

<b>Matter of Urban v Lagan</b>
2022 NY Slip Op 32613(U)
July 8, 2022
Surrogate's Court, Albany County
Docket Number: File No. 2013-241/A
Judge: Stacy L. Pettit
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*State of New York*

*Surrogate's Court, Albany County*

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In the Matter of the Petition to Vacate Decree  
of Probate and Apply Doctrine of Dependent  
Relative Revocation for the Estate of ANNE  
S. URBAN, Deceased.

DECISION, ORDER AND DECREE

ATTORNEY GENERAL,

Petitioner,

File No. 2013-241/A

THOMAS LAGAN,

Respondent.

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**Appearances:**

Letitia James, Attorney General, Jennifer Allinson of counsel, Attorney  
for Petitioner, Albany

John J.E. Markham, II, Attorney for Respondent, Boston

Eric N. Dratler, Attorney for Chris Cioffi and Ellis Hospital Foundation,  
Inc., Tabner Ryan, Keniry, LLP, Albany

Richard A. Frankel, Attorney for The Northeast Health Foundation, Inc.,  
Rivkin Radler, LLP, Albany

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**Pettit, S.,**

Decedent died testate a resident of Albany County on February 20, 2013, survived only by her sister Julia U. Rentz.<sup>1</sup> Shortly thereafter, respondent Thomas Lagan petitioned this Court for probate of a will dated April 16, 2012 (2012 will), which named him as executor. The will was drafted by Richard Sherwood, who also appeared as Lagan's estate counsel in the probate

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<sup>1</sup> Rentz died a resident of Ohio on September 22, 2013, at the age of 95.

proceeding. Both Lagan and Sherwood were attorneys. Under the 2012 will, decedent's assets poured over into the Anne S. Urban Revocable Trust under agreement dated April 16, 2012 (2012 AURT), which was also drafted by Sherwood. Lagan was named as the sole residuary beneficiary of the 2012 AURT. By decree dated June 18, 2013, the 2012 will was admitted to probate by this Court (Doyle, S.), and letters testamentary were issued to Lagan as executor.

Several years later, Lagan and Sherwood were charged and convicted upon their pleas of guilty to crimes related to stealing funds from and related to decedent and her estate. Specifically, in 2018, Sherwood entered into a plea and cooperation agreement with the Office of the Attorney General, the terms of which required Sherwood to plead guilty to grand larceny in the second degree, a class C felony, in relation to "the scheme to steal over a million dollars from [decedent], Julia Rentz and various charities between January 2006 and November 2015."<sup>2</sup> Sherwood also

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<sup>2</sup> The amount admittedly stolen was at least \$11,800,000 pursuant to Sherwood's plea agreement with the State of New York: "At all times relevant to these criminal charges, including between January 1, 2006 through March 1, 2018, I was a practicing attorney with offices at 9 Washington Square, Washington Ave. Extension, Albany, New York. In my capacity as an attorney, I represented Pauline Bruggeman, Warren Bruggeman and Anne Urban in family matters and estate planning. I was initially referred to the Bruggemans by Thomas Lagan, an employee of AYCO, a financial planning firm with offices in the Capital District. In 2006, with input from Lagan, I drafted wills and revocable trusts for Warren and Pauline Bruggeman. After Pauline Bruggeman died in 2011, Lagan and I drafted the Anne Urban Irrevocable Trust (AUIT), which was signed by Anne Urban on November 30, 2011. Warren predeceased Pauline in 2009, The AUIT was constructed to allow Lagan and me to share the AUIT's proceeds without any court review or public scrutiny. I knew that it was not Anne Urban's intent that Lagan and I would receive its contents. Over \$9,000,000 flowed through the AUIT and into accounts controlled by Lagan and me. One clause in the Bruggemans' trusts placed \$2,000,000 in a sub-trust for Anne Urban's benefit, the remainder of which was to be returned to the Bruggeman family trust upon Anne's death and given to charity. However, at Anne's death in 2013, the entire \$2,000,000 was diverted to the AUIT so that Lagan and I could divide it between ourselves. In 2012, Pauline and Anne's sister, Julia Rentz, received approximately \$2,900,000 outright from the Pauline Bruggeman Revocable Trust (PBRT) and from her share of Pauline's life insurance policy. Since Julia was in poor health and had no children, Lagan and I conspired to convince Julia's attorney-in-fact, through her lawyer, to transfer the \$2,900,000 to the AUIT under the belief that it would be divided among the charities named in the PBRT. Instead, Lagan and I divided the money between ourselves. Throughout the course of this scheme, I engaged in an ongoing course of conduct with Lagan, by drafting trusts and wills and by using our positions as trustees and executors, with the purpose of defrauding Anne Urban, Julia Rentz and the Bruggemans' intended charities. In 2015, at the scheme's conclusion, Lagan and I divided approximately \$11,800,000 from the AUIT and Anne Urban's estate for our personal use."

