

Matter of Kassover
2016 NY Slip Op 32636(U)
December 22, 2016
Surrogate's Court, Nassau County
Docket Number: 2013-374717/B
Judge: Christopher G. Quinn
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**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
Accounting by Phillip Kassover,
as the Executor of the Estate of

DECISION
File No. 2013-374717/B
Dec. No. 32184

RUTH KASSOVER,

Deceased.

-----X
PRESENT: HON. CHRISTOPHER QUINN

The following papers were considered in the preparation of this decision:

Notice of Motion with Exhibits.	1
Affidavit of Meridith Dennes.	2
Affirmation Opposing Motion to Compel Payment of Legacy.	3
Affidavit of Phillip Kassover Opposing Motion to Compel Payment of Legacy.....	4
Reply Affirmation.....	5

In the context of an accounting proceeding filed by Phillip Kassover, as the executor of the estate of Ruth Kassover, a motion has been filed by the decedent’s granddaughter, Meridith Dennes, to compel Phillip Kassover to pay to Meridith Dennes a legacy of \$70,000.00 in accordance with the decedent’s will, and to award Meridith Dennes interest on the unpaid legacy at the rate of nine per cent annually, beginning no later than January 6, 2014, as well as her costs and reasonable attorneys’ fees.

The application is opposed by Phillip Kassover.

BACKGROUND

Ruth Kassover (the decedent) died on April 20, 2013, leaving a will dated June 3, 1997, which was admitted to probate by this court on June 5, 2013. Under Article Third of

her will, the decedent bequeathed \$70,000.00 to Meridith Dennes. Under Article Fourth, the decedent bequeathed her residuary estate to Phillip Kassover. An order granting preliminary letters to Phillip Kassover was signed on May 7, 2013, and full letters testamentary issued to Phillip Kassover on June 5, 2013.

On May 13, 2015, Meridith Dennes filed a petition to compel Phillip Kassover to account as the executor of the decedent's estate, specifically stating that the reason for her petition was that she had not yet received her bequest of \$70,000.00 from the executor. On November 4, 2015, on the motion of counsel for Meridith Dennes, the Surrogate signed an order to account, ordering Phillip Kassover to file his judicial account as executor within 60 days.

The account was filed on January 19, 2016. The petition to account and the Summary of Account reflect the gross value of estate assets to be \$204,362.23, less funeral and administration expenses of \$180,162.32, leaving a balance on hand of \$24,199.91, of which only \$14,199.91 represents cash. Only on Schedule J of the account is there any indication that the estate contains substantial additional assets. Schedule J reads as follows:

“The Estate of Ruth Kassover is a party to ongoing litigation in which settlement for the estate could be in excess of five million (\$5,000,000) dollars. The settlement is therefore a receivable of the Estate. The legal fees for said litigation is a liability of the Estate and from any settlement, the Estate will have to reimburse the Executor who is personally paying the legal fees for the litigation.

Unsold Real Estate:

Real Property located at 5 Shore Drive, Kings Point, NY, having a value on the date of death in the sum of \$2,500,000.00.”

On March 31, 2016, Meridith Dennes filed 12 objections to the account, including objections to Phillip Kassover's: (1) failure to pay her legacy of \$70,000.00; (2) failure to include the decedent's real property in Kings Point (the Kings Point property), in which Phillip Kassover still resides, on Schedule A of the account; (3) personal use of the Kings Point property; and (4) payment, from estate assets, for such personal household expenses as cable, telephone, housekeeping, and gardening bills in the years following the death of the decedent. Meridith Dennes filed First Amended Verified Objections on April 7, 2016, and Phillip Kassover filed responsive papers on April 15, 2016, seeking dismissal of the objections with prejudice. Following court conferences, the present motion was filed.

RELIEF REQUESTED

Pursuant to SCPA § 2102 (4), EPTL § 11-1.5 (c), and/or CPLR § 3212, the petitioner seeks an order: (1) compelling Phillip Kassover, as the executor of the decedent's estate, to pay to Meridith Dennes her bequest of \$70,000.00; (2) pursuant to CPLR § 5004, awarding Meridith Dennes interest on the bequest at the rate of nine per cent, beginning no later than January 6, 2014; and (3) pursuant to SCPA §§ 2301 and 2303, awarding Meridith Dennes her costs and reasonable attorney's fees.

OPPOSITION TO MOTION

Phillip Kassover avers that the estate has no cash with which to satisfy the legacy of Meridith Dennes. He argues that selling the Kings Point property to raise cash is a cold suggestion by Meridith Dennes that would hurt Phillip Kassover personally and financially. He claims that it was the intent of the decedent that he reside in the Kings Point property, and

that if forced to sell it, the transaction costs would exceed the amount of the legacy being sought by the petitioner and would reduce the amount of the residuary bequest payable to him, in addition to uprooting him from his home. Phillip Kassover claims that he has made good faith but ultimately unsuccessful efforts to obtain outside funding to pay the bequest to Meridith Dennes. He concludes by justifying his use of estate assets to retain his mother's household staff after her death as a way "to ease the transition and maintain a relationship of trust between the staff, who had access to the house, and my mother's estate."

