

Matter of Chu

2018 NY Slip Op 34592(U)

October 10, 2018

Surrogate's Court, Queens County

Docket Number: File No. 2016-3481/D

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 Petition of BARBARA CHU
as Executor of the Will of

ANNE MARIE CHU,

File No. 2016-3481/D

Deceased,

to Turnover property withheld from the estate.
-----X

In this turnover proceeding, petitioner has moved to compel compliance with an order of this Court and for sanctions.

The within matter was commenced by petition and order to show cause returnable May 17, 2018. An answer was filed and the matter was adjourned to June 18, 2018. Based upon those proceedings, the Court issued an order dated June 19, 2018 wherein it directed the retention of a computer forensic examiner to determine what information on decedent's company laptop was corporate in nature, and would be provided to petitioner, as opposed to information which might be personal and therefore to be given to respondent.

A real estate appraiser was to be retained to provide a fair market price of decedent's coop apartment and respondent was provided an opportunity to notify

petitioner if he desired to purchase same, all within forty days. Also a list of artwork “removed from decedent’s apartment” was to be provided by respondent within thirty days.

The matter was adjourned to July 30, 2018 at which time the parties entered into a stipulation to, again, retain a forensic examiner, to have respondent provide a list of artwork removed from the apartment and an adjourn date of September 5, 2018 was given. On September 5, 2018, the parties then adjourned the proceeding until September 20, 2018.

During oral argument of the motion, it appeared that while the appraisal had been performed, a brokerage agreement had not been signed. The laptop also had not been turned over for examination. However, respondent, through counsel, agreed to do so by the end of business that day.

It was also established that a list of removed artwork also had not been provided. Respondent’s counsel claimed same was due to his client’s “misunderstanding”, in that respondent merely had meant to inform petitioner that artwork had been “removed from the walls” of the apartment but not from the apartment itself.

Petitioner’s counsel withdrew all branches of affirmative relief set forth in the

motion, except for the request for sanctions, inasmuch as counsel felt respondent's actions and dilatory conduct warranted same.

With respect to the branch of petitioner's motion to sanction respondent and his attorney, the Court, in its discretion, may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in conduct which is defined as frivolous (see 22 NYCRR §130-1.1[a]).

Conduct is frivolous if it is completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law; if it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or it asserts material factual statements that are false (22 NYCRR §130-1.1[c]; Mascia v Maresco, 39 AD3d 504; Greene v Doral Conference Ctr. Assoc., 18 AD3d 429, 431).

It is clear that respondent's actions have caused delay and legal expenses that might otherwise have been eliminated. However, it is questionable whether, after hearing the arguments from both sides, that petitioner has proven the actions were frivolous pursuant to the court rule as previously set forth (see generally, 22 NYCRR §130-1.1; Joan 2000, Ltd. v Deco Constr. Corp., 66 AD3d 841).

It appears a more appropriate redress would be to surcharge respondent's

interest for legal fees incurred by the estate due to respondent's conduct in any accounting proceeding filed by the fiduciary (see, SCPA §2110; Matter of Hyde, 15 NY3d 179).

Accordingly the branch of the motion seeking sanctions is denied.

The matter is adjourned to October 15, 2018 and all TROs set forth in the Court's order of April 12, 2018, except as limited, shall remain in full force and effect.

This is the decision and order of the Court.

Dated: October 10, 2018



SURROGATE