

Matter of Sartisky

2023 NY Slip Op 33044(U)

September 5, 2023

Surrogate's Court, New York County

Docket Number: File No. 1996-1944/A/B

Judge: Hilary Gingold

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This opinion is uncorrected and not selected for official publication.

Westchester County Surrogate Court
September 5th 2023

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

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In the Matter of the Petition for Retraction of
Renunciation of Right of Letter Testamentary and For
Issuance of Successor Letters Testamentary in the Estate of

File No.: 1996-1944/A/B

JACQUES SARTISKY,

Deceased.

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GINGOLD, S .

The following papers numbered 1 through 9 were read in connection with the motion and cross-
motion in this contested probate:

	<u>Papers Numbered</u>
Notice of Motion – Affirmation – Exhibits	1-3
Affidavit of Service	4
Notice of Cross Motion - Affidavit – Exhibits	5
Memorandum of Law in Support of Cross-Motion To Dismiss Objections and in Opposition to Motion to Dismiss Petition	6
Affidavit of Service	7
Reply/Responsive Affirmation	8
Affidavit of Service	9

For purposes of clarity the decision and order dated August 10, 2023 is vacated and the
following shall stand in its place and stead:

Objectant Lawrence Siegel, executor of the will of Ruth Siegel Sartisky (hereinafter,
“objectant”), seeks an order pursuant to CPLR 3211 (i) dismissing the petition of Michael Sartisky
(hereinafter, “petitioner”) which seeks the retraction of his renunciation of his right to letters

testamentary pursuant to a stipulation dated May 4, 2000 and for the issuance of successor letters testamentary to himself, (ii) or, in the alternative relief pursuant to CPLR 3212, (iii) that letters of administration c.t.a. be awarded to objectant or the Public Administrator of New York County and (iv) that legal fees, disbursements and Part 130 sanctions be awarded to him. Petitioner filed a cross motion requesting the dismissal of the objections to his petition.

Jaques Sartisky died on December 16, 1995 (hereinafter, “decedent”). Shortly thereafter, his spouse, Ruth Siegel Sartisky (hereinafter, “Ruth”), and his son, petitioner, engaged in litigation concerning the validity of decedent’s October 26, 1995 will (hereinafter, “will”) and assets of the estate. This litigation ended in a settlement dated May 4, 2000 (hereinafter, “settlement”), pursuant to which the will was admitted to probate but petitioner, on his behalf and on behalf of his issue, waived all rights and claims to the decedent’s estate. Petitioner also renounced his right to be appointed and serve as an executor of the decedent’s will and as a trustee thereunder. But for this settlement, pursuant to the terms of the will, petitioner was entitled to tangible property and was the remainderman of a residuary trust for the benefit of Ruth for her lifetime.

Ruth died on November 29, 2013, and her son, objectant, is the executor of her will.

Petitioner alleges that there are uncollected shares of “Public Storage” valued at approximately \$500,000, titled in decedent’s name. There is currently no fiduciary for the decedent’s will. By his amended petition filed September 12, 2019 (hereinafter, “petition”) and his August 28, 2019 affidavit, petitioner states that he “retract[s] my renunciation of my right to serve as Executor pursuant to SCPA 4717(2) [sic]” and requests that this court issue letters testamentary naming him “executor of the estate of Jacques Sartisky.”

In his November 19, 2019 objections to the petition (hereinafter, “objections”), objectant alleges that pursuant to the settlement agreement petitioner lacks standing to petition for letters

testamentary, is estopped from doing so, and also lacks the pecuniary interest in the decedent's estate required to request letters issue to himself or to anyone. Objectant seeks to have the Public Administrator of New York County or himself appointed as Administrator c.t.a. of decedent's estate.

Objectant moves pursuant to CPLR 3211 to dismiss the petition for lack of standing and collateral estoppel. Though CPLR 3211 provides the procedure for a party seeking the dismissal of a cause of action, the statute does not provide the substantive or procedural law on which the court's decision will be founded. Pursuant to SCPA 1417[2] a person may retract his renunciation of his right to letters testamentary if the person who was issued letters has died and there is no other acting executor or administrator. However, pursuant to SCPA 1417[3] the issuance of letters testamentary thereafter is in the court's discretion – “[w]here a retraction is so made letters testamentary may be issued to the person making it upon such notice as directed by the court” (*see Estate of Clute*, 37 Misc 710 [Sur Ct, Rensselaer County 1902]). Moreover, though petitioner is correct in that he may file his retraction of his renunciation pursuant to SCPA 1471[2], it is in the discretion of this court as to whether to accept the retraction, and if accepted, the effect of that retraction (*see id*). Therefore, in this case whether dismissal of the petition pursuant to CPLR 3211 should be granted is in the discretion of the court.

As objectant correctly alleges, petitioner has no financial interest in the estate. Even if accepted by this court, petitioner's retraction of his renunciation does not change the fact that pursuant to the settlement agreement he waived all rights and claims to the decedent's estate. Petitioner's allegations concerning his son's rights (decedent's grandson) to decedent's estate are unpersuasive given the terms of the will and the fact that petitioner survived decedent. Similarly, objectant is not alleging that the settlement agreement is not valid, therefore his allegations of

“after found assets” and “change of circumstances” are not relevant to his financial interest in the estate. Thus, the only person with a financial interest in decedent’s estate is Ruth, whose will is represented by objectant.

Though petitioner is correct in that pursuant to SCPA 1417[2] he does not need a financial interest in the estate to have standing to file his retraction, his lack of entitlement to the assets is a proper consideration for the court (*see Estate of Just*, NYLJ, February 11, 1991 at 22, col 6 [Sur Ct, Queens County 1991]). Moreover, the hostility between petitioner and objectant, acknowledged by both petitioner and objectant in their respective motions, is also relevant (*see Estate of Rad*, 162 Misc 2d 229 [Sur Ct, NY County 1994]).

Pursuant to SCPA 1418[1][a], when there is no person named within the will to act as fiduciary, letters of administration c.t.a may issue “to a sole beneficiary or if he be dead to his fiduciary.” Notwithstanding petitioner’s allegations concerning the propriety of objectant’s sale of an asset in Ruth’s estate in 2015, absent this court’s granting of the petition, pursuant to SCPA 1418[1][b], objectant is entitled to Letters of Administration c.t.a.

Accordingly, given the foregoing, it is

ORDERED that, the branch of objectant’s motion seeking CPLR 3211 relief is granted and the petition is dismissed; and it is further,

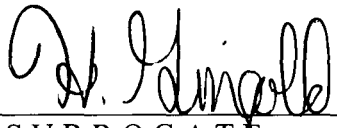
ORDERED that, the branch of objectant’s motion seeking CPLR 3212 for summary judgment and petitioner’s cross motion for CPLR 3212 summary judgment are both denied as moot; and it is further,

ORDERED that, objectant’s motion for legal fees, disbursements and Part 130 sanctions are denied; and it is further

ORDERED that, Letters of Administration c.t.a. shall issue to objectant upon his petition and qualification.

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

Dated *Sept. 5th*, 2023



SURROGATE

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