

Siska v Byrne

2017 NY Slip Op 32434(U)

September 8, 2017

Supreme Court, Nassau County

Docket Number: 2015-384219/B

Judge: Margaret C. Reilly

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**
-----X

ZSOLT I. SISKA,

Plaintiff,

-against-

MICHAEL BYRNE,

Defendant.
-----X

**In the Matter of the Application of ANN JULIANO
as Preliminary Executor of the Estate of**

MARIA VASZILY-McMAHON,

Deceased,

to Discover and Recover assets wrongfully diverted.
-----X

PRESENT: HON MARGARET C. REILLY

DECISION & ORDER

File No. 2015-384219/B

Dec. No. 33144

File No. 2015-384219/A

Dec. No. 33382

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

Cross-motion to Dismiss.	1
Affirmation in Support (Hyland).	2
Affirmation in Opposition and Exhibits (Croyle).	3
Affirmation in Opposition and Exhibits (Nord).	4

In an action transferred to this court (Supreme Court Index No. 2016-00075368; Surrogate’s Court File No. 2015-384219/B), defendant (Michael Byrne) moves to dismiss the complaint or vacate a stipulation of settlement executed in a SCPA § 2103 proceeding.¹

¹ The Supreme Court granted a motion to transfer the action from the Supreme Court to the Surrogate’s Court (CPLR § 325). The court notes that the plaintiff, Siska, did not caption the motion to dismiss under the transferred Supreme Court action. Rather, the caption is entitled “*In the Matter of the Estate of Maria Vaszily-McMahon.*”

The Supreme Court action seeks a declaratory judgment setting aside and declaring null and void a change of beneficiary form, dated March 3, 2015, relating to a Prudential Life Insurance Policy (No. xxxx357), purportedly executed by Maria Vaszily-McMahon, as having been made without the requisite mental capacity and as a result of undue influence and overreaching by defendant Michael Byrne and declaring plaintiff Zsolt Siska the sole and rightful beneficiary of the proceeds of the Prudential Life Insurance Policy (No. xxxx357).

The decedent's last will and testament was admitted to probate by a decree of this court, dated May 12, 2015. Letters testamentary issued to Ann Juliano. By petition dated May 12, 2015, Ann Juliano, in her capacity as preliminary executor, commenced a discovery proceeding, pursuant to SCPA §2103, against Michael Byrne, the designated beneficiary, seeking the return of alleged assets of the estate including the proceeds of the life insurance policy issued by Prudential. The discovery proceeding was settled by a so-ordered stipulation of settlement, dated March 29, 2016, which authorized the court to continue supervision for the purpose of enforcement of the stipulation.

The stipulation provides in part:

“The decedent's Prudential life insurance policy shall be collected by Michael M. Byrne as the designated beneficiary. Ann Juliano, individually or as fiduciary of the Estate of Maria Vazily-McMahon shall have no claim to the funds at Prudential Life Insurance.”

Thereafter, Zsolt Siska commenced an action against Michael Byrne in the Supreme Court, Nassau County (Supreme Court Index No. 2016-0075368, Surrogate's Court File No. 2015-384219/B) entitled “ZSOLT I. SISKI, Plaintiff, against MICHAEL BYRNE, Defendant.” In that action, Zsolt Siska alleges that he was the designated beneficiary of the

policy prior to the designation of Michael Byrne. The complaint seeks a declaration that any later designation is null and void as having been made without mental capacity and as a result of undue influence by the defendant.

A dispute between living persons as to title to property is not within the jurisdiction of the Surrogate's Court (*Matter of O'Connell*, 98 AD3d 673 [2d Dept 2012]). In the Supreme Court action, the dispute as to title is between two living persons. However, the motion to dismiss the action, based on the stipulation in the SCPA §2103 proceeding, connects the action to the administration of the estate and meets the requirements of CPLR §325 for transfer. The Surrogate's Court has subject matter jurisdiction over matters relating to the affairs of a decedent or the administration of an estate (NY Const, Art VI §12[d]; SCPA §201; *Matter of Piccione*, 57 NY2d 278 [1982]).

A decision/order dated August 31, 2016 of the Supreme Court granted a motion by Zsolt Siska directing that the funds in dispute be deposited into court.

Michael Byrne now cross-moves for an order dismissing the complaint pursuant to CPLR §3211[a][1] and [a][5], on the grounds that the stipulation of settlement in the SCPA §2103 proceeding bars the action. In the alternative, Michael Byrne seeks an order vacating the stipulation and restoring the discovery proceeding to the calendar. The motion is opposed.

CPLR §3211(a)(1) provides for dismissal of a complaint where the defense is based upon documentary evidence. Dismissal will be granted only where the documentary evidence totally refutes the plaintiff's allegations and establishes a defense as a matter of law (*XXXX, L.P. v 363 Prospect Place, LLC*, 2017 WL 3272222 [2d Dept 2017]; *Ray v JP*

Morgan Chase Bank N.A., 145 AD3d 812 [2d Dept 2016]). A stipulation of settlement may be submitted as documentary evidence in support of a motion for dismissal where the stipulation indisputably undermines the cause of action (*McMahan v McMahan*, 131 AD3d 593 [2d Dept 2015]). Here, however, the plaintiff was not a signatory to the stipulation of settlement and there was no judicial determination as to the rightful beneficiary. The stipulation merely provides that neither Ann Juliano individually nor the estate has any claim to the proceeds of the policy. Since the stipulation of settlement does not utterly refute the plaintiff's claim, that branch of the motion that seeks dismissal under CPLR § 3211 (a) (1) is **DENIED**.

Michael Byrne also seeks dismissal under CPLR 3211 (a) (5) on the grounds of res judicata. Under the doctrine of res judicata, a disposition on the merits bars an action between the same parties or those with whom they are in privity (*Courtazar v Tomasino*, 150 AD3d 668 [2d Dept 2017]); *Blue Sky LLR v Jerry's Self Storage, LLC*, 145 AD3d 945 [2d Dept 2010]). Likewise, collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding (*Carrasco v Weissman*, 120 AD3d 531 [2d Dept 2014]). Here, the doctrines of res judicata and collateral estoppel do not apply as Zsolt Siska was not a party to the SCPA §2103 proceeding. Accordingly, the branch of the motion that seeks dismissal of the complaint pursuant to CPLR §3211(a)(5) is also **DENIED**.

Michael Byrne moves, in the alternative, to vacate the stipulation of settlement. A stipulation of settlement is a contract and can only be vacated on grounds such as fraud,

collusion, mistake or accident (*Toscano v 4B's Realty VIII Southampton Brick & Tile, LLC*, 84 AD3d 780 [2d Dept 2011]). The attorneys for Michael Byrne allege collusion.

Accordingly, the branch of the motion that seeks to vacate the stipulation of settlement in the SCPA §2103 proceeding (although raised in the Supreme action) is set down for a hearing.

This matter will appear on the court's calendar for conference on October 31, 2017 at 10:00 a.m., to enter a discovery order.

This constitutes the decision and order of the court.

Dated: September 8, 2017
Mineola, New York

E N T E R:

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Judge of the Surrogate's Court

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