

Matter of Ingberman
2015 NY Slip Op 31233(U)
July 15, 2015
Sur Ct, New York County
Docket Number: 2007-0879/B
Judge: Rita M. Mella
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SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court
MISCELLANEOUS DEPT.
JUL 15 2015
FILED
Clerk
DECISION
File No.: 2007-0879/B

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Proceeding to Settle the Account of Israel Ingberman as
Sole Surviving Executor of the Will of

HELEN INGBERMAN,

Deceased.

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M E L L A, S.:

The court considered the following submissions in determining the motion for partial summary judgment:

<u>Papers</u>	<u>Date Filed</u>
1. Notice of Motion	September 25, 2014
2. Affirmation in Support	September 25, 2014
3. Memorandum of Law in Support	September 25, 2014
4. Memorandum of Law in Opposition	October 17, 2014
5. Movant's Reply	October 23, 2014
6. Supplemental Memorandum of Law in Support	November 20, 2014
7. Supplemental Memorandum of Law in Opposition	November 20, 2014

In a proceeding to settle the account of Israel Ingberman as sole surviving executor of the will of Helen Ingberman, objections have been filed by Francisco Colon, administrator of the estate of decedent's post-deceased daughter, Jeanette Ingberman. Primarily, he objects to the distribution of decedent's estate pursuant to a purported assignment by Jeanette. Objectant contends that the assignment was not effective because: (1) the instrument was not executed with the formalities prescribed by EPTL 13-2.2; and, in the alternative, (2) it was not made by Jeanette knowingly and voluntarily. Objectant now moves for partial summary judgment: he seeks a summary determination that the "purported assignment of Jeanette's interest in the Decedent's estate to her brother[,] Israel, is of no effect and void as a matter of law." Essentially,

objectant seeks a determination that the September 1, 2009 distribution to Israel, individually, of Jeanette's interests in decedent's estate was not supported by a cognizable basis and, accordingly, was invalid.

Facts

Helen Ingberman died on September 3, 2006, leaving an estate valued at approximately \$3 million. On March 20, 2007, letters testamentary issued to her two children: petitioner and Jeanette. The will provides for the equal distribution of her residuary estate to her two children.

In August 2009, Jeanette, individually, appears to have signed a document which reads:

“The undersigned, JEANETTE INGBERMAN, hereby assigns to ISRAEL INGBERMAN my entire interest in WASHINGTON JEFFERSON HOTEL, L.L.C., IROQUIS [sic] HOTEL, L.L.C., J & J HOTEL COMPANY, L.L.C., and NEW SYNDICATE, L.L.C., all New York limited companies, whether my interest is owned directly by me or through my interest in the Estate of Helen Ingberman, as a beneficiary thereof as of August 31, 2009.

IN CONSIDERATION of ten dollars (\$10.00) and other good and valuable consideration.”

Below and to the left of Jeanette's signature — which was not notarized or witnessed or acknowledged — appears the word, “Accepted,” as subscribed by Israel.

Despite the formulaic reference to consideration, there is no allegation that the purported assignment was other than gratuitous.

On September 1, 2009, one or both of the executors distributed decedent's interests in the limited liability companies named in the August 2009 instrument — along with decedent's interest in Yale Syndicate, Inc. — to Israel, individually. According to petitioner's account, the

distribution, valued at \$3,177,000, was made, “Pursuant to ARTICLE FIFTH (A) under the Will and assignment by Jeanette Ingberman of her interest under ARTICLE FIFTH (B) of the will.”

On August 24, 2011, Jeanette died intestate, survived by her husband, Francisco Colon, as her sole distributee. On October 21, 2011, letters of administration in her estate issued to him.

Analysis

It is undisputed that the instrument at issue was not executed in accordance with EPTL 13-2.2 (a). The statute provides that an assignment of an interest in a decedent’s estate “shall be in writing and acknowledged or proved in the manner prescribed by the laws of this state for the recording of a conveyance of real property.” But, as precedents have recognized, the statute’s purpose is to assure reliable notice of such an assignment to third persons who would be affected by it (including, as the terms of the statute make clear [EPTL 13-2.2[b]], the fiduciary of the estate). The precedents have thus held that the absence of the formalities prescribed by the statute is not determinative of the respective rights of a purported assignor and assignee *inter se*. (see *Matter of Eckel*, 256 App Div 1031 [4th Dept 1939]; *Matter of Hoffman*, 107 Misc 2d 497 [Sur Ct, Kings County 1980]; *Matter of Palmer*, 53 Misc 2d 217 [Sur Ct, Broome County 1967]; *Matter of Gray*, 28 Misc 2d 1051 [Sur Ct, Niagara County 1961]; *Matter of Kaufman*, 201 Misc 905 [Sur Ct, NY County 1951]; *Matter of Meisel*, NYLJ, Dec. 28, 1990, at 31, col 1 [Sur Ct, Bronx County]). As between the assignor and the assignee, common law principles applicable to gifts or transfers for consideration apply to any challenge by the assignor to the assignment.

The question thus remains as to whether the September 1, 2009 transfer to Israel of Jeanette’s interests constitutes a gift?

The elements of a gift are: “intent on the part of the donor to make a present

transfer; delivery of the gift, either actual or constructive[,] to the donee; and acceptance by the donee” (*Mirvish v Mott*, 18 NY3d 510, 518 [2012], quoting *Gruen v Gruen*, 69 NY2d 48, 53 [1986]). Here, the instrument, at least on its face, expresses an intent on the part of Jeanette to make a gift to Israel as of August 31, 2009. Jeanette was both a co-fiduciary of decedent’s estate and a beneficiary of one half of the residuary of decedent’s estate. As such, Jeanette could have effected a gift to Israel of her individual interests in the companies by having one or both fiduciaries distribute them directly to Israel, individually, rather than having one or both fiduciaries distribute them to herself, individually, and then transferring them to Israel, individually.

Objectant, however, has challenged the authenticity of Jeanette’s signature on the instrument, her capacity to form a donative intent, and her freedom from restraint. These are issues of fact to be determined at trial.

Conclusion

Material facts being in dispute, objectant’s motion for partial summary judgment is denied.

This decision constitutes the order of the court.

Dated: July 15, 2015



S U R R O G A T E