

Matter of Peck

2019 NY Slip Op 30311(U)

February 13, 2019

Surrogate's Court, New York County

Docket Number: 2016-1617

Judge: Nora S. Anderson

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SURROGATE'S COURT: NEW YORK COUNTY

New York County Surrogate's Court

Date: February 13, 2019

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Probate Proceeding, Will of

File No. 2016-1617

NORMAN L. PECK,

Deceased.

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LILIANE PECK, as Preliminary Executor of the
Estate of NORMAN L. PECK, Deceased,

File No. 2016-1617/A

Plaintiff,

-against-

IAN S. PECK and STUBBS HOLDINGS, LLC,

Defendants.

-----X
LILIANE PECK, as Preliminary Executor of the
Estate of NORMAN L. PECK, Deceased,

File No. 2016-1617/B

Plaintiff,

-against-

IAN S. PECK,

Defendant.

-----X
ANDERSON, S .

The court-appointed property guardian of two infants moves to intervene on their behalf in three pending proceedings related to their grandfather's estate, *i.e.*, the probate proceeding and two CPLR 3213 summary actions. Decedent's son, the infants' father, supports the motion to intervene, and decedent's spouse and daughter oppose it. For the reasons stated herein, the

motion is denied.

Background

Decedent died on April 16, 2016, survived by his spouse, son, and daughter. An instrument dated April 24, 2006, has been offered for probate by his spouse, and preliminary letters testamentary issued to her on May 4, 2016. The propounded instrument pours decedent's distributable estate into a revocable trust that he established for his primary benefit on November 3, 2004. Under the trust agreement, the bulk of the trust assets at grantor's death passed to a marital trust for the spouse's lifetime benefit. The infants have contingent interests in a portion of the trust remainder.

As preliminary executor, decedent's spouse commenced two summary actions under CPLR 3213 against decedent's son and his wholly owned company, Stubbs Holdings, LLC, on notes that he and the corporation executed in favor of decedent. Those actions were initiated in Supreme Court, New York County, and are presently sub judice in this court.

Discussion

This court previously denied an identical motion filed by movant based on his then lack of standing since he had not yet been appointed as the infants' guardian (*Matter of Peck*, Sur Ct, NY County, Jan. 23, 2018). With respect to the instant motion to intervene, the guardian argues that the infants' interests would be at risk in the probate proceeding and in the CPLR 3213 motions (collectively, the "proceedings") if the son took formal positions that arguably might trigger the trust agreement's in terrorem clause, in which case the son's interest in the trust and, therefore, the interests of the infants would be extinguished.¹ Movant, as the infant's guardian, seeks leave to

¹The will for its part contains no in terrorem clause.

intervene in the proceedings so that he can take positions that the son is fearful of taking. In support of the motion, movant invokes sections 1012 and 1013 of the CPLR.


To the extent allegedly relevant here, CPLR § 1012 (a) provides that intervention is as of right “when a statute of the state confers an absolute right to intervene” or “when the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment.” But, by decision dated May, 24, 2017,² on a motion to intervene brought by the son, this court determined that the infants were not among the persons entitled to be joined in the probate proceeding (SCPA 1410). Moreover, movant has failed to identify any cause for concern that the infants’ interests – in probate of the pour-over will and issuance of judgments in favor of the estate – are not adequately represented by the preliminary executor as petitioner in the probate proceeding and as plaintiff in the 3213 motions.

However, advancing the infants’ interests in enriching the trust is actually not the objective of the present motion. To the contrary, with his plan to act in the proceedings, in effect, as a surrogate for the son, movant makes clear that he would take defensive steps in the 3213 actions and oppositional steps in the probate proceeding (to conduct discovery for the purpose of examining the facts and circumstances of the March 2016 trust amendment) that could only threaten harm to the trust and its beneficiaries, including his wards. This is not to overlook that movant may genuinely believe his wards’ interests and the son’s to be, as a practical matter, overlapping. However, the infants’ interests cannot properly be gauged by speculating that the son would ultimately share with the infants any benefit that he derived from challenges to the propounded instrument or to his indebtedness to the estate.

² *Matter of Peck*, NYLJ, June 2, 2017, at 27, col 5 (Sur Ct, NY County).

Accordingly, movant's request for leave to intervene in the proceedings as a matter of right (CPLR 1012) must be denied. Similarly, under the foregoing circumstances the court denies movant's request for leave to intervene under the provisions of CPLR 1013.³

This decision constitutes the order of the court.



SURROGATE

Dated: February 13, 2019

³In relevant part, CPLR 1013 provides that, "any person may be permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact."