

Estate of Wang

2016 NY Slip Op 30085(U)

January 15, 2016

Surrogate's Court, New York County

Docket Number: 2003-2550/F

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

Date: JANUARY 15, 2016

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SCPA 2103 Proceeding Commenced by the Public
Administrator as Temporary Administrator of the Estate of

CHI-CHUAN WANG,

DECISION

File No.: 2003-2550/F

Deceased.

-----X
M E L L A, S.:

Papers considered:

Numbered

Notice of Motion for Summary Judgment by Respondents Yien-Koo King
and Kenneth King, dated May 19, 2015 1

Affirmation of Sam P. Israel in Support of Motion for Summary Judgment,
dated May 19, 2015, with Exhibits 1 to 21 2

Respondents Yien-Koo King and Kenneth King's Memorandum of Law in
Support of their Motion for Summary Judgment, dated May 19, 2015 3

Affirmation of David C. Rose in Support of the Public Administrator's
Opposition to the Kings' Motion for Summary Judgment, dated June 16, 2015,
with Exhibits A to H 4

Memorandum of Law in Support of the Public Administrator's Opposition
to the Kings' Motion for Summary Judgment, dated June 16, 2015 5

Memorandum of Law of Respondents Andrew Wang and Shou-King Wang
in Opposition to Motion of Respondents Yien-Koo King and Kenneth King
for Summary Judgment; Affirmation of Carolyn Shields, with Exhibit,
both dated June 16, 2015 6, 7

Respondents Yien-Koo King and Kenneth King's Memorandum of Law in
Reply to the Public Administrator of the County of New York's Opposition
to the Motion for Summary Judgment, dated June 23, 2015 8

Affirmation of Sam P. Israel in further Support of Respondents'
Motion for Summary Judgment, dated June 23, 2015, with Exhibits 1 to 3 9

Respondents Yien-Koo King and Kenneth King's Memorandum of Law
in Reply to Andrew Wang and Shou Kung Wang's Opposition to the
Motion for Summary Judgment, dated June 23, 2015 10

Papers considered (continued):	Numbered
Affirmation of Timothy Savitsky, dated August 27, 2015, with Exhibits 1 to 2	11
Respondents Yien-Koo King and Kenneth King's Supplemental Memorandum of Law in further Support of their Motion for Partial Dismissal of the 2103 Proceeding, dated August 27, 2015	12
Memorandum of Law in Support of the Public Administrator's Opposition to the Kings' Supplemental Memorandum of Law in further Support of their Motion for Partial Dismissal of the 2103 Proceeding, dated September 17, 2015	13
Memorandum of Law of Respondents Andrew Wang and Shou-Kung Wang in Opposition to Supplemental Memorandum of Law of Respondents Yien-Koo King and Kenneth King for Partial Dismissal; Affirmation of Carolyn Shields, with Exhibits A to C, both dated September 17, 2015	14, 15
Affirmation of Timothy Savitsky, dated September 23, 2015, with Exhibit 1	16
Respondents Yien-Koo King and Kenneth King's Supplemental Memorandum of Law in Reply to the Memoranda of the New York County Public Administrator and Respondents Andrew and Shou-Kung Wang in Opposition to the Kings' Motion for Partial Dismissal, dated September 23, 2015	17

Yien-Koo King (decedent's daughter) and her husband, Kenneth King (the "Kings"), two of four respondents in an SCPA 2103 proceeding commenced by the Public Administrator as temporary administrator of the estate of Chi-Chuan Wang, have purported to move for summary judgment. The court, however, with the parties' consent, is treating the application as a motion to dismiss the SCPA 2103 petition *vis a vis* the Kings, based on CPLR 3211 (a) (5), on the ground that the Kings were granted a discharge by the United States Bankruptcy Court for the Southern District of New York, pursuant to 11 USC § 727, on August 10, 2010. Shou-Kung Wang and Andrew Wang, the other respondents to the petition, along with petitioner, oppose the motion.

