

Matter of Reed (Sugg)
2023 NY Slip Op 31056(U)
April 4, 2023
Surrogate's Court, New York County
Docket Number: File No. 2016-3704/A
Judge: Hilary Gingold
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNT OF NEW YORK

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In the Matter of the Petition of Lucienne Reed, as
Administrator of the Estate of

File No.: 2016-3704/A

JOHN SUGG, III,
Deceased,

Pursuant to SCPA 2103 for Turnover of Property
Withheld.

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G I N G O L D, S .

Respondent Stephen Pevner (hereinafter "respondent"), moves to dismiss the verified petition for a turnover of property withheld of petitioner Lucienne Redd, as Administrator of the estate of John Sugg, deceased (hereinafter "petitioner"), pursuant to CPLR 3211[a][1], [3] and [5] on the grounds that the petitioner does not have the legal capacity to sue and that the documentary evidence supports a statute of limitations defense.

The following papers numbered 1 through 12 were read:

	<u>Papers Numbered</u>
Notice of Motion – Affirmation – Exhibits	1-3
Memorandum of Law	4
Affidavits of Service	5
Opposition Affidavit – Exhibits	6-7
Memorandum of Law	8
Affidavits of Service	9
Reply Memorandum of Law	10
Affidavits of Service	11

In this discovery proceeding respondent filed a pre-answer motion to dismiss petitioner's SCPA 2103 turnover proceeding in which petitioner seeks the return of all property of the estate in respondent's possession, the vacating of a co-op, and enjoining respondent from furthering interfering with the administration of the estate, including further misappropriation of property and from selling or transferring estate property.

Petitioner was the decedent's spouse at his death and is his sole distributee. Respondent is alleged to have been decedent's long-time friend. Petitioner was appointed the administrator of decedent's intestate estate by this court on October 28, 2016. On October 30, 2017, petitioner filed her verified petition for turnover of estate property alleging that respondent was illegally living in a co-op owned by the estate and herself and refused to turn it over; that respondent has possession of assets, including artwork, belonging to the estate and herself and has refused to turn it over; and that respondent has refused to turn over the assets of Saint at Large, Inc. and its assets, all of which are alleged to be assets of the estate. For purposes of his motion to dismiss, respondent is treating the allegations in the petition as true but has reserved his right to challenge the allegations if the matter is adjudicated.

Petitioner is the fiduciary of the decedent's estate. As such, she filed a petition pursuant to SCPA 2103 seeking information needed to determine the assets of the estate which she believes respondent to be in the possession or control of and seeking to effectuate a return of the property which she has reason to believe that respondent is in possession or control of. This is the purpose of SCPA 2103 which states in relevant part, "a fiduciary may present to the court which has jurisdiction over the estate a petition showing on knowledge or information and belief that any

property defined in 103 or the proceeds or value thereof which would be paid or delivered to him is [a] in the possession or control of a person who withholds it from him, whether possession or control was obtained prior to the creation of the estate or subsequent thereto.” (see *Schwartz v. Helmsley-Spear, Inc.*, 801 NYS2d 781 [Sur Ct, Nassau County 2005]).

Respondent first alleges that pursuant to CPLR 3211[a][3], the SCPA 2103 petition should be dismissed because petitioner lacks standing to appear before the court. CPLR 3211[3] states “a party may move for judgment dismissing one or more causes of action asserted against him on the grounds that . . . [3] the party asserting the cause has not legal capacity to sue.” Respondent argues that (i) because petitioner may have abandoned the decedent she may not have the capacity to act as the administrator of the decedent’s estate; (ii) the decedent may not have died intestate given that he has located a copy of a 1972 testamentary instrument (hereinafter “the will”) alleged to have been executed by the decedent; and (iii) given that he has found the copy of the will, that petitioner may have misrepresented her diligence in searching for a will in her application for letters of administration.

However, as respondent himself notes, each of his three allegations requires a factual determination by this court before the revocation of petitioner’s letters. Respondent asserts that the court must resolve these issues before the turnover proceeding may proceed. According to the respondent, if the court decides in favor of respondent on any of his allegations, petitioner’s letters of administration could be revoked, and, thereby establishing that petitioner did not have standing. It is clear respondent is not alleging that petitioner currently does not have standing as the fiduciary of the estate to bring her turnover petition under SCPA 2103 nor is there proof to remove her as administrator. Nonetheless, to prevail under CPLR 3211[a][3] respondent must establish that petitioner actually lacks standing now to appear in the proceeding currently before the court;

merely hoping that maybe, sometime in the future, petitioner's letters may be revoked is not sufficient for dismissal (*see Rodriguez v River Valley Care Center*, 108 NYS3d 126 [1st Dept 2019]; *Montgomery Troy LLC v Vassell*, 43 NYS3d 768 [Sup Ct, Kings County 2016]).

Further, petitioner's motion to dismiss is not the correct pleading to raise allegations concerning the status of petitioner's standing as a distributee, the admissibility of the copy of the will to probate, or petitioner's diligence in searching for a will of the decedent. A proceeding to revoke letters for cause must be brought by petition pursuant to SCPA 711, and respondent has not presented any facts that would require the court to *sue sponte* revoke petitioner's letters pursuant to SCPA 719. Additionally, though petitioner's letters of administration would be revoked after a will was probated pursuant to SCPA 1413, there is no petition to probate the copy of what is purported by respondent to be the decedent's will before this court (*see Estate of Dinger*, NYLJ, Dec 15, 2014 at 28 [Sur Ct, Richmond County 2014]; *Estate of Kassover*, NYLJ, July 9, 1990 at 33, col 4 [Sur Ct, Kings County 1990]). Moreover, respondent's own standing to bring any such petitions is likewise not currently before this court.

