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| Matter of VNB N.Y., LLC (Hakimian) |
| 2017 NY Slip Op 31759(U) |
| August 8, 2017 |
| Surrogate's Court, Nassau County |
| Docket Number: 2013-377108/C |
| Judge: Margaret C. Reilly |
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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**In the Matter of the Petition of VNB New York, LLC,
as Successor by Merger to VNB New York Corp., as
Successor in Interest to Valley National Bank,
Merchants Bank Division for Leave to Issue an
Execution Upon a Money Judgment Entered Against
Monika Hakimian, as Executrix of the Estate of**

**DECISION & ORDER
File No. 2013-377108/C
Dec. No. 32880**

**MIKE MEHRAN HAKIMIAN,

Deceased.**

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PRESENT: HON. MARGARET C. REILLY

The following papers have been considered in the preparation of this decision:

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| Petition, Amended Petition & Exhibits | 1 |
| Answer | 2 |
| Reply Affirmation | 3 |
| Guardian ad Litem Report | 4 |
| Petitioner’s Opposition to the Report of Joan Kingsley. | 5 |
| Attorney Affirmation | 6 |
| Petition for Compulsory Accounting and Related Relief. | 7 |
| Stipulation Withdrawing Petition. | 8 |

Petitioner, Valley National Bank New York, LLC (VNB),¹ seeks leave to execute a judgment pursuant to CPLR §§ 5208 & 5201(b)² against estate assets in the sum of \$32,589.23 plus accrued statutory interest at a rate of 9% per annum from June 30, 2015

¹Valley National Bank New York, LLC is the successor by merger to VNB New York Corp. who was successor in interest to Valley National Bank, Merchants Bank Division.

²CPLR § 5201 (b) sets forth property against which a money judgment may be enforced. It further provides that a money judgment entered upon a joint liability of two or more persons may be enforced against individual property and joint property of such persons with any other persons against whom the judgment is entered.

through May 12, 2016 in the sum of \$2,547.32, plus further accrued interest at 9% per annum to be calculated.

The decedent died on April 22, 2013, survived by a wife, Monika Hakimian, and four children, two of whom are minors. Letters testamentary issued to Monika Hakimian on April 22, 2014. In Ms. Hakimian's application to be appointed preliminary executor, she listed the estate assets as totaling \$95,000.00.

On or about January 5, 2014, VNB filed a lawsuit in Nassau County Supreme Court against Y.M. Intercontinental Gem Corp. and Monika Hakimian as executor of the estate of Mike Mehran Hakimian to recover funds the bank loaned Y.M. Intercontinental Gem Corp. with the personal guarantee of the decedent. A judgment was signed on June 29, 2015 against the two defendants, jointly and severally, in the amount of \$32,589.23. The judgment provides that interest on the \$32,589.23 shall be calculated at the statutory rate of 9% per year from the date of entry of the judgment.

The petitioner now seeks leave from this court pursuant to CPLR § 5208, to execute on a money judgment against proceeds awarded in favor of the decedent in a personal injury lawsuit against the Long Island Rail Road ("LIRR") in the possession of Rappaport, Glass, Levine & Zull, LLP, who are allegedly holding the funds as a garnishee. Section 5208 of the CPLR provides that "after the death of a judgment debtor, an execution upon a money judgment shall not be levied upon . . . any property in which he has an interest, nor shall any other enforcement procedure be undertaken with respect to such debt or property, except upon leave of the surrogate's court which granted letters testamentary or letters of administration upon the estate." The law suit was allegedly commenced for injuries suffered by the decedent prior to his death against LIRR and

recovered after his death. A guardian ad litem was appointed to represent the two minor children in this proceeding, who objects to the relief requested. The guardian ad litem contends the funds would significantly affect the children's ability to have a basic lifestyle.

On or about July 17, 2015, Santander Bank, N.A. filed a petition to compel an accounting pursuant to SCPA § 2205. Santander Bank alleged that it extended a loan to Y.M. Intercontinental Gem Corp which was guaranteed by the decedent by guaranty dated November 4, 2011. Santander Bank stated that the outstanding balance of the loan, as of November 18, 2014, was \$80,569.29. The Bank further set forth that, upon information and belief, the decedent's estate "may be entitled to recover significant proceeds arising from the decedent's prior personal injury action entitled 'Monika Hakimian as Executrix of the Estate of Mehran Hakimian, Individually v. Long Island Railroad and Metropolitan Transit Authority. . .'" By stipulation dated March 15, 2016, the petition was withdrawn without prejudice.

There are two creditors in this estate. Both claims, added together, exceed the purported total assets of the estate. Where an estate is insolvent, SCPA § 1811 sets forth the priority of payment of debts of a decedent. Pursuant to SCPA § 1811 (2), debts of the decedent are to be paid in the following order: "(a) Debts entitled to a preference under the laws of the United States and the state of New York. (b) Taxes assessed on property of the deceased prior to his death . . . (c) Judgments docketed and decrees entered against the decedent according to the priority thereof respectively." The Practice Commentaries to this section note that SCPA § 1811 (2) (c) "gives next priority to judgments docketed and decrees entered against the decedent during his lifetime, with further priority given to

the earliest docketed or entered” (Turano, Practice Commentaries, McKinney’s Cons. Laws of NY, Book 58A, SCPA § 1811). Judgments obtained “after the death of the decedent are not granted the priority as provided within SCPA 1811 (2). . . A creditor’s race to the courthouse to obtain a judgment after decedent’s death will not alter his priority among general creditors” (*Matter of Nalitt*, NYLJ, Feb. 24, 1999, at 1, col 1 [Sur Ct, Richmond County]; *see also* SCPA § 1812 (3) which provides in part “[t]he commencement of a suit for the recovery of a debt or the obtaining of a judgment thereon against the fiduciary shall not entitle this debt to preference over others of the same class”).

As it appears that the estate is insolvent to pay all debts against the fiduciary and it appearing to be in the best interest of the estate, the court hereby orders Monika Hakimian to file an account of her proceedings as executor within sixty days of the date of service of a copy of this order upon her. The petition for permission for leave to execute on a money judgment is therefore denied without prejudice to renew in the accounting proceeding.

This constitutes the decision and order of the court.

Dated: August 8, 2017
Mineola, New York

E N T E R:

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

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