

Matter of Hartofilis
2016 NY Slip Op 31243(U)
July 1, 2016
Surrogate's Court, New York County
Docket Number: 2011-4100/A
Judge: Nora S. Anderson
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Date: JULY 1, 2016

SURROGATE'S COURT : NEW YORK COUNTY

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Proceeding by Michael J. Hartofilis, as
Preliminary Executor of the Estate of

NIKI SIDERIS,

File No. 2011-4100/A

Deceased,

to Discover Estate Property Withheld
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A N D E R S O N , S .

This is a contested SCPA § 2103 proceeding brought by the preliminary executor of the estate of Niki Sideris to recover certain estate property from decedent's three brothers and from the children of one of the brothers. Petitioner moves for summary judgment dismissing the objections and ordering turnover of the property to the estate fiduciary. For the reasons stated herein, the petition is granted.

Niki Sideris, a domiciliary of New York, died at the age of 77 on October 12, 2011, on a flight from Athens to New York. She was a widow and had no children. Her three brothers, James, George and Anargiros Kakridas, were her sole distributees. Decedent left a will dated October 19, 2000, in which she explicitly disinherited her brothers. Michael J. Hartofilis, one of three nominated executors, was initially appointed as preliminary executor. Decedent's brothers contested the will, but their objections were ultimately dismissed upon the preliminary executor's motion for summary judgment. The will was admitted to probate on May 13, 2016, and letters

testamentary issued to Mr. Hartofilis and two other nominated executors (*Matter of Sideris*, NYLJ, Feb. 23, 2016 at 22, col 3; NYLJ 1202751962410 at *1 [Sur Ct NY County]), hereafter referred to as "the fiduciary."

During the pendency of the contested probate petition, decedent's family members wrongfully gained control over decedent's assets located in Greece, specifically the proceeds of bank accounts in two Greek banks, a condominium apartment in Athens, tangible assets located in the Athens apartment, and a piece of unimproved real property in Laconia, collectively valued at an estimated \$750,000. Decedent's brothers James and George, along with the children of brother Anargiros (who had renounced his alleged interest in decedent's estate in favor of his children), filed an ex parte proceeding in the Court of the First Instance in Sparta, Greece, alleging that they were decedent's sole heirs with the right to take possession of her assets. However, they failed to disclose to the Greek court that decedent did not die intestate, but that she indeed had a will which was being offered for probate in New York Surrogate's Court. Neither did they inform the court in Greece that they had appeared in the New York probate proceeding nor that under the will they had no interest in decedent's estate. Respondents thus deceived the Greek court into granting them a Certificate of Inheritance on September 27, 2012, which allowed them to

seize control of decedent's assets located in Greece. The estate's fiduciary then initiated proceedings to reverse the actions of respondents. In a decision dated October 21, 2013, the Court of the First Instance vacated its previously issued Certificate of Inheritance based on these false representations by respondents. That decision has not been appealed, and the time to do so has expired. The estate fiduciary has not, however, recovered any estate property from the respondents, whether in kind or in cash.

The fiduciary initiated this turnover proceeding against decedent's three brothers and the children of Anargiros, seeking to recover decedent's assets or their value. All respondents appeared by counsel and filed an answer in which they asserted, as affirmative defenses, that they acted in compliance with the laws of Greece; that a turnover proceeding pending in Greece should take precedence over the instant matter (notably, without any evidence that such a matter had been commenced); and that the revocation of the Certificate of Inheritance renders this proceeding moot. Respondents also alleged that decedent's brother Anargiros is not a proper party to this proceeding because he renounced his supposed interest in decedent's estate in favor of his children.

The fiduciary moves for summary judgment granting the relief requested in the petition, *i.e.*, the return of the

property or its value to the estate. The standards governing an application for summary judgment are well settled. It is available only where no material issue of fact exists (see, e.g., *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The party seeking summary judgment "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*id.* at 324). If the movant's burden is satisfied, the party opposing summary judgment must either come forward with proof, in admissible form, establishing a genuine issue of material fact or provide an acceptable excuse for the failure to do so (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Turning first to the question of whether Anargiros Kakridas is a proper party, petitioner alleges that relief should be available against Anargiros because he, along with his brothers, participated in a dishonest scheme to deceive the Greek court into granting the Certificate of Inheritance which enabled the wrongful seizure of the estate's assets. This is not, however, a proceeding for damages for wrongful acts committed by respondents. Rather, the fiduciary here seeks turnover of estate assets. Anargiros, because of his renunciation, does not possess or control the estate assets, and is not in a position to return them. Thus the court cannot grant relief against Anargiros in this proceeding, and the petition is dismissed as

to him, without prejudice.

Against the other respondents, however, the fiduciary has established a prima facie case for turnover by identifying the specific property being sought (SCPA 2103; SCPA 103 [44]) and establishing that it belonged to the decedent at the time of her death (*Matter of Voyiatgis*, 110 AD3d 911 [2d Dept 2013]; *Matter of Kircher*, 123 Misc 2d 397 [Sur Ct, Kings County 1984]). Thus, the burden shifts to the remaining respondents to show a material disputed fact.

Respondents do not dispute that the property being sought here is estate property, nor do they dispute their possession or control of it. Indeed, respondents concede that the assets sought here belong to the decedent's estate over which they gained control by use of the now-revoked Certificate of Inheritance.

Respondents assert only two arguments in opposition to this motion. Their first argument, that if they were to prevail on their objections to decedent's will they would be entitled to decedent's property, has been rendered moot by this court's admission of decedent's will to probate. Second, respondents argue that the court should defer action until resolution of a subsequent proceeding they themselves have initiated in a Greek court in Athens in which they assert that decedent was a Greek domiciliary and ask that court to determine that her will is

invalid. Since respondents did not contest decedent's New York domicile in the New York probate proceeding, and since they have lost the probate contest here, there is no merit to their suggestion that the new action provides any basis for this court to defer its determination of this proceeding.

Accordingly, the motion for summary judgment is granted and the objections to the petition are dismissed. Settle a decree directing turnover of the property.

NSA

S U R R O G A T E

Dated: *July 1*, 2016