PETITIONER'S REPLY AFFIRMATION

In a reply affirmation filed on September 28, 2016, the petitioner's counsel argues that the executor has made no effort to pay her client's legacy since receiving letters in 2013. Instead, Phillip Kassover admits his intention to retain the sole estate asset, the Kings Point property, for his own use, instead of liquidating it, as required. Counsel claims that Phillip Kassover has converted estate assets into personal assets at the expense of a legatee under the decedent's will. Under these circumstances, it is argued, it would be appropriate to award the petitioner with interest and legal fees.

ANALYSIS

Legacies under a will are generally payable seven months after letters are issued to the executor, unless there are extenuating circumstances or the testator has otherwise directed (*see* EPTL § 11-1.5 (c); *Matter of Usdan*, 125 Misc 2d 494, 495 [Sur Ct, Nassau County 1984]). A residuary clause does not take precedence over a general legacy (*see Title Guarantee & Trust Co. v Ebaugh*, 184 NYS 351, 354 [Sup Ct, New York County]). In fact,

general legacies are “entitled to certain priorities in treatment over residuary legacies, one of which is that general legacies must be satisfied before residuary ones can be paid” (*see Matter of White*, 48 Misc 2d 990, 994 [Sur Ct, Onondaga County 1966] [citations omitted] [*revd on other grounds*, 20 NY2d 791 (1967)]). In *Matter of Usdan*, a grandson sought payment of his \$25,000.00 legacy out of a largely illiquid but not insolvent estate. In that instance, this court noted: “Certainly if the executors and trustees had liquidated the major assets of the estate there would have been cash sufficient to fund the \$ 25,000 legacy” (*Matter of Usdan*, 125 Misc 2d 494, 495 [Sur Ct, Nassau County 1984]).

Meridith Dennes requests that the court compel Phillip Kassover to pay her legacy of \$70,000.00 in accordance with the decedent’s will, and to impose interest on the delayed payment of her legacy at the rate of nine per cent, beginning no later than January 6, 2016, which is seven months after the date on which Phillip Kassover was issued full letters testamentary. Phillip Kassover has not presented the court with any valid excuse for his failure to pay this legacy.¹ “[G]eneral legatees are entitled to be paid interest charges on their general legacies if not paid promptly after the expiration of the statutory period” (*Matter of White*, 48 Misc 2d 990, 996 [Sur Ct, Onondaga County 1966] [*revd on other grounds*, 20 NY2d 791 (1967)]). Under former EPTL § 11-1.5 (d),² which applies to estates of decedents

¹The court notes that Article Third of the decedent’s will contained another legacy, in the amount of \$5,000.00, which has been paid by Phillip Kassover.

²In 2014 the New York State Legislature repealed EPTL § 11-1.5 (d) and (e) and added a new paragraph (3) to EPTL 11-A-2.1, but the change is only applicable to estates of persons dying on or after December 20, 2014.

dying prior to December 20, 2014, interest on delayed payments is at six per cent per year, except in the case of unreasonable delay, in which case the court may fix interest in accordance with CPLR § 5004, which provides for interest at nine per cent annually.

CONCLUSION

The court finds that Phillip Kassover's refusal to pay the legacy of \$70,000.00 to Meridith Dennes under the will of the decedent has been and remains unreasonable. Accordingly, the motion to compel Phillip Kassover to pay to Meridith Dennes her legacy of \$70,000.00 in accordance with the decedent's will, and to award Meridith Dennes interest on the unpaid legacy at the rate of nine per cent annually beginning January 6, 2014, as well as her costs and reasonable attorneys' fees, is **GRANTED**.

Phillip Kassover is ordered to pay the legacy of \$70,000.00 to Meridith Dennes no later than February 28, 2017, with interest thereon beginning on January 6, 2014 and continuing to the date of payment at the rate of nine per cent annually. The court acknowledges that this order may require a sale of the Kings Point property in order to fulfill the directions of the decedent as expressed in her will.

The court finds that the petitioner should be awarded costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, and directs counsel for the petitioner to file, on notice to Phillip Kassover, an affirmation of legal services and costs, on or before February 15, 2017. Objections to the costs and fees set forth in the attorney's affirmation, if any, shall be filed by Phillip Kassover on or before February 28, 2017, at which time the determination of costs and fees payable by Phillip Kassover to

Meridith Dennes will be submitted for decision.

This decision constitutes the order of the court and no additional order need be submitted.

Dated: December 22, 2016
Mineola, New York

E N T E R:

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Acting Surrogate

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