

Matter of Kulukundis (Sigal)
2018 NY Slip Op 31270(U)
June 15, 2018
Surrogate's Court, New York County
Docket Number: 2010-3411/K
Judge: Rita M. Mella
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court

Date: June 15, 2018

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SCPA 2103 Petition of Albert Sigal and Barbara L. de Mare, :
Executors of the Will of :
:
M. MICHAEL KULUKUNDIS, :
:
Deceased. :
-----X

DECISION
File No.: 2010-3411/K

M E L L A, S.:

At the call of the May 8, 2018 calendar, the court granted the SCPA 2103 petition of Albert Sigal and Barbara L. de Mare, executors of the will of M. Michael Kulukundis, to the extent of ordering respondent Tara Kulukundis to vacate a co-operative unit, Apartment 1107, The Pierre Hotel, 2 East 61st Street, New York, New York, by January 15, 2019 and, in the meantime, to allow petitioners and their agents reasonable access to the apartment, during the day, on 48-hours' notice. The balance of the requested relief — a request for costs and disbursements, including petitioners' legal fees — is denied.

Petitioners had petitioned for turnover of the apartment, owned by a closely-held corporation, 100% of the stock of which is owned by the executors and is not specifically bequeathed.

Decedent died on September 19, 2010; petitioners have been maintaining The Pierre apartment ever since. According to respondent, the current monthly maintenance and capital charges are \$12,815. The instant proceeding — essentially eviction — was prompted by petitioners' alleged need to fulfill obligations under a September 26, 2016 contract for the sale of the apartment.¹

¹ Respondent's eviction from The Pierre apartment — which, according to petitioners, she occupied only after decedent's death — does not deprive her of a home. Petitioners' allegations that respondent, individually, owns an apartment on East 52nd Street in Manhattan,

Respondent objected to the petition. She challenged the validity of the September 26, 2016 contract of sale, argued that she had never consented to it, contended that the executors had “no financial need” to sell the apartment as they could afford to continue to maintain the apartment, and, finally claimed: “It may well be that the size of her elective share would require the Executors to turn over to Mrs. Kulukundis either the Pierre Apartment or its proceeds of sale.” The court addresses each of these arguments.

The Court of Appeals has made clear that a Surrogate’s Court has jurisdiction over an eviction proceeding (“Applying these principles to the eviction matter, it would seem to follow that such a proceeding, brought by the executors in the process of attempting to wind up the administration of the estate, is cognizable in the Surrogate’s Court,” *Matter of Piccione*, 57 NY2d 278, 290 [1982]).

The validity of the executors’ contract to sell The Pierre apartment is not before the court. Had respondent sought a determination that the contract was void, the purchaser would have had to have been made a party to the proceeding.

An estate fiduciary has a duty to marshal estate assets and to prevent waste (*see Matter of Haberstick*, 169 Misc 2d 543, 545 [Sur Ct, New York County 1996] [“An executor or an administrator is required to marshal [sic] assets, pay administration expenses and make distribution. . . . [H]is or her main objective is to prevent waste while acting expeditiously to wind up the affairs of the estate”]). Accordingly, petitioners are duty-bound to marshal The Pierre apartment; they must do so whether or not they have entered into a

and that petitioners, not only have been paying the maintenance and taxes on her apartment, but also, in anticipation of her move from The Pierre apartment, have arranged and paid for extensive renovations to her apartment, are unrefuted.

contract for its sale.

Prospective approval by respondent, a person interested in the estate, of the executors' administration of the estate is not required. Her remedy, if the executors were to breach their fiduciary duty, would be to object to the executors' account.² At this juncture, respondent's consent or lack of consent to the sale of The Pierre apartment (although respondent contends she did not consent, her then counsel was kept apprised of negotiations and attended the signing of the September 26, 2016 contract of sale is irrelevant.

On March 16, 2011, respondent filed a notice of her exercise of her spousal right to elect against the will (*see* EPTL EPTL 5-1.1-A [d] [1]). An elective share of a decedent's estate is a "pecuniary amount" (EPTL 5-1.1-A [a] [2]), satisfied by a "ratable contribution" from the beneficiaries other than the surviving spouse, "which contribution may be made in cash or in the specific property received from the decedent by the person required to make such contribution or partly in cash and partly in such property as such person in his or her discretion shall determine" (EPTL 5-1.1-A [c] [2]). Accordingly, respondent's exercise of her spousal right of election does not entitle her to ownership — or the use — of a specific asset.

Respondent having failed to articulate a valid legal or equitable basis for her claim that she is entitled to remain indefinitely in The Pierre apartment at the expense of the estate, the court granted the executors' SCPA 2103 petition, to the extent indicated herein, and ruled: If respondent fails to vacate The Pierre apartment by January 15, 2019, a warrant of

² At the May 8, 2018 calendar, the court granted Tara Kulukundis's petition to compel an accounting by the executors.

eviction may issue, upon five days' notice.

This decision, together with a transcript of the May 8, 2018 proceedings, constitutes the order of the court. Petitioners are directed to serve on respondent Tara Kulukundis, by overnight mail, a copy of this written decision.

The clerk of the court is directed to mail a copy of this decision to Joseph M. Weitzman, Esq., counsel for petitioners; David Rabinowitz, Esq., counsel for respondent Tara Kulukundis; and to Tara Kulukundis, herself.

Dated: June 15, 2018



S U R R O G A T E