

Estate of Russell Butler

2025 NY Slip Op 30656(U)

January 6, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2012-2034/B-C-D

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

January 6, 2025

ESTATE OF RUSSELL BUTLER, Deceased
File No.: 2012-2034/B-C-D

In this probate estate, Neville A. Williams, a nephew of the decedent (“the petitioner”), filed a petition and order to show cause seeking to, inter alia: vacate the decree dated January 2, 2018 that admitted to probate a testamentary instrument dated April 14, 2009 (“the purported instrument”), revoke the letters testamentary issued to the nominated executor, Chianti Bailey (“Chianti”) and dismiss the probate petition with prejudice. He urges that dismissal is appropriate because Chianti filed a fraudulent will, deliberately misrepresented in a verified probate petition and other documents filed with the court that she and several other individuals were related to the decedent and excluded the decedent’s only distributees, three nephews over whom jurisdiction was not obtained in the probate proceeding. As a result, Chianti transferred title to realty owned by the decedent located in Laurelton, Queens (“the Laurelton realty”) and other estate assets to herself in disregard of the interests of the nephews. Accordingly, the petitioner requests that the court immediately suspend the letters testamentary issued to Chianti, issue a temporary order restraining Chianti, her agents, attorney and representatives from transferring, selling, encumbering or in any other manner disposing of any personal property, real property, or other assets belonging to the decedent, and appoint him temporary administrator of the estate. On the return date of the order to show cause, jurisdiction was obtained over Chianti and Stephanie Bailey

("Stephanie"), who is the nominated successor executor in the purported instrument, and they both failed to appear or assert opposition to the court to date. The Public Administrator ("PA"), who was also cited, appeared by counsel who did not object to the relief sought by the petition.

Background

The decedent died on November 10, 2010 at the age of 87. He never married or had children. In addition to the petitioner, his distributees are two other nephews: Basil Williams Sr. ("Basil Sr.") and Ralph Williams ("Ralph"), who post deceased on August 25, 2019 without a spouse or issue. No fiduciary has been appointed for Ralph's estate. The purported instrument was allegedly executed by the decedent on April 14, 2009 in the presence of three attesting witnesses who signed a self-proving affidavit. Chianti is the nominated executor and sole testamentary beneficiary and Stephanie is the nominated successor executor. Should Chianti predecease the decedent or decline to accept the bequest, the instrument provides that the estate assets are to be paid to Chianti's surviving children and, should none survive, the estate passes to the decedent's distributees by intestacy.

On February 24, 2017, Ally Bank N.A., a secured creditor, petitioned for the issuance of letters testamentary to Chianti and alternatively for letters of administration c.t.a. to the PA. The creditor's application lists Chianti, Stephanie, the three nephews and the PA as interested parties. On the return date of supplemental citation to Chianti, Stephanie, the two surviving nephews and the PA, jurisdiction was not obtained over Stephanie. Counsel for the secured creditor, Chianti, the petitioner and the PA appeared and entered into a written stipulation that was "so-ordered,"

pursuant to which, inter alia, the secured creditor's application was marked off the calendar with leave to restore should Chianti fail to timely file a probate petition.

On September 1, 2017, Chianti's attorney filed a verified probate petition expressly stating in Paragraph Sixth that Chianti is the decedent's great-granddaughter, Stephanie is a granddaughter, and Creola Bailey ("Creola"), who receives no testamentary bequest, is the decedent's daughter and only distributee. The petition fails to list the three nephews as interested parties. An heirship affidavit was filed from an individual named Mariah Thompson stating, inter alia, that she was the decedent's companion and friend for over 50 years and the mother of Creola and that the decedent was Creola's father and remained "heavily involved" in Creola's life until his death. On August 8, 2018, Chianti filed an inventory of assets stating that the sole estate asset consists of realty valued from \$200,000 to \$500,000.

Petitioner's Contentions

In support of the petitioner's application, counsel avers that he was informed by Antara Kanth, Assistant District Attorney, Queens County District Attorney's Office, that: (1) Chianti was arrested on May 23, 2022 and charged with various felonies in connection with the transfer of the Laurelton realty; (2) she pled guilty to one count of Offering a False Instrument for Filing in the Second Degree (PL § 175.30) on March 29, 2023; and (3) on that date, she also executed a revocation agreement memorializing the plea admissions. Counsel further asserts that on June 16, 2023, an order was issued in the Supreme Court, Queens County (Iannece, J.) voiding the deed transferring the Laurelton realty to Chianti, and, consequently, title to the realty is currently back in the name of the decedent.

