

Matter of Puentes

2023 NY Slip Op 32606(U)

July 27, 2023

Surrogate's Court, New York County

Docket Number: File No. 2019-2437

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

Date July 27th 2023

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

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Administration Proceeding, Estate of

File no. 2019-2437

AMADO COSME MARTINEZ PUENTES,
aka AMADO MARTINEZ,

Deceased.

-----X

GINGOLD, S.

Ramon Eduardo Arias (hereinafter, “movant”), co-executor of the will of Amado Cosme Martinez Puentes (hereinafter, “decedent”) that was filed in Venezuela, decedent’s domicile, seeks to intervene and file a notice of appearance in the administration proceeding before this court (hereinafter, “September 3, 2021 motion”) and seeks to vacate this court’s September 12, 2019 decree granting letters of administration based on excusable default and newly discovered evidence. The administrators appointed by this court, Efrain de la Caridad Martinez Puentes, Maria Carolina Solorzano Palacios, Alejandro Virgilio Preziosi Perdigon and Carolos Domingo del Refugio Martinez Puentes (hereinafter, “administrators”) cross-moves seeking costs and legal fees incurred in opposing the September 3, 2021 motion.

The following papers numbered 1 through 11 were read:

	<u>Papers Numbered</u>
Notice of Motion - Affirmations – Affidavits – Exhibits	1-4
Affirmation of Service	5
Memorandum of Law In Support	6
Notice of Cross Motion – Affirmations – Affidavits – Exhibits	7

Affirmation of Service	8
Memorandum of Law In Opposition To Motion ans Support of Cross Motion	9
Affidavit and Affirmation In Support Of Motion - Exhibits .	10
Reply Memorandum of Law	11

Decedent died while domiciled in Venezuela and left a Venezuelan will (hereinafter, “will”) disposing specific assets located in Venezuela. The will did not dispose of any assets outside of Venezuela and did not have a residuary clause. However, the will authorizes his executors to “prevent entry of relatives . . . in any of the properties of my property located in the country or abroad.” Movant and Humberto D’Ascoli Centeno were appointed co-executors of the will by the court in Venezuela (hereinafter, “executors”).

Decedent’s four brothers, Efrain de la Caridad Martinez Puentes (“Efrain”), Leandro Humberto Martinez Puentes (“Leandro”), Daniel Maria de las Mercedes Martinez Puentes (“Daniel”), and Carolos Domingo del Refugio Martinez Puentes (“Carlos”), are his intestate distributees under the laws of both New York and Venezuela.

In May 2019 movant gave a key to the decedent’s condominium located in New York City to the decedent’s brother (and one of the administrators), Efrain.

This court granted administrators temporary letters of administration on July 3, 2019. On July 16, 2019 the temporary administrators mailed the citation for letters of administration with a return date of September 26, 2019, by USPS registered mail, return receipt requested, to executors at Calle los Pardillos, Casa 87a61, Trigal Sur, Valencia 2001 Carabobo, Venezuela, and at Calle las Esmeraldas, Edif Cima Esmerald, Piso PB Apt 1, Urb la Tahona, Caracas 1080 Miranda,

Venezuela. An August 28, 2019, affidavit of service was filed August 30, 2019, swearing that said mail was not returned undelivered. Letters of administration issued September 12, 2019.

A contract of sale for the condominium was entered into on August 14, 2019, by decedent's distributees, his four brothers, as seller. On September 19, 2019, and September 24, 2019, the administrators signed an "administrator's deed" to sell the condominium. The sale closed on October 10, 2019. In addition to the condominium, the decedent had tangible personal property and a Wells Fargo account in New York.

Movant alleges that the decree granting letters of administration should be vacated because he did not receive the citation and that he has an excusable default because of newly discovered evidence and because administrators did not disclose that their "true purpose for obtaining Letters was to sell Decedent's New York City apartment." Further, movant alleges that in their petition administrators "failed to highlight (and minimized) that they are expressly prohibited from inheriting anything from Decedent under his Venezuelan Will."

