

Levy v Estate of Mahler

2023 NY Slip Op 33371(U)

September 28, 2023

Surrogate's Court, New York County

Docket Number: File No. 2019-4004/F

Judge: Hilary Gingold

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

September 28th 2023

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

-----x
Lawrence Levy

Plaintiff,
-v-

File No.: 2019-4004/F
(formerly NYS Sup Ct
Index No. 650197/2021)

Estate of Robert Mahler, Miles Zatkowsky,
Defendants.

-----x

G I N G O L D, S .

I this combined proceeding the following papers numbered 1 through 21 were read:

	<u>PAPERS NUMBERED</u>
Notice of Motion-Affirm-Affidvt-Exhibits.....	1-4
Memorandum of Law	5
Affidavit of Service	6
Notice of Cross Motion-Affirm-Exhibits	7-9
Memorandum of Law	10
Affidavit of Service	11
Affms In Opposition-Exhibits	12-13
Affidavits of Service	14
Affdvt-Exhibit	15-16
Memorandum of Law	17
Affidavit of Service	18
Affidvt in Response-Exhibits.....	19-20
Affidavit of Service	21

The instant motions before the court are the August 2, 2021 motion for summary judgment pursuant to CPLR 3212 to grant the causes of action in the January 11, 2021 summons and complaint of plaintiff, Lawrence Levy (hereinafter, “buyer”), to compel Miles P. Zatkowsky (hereinafter, “executor”), as executor of the will of Robert Mahler, deceased (hereinafter, “decedent”) for specific performance on the contract of sale for the cooperative apartments 9B and 9G located at 41 West Central Park West, New York, New York (hereinafter, collectively “apartments”). Decedent’s children, Joyce M. Duckles, Alison Mahler Bowie, and William Wolf (hereinafter, collectively “children”) oppose and the sale and moved by cross-motion dated September 23, 2021 to dismiss buyer’s complaint in its entirety pursuant to CPLR 3212.

On October 19, 2020, executor entered into a contract of sale with buyer. On January 14, 2021 buyer filed in New York State Supreme Court, New York County (Index No. 650197/2021) a summons and complaint for a preliminary injunction to enjoin executor from transferring the apartments and for specific performance on the contract of sale. Buyer’s action was transferred from the Supreme Court to this court by decision and order dated February 16, 2021. On January 14, 2021 the supreme court issued a temporary restraining order on the executor’s transfer of the apartments and this restraining order is still in effect.

On a motion for summary judgment, the movant must make a “prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp*, 68 NY2d 320, 324 [1986]).

As buyer acknowledges, pursuant to the decedent’s will, the apartments would pass through his residuary estate to children. Further, the children, who are not parties to the contract of sale, allege that executor did not have the authority to enter into the contract. Thus, there is an underlying issue of fact concerning the validity of the contract that buyer is seeking to enforce.

Therefore, it is

ORDERED that, buyer's motion for summary judgment pursuant to CPLR 3212 is denied;
and it is further

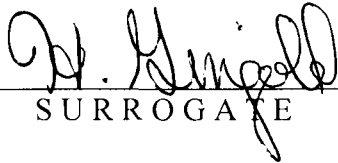
ORDERED that, children's cross motion for summary judgment pursuant to CPLR 3212
is also denied; and it is further

ORDERED that, all parties are directed to appear in person for a pre-trial conference on
January 10, 2024 at 11:00 am, in Courtroom 509, New York County Surrogate's Court, 31
Chambers Street, New York, New York 10007.

This is the decision and order of the court.

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

Dated: September 28, 2023


SURROGATE

To:

Robert Mehran, Jr., Esq.
Mehran Law, PLLC
rmehran@mehranlawny.com
Attorney for Miles P. Zatkowsky, Executor

Adam D. Solomon, Esq.
Ron Fatoullah & Associates, PLLC
Attorney for Miles P. Zatkowsky, Executor

Chaya R. Biskin-Sitko, Esq.
Biskin-Sitko Law PLLC
cbs@b-slaw.com
Attorney for Joyce M. Duckles, Alison M. Bowie, and William Wolf

Jeffrey S. Greener, Esq.
Rivkin Radler
Jeffrey.greener@rivkin.com
Attorney for Joyce M. Duckles, Alison M. Bowie, and William Wolf

Benjamin Noren, Esq.
Davidoff Hutcher & Ciron LLP
bn@dhelegal.com
Attorney for Lawrence Levy