In further support, counsel annexes copies of the following documents, inter alia: (1) a deed dated February 13, 2020 transferring the Laurelton realty from Chianti, as executor of the decedent's estate, to herself individually; (2) a portion of the transcript of Chianti's allocution on March 29, 2023 in the Supreme Court, Queens County (Iannece, J.) admitting, inter alia, that: (A) Chianti filed a deed in Queens County with the intention of holding herself out as the true owner of the Laurelton realty in order to take possession of the realty away from the estate's heirs; (B) in concert with Stephanie, she purported to be related to the decedent; and (C) in fact, no one in Chianti's family is related to the decedent. Also annexed is a copy of the revocation agreement executed by Chianti on March 29, 2023 in the Queens County Supreme Court, Criminal Term acknowledging, inter alia, that: (a) she was charged, inter alia, with the felony of Offering a False Instrument for Filing in the First Degree; (b) she entered a plea of guilty to the referenced felony on March 29, 2023, in full satisfaction of the pending charges; (c) she realized certain unlawful gains because of her acts; (d) Chianti, acting in concert with Stephanie, filed false documents, including a false will, in the Bronx Surrogate's Court, and a false deed for the Laurelton realty with the City Registrar, Queens County, in order to take possession of the Laurelton realty owned by the decedent; (e) Chianti fraudulently obtained over \$94,000 belonging to the decedent's estate; (f) neither Chianti nor anyone in her family, is related to the decedent; (g) Chianti gives up any present and future interest in the realty that she may have unlawfully obtained; and (h) Chianti and her family were to vacate the Laurelton realty within 90 days thereof.

Determination

There is a policy of maintaining the sanctity of decrees of Surrogate's Court. As set forth in CPLR § 5015 (a) (3), (4), such decrees will not be vacated except on grounds such as fraud, misrepresentation, newly discovered evidence, lack of jurisdiction or excusable default made within one year after service of a copy of a judgment or order with written notice of its entry upon the moving party (see Matter of Vogel, 276 AD 281 [4th Dept 1950]; Matter of Bartok, 28 Misc 2nd 324 [Sur Ct, NY County 1961]). As the decree was not served upon the petitioner and jurisdiction was not obtained over the three nephews, the application is deemed to be timely.


Here, the uncontested allegations set forth in the petition, as corroborated by the submitted supreme court documents, namely that the granting of letters to Chianti was obtained by misrepresentation and fraud, are as follows: (1) Chianti filed a "false will" and misrepresented to the court in a verified petition and other documents that she, Stephanie and Creola were related to the decedent; (2) Chianti deliberately failed to disclose that the three nephews were the decedent's only distributees; (3) Chianti, acting in concert with Stephanie, filed a false deed for the Laurelton realty; and (4) as a result of these fraudulent acts, Chianti obtained possession of the Laurelton realty and \$94,000 in personal property belonging to the decedent. These allegations, as substantiated by admissions in the revocation agreement entered into by Chianti and the transcript of her guilty plea in the Queens Supreme Court to the criminal charges arising from these fraudulent acts, and the lack of in personam jurisdiction over all necessary parties, constitute due proof of the facts therein (SCPA 509) and warrant vacating the decree admitting the purported instrument to probate and revoking letters testamentary that issued to Chianti (see CPLR § 5015 [a]) [3], [4]; SCPA 711 [2], [8]);

Matter of Urgan, 222 AD3d 1088 [3rd Dept 2023]; Matter of Planty (Hanlon), NYLJ, Jan. 29, 2024 at 17, col 1 [Sur Ct, Queens County 2024]; Matter of Dittmar, 154 Misc 28 [Sur Ct, N Y County 1934]).

Accordingly, this decision constitutes the order of the court granting the relief sought by the petitioner to the extent that: (1) the probate decree entered on January 2, 2018, is vacated and the letters testamentary issued to Chianti are revoked, (2) Chianti's probate petition (File No. 2012-2034/B) is dismissed with prejudice, (3) temporary letters of administration shall issue to the petitioner upon his duly qualifying according to law and paying an appropriate filing fee, if any; (4) Chianti, her agents, attorney and representatives are restrained from transferring, selling, encumbering or in any other manner disposing of any personal property, real property, or other assets belonging to the decedent, and (5) Chianti and her attorneys are hereby directed to turn over to the petitioner all books, records, and estate assets she conveyed to herself or others, within 21 days after being served with proof of the petitioner's appointment as fiduciary of the estate.

The Chief Clerk shall mail a copy of this decision and order to counsel for the petitioner, Chianti, Stephanie, Salem, Shor & Saperstein, LLP and counsel for the PA.

Proceed accordingly.


HON. NELIDA MALAVÉ-GONZÁLEZ
SURROGATE