SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

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IN THE MATTER OF THE APPLICATION PURSUANT TO SECTION 7701 OF THE CIVIL PRACTICE LAW AND RULES FOR THE CONSTRUCTION OF THAT CERTAIN MICHAEL A. LORIG REVOCABLE TRUST, U/A/D JUNE 22, 2014,

BY CAROLINE BERTHET, AS SUCCESSOR TRUSTEE and BENEFICIARY,

Petitioner,

-against-

MATTHEW BRIAN LORIG, ANDREW MICHAEL LORIG, ELIZABETH DALY, and BANK OF NEW YORK MELLON,

Respondents.

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Index No.: 153674/2017

DECISION/ORDER

HON. SHLOMO S. HAGLER, J.S.C.:

In this Article 77 proceeding, petitioner Caroline Berthet ("Caroline") seeks an order and judgment confirming that her rights as a beneficiary under the Michael A. Lorig Revocable Trust, u/a/d June 22, 2014, have not been waived or impaired by the provisions in the Postnuptial Agreement, dated July 28, 2016, between Caroline Berthet and the late Michael Lorig (Michael). Respondents Matthew Brian Lorig, Andrew Michael Lorig ("Andrew") and Elizabeth Daly (together, "Individual Respondents"), who are Michael's children from a prior marriage, cross-move to dismiss the petition, pursuant to CPLR 3211 (a) (1) and 327 (a). Respondent Bank of

New York Mellon answers the petition but declines to take a position at this time.[1]

BACKGROUND AND FACTUAL ALLEGATIONS

Caroline and Michael were married on April 15, 2011. On June 22, 2014, Michael simultaneously executed the Michael A. Lorig Revocable Trust ("Trust") and the Last Will and Testament of Michael A. Lorig ("Will"). Both the Trust and the Will were executed while Michael was a resident of the State of New York. The Trust states that the "interpretation and operation . . . shall be governed by the laws of the State of New York." Caroline's Exhibit 1, Trust at 26. The Trust was executed in Connecticut and states that individual trustees "shall receive reasonable compensation in accordance with the law of the State of Connecticut." Trust at 20. The Will references New York Law.[2]

Will

The Will provides certain benefits for Caroline and for the Individual Respondents. Article II, Tangible Personal Property, indicates that the Individual Respondents are to receive Michael's personal effects, jewelry and cars, and that Caroline is to receive the remaining tangible personal property. Tangible personal property is defined as "personally held art, antiques, stamp and coin collections and other collectibles." Will at 13.

Article V of the Will sets forth that the residuary of the estate, including the "rest, residue and remainder of my estate, real and personal" shall be given to the trustee of the Trust, and

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[1] Respondent states that it has been incorrectly named as Bank of New York Mellon and that its accurate name is BNY Mellon, National Association ("BNY Mellon").

[2] For example, the Will states that the executor may receive compensation in accordance with the law of the State of New York. Caroline's Exhibit 2, Will at 4.

disposed of as provided in the Trust. David Mittelman ("Mittelman") was appointed to serve as the executor of the Will.

Trust

Article V of the Trust, Preresiduary Gifts, states that, upon Michael's death, the Trustee is to transfer 1/3 of the estate to the Individual Respondents to be held in Descendants' Separate Trusts, and transfer 2/3 of the estate to Caroline, to be held in a Marital Trust.

Marital Trust

Article VII, QDOT Marital Trust, explains the terms and conditions of the Marital Trust. In pertinent part, "one of the primary assets of the Marital Trust shall be a residence," and Caroline was to "have full use and enjoyment of the residence" during her lifetime. Trust at 6. With respect to the terms of this residence, the Trustee was responsible for paying the fees associated with the residence, including the taxes and all expenses associated with the "running of a household for the benefit of my Wife as beneficiary of the Marital Trust." Trust at 31.

In addition, including other distributions, the Trustee is to distribute the net income of the Trust, to Caroline, at least, on an annual basis. In addition, the Trustee is directed to distribute up to $300,000 in maintenance payments, annually, to Caroline. The terms of the Trust state that, after Michael's death, Mittelman is named as the trustee for the Administrative Trust and Caroline and Mittelman are appointed as co-trustees of the Marital Trust.

