

Matter of Frank

2018 NY Slip Op 34556(U)

June 15, 2018

Surrogate's Court, Richmond County

Docket Number: File No. 2016-132

Judge: Robert J. Gigante

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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In the Matter of the Estate of

ROBERT A. FRANK,

Deceased.

File No. 2016-132

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In this contested probate proceeding, Doris Stern, the Objectant to the offered will, filed a Notice of Motion on February 13, 2018 seeking to extend the discovery period beyond the time frame set forth in 22 NYCRR §207.27. An Affirmation in Opposition to the requested relief was filed on March 12, 2018 by the Proponent of the Will, Anthony Ameduri, Esq.. Oral argument was heard by the Surrogate on April 18, 2018. Catherine Paulo, Esq, court appointed Guardian Ad Litem for unknowns stated during oral argument that although she did not submit papers on the pending motion (in order to prevent additional costs), she was present during Anthony Ameduri's deposition and has reviewed the already exchanged discovery documents between the parties. She stated she did not believe the Objectant met her burden of special circumstances as set forth in 22 NYCRR §207.27. John Passarello, Esq. on behalf of the Public Administrator, Anthony Catalano, Esq., did not take a position on the pending motion. The matter was marked decision reserved after oral argument was heard.

FACTS

A Last Will and Testament dated October 28, 2009 was offered for probate by Anthony Ameduri, Esq., Proponent of the Will and Respondent to the pending motion. The decedent bequeathed "50% of the remainder of my Estate to my late brother,

THEODORE G. FRANK's, best friend, ANTHONY L. AMEDURI, XXX, NJ." Ameduri is also the nominated executor of the offered will. The offered will was drafted by Anthony Galante, Esq., Ameduri's partner in the law firm of Ameduri Galante & Friscia. The decedent's estate is valued at approximately \$1.5 million, according to the filed probate petition. Mr. Ameduri stated during depositions that the decedent relied on him for everything and that the decedent had contacted Mr. Ameduri when the decedent discovered that his caretaker had taken over \$800,000.00 from him. Mr. Ameduri stated that after 'they' looked into the options available, commencing an Article 81 proceeding offered the fastest way to try and get back the decedent's money. The Article 81 proceeding was commenced on or about October 2, 2009 and Mr. Ameduri was appointed as the decedent's guardian. There was, a mini mental exam in which the decedent scored 28/30. The decedent was adjudicated as needing a guardian by a court of competent jurisdiction.

The 2009 Will also included other bequests: "20 of the remainder of my Estate to my cousin, BEATRICE SCHAWRTZ, XXX, NY, 20% of the remainder of my Estate to my good friend, SAL CINO, XXX, NY, 10 % of the remainder of my Estate to my friend, Philip Johansen, XXX, NY." The proponent of the 2009 will argues that the decedent had also drafted, on his own, an earlier will, dated 1995 in which Mr. Ameduri was also left 50% of the decedent's estate, as well as ostensibly the same bequests as the 2009 will. The only difference being that Marie Wausnock, who was given 10% of the residuary estate in the 1995 Will, was removed from the 2009 Will, since she was the one that had improperly taken the decedent's money.

The Objectant was not left any bequests in either of the wills. During oral argument, attorney for the proponent stated that the decedent had not seen the Objectant in 50 years.

Discussion

22 NYCRR § 207.27 states “In any contested probate proceeding in which objections to probate are made and the proponent or the objectant seeks an examination before trial, the items upon which the examination will be held shall be determined by the application of Article 31 of CPLR. Except upon the showing of special circumstances, the examination will be confined to a three-year period prior to the date of the propounded instrument and two years thereafter, or to the date of decedent's death, whichever is the shorter period.” The Objectant argues special circumstances exist in as much as the decedent's 2009 will was executed in Mr. Ameduri's office, by Mr. Ameduri's partner, naming Mr. Ameduri as the nominated executor and bequeathing him 50% of the estate. While the Proponent argues that the 1995 also had the same testamentary scheme, the Objectant states that the decedent' started solely relying on Mr. Ameduri after the decedent's brother died and that the relationship between the decedent and Mr. Ameduri existed because of the decedent's brother.

The three/two rule is not absolute and may be adjusted based on the circumstances and fact pattern of the case (Matter of Kaufmann, 11 AD2d 759). To increase the time period beyond the three/two rule, the objectant must set forth the facts that support the allegation of a scheme of fraud or a continuing course of conduct (Matter of Chambers, NYLJ 11/2/01 (Sur. Ct. Suffolk County)). Based on the facts, the Court finds that there does exist a special circumstance that warrants discovery go beyond the

three/two rule. Although the 1995 will has not been offered for probate and is not the subject of the discovery motion, it could be indicative of the beginning of a particular course of conduct (Matter of Partridge, 141 Misc. 2d 159 (Sur. Ct. Richmond County 1988)).

Discovery is limited to January 1994 to October 2011 and is limited to the decedent's financial accounts only.

This decision shall constitute the Order of the Court.

Dated: June 15, 2018



ROBERT J. GIGANTE, Surrogate