

Matter of Chi-Chuan Wang

2018 NY Slip Op 32606(U)

October 12, 2018

Surrogate's Court, New York County

Docket Number: 2003-2550/F

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: October 12, 2018

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SCPA 2103 Proceeding Commenced by the Public
Administrator as Temporary Administrator of the Estate of

CHI-CHUAN WANG,

DECISION
File No.: 2003-2550/F

Deceased.

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M E L L A, S.:

In the SCPA 2103 proceeding commenced by the Public Administrator as temporary administrator of the estate of Chi-Chuan Wang, two respondents have each moved for an order holding one of the other respondents in contempt.

Decedent's son, Shou-Kung Wang, filed the first motion. He sought an order holding decedent's daughter, Yien-Koo Wang King, in contempt, and he also sought related relief. Specifically, he sought an order: (1) holding Yien-Koo Wang King in contempt for selling "at least" six paintings in violation of the restraint in the October 28, 2003 supplemental order to show cause by which the Public Administrator had commenced the instant SCPA 2103 proceeding;¹ (2) revoking Yien-Koo Wang King's preliminary letters, issued February 15, 2018; (3) directing Yien-Koo Wang King to turn over to petitioner \$34 million representing the value of the six paintings at issue; and (4) directing that, if Yien-Koo Wang King or her agents should fail to turn over such property, the court deem Northwich Investments, Ltd., Goldwave Trading, Ltd., Tie Fung International, Ltd., and Soon Huat, Inc., assets of decedent's estate.

At the call of the May 29, 2018 calendar, the court dismissed Shou-Kung Wang's request for revocation of Yien-Koo Wang King's preliminary letters. Such request may be made only by

¹ Although the notice of motion refers to a "November 2003 Restraining Order," apparently what was intended was the October 28, 2003 supplemental order to show cause.

petition (*see* SCPA 711).

Yien-Koo Wang King filed the second motion. She sought an order: (1) holding Shou-Kung Wang's son, Andrew Wang, in civil and criminal contempt for disposing of 46 paintings in violation of the October 2003 restraint and (2) directing Andrew Wang to turn over to petitioner the 46 paintings or the value thereof. At the call of the September 18, 2018 calendar, the court dismissed Yien-Koo Wang King's motion as procedurally defective. An application for contempt must be made by petition (*see* SCPA 607; *Matter of Levine*, NYLJ, Aug 15, 2012, at 23, col 1 [Sur Ct, NY County]). The court indicated that it would dismiss — and hereby does dismiss — the balance of Shou-Kung Wang's motion for contempt and related relief, for the same reason.

SCPA 607 clearly provides that a contempt application must be made by petition:

“A person interested in the compliance with a decree or order, directing the payment of a sum of money or the performance of any act, may present to the court a petition” (Emphasis added.)

The enactment of SCPA 607 (L 1966, ch 953, eff Sept 1, 1967) codified the then existing practice of instituting a contempt application by petition. The initial Practice Commentary (McKinney's) with respect to SCPA 607 reads:

“This section had no counterpart in the Surrogate's Court Act. It is intended to set forth a procedure for punishment by contempt. In effect, it provides for a petition showing one of the grounds for punishment as set forth in section 606

“Upon entertaining such a petition, the court can”

Myles B. Amend, Jr., Practice Commentary, McKinney's Cons Laws of NY, Book 58A, SCPA 607 at 497 (1967 ed) (Emphasis added) (hereinafter Amend, Practice Commentary).

The March 31, 1966 Fifth Report of the Temporary State Commission on the

Modernization, Revision and Simplification of the Law of Estates to the Governor and the Legislature explains:

“The surrogate’s court act contains no procedure for an application to punish for contempt. This section incorporates present practice.” (Emphasis added.)

This court is not unmindful of the confusion generated by SCPA 606 (2) as to the appropriate procedure for bringing a contempt application (*see, e.g., Matter of Clarke*, 2001 NY Misc LEXIS 1417 [Sur Ct, Nassau County, Sept 6, 2001]). An examination of the legislative history for SCPA 606 (2), however, indicates that SCPA 606 (2) presupposes a contempt application made by petition.

SCPA 606 is “former S.C.A. § 84 with changes only in the phraseology” (Amend, Practice Commentary at 492). The language of SCPA 606 (2) — “For the purpose of enforcement of a decree or order by means of punishment for contempt of court, the proceeding which terminated in such decree or order is deemed continued” — was enacted (absent the comma) as an amendment to Section 84 of the Surrogate’s Court Act, in 1940 (*see* L 1940, ch 410). The purpose of that amendment was to relax the procedural requirements for obtaining jurisdiction over a respondent in a contempt proceeding that was to be commenced by petition (*see* Report No. 340, New York County Lawyers’ Association, Committee on State Legislation, Bill Jacket, L 1940, ch 410 at 5; Letter from Surrogate’s Court, New York County, March 28, 1940, Bill Jacket, L 1940, ch 410 at 6; Report No. 216, The Association of the Bar of the City of New York, Committee on State Legislation, Bill Jacket, L 1940, ch 410 at 3-4).

Because a contempt application in this court must be made by petition, the motions for contempt and related relief are dismissed. Consistent with the court’s ruling at the call of the

September 18, 2018 calendar with respect to Yien-Koo Wang King's motion, any petition for contempt should be returnable November 16, 2018, the return day of Shou-Kung Wang's petition for revocation of Yien-Koo Wang King's preliminary letters.

This decision constitutes the order of the court.

Dated: October 12, 2018



S U R R O G A T E