Respondent also moves under CPLR 3211[a][1], asserting that the turnover petition should be dismissed because he has presented documentary evidence that utterly refutes petitioner's factual allegations and conclusively establishes a defense as a matter of law (*see Goshen v Mutual Life Ins Co of NY*, 98 NY2d 314, 326 [2002]). To prove ownership of Saint at Large, Inc., respondent provides the incorporation information for Saint at Large, Inc. and agreements and assignments involving the decedent, TSTAL, Inc., Saint at Large, Inc., the employment of respondent by TSTAL, Inc., and Stephen Pevner, Inc. Without addressing any issues of authenticity or enforceability of any of these documents, none of the documents address the question of ownership of Saint at Large, Inc. Contrary to respondent's assertion that the October

3, 2003 letter demonstrates that the decedent acknowledged respondent's ownership of Saint at Large, Inc., the letter merely states that Stephen Pevner, Inc. (not respondent) incorporated Saint at Large, Inc.; it recites no information as to the ownership of either Saint at Large, Inc. or Stephen Pevner, Inc.¹

Though incorporation of a company may be some indication of ownership in a corporation, it is far from evidence of ownership that utterly refutes petitioner's factual allegations and conclusively establishes a defense as a matter of law (*see Simon v Kyrejko*, 2015 NY Slip Op 31497[U] [Sup Ct, NY County 2015]; *Famous Family LLC v Kutsyk*, Slip Op 31155[U] [Sup Ct, Kings County 2022]). Likewise, as to the ownership of unit 8 of 382 Lafayette Street, as already stated in the eviction proceeding brought in Supreme Court in this estate, "[i]t cannot be said that the lease [for unit 8 of 382 Lafayette Street] qualifies as 'documentary evidence' in light of

¹ In its entirety the October 3, 2003 letter states:

"As of October 3, 2003

Reference is hereby made to the letter agreement dated September 18, 1998 between T.ST.A.L. INC., ("TSTAL") and Stephen Pevner, Inc. ("Producer").

WHEREAS, Producer incorporated the company, THE SAINT AT LARGE, INC., a New York corporation with offices at 382 LaFayette Street, 8th Floor, New York, N 10003 ("Purchaser") and desires to obtain all of the assets of TSTAL ("Owner").

WHEREAS, Owner has received from Purchaser good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

NOW, THEREFOE, Owner hereby sells, transfers, conveys and assigns to Purchaser all assets related to the company including all right, title and interest throughout he world in registered trademarks, service marks, copyrights and any and all other intellectual property now known or hereinafter created; collections of artwork, archival material, memorabilia, posters, sound recordings, books, magazines, records and video assets; music licenses; audio/visual equipment; office furniture and fixtures and all other assets comprising the good will of the business in connection with which they are or have been used.

IN WITNESS WHEREOF, Owner has caused this document to be executed as of the date hereof.

T. ST. A. L. Inc.
/s/
John Sugg
President"

[petitioner's] argument as to the lease's authenticity" (*Reed v Saint at Large, Inc.*, 2022 NY Slip Op 31624[U] [Sup Ct, NY County 2022]). In short, respondent's documents simply universally fail to address the ownership of any of the contested property.

Finally, based on the documentary evidence, respondent contends that the statute of limitations bars petitioner's claim for claiming ownership of Saint at Large, Inc. CPLR 3211[5] states that a party may move to dismiss if "the cause of action may not be maintained because of . . . statute of limitations." Respondent bears the burden of proof in establishing that the time in which to sue has expired (*see Matter of Asch*, 83 NYS3d 307 [2d Dept 2018]). A discovery proceeding is likened to an action for conversion or replevin and a three-year statute of limitations is applied (*see Id*; CPLR 214[3]). A conversion does not accrue in an unlawful possession until the owner's demand for the return of the property is refused (*see Id*). The limitations period begins to run on the date the conversion cause of action accrues (*see Id*).

Respondent, relying on his reading of the October 2003 letter, claims lawful possession of Saint at Large, Inc. and its assets; thus, respondent alleges, decedent's claim for ownership accrues at the latest, October 2003, therefore the statute of limitations would have run in October 2006. However, as stated above, the October 2003 letter fails to establish respondent's ownership in Saint at Large, Inc. or any of its assets. Additionally, petitioner has not alleged that respondent wrongfully exercised ownership and dominion over any assets prior to decedent's death. Accordingly, the alleged conversion did not occur until respondent refused petitioner's demand (*See Estate of Madris* NYLJ, March 13, 2000, at 31, col 3 [Sur Ct, NY County 2000]). According to petitioner, demand was made after decedent's death on August 7, 2016. Petitioner filed her turnover proceeding on October 30, 2017, well within the three-year statute of limitations period.

Accordingly, based on the foregoing, it is

ORDERED that, respondent's motion seeking dismissal of the SCPA 2103 turnover proceeding is denied in its entirety, and it is further

ORDERED that, respondent shall file and serve his answer on or before April 18, 2023, and it is further

ORDERED that, all counsel shall appear on Thursday April 19, 2023, at 2 p.m. in courtroom 509, New York County Surrogate's Court, 31 Chambers Street, New York, New York 10007, for a conference to schedule discovery.

This decision constitutes the order of the court.

The court clerk shall serve a copy of this order to all parties in this proceeding by email.

Dated: April 4, 2023



SURROGATE

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