Decedent, an artist and prominent collector of classical Chinese paintings, died on July 3, 2003. In the dozen years since his death, the estate has been mired in controversy over the identity — and location — of works of art that belong to decedent's estate. In 2007, for example, the court was informed that the Internal Revenue Service had assessed an estate tax of \$22 million on decedent's estate, but that the estate fiduciaries had marshaled assets of only \$8 million (*see Matter of Wang*, NYLJ, Jan. 31, 2011, at 17, col 1).

The instant proceeding, commenced in October 2003, was stayed from February 14, 2005 until January 21, 2011. Its evolution — as well as its relationship to other proceedings in the estate — is described in the January 21, 2011 decision (*Matter of Wang*, NYLJ, Jan. 31, 2011, at 17, col 1, *aff'd* 92 AD3d 453 [1st Dept 2012]) by which this court modified its February 14, 2005 order to the extent of authorizing the Public Administrator to continue the prosecution of her SCPA 2103 proceeding.

Petitioner's prayer for relief is three-pronged. Petitioner seeks: (1) an order directing respondents to "provide to petitioner any knowledge and information they may have concerning estate property in their possession or control or which will aid petitioner in making discovery of estate property," (2) a decree, "in the event petitioner shall discover information which establishes that any of the respondents herein have [sic] possession or control of property belonging to the estate," directing the delivery of such property to the co-fiduciaries, and (3) an order restraining the four respondents from disposing of assets belonging to the estate or formerly owned by decedent pending final determination of the petition.¹ Thus, the petition contemplates

¹ Such restraint has been in force since October 2003. An October 28, 2003 order restrains the four respondents, pending a determination of the petition, and their respective agents, employees, representatives and assigns, from selling, transferring, encumbering, leasing,

two distinct phases to the proceeding. The first and current phase is inquisitorial (*see* SCPA 2103 [3] and [1] [b]). The second phase — to be initiated by the filing of an amended petition upon the completion of the inquiry — would be for turnover of estate assets (*see* SCPA 2103 [1] [a] and [c]).

The Kings contend that the SCPA 2103 proceeding against them “must be permanently suspended,” or dismissed because: “any potential underlying liability to the Estate has already been discharged in bankruptcy or is otherwise barred by the statute of limitations.”

The protections of a bankruptcy discharge, however, do not extend to any asset not included in the debtor’s schedule of assets filed in accordance with 11 USC § 521 (a)(1). That would include, for example, any asset of decedent’s estate which may have been disposed of by the Kings either before they filed their bankruptcy petition dated December 11, 2007, or after they obtained a discharge. Moreover, pursuant to 11 USC § 523, a bankruptcy discharge does not shield a debtor from liability with respect to any asset that is the object of a willful and malicious conversion (*see* 4-523 Collier on Bankruptcy ¶ 523.12 [15th ed 2015], “A debt arising

assigning, consigning or otherwise disposing of: (i) any property which is property of the estate; (ii) any property formerly owned by decedent which any respondent claims was gifted to the respondent or to the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control; (iii) any property formerly owned by decedent which any respondent claims was sold to the respondent or to the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control; or (iv) any property formerly owned by decedent which any respondent claims was given on consignment to the respondent or to the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control.

The restraint is the subject of a separate motion by the Kings for an order of modification, which motion is being held in abeyance pending the determination of the instant motion (*Matter of Wang*, NYLJ, Dec. 8, 2015, at 22, col 5).

from the unlawful conversion of the property of another is not specified as nondischargeable in section 523(a) because ‘willful and malicious injury’ covers a ‘willful and malicious conversion,’” citing 124 Cong. Rec. H11,095-11,096 [daily ed. Sept. 28, 1978]; S17, 412-13 [daily ed. Oct. 6, 1978]).

At this juncture — when petitioner has yet to amend her pleading — the Kings’ invocation of a bar preventing petitioner from obtaining relief pursuant to SCPA 2103 against them is inapposite. The Public Administrator has yet to specify what occurred with respect to any estate asset, let alone when it occurred. The Kings’ challenge to the adequacy of the petition to “give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to [any future] amended pleading” (CPLR 203 [f]) is, at best, premature.

Accordingly, the motion to dismiss the SCPA 2103 petition of the Public Administrator *vis a vis* the Kings is denied.

This decision constitutes the order of the court.

Dated: January 15, 2016


S U R R O G A T E