Postnuptial Agreement

In 2015, Michael filed for divorce in New York County. As a condition to the discontinuance of divorce proceedings, Michael and Caroline executed a Postnuptial Agreement, dated July 28, 2016. As stated in the Postnuptial Agreement:

> "The parties are currently parties to a divorce action . . . which is being discontinued simultaneously with the execution of this Agreement as they desire to reconcile and to fix and determine their rights and claims that will accrue to each of them in the income, property and estate of the other by reason of their marriage to accept the provisions of this Agreement in full discharge and satisfaction of such rights which would otherwise each might have under the laws in and to income, property and the estate of the other both before and after the death of each . . . ."

Caroline's Exhibit 3, Postnuptial Agreement at 2.

The Postnuptial Agreement states that it is between Michael, who resides in Naples, Florida, and Caroline, who resides in New York, New York. Further, the Postnuptial Agreement indicates that it replaces the Prenuptial Agreement dated April 13, 2011. The Postnuptial Agreement constitutes an agreement "with respect to all assets and properties, both real and personal, tangible and intangible, wherever situated, now owned by the parties or either of them . . . or that may hereafter be acquired by either of the parties." *Id.* at 2.

Under General Provisions, the Postnuptial Agreement has a paragraph entitled "Binding on Parties' Estates," where Caroline and Michael agree that this Agreement is binding on them and their heirs and executors. Further, the Postnuptial Agreement provides that each party acknowledges that they have not received any representation from the other, "not contained in this Agreement as to the financial or other support from the other or as to any right to future earnings, profits or revenue of the other regardless of the past, present or future conduct of the parties in their financial and living arrangements." *Id.*, ¶ 7.

Marital versus Separate Property and Waiver

Article III of the Postnuptial Agreement defined the separate property, as, among other things, the assets listed by Michael and Caroline in exhibits A and B. Included in Michael's

assets are Michael's apartment in Naples and his house in Connecticut, bank and brokerage accounts, retirement accounts, private investments, cars, jewelry and accounts receivables. By signing the Postnuptial Agreement, the parties acknowledged that all existing property is separate property. According to the Postnuptial Agreement, separate property should not be treated as "marital property or any other form of property in which the other party has any interest by reason of the marital relationship in New York . . . ." *Id.*, ¶ 14.

The Postnuptial Agreement again clarified marital property in Article V, Marital Property and Marital Liabilities, stating, "[a]s of the execution of this Agreement, the parties have not classified any property as 'Marital Property,' since all currently existing property is Separate Property." *Id.*, ¶ 22. Any property acquired after the execution of the Postnuptial Agreement that is titled jointly shall be marital property.

Under Article IV, Waiver of Separate Property, upon executing the Postnuptial Agreement, Caroline acknowledged that Michael "will continue to retain" all rights to separate property, free of any claims or rights of Caroline. Each party acknowledged that they were represented by legal counsel with respect to the "nature and extent of the valuable Property rights that he or she is relinquishing by signing this Agreement . . . ." *Id.*, ¶ 3. The last paragraph of the Postnuptial Agreement sets forth, "EACH PARTY TO THIS AGREEMENT FULLY UNDERSTANDS AND AGREES THAT HE OR SHE IS RELINQUISHING VALUABLE PROPERTY RIGHTS BY SIGNING THIS AGREEMENT." *Id.*, ¶ 67.

Article X, Estate Rights After Death, Paragraphs 42-44

In the event that Michael dies prior to a divorce, the Postnuptial Agreement provides the formula to be used, to calculate payments that Caroline is entitled to receive from Michael's

estate. In relevant part, if Michael's death occurs prior to the tenth anniversary of their marriage, Caroline is to receive "an amount equal to the greater of: (i) the Distributive Payment as calculated in Paragraph 31(A); or (ii) an amount equal to 10% of Michael's federal tax gross estate, less administrative expenses, all as finally determined for estate tax purposes ("Michael's Estate") . . . ." *Id.*, ¶ 44 (A).[3]

In the event of Michael's death prior to a divorce, the Postnuptial Agreement explicitly sets forth what rights Caroline retains with respect to the principal residence. It states, in pertinent part, "Caroline shall be entitled to live in the principal residence of the parties as of the time of Michael's death for the rest of her life. Caroline shall pay the real estate taxes, insurance, any assessments, maintenance, homeowner's association, utilities and any other costs associated with living in the principal residence. Upon Caroline's death, all rights revert back to Michael's estate." *Id.*, ¶ 43.

