op 31501(U)
August 11, 2015
Surrogate's Court, New York County
Docket Number: 2012-4035/C
Judge: Rita M. Mella
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SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

New York County Surrogate's Court  
MISCELLANEOUS DEPT.  
AUG 11 2015  
**FILED**  
Clerk

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In the Matter of the Application of Barbara Klasewitz, as  
Administrator of the Goods, Chattels, and Credits of

DECISION

MIRIAM BRAUNER,  
Deceased,

File No.: 2012-4035/C

For an Order Permitting the Sale of Real Property of Said  
Deceased and Ejecting Frederic Brauner from 1035  
East 52nd Street, Brooklyn, New York and 62-15 14th Avenue,  
Brooklyn, New York.

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M E L L A, S.:

<u>Papers Considered</u>	<u>Numbered</u>
Amended Notice of Motion dated May 27, 2015, with Affidavit of Barbara Klasewitz, dated April 15, 2015, and Affirmation of Mary E. Mongioi, Esq., dated May 22, 2015 with Exhibits A through G	1, 2, 3

After the call of the motion calendar on August 5, 2015, the court took evidence<sup>1</sup>  
regarding this petition by Barbara Klasewitz, as administrator of the estate of decedent Miriam  
Brauner, to eject her brother, respondent Frederic Brauner, from two real properties in Brooklyn  
and for authority to sell them. Respondent filed no opposition to petitioner's motion for  
summary judgment<sup>2</sup> and failed to appear at the motion calendar and at the hearing.

Based on the testimony of petitioner, the evidence admitted, the pleadings, and the papers  
submitted on the petitioner's motion, the court found that, at the time of her death on September  
17, 2012, decedent owned two pieces of improved real property in Brooklyn, New York, one  
located at 62-15 14th Avenue, a commercial property, and the other located at 1035 East 52nd

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<sup>1</sup>The court had informed counsel for both parties that an evidentiary hearing on the merits  
of the petition would be conducted on that day, there being issues of fact in this matter.

<sup>2</sup>The affidavit of service of the motion papers in the court file indicates that they were  
served on respondent's counsel as well as on respondent.

Street, a residential property. The court also found that decedent's two distributees, her children, petitioner and respondent, were equal co-tenants in common of these two properties and that respondent was in possession and had ousted (RPAPL § 633) his co-tenant, petitioner, from these two properties by denying her any access to the properties. The court then issued the following directions on the record:

(1) Respondent is directed to allow petitioner prompt access to the 62-15 14th Avenue, property (the "14th Avenue Property") as well as the 1035 East 52nd Street property (the "52nd Street Property") for the purposes of ensuring that these properties are properly maintained and to allow them to be administered as assets of the decedent's estate.

(2) Within 30 days of personal service upon him of the order of the court, Frederic Brauner shall remove any and all of his possessions from the 14th Avenue Property. After such 30-day period, petitioner as administrator shall have exclusive possession of the 14th Avenue Property, and respondent shall have no right to possession of or access to the 14th Avenue Property. The court directed that, if Frederic Brauner refuses to provide petitioner or her agent(s) with keys to the 14th Avenue property promptly after the order in this matter is served on him, then petitioner is authorized to change the locks, and, if necessary, a warrant of eviction may issue upon five days' notice to Frederic Brauner.

(3) Regarding the 52nd Street Property, which is respondent's long-term residence, respondent is directed to provide petitioner or her agent(s) reasonable access to all parts of this property during day or early evening hours on 24 hours' notice. The failure of respondent to provide petitioner or her agent(s) with access to the 52nd Street Property as set forth herein may result in his immediate ejectment from the property and the issuance of a warrant of eviction

upon five days' notice to respondent.

The court also found that it is in the best interests of the estate as a whole to permit the sale of these two properties to satisfy the substantial debts of the estate and to allow for distribution of the estate (*see* SCPA 1902; *Matter of Lynch*, 80 AD2d 959 [3d Dept 1981]; *Matter of DiNapoli*, NYLJ, Feb. 22, 1994, at 33, col 3 [Sur Ct, Bronx County]; *Matter of Sperry*, 33 NYS2d 784 [Sur Ct, Westchester County 1942]; *Matter of Kelly*, 144 Misc 330 [Sur Ct, Wayne County 1932]).

The court granted the petition to the extent that Petitioner Klasewitz is permitted to sell the 14th Avenue Property and the 52nd Street Property in the open market by private sale by selecting a suitable licensed broker to list the property for sale, subject to the following conditions.

Any contract for sale must be subject to the approval of the court.

Further, the order allowing sale of the 14th Avenue Property is stayed for 30 days after the personal service of the order of the court on respondent, and, as to the 52nd Street Property, the order allowing the sale is stayed until February 10, 2016 to allow Frederic Brauner to vacate the property fully. Exclusive possession of the 52nd Street Property is granted to petitioner as of February 10, 2016, at which time a warrant of eviction may issue without further notice to respondent.

Given that the contracts of sale must be subject to court approval (SCPA 1911), no bond is imposed (SCPA 1910). The request for approval of any contract for sale should be made by petition with process (citation) to be served on respondent and any creditor and tax lienholder.

The affirmative defenses by respondent (statute of limitations, unclean hands, waiver,

estoppel, accord and satisfaction, laches, etc.), which are not supported by factual allegations or legal authority in the answer or otherwise, are dismissed as meritless.

The administrator's petition was granted as set forth herein.

Order of Ejectment signed.

Dated: August 11, 2015

  
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SURROGATE