entered into a federal plea agreement with the United States under which he pleaded guilty to conspiracy to launder money and filing false tax returns. In 2019, Lagan pleaded guilty in Albany County Court to grand larceny in the first degree, a class B felony. He then entered into a federal plea agreement with the United States under which he pleaded guilty to conspiracy to launder money and filing false tax returns. Sherwood and Lagan were each sentenced to terms of incarceration. Since that time, the US Marshals Service has collected over \$5 million in restitution from Sherwood and Lagan.

In September 2020, petitioner commenced this proceeding seeking to vacate the 2013 decree admitting the 2012 will to probate and for related relief. Jurisdiction was obtained over all necessary parties and Lagan appeared and opposed the petition. Petitioner now moves this Court for an order pursuant to CPLR 3212 granting summary judgment on the petition. Specifically, petitioner seeks the following relief: (1) vacate the decree dated June 18, 2013 which admitted the 2012 will to probate; (2) admit a will dated November 30, 2011 (2011 will) to probate and declare the 2012 AURT is invalid; (3) declare the 2011 Anne S. Urban Revocable Trust under agreement dated November 30, 2011 (2011 AURT) valid; (4) direct the distribution of decedent's share of restitution be distributed pursuant to the 2011 will and the 2011 AURT; (5) impose a constructive trust to distribute decedent's share of restitution pursuant to the 2011 AURT; and (6) deny probate to the 2012 will. Lagan has answered the motion, arguing that petitioner has failed to meet her burden of showing there are no genuine issues of fact, and the matter is now submitted for decision.

“[A] party seeking to vacate a probate decree based upon the alleged exercise of undue influence must establish a substantial basis for its challenge to the probated will and a reasonable probability of success on the merits of its claim” (Matter of American Comm. for Weizmann Inst.

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of Science v Dunn, 10 NY3d 82, 86 [2008]; see Matter of Musso, 227 AD2d 404, 406 [2d Dept 1996]; Matter of Westberg, 254 App Div 320, 321 [1st Dept 1938]). Under CPLR 5015, “a party seeking to vacate a final judgment upon the ground of newly discovered evidence [is required] to establish that such evidence ‘would probably have produced a different result’ in the original proceeding” (Matter of American Comm. for Weizmann Inst. of Science v Dunn, 10 NY3d at 95-96, quoting CPLR 5015 [a] [2]; see also CPLR 101; SCPA 102; 209 [10]). The Court of Appeals has determined that “this standard strikes the proper balance between the Surrogate’s statutory duty to ‘inquire particularly into all the facts’ and to be ‘satisfied with the genuineness of the will and the validity of its execution’ before admitting a will to probate and the policy favoring the finality of validly issued decrees” (Matter of American Comm. for Weizmann Inst. of Science v Dunn, 10 NY3d at 95-96, quoting SCPA 1408 [1]).

In support of her motion for summary judgment, petitioner submits, among other things, copies of the 2011 POA, the 2011 will, the 2011 AURT, the 2011 Anne S. Urban Irrevocable Trust (2011 AUIT), the 2012 will, the 2012 AURT, and documentation related to Sherwood’s and Lagan’s convictions, which provide the following information. Lagan, an attorney and investment advisor, provided estate planning and financial services to decedent’s sister and brother-in-law Pauline and Warren Bruggeman, and to decedent, for more than a decade. Warren and Pauline Bruggeman had no children. Pauline Bruggeman had two sisters, decedent, who had no spouse or children, and Julia Rentz, who had no spouse and a daughter who predeceased her in 2010. In 2006, Lagan asked Sherwood, an attorney who practiced in the area of trusts and estates, to provide these individuals with legal services related to estate planning. Lagan and Sherwood were both advising the Bruggemans when, in July 2006, the Warren H. Bruggeman Revocable Trust (WBRT) and the Pauline U. Bruggeman Trust (PRBT) were created. Warren and Pauline both signed wills