Also included in this Article is a reciprocal waiver, set forth as follows:

> 42. Except as otherwise set forth herein, each of the parties hereto for himself and herself, respectively, and for their respective heirs, . . . waives, discharges and releases
> a) any and all claims, demands, rights and interest that he or she may acquire by reason of the parties' marriage under the present or future laws of the State of New York or any jurisdiction with the same effect as if no marriage had been consummated between them, including, without limitation, any rights that each may acquire as a spouse in the estate or property of the other, except with respect to Federal Social Security benefits, including the right of election which he or she may have or hereafter acquire regarding the estate of the other, the right to take against the Last Will and Testament of the other, whether heretofore or hereafter

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[3] Paragraph 31(A) states, in pertinent part, in the event of a marital dissolution, Caroline shall receive, "$250,000 plus an additional $10,000 for each additional year of marriage after the execution of this Agreement (and pro-rated for any fractional portion of a year) up until the earliest of all Event of Marital Dissolution or ten years after the execution of this Agreement."

> executed, the right to take a distributive share in the event of the intestacy of the other, all interest, right or claim of right in the estate of the other by way or dower, curtesy, statutory allowance, widow or widower's allowance, homestead rights, or otherwise, and the right to act as an executor or executrix or administrator or administratrix or personal representative of the other's estate, although each party may name the other as an executor or executrix if he or she desire . . . ."

Id., ¶ 42 (a).

After setting forth the common-law waiver above, the Article continued that, nothing in the Postnuptial Agreement shall constitute a release for a bequest made in the will of the other party which is executed after the date of the Postnuptial Agreement. Either party is able to execute a will executed after the date of the Postnuptial Agreement to "provide for more than what is contained in this Agreement." *Id.*, ¶ 42 (c) (2). If Michael dies prior to a divorce, "[a]ny portion of money owed to Caroline pursuant to this Agreement shall be paid prior to the probate of Michael's estate." *Id.*, ¶ 42 (c) (3).

Instant Petition:

Michael died on January 22, 2017. Caroline, as a successor trustee and beneficiary, commenced this proceeding seeking an order and judgment confirming that her rights under the Trust have not been impaired by the Postnuptial Agreement. She argues that, neither Article X, Estate Rights After Death, nor any other provision in the Postnuptial Agreement, contain the specific language revoking the provisions made for her in the Will or Trust.

Citing the common law waiver and general release provision in ¶ 42 (a), Caroline claims that this is a general waiver and is applicable only to her statutory and common law rights. As it makes no reference to waiving her rights under the Will and Trust, Caroline alleges that it is ineffective to waive them.

The Individual Respondents argue that when Caroline signed the Postnuptial Agreement, she waived all of her rights as a beneficiary to the Will and Trust. They continue that it should be enforced as written, and that it supercedes the Will and Trust. They allege that Caroline cites to an irrelevant portion of the Postnuptial Agreement and does not consider the contract as a whole. According to the Individual Respondents, the Postnuptial Agreement is valid and unambiguously addressed Caroline's rights to specific assets after Michael's death. Andrew submitted an affidavit in support of the motion explaining the alleged circumstances surrounding the execution of the Postnuptial Agreement.

Further, the Individual Respondents note that, according to the petition and Caroline's interpretation of the Postnuptial Agreement, Caroline would be entitled to both the benefits owed to her under the Postnuptial Agreement and also under the Will and Trust. They argue that where, like here, the Postnuptial Agreement uses language that is "wholly inconsistent" with the Will and Trust, it revokes the prior testamentary disposition. For example, the Trust set forth that Caroline was entitled to 2/3 of the corpus of the Trust, as held in the Marital Trust. This Marital Trust included the assets, subsequently listed as separate property in the Postnuptial Agreement in Exhibit A. However, when Caroline signed the Postnuptial Agreement, she agreed that all property was separate property, not marital property, and waived any rights to that property.

In opposition, Caroline argues that Andrew's "self-serving" affidavit constitutes extrinsic evidence presented to explain the alleged circumstances under which the Postnuptial Agreement was executed.

