

Matter of Pietropinto

2018 NY Slip Op 34564(U)

October 1, 2018

Surrogate's Court, Suffolk County

Docket Number: File No. 2017-627/B

Judge: John M. Czygier, Jr.

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OCT 01 2018

SURROGATE'S COURT : SUFFOLK COUNTY

Proceeding to Turnover Property Withheld)
from the Estate of)

MICHAEL CIPOLLINO
CHIEF CLERK

DECISION

By: HON. JOHN M. CZYGIER, JR.,
.....

Surrogate
.....

ROSALIE PIETROPINTO,

Dated: OCT 1 2018
.....

Deceased,

File #: 2017-627/B
.....

Pursuant to SCPA 2103.

Although this matter was litigated during the pre-objection period to the probate of the underlying testamentary instrument(s) herein, probate was granted and letters testamentary issued without objection to Judith Pietropinto (petitioner herein) on March 30, 2018. Petitioner has now brought a proceeding pursuant to SCPA 2103 seeking an inquiry and the return of estate property which may be in the possession of Rosemarie Burriesci (respondent herein).

Background

The record reflects that captioned decedent died testate on January 9, 2016, survived by four adult children. Petitioner, decedent's daughter Judith Pietropinto, propounded a will, dated September 4, 1996 and a codicil, dated May 14, 2007, after bringing a proceeding to compel production of decedent's will against this respondent. The will named Frank Pietropinto, Jr. as executor and Judith Pietropinto as alternate executor. Frank Pietropinto, Jr. renounced his appointment. The 1996 will provides that the decedent's children share the residuary estate equally, after a bequest to the decedent's daughters of her jewelry. The decedent also mentioned her real property at 64 Van Sicklen Street in Brooklyn, New York, expressing her request that the home be sold and the proceeds split equally among the four children.

In the 2007 codicil, the decedent revokes the language in the prior will concerning the Brooklyn property, providing that she has "...this 14th day of May, 2007, made a gift of my home at 64 Sicklen Street, Brooklyn, New York, to my beloved children Judith Pietropinto, Rosemarie Burriesci, and Frank Pietropinto, Jr." The

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decedent then goes on to state that she is doing this because of the lifetime gifts made by the decedent and her husband to daughter Rosalie O'Hara and her daughter's family. She states that she wishes to "bring equity" to the inheritance left all her children, by "equalizing the treatment" of the children in consideration of "loans, gifts and other monies accessed by Rosalie O'Hara and her husband Vincent O'Hara...." (Article First, Codicil). As noted, respondent herein is one of the decedent's surviving four (4) children.

After motion practice concerning the conduct of examinations pursuant to SCPA 1404, the will and codicil were admitted to probate by this court by decree dated March 29, 2018, without objection.

Subsequently, petitioner filed a proceeding seeking an inquiry of respondent concerning "any personal property that the Decedent may have had an interest in at the time of her death and any other assets which may belong to the Estate..." (Petition, p.2, Wherefore Clause, ¶1). On return of citation, respondent having filed her answer, counsel for the parties agreed that petitioner would be allowed to file a reply, and the matter would be submitted to the court for a determination on the papers.

The answer submitted by respondent avers that the decedent "...made *inter vivos* gifts of all her jewelry and personal possession (*sic*) during her life time (*sic*) to her children," and that "all assets of the decedent were distributed by the decedent during her lifetime according to her wishes." (Verified Answer to Petition, p.1, ¶¶3-4).

In reply, counsel for petitioner contends that, as fiduciary of the estate, petitioner is entitled to inquire into the status of estate assets of a party who may have information with respect thereto. Counsel goes on to specify the areas of inquiry proposed, including the sale of the contents of the house at 64 Van Sicklen Street in Brooklyn, NY, disposition of \$50,000.00 in proceeds from the decedent's checking and savings accounts, disposition of the contents of decedent's safety deposit box at HSBC in Oceanside, NY, disposition of the decedent's jewelry and disposition of decedent's income (Reply Affirmation, ¶4(a) through(e)). Counsel concludes by asking the court to direct respondent to appear for an inquiry.

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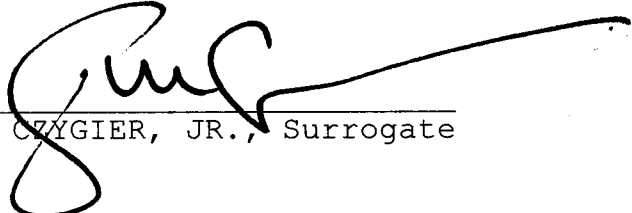
Discussion and Conclusion

Often referred to during its inquisitorial stage as a "licensed fishing expedition" (*Matter of Rosencrantz*, 5 Misc.2d 308), in a proceeding brought pursuant to SCPA 2103 petitioner only needs to set forth allegations sufficient to justify an inquiry, as long as the discovery proceeding itself is not being used for the purpose of discovering or obtaining evidence to be used in another proceeding (*Estate of Boccia*, 2/23/2001 NYLJ 24 [col. 2]; citations omitted). In fact, pursuant to SCPA 2103, the court has the inherent authority to include in the proceeding any party that may hold assets belonging to the estate or that may have information regarding assets that may rightfully belong to the estate. Petitioner's reasons for singling out this particular respondent is somewhat unclear to this court, however, it is also well-noted that this type of proceeding is designed as "an information-gathering vehicle for a fiduciary attempting to garner information as to potential estate assets" (*In re Fialkoff*, 45 Misc3d 1205(A)*2, citing *Matter of Hendershot*, 16 Misc3d 1125(A)). In fact, the inquisitorial stage of the 2103 proceeding contemplates that the pleadings will be non-specific (*In re Fialkoff*, *supra*, citing *Matter of Hendershot*, *supra* and *Matter of Tesser*, 4 Misc2d 712, 713-714).

The answer filed by this respondent recites in general terms that the decedent made gifts and distributed all her assets during her lifetime. While this may, indeed, have been the case, as is clear from the decedent's own testamentary dispositions, it is not sufficient to derail the inquiry petitioner is entitled to conduct. Indeed, she may be open to criticism from others interested in the estate, if she does not fulfill her fiduciary duty by ensuring that she can account for all assets of this decedent.

Therefore, on this record, the court directs respondent to appear for examination by petitioner, pursuant to SCPA 2103, at a mutually convenient place and time. Subsequent to the inquiry, the court will give the parties an opportunity to amend their pleadings according to the testimony received, if needed.

Proceed accordingly.



JOHN M. CZYGIER, JR., Surrogate

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