at the time the trusts were created, which wills each directed that all estate assets would be transferred to the testator's trust. Warren and Pauline's estate plans were identical, with their assets being distributed to close family, charities, churches and other institutions. Warren died in April 2009, survived by Pauline. Under the WBRT, a Family Trust was funded with \$4,185,353.46 from Warren's estate. According to the terms of the Family Trust, decedent and Julia Rentz would each receive half of the remaining funds upon the death of Pauline Bruggeman. Pauline died in August 2011. Her personal and trust assets at the time of her death were approximately \$19,838,789. Her trust directed that all residual funds be distributed to six named charities/institutions in established percentages. Decedent and Julia Rentz were each to receive half of the Family Trust, and decedent also received an additional \$2 million outright from Pauline's estate. Decedent was supposed to be the executor and trustee under Pauline's will and the PBRT; however, she signed a renunciation in September 2011, resulting in Lagan being the executor and Sherwood being the trustee. Sherwood also served as the estate attorney for Pauline's estate.

On November 9, 2011, decedent executed a power of attorney appointing Sherwood and Lagan as co-agents with the power to act separately. Although she also signed a statutory gift rider wherein she granted Sherwood and Lagan the authority to make gifts on her behalf, she did not permit them to gift her assets to themselves.

On November 30, 2011, decedent executed a will, which was drafted by Sherwood and nominated Lagan as executor. Under the terms of the 2011 will, her estate poured into the 2011 AURT, which named Sherwood as trustee. The 2011 AURT directed the trustee to distribute certain real property known as the Galway Camp to decedent's cousin Thomas Gutch and Gale Gutch, and the residuary to charities in the following shares: 20% to St. Nicholas Ukrainian Catholic Church; 20% to the Ukrainian American Citizens Club; 30% to the Ellis Hospital

Foundation, Inc.; and 30% to the Pauline Urban Bruggeman and Warren H. Bruggeman '46 Scholarship Fund for Unrestricted Endowment Support at Rensselaer Polytechnic Institute.

Contemporaneously with the execution of the 2011 will and the 2011 AURT, decedent signed the 2011 AUIT. Under this instrument, Sherwood was named as trustee and Lagan as successor trustee. Upon decedent's death, the 2011 AUIT permitted Sherwood to distribute the assets to any person or charitable organization, specifically including himself and Lagan.

On December 6, 2011, Sherwood transferred \$2 million from Pauline Bruggeman's estate account to an account in the name of the irrevocable trust. From February 13, 2012 to February 28, 2013, Lois Cheney, as attorney-in-fact for Julia U. Rentz made four transfers totaling \$2,905,499.37 from Julia's bank account to the irrevocable trust. On January 2, 2015, Sherwood began distributing the stolen funds held in the irrevocable trust account to himself and Lagan. Specifically, he authorized a wire transfer of \$3,598,908 from the irrevocable trust account to an account in his individual name and a wire transfer of \$2,693,865.92 to Lagan.

A few months later, decedent signed the 2012 will and the 2012 AURT. The 2012 will poured into the 2012 AURT, which named Sherwood as trustee. Under the 2012 AURT, upon decedent's death, the trustee was directed to distribute \$75,000 to St. Nicholas Ukrainian Catholic Church and \$75,000 to the Ukrainian American Citizens Club. The 2012 AURT also contains a provision addressing a December 8, 2011 agreement between Northeast Health Foundation and decedent wherein she agreed to donate \$500,000, including any matching funds received, to fund the construction of a greenhouse style cottage for seniors in need of skilled nursing at a senior living community owned and operated by Northeast Health. In the 2012 AURT, the gift to

Northeast Health was increased to \$1 million.<sup>3</sup> All remaining funds held by the 2012 AURT were to be distributed to Lagan as the residuary beneficiary.

According to Lagan's federal plea agreement, "[s]tarting in or around November 2011, following the death of Pauline Bruggeman, [Lagan] and Sherwood agreed that they would divert and transfer to themselves millions of dollars belonging to her estate and millions of dollars belonging to Anne Urban. This agreement was later expanded to include the diversion and transfer to themselves of an additional approximately \$3 million belonging to Julia Rentz." On November 30, 2011, Anne Urban executed the Anne S. Urban Irrevocable Trust (AUIT), which was drafted by Sherwood and named him as trustee and Lagan as successor trustee. The AUIT specifically permitted Sherwood to distribute the principal of the trust to himself and Lagan. "[Lagan] and Sherwood created the AUIT in order to divert and steal, and then conceal the theft of, millions of dollars that were supposed to be used either for Anne Urban's benefit, during her life, or distributed in accordance with the terms of the PBRT and Anne's estate documents, after her death. [Lagan] and Sherwood concealed from Anne Urban their reason for creating the AUIT, and asked her to sign the AUIT documents without advising her as to its implications, including its purporting to allow [Lagan] and Sherwood to transfer trust assets to themselves in contradiction to the prior POA she gave them." Thereafter, Lagan and Sherwood executed dozens of transfers of funds, ultimately sending the funds to their personal accounts and an LLC they created to facilitate and conceal their theft.