Caroline does not dispute the validity of the Postnuptial Agreement and requests that this Court construe the Postnuptial Agreement as written. Specifically, she requests that this Court confirm that she is entitled to the rights under the Trust and also to the rights and benefits under paragraphs 43 and 44 in the Postnuptial Agreement. She maintains that not one section of the Postnuptial Agreement conclusively waives her rights under the Trust.

Caroline has submitted an affidavit explaining the circumstances surrounding the Postnuptial Agreement. Caroline does not reconcile the discrepancies between the Postnuptial Agreement and the Trust. For example, Caroline concedes that the terms in the Postnuptial Agreement with respect to the principal residence take precedence over the terms as set out in the Trust; namely that she is responsible to pay the costs associated with the residence. However, she then argues that she is entitled to the additional income distributions as provided to her in the Trust, to provide her with the financing to pay for those housing costs.

Forum Non Conveniens and Article 77

In addition, the Individual Respondents argue that the petition should be dismissed based on forum non conveniens. According to the Individual Respondents, there is no sufficient nexus to New York and the more appropriate forum would be Florida. Among other reasons, they explain that the probate action is pending in Florida and that the real estate assets, along with the respective documentation, are located in Connecticut and Florida. They note that petitioner is a dual resident of New York and Florida and that BNY Mellon operates an office in Florida. Although none of the Individual Respondents live in Florida, they would be amenable to service in Florida due to the pending probate action. In addition, a court in Florida would be able to apply New York law.

Alternatively, the Individual Respondents argue that Caroline's petition should be dismissed as premature. According to the Individual Respondents, as the order to show cause is requesting declaratory relief, this Court should treat it as one for summary judgment, which may not be made until issue has been joined. In addition, the Individual Respondents maintain that, in the event that this Court denies their motion to dismiss, this Court should order discovery to determine the intent of the parties when drafting the Postnuptial Agreement, as it relates to the Will and the Trust. Further, in case of dismissal, the Individual Respondents state that they will serve and file and answer, asserting their affirmative defenses and counterclaims at that time.

In opposition, Caroline argues that she should not be denied her choice of forum because, among other reasons, she is a New York resident, the Trust and Postnuptial Agreement have a New York choice of law clause and the Postnuptial Agreement was executed in New York. In addition, Caroline states that, where, like here, she is a New York resident, the Individual Respondents face a greater burden to demonstrate that New York is an inappropriate forum. Furthermore, BNY Mellon, a respondent, conducts business in New York. Caroline alleges that this too, creates a higher burden for Individual Respondents to demonstrate that an alternative forum would be more suitable.

Caroline notes that two of the Individual Respondents live in close proximity to New York. Moreover, the Individual Respondents had alleged that, if their motion to dismiss is denied, they intend to seek discovery from Caroline's and Michael's respective counsel regarding the drafting and negotiating of the Postnuptial Agreement. Caroline states that these lawyers are also located in New York.

With respect to the Article 77 proceeding, Caroline maintains that her application is properly before this court.

Respondent BNY Mellon

Mittelman declined to serve as executor for both the Will and for the Trust. On February 13, 2017, Caroline filed a petition for administration in Florida, requesting that the Will be entered for probate and that BNY Mellon be appointed as executor. On February 13, 2017, Caroline nominated herself as the administrative trustee and nominated herself and BNY Mellon as co-trustees of the Marital Trust. On April 26, 2017, a Circuit Court Judge in Florida admitted the Will to probate and appointed BNY Mellon as personal representative.[4] To date, BNY Mellon "has not accepted the appointment as successor co-Trustee of the Marital Trust." Palmesi aff, ¶ 18.

BNY Mellon responded to the petition, and declined to take a position with respect to the matter. BNY Mellon notes that its role, at this time, is personal representative. BNY Mellon has not yet accepted the appointment as co-trustee of the Marital Trust. The Will provides that the remainder of Michael's estate is to be disposed of as provided in the Trust. BNY Mellon alleges that the requested relief, to determine the "interplay of the Trust and the Postnuptial Agreement, would ultimately only affect the instructions of the Trust, not the will." BNY Mellon's memorandum of law at 3. As a result, BNY Mellon states that it has no current interest in the matter and that it declines to take a position.

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[4] The papers filed in Probate Court refer to the executor as the "personal representative."

DISCUSSION

Dismissal

On a motion to dismiss pursuant to CPLR 3211, the facts as alleged in the complaint are accepted as true, the plaintiff is given the benefit of every possible favorable inference, and the court must determine simply whether the facts alleged fit within any cognizable legal theory. *P.T. Bank Cent. Asia v ABN AMRO Bank N.V.*, 301 AD2d 373, 375 (1st Dept 2003). However, "where factual allegations or legal conclusions are flatly contradicted by documentary evidence, they are not presumed to be true, or even accorded favorable inference." *Taussig v Clipper Group, L.P.*, 13 AD3d 166, 167 (1st Dept 2004). Dismissal of a complaint pursuant to 3211 (a) (1) is warranted where "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *150 Broadway N.Y. Assoc., L.P. v Bodner*, 14 AD3d 1, 5 (1st Dept 2004) (internal quotation marks and citation omitted).

Article 77 and Forum Non Conveniens

"CPLR 7701 authorizes the institution of a special proceeding in the Supreme Court for the determination of matters relating to all types of express trusts, including inter vivos and testamentary trusts." *Matter of Chiantella v Vishnick*, 84 AD3d 797, 798 (2d Dept 2011). Pursuant to CPLR 304 (a), "[a] special proceeding is commenced by filing a petition." CPLR 403 (d) provides that, as applicable to special proceedings, "[t]he court may grant an order to show cause to be served, in lieu of a notice of petition at a time and in a manner specified therein."

The Individual Respondents argue that this petition should be denied as premature because issue has not yet been joined. However, the petition is not premature. Caroline has

properly commenced a special proceeding pursuant to Article 77 by filing a petition and serving an order to show cause. The narrow issue presented to this Court is whether Caroline's rights under the Trust have been waived or impaired by the Postnuptial Agreement.

"The doctrine of forum non conveniens articulated in CPLR 327 permits a court to stay or dismiss such actions where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere." *Sambee Corp. v Mohamed Moustafa*, 216 AD2d 196, 198 (1st Dept 1995). Specifically, CPLR 327 (a) provides that "[w]hen the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just."

The burden rests on the party challenging the forum to illustrate "factors which militate against accepting the litigation . . . ." *Thor Gallery at S. DeKalb, LLC v Reliance Mediaworks (USA) Inc.*, 131 AD3d 431, 431 (1st Dept 2015) (internal quotation marks and citation omitted). The factors to be considered include: "the burden on the New York courts, the potential hardship to the defendant, [] the unavailability of an alternative forum" for the plaintiff to bring the action, the residency of the parties, and where the underlying transaction occurred. *Id.* at 432 (internal quotation marks and citation omitted). The Court of Appeals has noted that "[n]o one factor is controlling. The great advantage of the rule of *forum non conveniens* is its flexibility based upon the facts and circumstances of each case." *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 (1984) (internal citations omitted).

The Individual Respondents cross-move, pursuant to CPLR 327 (a), to dismiss the petition based on forum non conveniens. They allege that Florida would be a more appropriate

forum because, among other reasons, as the Will has been admitted to probate in Florida, the relevant documentation concerning the disputed assets is already there.

Here, given the circumstances of the case, the Individual Respondents have sufficiently met their burden to demonstrate that New York is an inconvenient forum and that the matter would be better adjudicated in Florida. Prior to commencing this proceeding, Caroline initiated probate proceedings in Florida. The Will has been admitted to probate by a Florida court and letters of administration have been issued to BNY Mellon. Moreover, despite the New York choice of law provision in the Trust, petitioner has already availed herself of the court in Florida with respect to the Trust. In conjunction with initiating probate proceedings, Caroline simultaneously nominated herself as administrative trustee and nominated herself and BNY Mellon co-trustees of the Marital Trust. The appointments of trustees are still outstanding, as BNY Mellon has not yet accepted appointment. As a result, the "pendency of an action in [Florida] and the burden the litigation would impose of the courts of this State because of the multiplicity of the actions" militates towards dismissal. *World Point Trading PTE. v Credito Italiano*, 225 AD2d 153, 161 (1st Dept 1996).

