

Matter of Eckert

2018 NY Slip Op 34591(U)

September 25, 2018

Surrogate's Court, Queens County

Docket Number: File No. 2016-3279/A

Judge: Peter J. Kelly

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This opinion is uncorrected and not selected for official publication.

Present: HON. PETER J. KELLY
SURROGATE

SURROGATE'S COURT: QUEENS COUNTY

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In the Matter of the Probate Proceeding,
Will of

File No. 2016-3279/A

BERNHARD ECKERT,

Deceased.
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Petitioner Susan Eckert-Barsz moves for an order dismissing the objections of Edward Eckert and Robert Eckert for their failure to comply with the court's previous order requiring each of them to post security for costs. The objectants oppose petitioner's motion and cross move for leave to reargue the motion to compel them to furnish security for costs.

By decision and order dated June 29, 2018, the court directed the non-domiciliary objectants to each post security for costs by an undertaking with sufficient surety in the amount of \$25,000.00 within 15 days of service of the decision and order. Upon the objectants' failure to post security as required, petitioner was given leave to make application to dismiss the objections (SCPA 2303[3]). The objectants have not complied with the court's order in that they have not posted the required undertakings, although Edward Eckert has placed the sum of \$25,000.00 with his attorney for the purpose of posting security pending reargument.

A motion for leave to reargue is addressed to the court's discretion and is designed to afford a party an opportunity to establish that the court overlooked or

misapprehended the facts or the law, or for some reason mistakenly arrived at its earlier decision (*Carrillo v PM Realty Group*, 16 AD3d 611; *Rodney v New York Pyrotechnic Prods. Co.*, 112 AD2d 410,411; *Schneider v Solowey*, 141 AD2d 813). Reargument is not designed, however, to afford the unsuccessful party successive opportunities to argue the issues previously decided or to present arguments different from those originally asserted (*McGill v Goldman*, 261 AD2d 593, 594; *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22; *Foley v Roche*, 68 AD2d 558).

In granting the original motion, the court took into consideration the lack of assets or prospective assets within the state available to the satisfaction of costs as might be enforced against the objectants, and weighed the bona fides of the objections against the circumstance where the propounded instrument provides for the benefit of the decedent's spouse and not the proponent. Furthermore, in fixing the amount of the undertakings to be posted, consideration was given to the significant expense the estate has and will continue to incur in this litigated proceeding. While recognizing that the amount of security is greater than what might be considered "average", the court is cognizant of the extremely litigious nature of the parties involved, the amount of the assets at their disposal, and that the expenses of litigation will most likely, and distressingly, be enormous.¹

1. Indeed, as petitioner has pointed out in her opposition to the cross-motion, disbursements have already exceeded \$17,000.00, and the parties are still in the beginnings of the discovery process.

Upon the papers submitted, objectants have not demonstrated to the court that it overlooked or misapprehended the facts or law or otherwise mistakenly arrived at its earlier decision. Accordingly, the cross-motion to reargue is granted, and upon reargument, the court adheres to its original decision requiring objectants to post security in the amount ordered.

Objectants have not timely posted security in accordance with the original order. Petitioner was given leave to make application to dismiss the objections if the objectants failed to do so. However, in light of the motion to reargue, and the placing of the sum of \$25,000.00 with their attorney pending reargument, objectants should be given a further opportunity to post security.

Accordingly, the motion to dismiss the objections is granted as to each objectant unless he file the required undertaking within fifteen (15) days of the date of service of a copy of this decision and order, or in lieu thereof, deposit the sum of \$25,000.00 with the Commissioner of Finance of the City of New York within the same fifteen (15) day time period.

The papers considered on these motions are the Notice of Motion and all the papers annexed; the Notice of Cross Motion and all the papers annexed; the Affirmation in Opposition to the Cross-Motion and in Further Support of the Motion and all papers annexed; the Supplemental Affirmation in Opposition to the Cross-Motion and in Further Support of the Motion and all papers annexed; and the Affirmation in Response of the guardian ad litem.

This is the decision and order of the Court.

The Clerk of the Court is directed to email a copy of this decision and order to the parties who have appeared in this proceeding.

Dated: September 25, 2018



SURROGATE