

Matter of Koepfel

2022 NY Slip Op 34428(U)

December 31, 2022

Surrogate's Court, New York County

Docket Number: File No. 1996-4098/E/F

Judge: Rita Mella

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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Petition of William W. Koepfel for the
Removal of the Trustees of the Trust Under Article FOURTH
Of the Last Will and Testament of

DECISION

File No.: 1996-4098/E/F

ROBERT A. KOEPEL,

Deceased.

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M E L L A, S.:

The following papers were considered in determining this motion for a preliminary injunction and the appointment of a temporary receiver:

Papers Considered

Numbered

| | |
|---|------------|
| Notice of Motion, dated September 12, 2022, to Appoint a Temporary Receiver and for the Imposition of a Preliminary Injunction, Affirmation of Christopher J. Alvarado, Esq., in Support, with Exhibits, and Memorandum of Law in Support | 1, 2, 3 |
| Affidavit of Alexandra Koepfel, in Opposition, with Exhibits, Affidavit of Peter Salvatore, in Opposition, Memorandum of Law in Opposition, Affirmation of Jeffery H. Sheetz, Esq., in Opposition, with Exhibits | 4, 5, 6, 7 |
| Affirmation of Edward F. Campbell, Jr., in Opposition, with Exhibits | 8 |
| Affidavit of William W. Koepfel, in Reply and Further Support, with Exhibits, Memorandum of Law in Reply and Further Support | 9, 10 |

Before the court at the call of the calendar on October 25, 2022, was a motion by Petitioner William W. Koepfel, in this proceeding in which he seeks: a) the removal of Roberta L. Koepfel and Alexandra Koepfel as Trustees of a trust created under Article Fourth of the Last Will and Testament of Robert A. Koepfel (the Trust) pursuant to SCPA 711; b) the appointment of successor trustees; and c) the appointment of a temporary receiver for the Trust properties and a preliminary injunction pursuant to CPLR 6301. Petitioner is a remainder beneficiary of certain

of the assets held in the Trust and is a son of decedent and Roberta L. Koepfel, one of the two trustees, the other being her daughter and Petitioner's sister, Alexandra Koepfel. The Trust is for the lifetime benefit of Roberta,¹ and holds interests in 13 income-producing properties. In addition to Petitioner, Alexandra, and their sister Caroline Koepfel, have remainder interests in this Trust.

This estate is well known to the court. Since decedent's death in 1996, these parties have engaged in significant and extended litigation. Roberta and Alexandra have served as Trustees of this Trust since Letters of Trusteeship were granted to them upon the admission of decedent's will to probate and the court's issuance of the probate decree. Currently pending before the court, in addition to the instant petition, there is a proceeding to settle the Trustees' interim account for the period of May 31, 2008 through December 31, 2015, to which William has objected, and the parties have been engaged in discovery related to that matter.

In the instant motion, William asks that the court appoint a temporary receiver, pursuant to CPLR 6401, over the Trust's properties, and preliminarily enjoin the Trustees, pursuant to CPLR 6301, from continued management and control of the properties and related operating accounts pending the determination of this proceeding for their removal. Following oral argument of the parties on the record on October 25, 2022, the court ruled on the motion as follows.

The motion for an order pursuant to CPLR 6301 preliminarily enjoining the Trustees was denied. The court concluded that William had failed to establish that he will suffer irreparable harm if Roberta and Alexandra continue to serve as Trustees. On this record, William has not

¹ Because of the shared surname of the parties, first names are used.

shown that the value of his remainder interest in the Trust has been or is at a continued risk of being affected negatively by the Trustees' actions. In particular, the court could not conclude on this record that the Trustees have been so derelict in their duty to keep the properties in good condition that their value has diminished. Nor could the court conclude that any injury that may be suffered by William as remainder beneficiary as a result of the actions of the Trustees—even if the value of the properties has diminished by the time they are distributed to him—is not compensable by the imposition of a surcharge on the Trustees (*see New York City Off-Track Betting Corp. v New York Racing Assn.*, 250 AD2d 437, 442 [1st Dept 1998] [an injury that is pecuniary in nature may be adequately compensated by money damages and does not show irreparable injury]).

Additionally, in light of the well-established rule that courts should exercise the power of removal of fiduciaries nominated by a testator only upon a clear showing of misconduct endangering the assets of the estate or trust (*see Matter of Duke*, 87 NY2d 465, 473 [1996]), William has not established on this record that it is likely that he will prevail on his request for removal of the Trustees.

Finally, William has failed to establish that the equities, when balanced, favor him. The disruption of the administration and management of the properties in which the Trust has an interest would be substantial if the Trustees who have been at the helm for more than 25 years are enjoined from managing these properties and it would be the interests of the sole income beneficiary that would be primarily affected by this disruption.

The motion for an order appointing a temporary receiver was also denied. No basis was provided on this record for such appointment, which is committed to the court's discretion and

only to be used as a drastic remedy (*see Matter of Armienti & Brooks*, 309 AD2d 659, 661 [1st Dept 2003]).

This decision, together with the transcript of the October 25, 2022 proceedings, constitutes the order of the court.

Dated: December 31, 2022



SURROGATE