Following Pauline's death, Julia Rentz received approximately \$3 million from the PBRT. Sherwood contacted the attorney representing Julia Rentz's attorney-in-fact and convinced the attorney to transfer Julia's inheritance to him, purportedly to distribute to the charities and

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<sup>3</sup> In 2015, Northeast Health refunded \$500,000 of the \$1 million gift due to its inability to construct the greenhouse.

institutions identified in the PBRT. That money was transferred to the AUIT for the benefit of Lagan and Sherwood.

Based on these facts, Lagan pleaded guilty to conspiracy to launder money and filing a false tax return. The elements of conspiracy to launder money, as set forth in his federal plea agreement, are:

“First, two or more people agreed to knowingly and intentionally conduct a financial transaction involving funds that the defendant knew to be the proceeds of some specified unlawful activity, knowing and intending that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of specified unlawful activity, that is wire fraud conspiracy committed in violation of 18 USC §§ 1343, 1349; and Second, the defendant joined that conspiracy, either at its inception or sometime during its existence, knowing the purpose of the conspiracy and intending to help it succeed.”

The Court finds that the facts set forth in petitioner’s papers are sufficient to establish prima facie entitlement to judgment as a matter of law with respect to vacating the decree that probated the 2012 will. These facts are also sufficient to establish prima facie entitlement to judgment as a matter of law with respect to invalidating the 2012 AURT of which Lagan was the residuary beneficiary. Inasmuch as the 2012 AURT is funded solely from the 2012 will, invalidation of the 2012 will necessarily results in invalidation of the 2012 AURT.

In opposition, Lagan argues that the guilty pleas do not contain the facts required to establish that he defrauded Anne Urban into signing the 2012 will or that he stole millions of dollars from Anne Urban, Pauline Bruggeman and Julia Rentz.<sup>4</sup> The Court disagrees. The facts clearly stated above are that “[Lagan] and Sherwood agreed that they would divert and transfer to

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<sup>4</sup> It is noted that Lagan’s opposition is limited to vacatur of the 2012 will; he does not affirmatively oppose the other relief requested by petitioner including admission of the 2011 will to probate, declarations that the 2011 AURT is valid and the 2012 AURT is invalid, and distribution of the restitution funds in accordance with the 2011 will and 2011 AURT.

themselves millions of dollars belonging to [Pauline Bruggeman's] estate and millions of dollars belonging to Anne Urban. This agreement was later expanded to include the diversion and transfer to themselves of an additional approximately \$3 million belonging to Julia Rentz.” To the extent Lagan argues that the facts contained in Sherwood's guilty pleas are inadmissible hearsay, the Court need not reach this argument because there are sufficient facts in Lagan's guilty plea to establish his bad acts. Lagan and Sherwood acted together to alter Anne Urban's testamentary plan, as well as the Bruggemans' testamentary plan, in order to benefit themselves. The 2012 will directs all of Anne Urban's estate assets be distributed to the 2012 trust, of which Lagan is the residuary beneficiary. The 2011 AUIT also directly identifies Lagan and Sherwood as permissible beneficiaries of the assets of that trust. Money from decedent's and Pauline Bruggeman's estate was funneled through these trusts by Lagan and Sherwood for their personal benefit. To the extent Lagan points to brief statements made by Sherwood over the phone to Lagan prior to the guilty pleas as raising an issue of fact, the Court finds that these statements fail to qualify as evidence in admissible form to defeat a motion for summary judgment (see Medbury v Sonwil Distrib. Ctr., Inc., 19 AD3d 1111, 1112 [4th Dept 2005]).