As the terms of the Will dictate that the residuary estate is to be placed in the Trust, the issue of whether the petitioner waived her rights under the Trust by signing the Postnuptial Agreement is intertwined with the probate proceedings. It is undisputed that the parties settled a divorce action by executing the Postnuptial Agreement. However, the terms of the Postnuptial Agreement could be interpreted as somewhat inconsistent with the terms of the Trust, and any potential conflicts need to be addressed. The probate court in Florida may have to interpret the Postnuptial Agreement to determine the rights of the parties under the Will. *See e.g. Fox v*

Fusco, 4 AD3d 313, 313 (1st Dept 2004) (Court granted dismissal based on forum non conveniens when New Jersey was "the locus of both the QDROs and the probate proceeding").

Moreover, to avoid duplicate proceedings and potentially duplicate rulings, Florida is a more appropriate forum. *See e.g. World Point Trading PTE. v Credito Italiano*, 225 AD2d at 161 ("The significance of the action pending before the Italian courts is not limited to the obvious availability of another forum. It presents the attendant risk that conflicting rulings might be issued by courts of two jurisdictions. It involves duplication of effort . . . .")

All of the relevant documentation concerning the disputed assets, including the property in Florida and the assets out of state, is already in Florida as a result of the probate proceedings. This factor also militates towards dismissal. *See e.g. Shin-Etsu Chem. Co. v ICICI Bank Ltd.*, 9 AD3d 171, 178 (1st Dept 2004) (Court granted motion to dismiss on grounds of forum non conveniens, noting, "[t]he complete written record of this transaction is located in India, as are all documents and correspondence").

Here, Caroline is a resident of New York and states that, up until Michael's death, they resided together in Florida and in New York. However, although petitioner is a New York resident, her "New York residence is an important but not dispositive factor favoring trial in New York." *Holness v Maritime Overseas Corp.*, 251 AD2d 220, 224 (1st Dept 1998); *see also Rosenberg v Stikeman Elliott, LLP*, 44 AD3d 840, 841 (2d Dept 2007) (internal citations omitted) ("Even if the plaintiff possesses residences or domiciles both in New York and Canada, she already had availed herself of Canadian courts in the past, not only in the related probate action, but also in an almost identical matter involving the payment of legal fees for the probate matter").

Further, even though Caroline claims that two of the Individual Respondents live closer to New York than to Florida, the Individual Respondents allege that they have already consented to service in Florida. In addition, while the Trust and the Postnuptial Agreement have a New York choice of law clause, a Florida court can apply New York law.

Accordingly, in the interest of substantial justice and in this Court's discretion, the Individual Respondents' motion to dismiss on the grounds of forum non conveniens is granted.

As a result of this decision, this Court is granting the Individual Respondents' cross-motion to dismiss the petition in its entirety pursuant to CPLR 327 (a). Therefore, this Court will not consider the remainder of the requested relief to dismiss the petition pursuant to CPLR 3211 (a), as this issue is best addressed by the Florida court. *See e.g. Troni v Banca Popolare Di Milano*, 129 AD2d 502, 504 (1st Dept 1987) ("Having found New York to be an inappropriate forum, the merit or lack thereof of the action is best reserved for the courts of Italy").

CONCLUSION, ORDER AND JUDGMENT

Accordingly, it is hereby

ORDERED that the cross-motion of Matthew Brian Lorig, Andrew Michael Lorig and Elizabeth Daly to dismiss this proceeding on the ground that New York is an inconvenient forum is granted on condition that the Individual Respondents stipulate to accept service of process and stipulate to waive the defense of the statute of limitations in the event that this proceeding is commenced in Collier County, Florida; and it is further

ORDERED that, within 30 days from service of a copy of this order with notice of entry, the Individual Respondents shall file proof of compliance with the above conditions with the Clerk of the Part and with the County Clerk (Room 141B), together with a copy of this order

with notice of entry and proof of service of the foregoing on counsel for petitioner Caroline Berthet; and it is further

ORDERED that the remainder of the cross-motion seeking dismissal pursuant to CPLR 3211 (a) (1) is denied as moot; and it is further

ORDERED that, upon the timely filing of the foregoing, the County Clerk shall enter judgment dismissing this proceeding; and it is further

ORDERED that, in the event the court in Florida fails to accept jurisdiction of this proceeding the parties may reinstate this special proceeding with this Court.

Dated: June 18, 2018

ENTER:

J.S.C.

SHLOMO HAGLER
J.S.C.