

Matter of Rosenberg
2016 NY Slip Op 30150(U)
January 27, 2016
Surrogate's Court, New York County
Docket Number: 1987-3380/A
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 27, 2016

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In the Matter of a Petition for Authorization to File
a Renunciation on Behalf of the Estate of

ALEXANDRE P. ROSENBERG,

DECISION

File No.: 1987-3380/A

Deceased.

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Estate of

PAUL ROSENBERG,

File No.: P1959-2589

Deceased.

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M E L L A, S. :

The petition before the court requests relief in two related, but separate estates. As executor of the estate of Alexandre P. Rosenberg, petitioner seeks authority in Alexandre's estate to renounce Alexandre's interest in assets newly discovered to have been owned by his predeceased father, Paul Rosenberg, as well as any that may be discovered in the future, as described below (EPTL 2-1.11[d][5]). In the same capacity, petitioner seeks an extension of time to file such renunciation, an application that is made in Paul's estate (EPTL 2-1.11[c][2]). All necessary parties in each of the estates have been joined in the proceeding.

Petitioner is Alexandre's surviving spouse as well as the fiduciary under his will. The property that she would disclaim on behalf of his estate consists of two paintings only recently determined to have been confiscated by the Nazis, in 1940, from their owner, Paul, a Jewish art collector and dealer who lived in France. The paintings, by Henri Matisse, were retrieved for Paul's heirs over forty years after his death and collectively have been valued at over \$12 million.

The present application can be understood only by reference to the testamentary histories

of the estates that are the subjects of this petition. To the extent relevant here, those histories may be briefly described as follows.

Paul died on June 29, 1959, survived by his wife, a daughter, and Alexandre. Paul left a will that was admitted to probate in this court on August 14, 1959. Under the instrument, Paul bequeathed half of his residuary estate to Alexandre or, in the event that Alexandre did not survive him, to Alexandre's children. Alexandre in turn died on July 11, 1987, survived by petitioner and their two children. Alexandre's will was admitted to probate in this court on August 13, 1987. Under the terms of that instrument, Alexandre bequeathed his residuary estate to petitioner or, in the event that she disclaimed her interest, to a Marital Trust for her benefit. Petitioner, in her individual capacity, did in fact disclaim and, as a result, Alexandre's children receive any assets that pass as part of his residuary estate.

The relief sought by the present petition is based upon section 2-1.11 of the EPTL. For the first form of relief, permission by the fiduciary of Alexandre's estate to renounce, the petition invokes subsection (d)(5) of that statute. Under a recent amendment to that subsection, fiduciaries of estates of decedent's dying after the amendment's effective date, i.e., August 11, 2014, are not required to seek court authorization to renounce dispositions that would otherwise devolve upon the estates that they represent, although they may nonetheless elect to request such relief. However, a fiduciary such as petitioner, whose decedent died before August 11, 2014, must still receive court authorization before she may renounce an interest on behalf of her decedent's estate (EPTL 2-1.11[d][5], as amended by L 2014, ch 315; Senate Introducer Mem in Support, Bill Number S7144). Hence, the need for the present application in Alexandre's estate despite the fact that Alexandre's children – the only persons whose interests might be adversely

affected by the proposed diversion of the paintings from Alexandre's residuary – have consented to the application. The consents are understandable, in view of the clear benefit that the renunciation would achieve for the children who, in any event, will receive the property, but who will be spared the cost of the estate tax that would be payable in respect of Alexandre's estate in the absence of the contemplated renunciation. Petitioner's request for authorization to renounce is hereby granted.

We now turn to the second aspect of the petition, i.e., petitioner's request for an extension of time for filing the renunciation of Alexandre's interest in the two paintings and any works of art discovered in a similar manner in the future and found to be assets of Paul's estate. It may be noted that, in light of the foregoing discussion, such request was technically unripe at the time the petition was filed, since petitioner was not then in a position to file the renunciation for which the extension was sought. However, given the authorization to renounce that she has now received, the extension issue is no longer premature, and the court finds it prudent to allow this portion of the petition to proceed despite the technical defect at the outset of the proceeding.

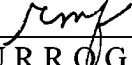
The merits of the extension issue need not detain us long. Subsection (c)(2) of EPTL 2-1.11 provides that the time to file and serve a renunciation may be extended by the court, in its discretion, by petition showing reasonable cause and on notice to such persons as the court may direct. What comprises "reasonable cause" depends upon the facts of each case (*see Matter of Vento*, NYLJ, June 19, 2013, at 26, col 5 [Sur Ct, Suffolk County], *citing Matter of Palmeri*, 75 Misc 2d 639 [Sur Ct, Westchester County 1973], *aff'd* 45 AD 2d 726 [2d Dept 1974], *aff'd* 36 NY 2d 895 [1975]). For purposes of the "reasonable cause" standard, the circumstances presented to this family are nothing short of extraordinary. Despite Paul's attempt to secure his

artwork in a bank vault in southern France at the time of the Nazi invasion of France in 1940, two of Paul's paintings by Henri Matisse went missing for seventy years with no expectation of recovery. The Rosenberg family was contacted in or around 2012 by a London-based organization, which tracks lost and stolen paintings, with information suggesting that a Matisse painting on display at a museum in Oslo was in fact property of Paul Rosenberg. Lengthy discussions with the museum and the family for nearly two years eventually concluded by the museum relinquishing the painting and returning it to Paul's heirs in 2014. Also in 2014, the Rosenberg family learned of the discovery of several stolen pieces of art kept in the private residence of a German citizen for his personal use. The family participated in months of discussions and meetings with German authorities, eventually resulting in the written acknowledgment in February of 2015 by German authorities that Paul's heirs were the owners of a second Matisse painting. Based upon the foregoing, petitioner, as the Executor of the Will of Alexandre Rosenberg, has shown reasonable cause for an extension of time to file a renunciation in the Estate of Paul Rosenberg and her application is granted. Petitioner shall provide notice to the person or persons having custody or possession of these Matisse paintings of the filing of her renunciation pursuant to section (c)(2) of EPTL 2-1.11.

Petitioner's time within which to file the renunciation in the Estate of Paul Rosenberg is thirty days from the date of the court's order.

Order signed. Clerk of the court is directed to mail petitioner copies of this decision and signed order.

Dated: January 27, 2016



SURROGATE