

**Estate of Wang**

2016 NY Slip Op 30715(U)

April 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

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

Date: APRIL 15, 2016

**CHI-CHUAN WANG,**

DECISION

File No.: 2003-2550/F

Deceased.  
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M E L L A, S.:

The court considered the following submissions in deciding the motion to reargue:

- |  | <u>Date Filed</u> |
|--|-------------------|
| 1. Notice of Motion  | February 8, 2016  |
| 2. Affirmation of Timothy Savitsky, Esq.   | February 8, 2016  |
| 3. Memorandum of Law in Support  | February 8, 2016  |
| 4. Memorandum of Law in Opposition of petitioner<br>Public Administrator, Temporary Administrator<br>of the Estate of Chi-Chuan Wang | February 19, 2016 |
| 5. Memorandum in Opposition of respondents<br>Andrew Wang and Shou-Kung Wang   | February 19, 2016 |

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 moved for leave to reargue their motion to dismiss the petition *vis a vis* them (*see* CPLR 2221 [d]). The court had denied the motion to dismiss on January 15, 2016. The Kings contend that the January 15, 2016 decision reflects a "fundamental misapprehension of the United States bankruptcy law." Both petitioner and the other respondents, Andrew Wang and Shou-Kung Wang, oppose the motion for leave to reargue, which was returnable on February 23, 2016.

The Kings' motion for leave to reargue is granted. Upon reargument, the court vacates its January 15, 2016 decision (*Matter of Wang*, NYLJ, Jan. 21, 2016, at 28, col 4; 2016 N.Y. Misc. LEXIS 146; 2016 NY Slip Op 30085[U]) and renders the following decision in its place:

The court considered the following submissions in deciding the motion to dismiss:

	<u>Numbered</u>
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
Memorandum of Law of Respondents Yien-Koo King and Kenneth King 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
Memorandum of Law of Respondents Yien-Koo King and Kenneth King 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
Memorandum of Law of Respondents Yien-Koo King and Kenneth King in Reply to Andrew Wang and Shou Kung Wang's Opposition to the Motion for Summary Judgment, dated June 23, 2015	10
Affirmation of Timothy Savitsky, dated August 27, 2015, with Exhibits 1 to 2	11
Supplemental Memorandum of Law of Respondents Yien-Koo King and Kenneth King 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

<u>Papers considered in deciding the motion to dismiss (continued):</u>	<u>Numbered</u>
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
Supplemental Memorandum of Law of Respondents Yien-Koo King and Kenneth King's 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, based on CPLR 3211 (a) (5), to dismiss the SCPA 2103 petition *vis a vis* the Kings 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 decedent's estate

— is described in the January 21, 2011 decision (*Matter of Wang*, NYLJ, Jan. 31, 2011, at 17, col 1, *affd* 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 resume 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 [has] 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.<sup>1</sup> Thus, the petition contemplates 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]).

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<sup>1</sup> 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, 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).

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.”

At this juncture, the petition is a request (apart from the injunctive relief) only for information. Its present purpose is the disclosure of facts that may lead petitioner to the whereabouts of estate assets, whether in the hands of one or more of the respondents or in the hands of a third party. In the instant inquisitorial phase of the SCPA 2103 proceeding, petitioner need furnish only a basis for inquiry, and she has done so (*see Matter of Green*, NYLJ, Oct. 16, 2014, at 34, 45 Misc 3d 1025 [A]; *Matter of Lukele*, NYLJ, July 18, 2014, at 41, 2014 N.Y. Slip Op. 31777[U] [Sur Ct, NY County 2014]). 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, together with a transcript of the February 23, 2016 proceedings, constitutes the order of the court. Clerk to notify.

Dated: April 15, 2016

  
S U R R O G A T E