Finally, with respect to Lagan's own affidavit, wherein he asserts that Anne Urban asked him to take her money because she had no need for it, it is well-settled that “a party ‘cannot create an issue of fact by submitting a self-serving affidavit that contradicts prior sworn testimony’” (Benamati v McSkimming, 8 AD3d 815, 817 [3d Dept 2004], quoting Ferber v Farm Family Cas. Ins. Co., 272 AD2d 747, 749 [2000]). Lagan admitted in his guilty plea that he and Sherwood worked together through their roles as financial advisor and estate planning attorney to steal millions of dollars from decedent, the Bruggemans, and Julia Rentz. As a result of their guilty pleas, Lagan and Sherwood were each sentenced to prison and ordered to pay millions of dollars

of restitution. Lagan cannot now claim that, despite the admissions in his guilty pleas, he did not defraud Anne Urban. Equity demands that Lagan shall not “be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime” (Riggs v Palmer, 115 NY 506, 511 [1889]; see Campbell v Thomas, 73 AD3d 103, 116 [2d Dept 2010]). Accordingly, the Court finds that Lagan has failed to raise an issues of material fact sufficient to defeat petitioner’s showing of entitlement to judgment as a matter of law.

Petitioner further requests that this Court deny probate to the 2012 will. Under SCPA 1408, probate of a will is not allowed unless Surrogate’s Court is satisfied with the genuineness of the will and the validity of its execution. Under the facts presented here, and the failure of Lagan to defeat petitioner’s showing, the Court is not satisfied with the genuineness of the 2012 will and denies probate to that instrument (see Matter of Walker, 124 AD3d 970, 973 [3d Dept 2015]).

Petitioner requests that this Court admit the 2011 will to probate. As the Court has denied probate to the 2012 will based on the fraud exercised upon decedent by Lagan and Sherwood, the 2012 will is ineffective in revoking the 2011 will (see Matter of Kronik, 2019 NY Slip Op 30178[U], 6 [Sur Ct, New York County 2019], affd 192 AD3d 489 [1st Dept 2021]); thus, the 2011 will shall be admitted to probate.


Petitioner further requests that this Court declare that the 2011 AURT is valid. In support of this request, petitioner points out that neither the 2012 will nor the 2012 trusts revoke, alter or amend the 2011 AURT. Furthermore, petitioner argues, the 2012 documents were procured by fraud and are void. There is no suggestion from any party that the 2011 AURT was revoked or is invalid. Accordingly, the Court will declare that the 2011 AURT is valid.

Finally, in accordance with petitioner's request, the Court directs that decedent's share of restitution be distributed pursuant to the 2011 will and the 2011 AURT and imposes a constructive trust to distribute decedent's share of restitution to the beneficiaries named in and pursuant to the 2011 will and the 2011 trust. The distributions shall take into account that (1) St. Nicholas Ukrainian Catholic Church and Ukrainian American Citizens Club each previously received \$75,000 and their impending distribution shall be reduced by that amount; and (2) Thomas Gutch and Gail Gutch, or the survivor thereof, shall receive an amount equal to the net proceeds received by the US Marshals Service from the sale of the Galway Camp, or the property itself. Accordingly, it is hereby

ORDERED that petitioner's motion for summary judgment is granted; and it is further DECLARED that the 2011 AURT is valid, the 2012 AURT is invalid; and it is further DECREED that the last will and testament of Anne S. Urban dated November 30, 2011, is admitted to probate. Issuance of letters of administration c.t.a. and trust letters are unnecessary because this order authorized a constructive trust to directly distribute the restitution amounts to the beneficiaries pursuant to the terms of the 2011 will and the 2011 AURT.

This constitutes the decision and order of the Court. You are hereby notified that this order has been entered this date in the office of the Clerk of Albany County Surrogate's Court. At the time of the filing of this decision and order, NYSCEF shall transmit by e-mail to the e-mail service addresses of record a notification that the decision and order has been filed and is accessible through NYSCEF. Such notice shall not constitute service of notice of filing or entry by any party (see 22 NYCRR 207.4a [h]).

Dated and Entered: July 8, 2022

  
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Hon. Stacy L. Pettit, Surrogate

**Papers Considered:**

- 1) Petitioner's Notice of Motion for Summary Judgment; Affirmation of Assistant Attorney General Jennifer L. Allinson, Esq., in Support, with exhibits 1-30; Petitioner's Memorandum of Law in Support;
- 2) Affirmation of Eric N. Dratler, Esq., in Support of the Attorney General's Motion for Summary Judgment;
- 3) Affirmation of Counsel by Richard A. Frankel, in Support;
- 4) Affirmation of Thomas Lagan in Opposition to the Petition of the Attorney General to Vacate the Decree of Probate Relating to the April 16, 2022 Will of Anne S. Urban; Memorandum of Law in Opposition to the Motion of the Attorney General for Summary Judgment;
- 5) Reply Affidavit and Reply Memorandum of Law in Support.