Intervention is governed by CPLR 1012 which permits intervention when the action involves the disposition of property, and the person may be affected adversely by the judgment (CPLR 1012 [a][3]) and CPLR 1013 which allows intervention in the court's discretion after considering whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party. In order to be adversely affected the person seeking to intervene must have an interest in the subject of the litigation that will be gained or lost by the legal operation and effect of the judgment (*see Estate of Tannenbaum*, NYLJ Jan 27, 1989 at 23, col 1 [Sur Ct, NY County 1989] *citing Rubin v Irving Trust Co*, 105 NYS2d 140, 142 [Sup Ct, NY County 1951]). Pursuant to CPLR 5015, in order to vacate a default, movant must show a valid excuse, absent willfulness and a meritorious claim (*see Estate of Maxwell*, 13 AD3d 630 [2nd Dept 2004]).

Additionally, in order to vacate a decree based on new evidence, movant must demonstrate both a substantial basis for the contest and a reasonable probability of success that the new evidence would have probably altered the outcome of the original proceeding (*see Estate of Formosa*, NYLJ, Oct 7, 2014 at 28, col 3 [Sur Ct, Suffolk County 2014] *citing American Committee for Weizmann Institute of Science v Dunn*, 10 NY3d 82 [2008]; CPLR 5015[a][2]). Nonetheless, the court may exercise its inherent power and control over its own proceedings and vacate its own judgment where it appears that necessary to serve a substantial justice and to prevent an injustice (*see Matter of Efros*, 19 Misc 3d 113[A] [Sur Ct, NY County 2008] *citing F & C General Contractors Corp v Atlantic Mutual Mortgage Corp*, 202 AD2d 629 [2d Dept 1994]).

As a non-domiciliary movant was required to be served pursuant to SCPA 307[2] and service of process is deemed completed pursuant to SCPA 309[2]. The August 30, 2019, affidavit of service is *prima facie* proof of proper service and completion of personal jurisdiction in accordance with the statutes (*see Matter of Nieto*, 70 AD3d 831 [2nd Dept 2010]). The affidavit of service includes copies of the Bryant Station US post office's stamped receipt for the mailing, return receipt requested, to movant. Furthermore, movant admits that the mail was sent to the correct address. There is no requirement that the movant actually received the mailing for the court to acquire jurisdiction (*see Estate of Daniel*, NYLJ Mar 31, 2003 at 7, col 1 [Sur Ct, Dutchess County 2003]). As administrators contend, movant's allegations concerning his using the USPS tracking system in 2021 for a mailing sent in 2019 and the possible need for a PS Form 2976 with the mailing are not sufficient to overcome the presumption of effective service. Likewise, movant's statement that "it is universally known in Venezuela that it is extremely unlikely for USPS mail to get delivered in Venezuela" is not compelling. Moreover, movant does not determine what is effective service, thus the fact that administrators "could have easily sent a copy of the citation by

Federal Express or local courier or emailed [him]” and the fact that they did not call him on the phone to tell him to expect a copy of the citation in the mail, is irrelevant.

Movant also asserts that the probate decree should be vacated because he has a reasonable excuse his default and a meritorious defense. It is in the court’s discretion to determine what constitutes a reasonable excuse for default (*see Estate of Grimaldi*, NYLJ, Nov 14, 2006 at 23, col 1 [Sur Ct NY County, 2006]). Additionally, the movant must show meritorious objections and the absence of prejudice (*see id*).

Movant did not submit an affidavit of merit concerning his defense with his September 3, 2021 motion, however he did file an affidavit on October 7, 2019 in reply to administrators’ September 24, 2019 opposition. In his affidavit movant states that he was “under the impression that selling the New York apartment would require commencing legal proceedings in New York and maybe Venezuela” and that as executor he would be “be given notice of said proceedings.” Movant also states that he only became aware of any legal proceedings by the decedent’s brothers in April of 2021. Movant further alleges that decedent’s brothers are prohibited from inheriting pursuant to the term of the will. These allegations are the basis for movant’s excusable default and newly discovered evidence.

