

DeLuca v Samuels

2018 NY Slip Op 32262(U)

September 10, 2018

Surrogate's Court, Nassau County

Docket Number: 2016-389031/B

Judge: Margaret C. Reilly

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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**Jeffrey DeLuca, Public Administrator of Nassau County,
as Administrator of the Estate of**

DECISION

CATHLEEN R. SMITH, Deceased,

**File No. 2016-389031/B
Dec. No. 34604
Seq. No. 1**

Petitioner,

-against-

KAREN SAMUELS, “JOHN DOE” and “JANE DOE,”

Respondents.

PRESENT: HON. MARGARET C. REILLY

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

Order to Show Cause	1
Verified Petition with Exhibits	2
Verified Answer and Affidavit in Opposition.	3
Verified Reply.. . . .	4

Before this court is a petition by the Public Administrator, as administrator of the Estate of Cathleen R. Smith, to recover possession of the decedent’s real property. This proceeding was brought on by order to show cause returnable on March 7, 2018. The Public Administrator seeks an order and decree pursuant to NYRPAPL § 711[1], SCPA §1901[2][h], and EPTL §11.1.1[b][5]: to award him possession of the real property known as and located at 750 Macon Place, Uniondale, New York (the “Property”); issuing a warrant of eviction to the Sheriff of the County of Nassau to remove Karen Samuels, “John Doe,” and “Jane Doe” from the Property; directing the Sheriff of the County of Nassau to execute the aforesaid warrant; awarding a money judgment against Karen Samuels, “John Doe,” and “Jane Doe” in favor of petitioner in an amount equivalent to the cumulative use and

occupancy of the Property from December 25, 2015 [the date of death] through the date of delivery of possession; awarding a money judgment against Karen Samuels, “John Doe” and “Jane Doe” in favor of petitioner in an amount equivalent to the amount required to be paid by the Public Administrator to repair and remedy the damage caused by Karen Samuels, “John Doe,” and “Jane Doe”, if any, to the Property from December 25, 2015 through the date of delivery of possession; and granting petitioner the power to sell the Property. Respondents have served and filed a verified answer and affidavit.

The decedent, Cathleen R. Smith, died intestate on December 25, 2015, survived by two daughters, respondent Karen Samuels and Rebecca Samuels a/k/a Rebecca Daniels. Letters of administration issued to the Public Administrator by decree, dated July 7, 2017, after both daughters applied for letters of administration and agreed to the appointment of the Public Administrator. The only listed asset is the Property, though Karen Samuels asserts that that the estate has damage claims against others.

The petition alleges that pursuant to SCPA § 1902, the Public Administrator is statutorily authorized to sell the decedent’s real property in order to pay: (a) expenses of administration, (b) funeral expenses, (c) estate creditors, including real property taxes, (d) estate taxes, (e) debts or legacies, (f) the respective shares of decedent’s estate to the distributees of decedent’s estate, and (g) for any other purpose the court deems necessary.

The Public Administrator claims that the Property must be sold in order to pay estate administration expenses, to pay and satisfy decedent’s creditors and to pay and make distributions to decedent’s distributees. He claims upon information and belief that the

respondents were residing in the premises prior to the decedent's death pursuant to an oral, month to month agreement with the decedent. After decedent's death, respondents have continued to reside in and occupy the premises. The Public Administrator served a 30-day Notice to Quit Occupancy of the Premises (Real Property Law § 232-b) on September 19, 2017, thereby notifying respondents of the termination of their purported tenancy. The Public Administrator further claims that despite this notice, the respondents have continued to reside in and occupy the premises.

The petition invokes EPTL § 11-1.1[b][5] and SCPA § 1902. Under EPTL § 11-1.1[b][5], with respect to any property or any estate therein owned by an estate or trust, except where such property or any estate therein is specifically disposed of, the fiduciary may take possession of, collect rents from, manage and sell same at public or private sale.

SCPA Article 19 addresses the power of a fiduciary to dispose of estate property, including the "real property of a decedent" (SCPA § 1901[1]). Under SCPA § 1902, the fiduciary is statutorily authorized to sell the decedent's real property in order to pay: (a) expenses of administration, (b) funeral expenses, (c) debts of the decedent [but not mortgage liens], including real property taxes, (d) estate taxes, (e) debts or legacies, (f) the respective shares of decedent's estate to the distributees of decedent's estate entitled thereto, and (g) for any other purpose the court deems necessary.

As relevant, the Public Administrator's verified petition claims that the Property must be sold in order: [a] to pay the expenses of administration, [b] to pay and satisfy decedent's creditors, and, [c] to make distributions to decedent's distributees. It is alleged that

respondents have failed to pay the mortgage lien holders and have caused waste to the Property. The petition then alleges that, if and to the extent that any tenancy or right to use and occupy the subject property was granted to respondents, any such tenancy has been effectively terminated by the Public Administrator based upon Petitioner's purported compliance with RPL § 232-b.

The verified answer asserts that Karen Samuels is a distributee of the decedent, is not a tenant and has never been a tenant but is a fifty percent (50%) owner of the Property. She asserts, therefore, that the only persons who can properly sell the Property are her and her sister, the other distributee. In that, she is mistaken.

“[A] fiduciary has a superior right to that of a beneficiary ...to possess and manage the decedent's realty so that [he] may sell the property in accordance with the statutory authority with which estate fiduciaries are imbued as well as to collect the rentals thereof, and otherwise preserve the asset and make it productive to all those with a beneficial interest therein” (*Matter of Pastorelli*, 2002 NY Misc LEXIS 2009 *3 [Sur Ct, Suffolk County, November 21, 2002]; see also *Matter of Rice*, 8 Misc 3d 1001 [A] [Sur Ct, Nassau County 2005]). Furthermore, although title to the real property of an intestate decedent vests upon death in the statutory distributees by operation of law, the vesting is subject to the power of the administrator to sell the property to pay debts and/or administration expenses and make distribution (*Kinard v Rosenblatt*, 39 Misc 3d 1215[A][Sur Ct, Queens County 2013]).

Here, the petition alleges that sale of the property is necessary to pay debts and administration expenses. The answer filed does not rebut these allegations and they are,

therefore, due proof of the facts asserted (SCPA § 509; *Matter of Wigfall*, 20 Misc 3d 648 [Sur Ct, Westchester County 2008]).

Accordingly, the petition is **GRANTED**, in its entirety. In addition, respondents are prohibited from interfering in any manner with the possession, control or management of the premises by the Public Administrator for the purpose of selling the premises, which the Public Administrator is authorized and empowered to do pursuant to EPTL § 11-1.1.

The matter is scheduled for a hearing on the issue of charges for use and occupancy (*Matter of Sevioli*, 31 AD3d 452 [2d Dept 2006]) and damage on December 10, 2018 at 10:00 a.m. The issue of costs shall be addressed after the hearing on the charges for use and occupancy and damage.

A warrant of commitment may be submitted without notice.

This constitutes the decision and order of the court.

Dated: September 10, 2018
Mineola, New York

E N T E R:

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

cc: Richard T. Kerins, Esq.
Mahon, Mahon, Kerins & O'Brien, LLC
Attorneys for Petitioner
254 Nassau Boulevard South
Garden City South, New York 11530

Karen Samuels
Respondent Pro Se
750 Macon Place
Uniondale, New York 11553