

<b>Matter of Cassini</b>
2016 NY Slip Op 32022(U)
June 29, 2016
Surrogate's Court, Nassau County
Docket Number: 343100G
Judge: Margaret C. Reilly
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**SURROGATE’S COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

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**Accounting by Marianne Nestor Cassini,  
as the Executor of the Estate of**

**DECISION**

**OLEG CASSINI,**

**File No. 343100G  
Dec. No. 31662**

**Deceased.**

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**PRESENT: HON. MARGARET C. REILLY**

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The following papers were considered in the preparation of this decision:

Notice of Cross-Motion by Farrell Fritz, P.C.. . . . .	1
Affirmations in Support and Exhibit. . . . .	2

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Upon the foregoing papers, it is ordered that Farrell Fritz, P.C.’s cross-motion is decided as follows:

Farrell Fritz, P.C. moves, pursuant to CPLR §6401(a), for the appointment of a receiver for any and all property belonging to Oleg Cassini, Inc. (“OCI”) and Cassini Parfums, Ltd. (“CPL”); and an order vesting the receiver with all of the powers of an equity receiver granted by law, including the power to preserve the assets of OCI and CPL, and to marshal any and all assets of the receivership estate, as well as any other powers that the Court may grant to the receiver.

Oleg Cassini (the “Decedent”) died on March 16, 2006. The decedent was survived by her spouse and two daughters, Christina and Daria. Marianne Nestor Cassini (referred to in the will of Oleg Cassini as Marianne Nestor) was appointed executor of the

estate and trustee on August 15, 2007. Since the death of the Decedent, his estate (the “Estate”) has been involved in extensive litigation. The litigation has involved Marianne Cassini, Christina Cassini (daughter of the decedent) and Daria Cassini (daughter of the decedent). Christina Cassini passed away on March 31, 2015 and Daria Cassini passed away on September 11, 2010.

This Court granted summary judgment to Christina Cassini, which determined that Christina Cassini was entitled to twenty-five percent (25%) of the estate of Oleg Cassini. Christina Cassini then petitioned the Court to remove Marianne Nestor Cassini as executor of the estate, by submitting tax returns showing that all shares in OCI and CPL were owned solely by the Decedent at the time of his death. The Court held that Marianne Cassini was unfit to serve as executor and therefore suspended Marianne and appointed the Public Administrator as the Temporary Administrator of the Estate of Oleg Cassini (*see Estate of Cassini*, 43 Misc 3d 1211[A], [Sur Ct, Nassau County 2014]). In the summary judgment decision, the Court scheduled a hearing on Marianne Cassini’s possible permanent removal as Executor of the Estate.

A hearing was held on May 30, June 2, and June 5, 2014. Thereafter, Marianne Cassini entered into a stipulation in which Marianne would resign as Executor of the Estate and that she would cooperate with the Public Administrator to secure the assets of the Estate. The stipulation reserved certain issues, such as whether or not Marianne Cassini and her sister Peggy Nestor would receive compensation in the amount of

\$250,000 from OCI and CPL going forward. In addition, OCI, which at one time was a very profitable company, has had major losses in the past years including more than \$400,000 due to a fire at an uninsured Oyster Bay location. There is also allegations of Marianne Cassini and Peggy Nestor diverting OCI earnings to Gemeaux Ltd., a company that Marianne Cassini and Peggy Nestor own as shareholders.

In the time since her resignation, Marianne Cassini has not cooperated with the Public Administrator in the administration of assets in accordance with the stipulation. In October 2014, the attorney for Christina Cassini applied for the appointment of a receiver to oversee the handling of the assets of OCI and CPL. The Court, by written decision, suspended Marianne Cassini and Peggy Nestor's authority to administer the companies and issued an injunction forbidding them from selling, transferring, or encumbering the real property located at 313 McCouns Lane, Oyster Bay Cove, New York (*see* Decision# 30636).

Christina Cassini passed away on March 31, 2015. The Estate of Christina Cassini was substituted into the proceedings as the Successor Administrators to Daria's Estate and as objectant to the accounting proceeding filed by Marianne Cassini. The Court ordered Marianne Cassini to turn over all assets of OCI and CPL to the Public Administrator as those assets belonged to the Estate and not Marianne Cassini personally.

Marianne Cassini has since failed to comply with the Court's November 5, 2015 order by failing to turn over to the Public Administrator the assets, records and administration of OCI and CPL.

### LEGAL ANALYSIS

CPLR §6401 (a) reads in relevant part as follows:

*Upon motion* of a person having an apparent interest in property which is the subject of an action *in the supreme or a county court*, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party. [Emphasis added]

CPLR § 6401 (a) requires that a party make a motion for a receiver. Accordingly, this court cannot sua sponte order a receiver. Moreover, according to CPLR § 6401, an action must be pending in the Supreme Court or County Court. However, the Second Department has permitted a Surrogate to grant a motion for the appointment of a temporary receiver when a proceeding is pending in Surrogate's Court (*In re Defelice-Levine*, 295 AD2d 512 [2d Dept 2002]).

Courts may grant receiverships when "the petitioner ma[kes] a clear evidentiary showing of the necessity of conserving the property at issue and protecting her interests" (*supra* at 512). A court may also grant a temporary receivership when a party has stolen assets. In *Wong v Wong*, the court ruled that in "view of the husband's admitted past

transfers and conversions of marital assets into other property in his own name, . . . it [was] appropriate and necessary that a temporary receiver be appointed to protect the wife's income in the two income-producing buildings jointly owned by the couple and to distribute the wife's share of the net income therefrom, if any, to her” (*Wong v Wong*, 161 AD2d 710, 711 [2d Dept 1990]). A court may also grant a receivership when a party who has control over assets merges those funds their own personal funds (*see Friedman v Ragin*, 228 App Div 642, 645 [2d Dept 1996]).

Based on the facts in this matter, the Respondent, Marianne Cassini, has taken actions which put the value of OCI and CPL at risk.

In view of the foregoing, this court hereby **GRANTS** the objectant’s motion in its entirety. A receiver shall be appointed under a separate order.

Dated: June 29, 2016  
Mineola, New York

**E N T E R :**

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**HON. MARGARET C. REILLY**  
**Judge of the Surrogate’s Court**

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