In opposition administrators state there is no new evidence or, in fact, any evidence at all. Furthermore, movant’s motion should be denied because movant has no interest in any New York assets, the will does not disinherit the brothers, and allowing movant to intervene will prejudice administrators by delaying, if not undoing, the progress they have made in administering decedent’s New York estate over the past two years.

Decedent died on August 23, 2018. Movant states that he was aware that decedent’s condominium and valuable artwork in the New York condominium were covered by insurance.

Clearly movant made no effort to secure, insure, or collect decedent's New York assets or he would have been aware of the appointment of the administrators before April 2021. Furthermore, movant states that he gave Efrain the keys to the condominium in May 2019 for "Efrain Martinez and the other Martinez siblings to visit the apartment." This statement directly contradicts his position that he seeks to intervene to enforce the will terms authorizing him to "prevent entry of relatives . . . in any of the properties of my property located in the country or abroad." Additionally, after the movant surrendered the keys to the condominium in May 2019, emails among the decedent's brothers and both executors state that the condominium legally belongs to decedent's brothers. Similarly, movant's allegations that administrators failed to disclose the terms of the will in their petition for letters is unavailing. The administration petition not only discloses the will, but further, the administrators filed an April 15, 2019 affidavit from Venezuelan attorneys stating that under Venezuelan law, the brothers are not disinherited by the terms of the will. Finally, contrary to movant's allegations, the limit on the collection of \$500,000 in assets as temporary administrators in no way limited their ability to enter a contract of sale for the condominium and, as administrators, they could close on the condominium without court approval. In short, movant fails to present any defense for his default or any evidence, new or old, to support the vacating of the September 12, 2019, decree granting letters of administration.

As to movant's request to intervene, the will does not dispose of any assets in New York nor does it contain a residuary clause. Thus, any of decedent's New York assets which do not pass through intestacy, will not pass under the will. Additionally, movant made no attempt to administer New York assets. Moreover, it is clear administrators have this estate well in hand and would be prejudiced by the intervention (*see Estate of Formosa*, NYLJ, Oct 7 2014 at 28, col 3 [Sur Ct, Suffolk County 2014]).

Both movant and administrators filed contradictory affidavits and affirmations of Venezuelan law concerning whether movant's authority to act as executor has expired and if the will terms limit movant's authority to intervene without the participation of his co-executor. These are both questions of Venezuelan law and not for this court to determine, however, given movant's default, lack of a meritorious defense, and lack of new evidence, determinations of Venezuelan law would not alter this decision.

Finally, movant has made no effort to have the legal effect of the contested terms of the will concerning disinheriting decedent's brothers or movant's right to bring this action, with or without his co-executor, determined in the correct venue. Consequently, there is no injustice occurring that would require this court to vacate its own judgment.

Accordingly, based on the foregoing, it is

ORDERED that, movant was properly and timely served with the administration citation; and it is further

ORDERED that, movant's motion to intervene and file a notice of appearance in the administration proceeding, is denied; and it is further

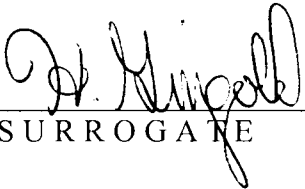
ORDERED that, movant's motion to vacate this court's September 12, 2019, decree granting letters of administration is denied; and it is further

ORDERED that, administrators' cross motion for costs and legal fees is denied; and it is further

ORDERED that, all parties shall appear in courtroom 509 at 31 Chambers Stret, New York, New York on Tuesday, September 19, 2023, at 2:00 p.m. for a conference on the turnover proceeding that was stayed by this proceeding unless it has been withdrawn before said date.

The Clerk of the Court is directed to email a copy of this decision counsel of record listed below.

Dated: July 27, 2023



SURROGATE

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