

Matter of Colucci

2016 NY Slip Op 32157(U)

September 26, 2016

Surrogate's Court, Nassau County

Docket Number: 47173/A

Judge: Margaret C. Reilly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**SURROGATE’S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X

**Proceeding to Establish the Right of Inheritance to
Real Property within the State of New York, Which**

**DECISION
File No. 47173/A
Dec. No. 31777**

**RAFFALE COLUCCI
a/k/a RAFFAELE COLUCCI,**

Deceased,

Died Seized in Fee and Intestate Pursuant to SCPA § 2113

-----X

PRESENT: HON. MARGARET C. REILLY

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

Petition.....	1
Affirmation.....	2
Affidavits (3).....	3
Waiver of Citation and Consent.....	4

Pursuant to SCPA § 2113, commonly referred to as probate of heirship, the petitioner seeks a decree establishing her right of inheritance and the rights of other persons entitled to inherit real property from the estate of Raffaele Colucci.¹ No opposition to the petition has been filed.

I. BACKGROUND

Raffaele Colucci (the decedent) died intestate on April 23, 1946. At the time, he owned and lived in real property located at 129 West Fulton Street, Long Beach, New

¹ SCPA § 2113 provides that when a person owning real property dies intestate, one or more of his distributees, or a person deriving title from a distributee, may petition the court for a decree establishing the rights of the decedent’s distributees to inherit the property (*see, for example, Matter of Orr*, NYLJ, Dec. 3, 2004, at 37, col 6 [Sur Ct, Kings County]).

York (the Property). The decedent was survived by his wife, Antoinette Colucci (a/k/a Antonnetta Colucci), and his six children, Michael Colucci, Sr., Joseph Colucci, John Colucci, Consiglia Colucci Binetti, Corrado Colucci and Marie DeLuca-Becht (the petitioner). Letters of administration issued to Michael Colucci, Sr. on May 27, 1946. Although a final account was judicially settled in 1949, the Property was never administered.

Antoinette Colluci resided in the Property with other family members after the death of the decedent in 1946. Antoinette Colluci died on August 31, 1989.² She never remarried or had additional children. Following her death, Corrado Colucci lived in the Property with his wife, Felicissima Colucci.

Michael Colucci, Sr., in his personal capacity, transferred all of his interest in the Property to his sister, Consiglia Colucci Binetti, by deed dated March 15, 1952. Michael Colucci, Sr. died on June 4, 1984, predeceasing his mother, Antoinette Colucci. Michael Colucci, Sr. was survived by a wife, Anna Colucci, and two children, Joanne Felty and Michael Colucci, Jr.

Joseph Colucci died on May 28, 2004. According to the affidavit filed by his son, Vincent Colucci, he was survived by three children: Ralph Colucci, Antoinette Colucci Mongelli, and Vincent Colucci. He left a will, dated March 4, 2002, that nominated

²The Nassau County Surrogate's Court has no record of an administration or probate proceeding in this estate, or in the estates of any deceased party named in this decision other than the decedent and Corrado Colucci. As noted below, the will of Joseph Colucci was probated in Bergen County, New Jersey.

Vincent Colucci as his executor and left all of his property in equal shares to Vincent Colucci and Ralph Colucci. The will was admitted to probate and letters testamentary issued to Vincent Colucci in Bergen County, New Jersey.

John Colucci died on May 27, 1998. According to the affidavit filed by his daughter, Stella Colucci, he was survived by his wife, Yaeko Colucci, and one daughter, Stella Colucci. After the death of John Colucci, his wife never remarried or had additional children. Yaeko Colucci died intestate in Japan on August 31, 2007.

Consiglia Colucci Binetti died intestate on June 11, 2012. According to the affidavit filed by her daughter, Rosalia Sambo, she was survived by two children: Rosalia Sambo and Pantaleone (Leo) Binetti.

Corrado Colucci died intestate on July 13, 2014. Felicissima Colucci, as the court-appointed administrator of the estate of Corrado Colucci (File No. 2014-381047) pursuant to a decree of this court dated September 11, 2014, filed a waiver of citation and consent to establishing the right of inheritance of the petitioner and other persons entitled thereto in the Property.

Marie DeLuca-Becht, the petitioner, is still alive.

II. RELIEF REQUESTED

Petitioner seeks a decree establishing her right of inheritance in the Property and the rights of the other persons entitled thereto.

III. ANALYSIS

Upon the death of the decedent, the Property descended immediately to his distributees (see *Matter of Frank*, 123 NYS2d 452 [Sur Ct, Erie County 1953]). “In determining the intestate succession, the date of death of the testatrix controls” (*Matter of Bruce*, 38 Misc2d 1035, 1038 [Sur Ct, Onondaga County 1963] [citations omitted]). Accordingly, to determine the rights of the petitioner and the other interested parties, the court must begin by applying the applicable law of intestacy in 1946, DEL § 83, which governed the descent and distribution of the real property of an intestate decedent. Paragraph (1) of DEL § 83 provides that 1/3 of the real property shall be distributed “to the surviving spouse, and the residue in equal portions to the children”

For ease of tracking the changing interests, the court’s analyses of the parties’ interests as tenants in common in the Property is presented in chronological order:

1946: Upon the death of the decedent, in accordance with the provisions of DEL § 83, 1/3 of the Property passed to Antoinette Colucci. The residue, or remaining 2/3, passed to the decedent’s six children, Michael Colucci, Sr., Joseph Colucci, John Colucci, Consiglia Colucci Binetti, Corrado Colucci and Marie DeLuca-Becht, who each received a 1/9 share of the Property.

1952: On March 15, 1952, Michael Colucci, Sr. executed a deed in which he transferred all of his interest in the Property to his sister, Consiglia Colucci Binetti. As a result of this transfer, Michael Colucci, Sr. no longer had an interest in the Property, and

the interest of Consiglia Colucci Binetti increased to a $\frac{2}{9}$ share of the Property. The other interests in the Property were unaffected by this transfer. According to the papers filed with the court by the petitioner, no other interests in the Property have been transferred by deed.

1984: Upon the death of Michael Colucci, Sr., the interests of the parties in the Property did not change, as he held no interest in the Property at the time of his death.

1989: Antoinette Colucci, the decedent's surviving spouse, died intestate in 1989. In accordance with the applicable New York statute governing intestate succession in effect in 1989, EPTL § 4-1.1, the $\frac{1}{3}$ share of the Property owned by Antoinette Colucci passed in accordance with EPTL § 4-1.1 (a) (3), in five equal shares to her five children, with one additional share passing to the two children of her predeceased son, Michael Colucci, Sr. This created the following changes in the parties' interests:

Joseph Colucci, John Colucci, Corrado Colucci and Marie DeLuca-Becht, who each previously owned a $\frac{1}{9}$ interest in the Property prior to the death of Antoinette Colucci, now inherited an additional $\frac{1}{18}$ share, leaving each of them with a total $\frac{1}{6}$ share of the Property.

Consiglia Colucci Binetti, who previously owned a $\frac{2}{9}$ interest in the Property prior to the death of Antoinette Colucci, now inherited an additional $\frac{1}{18}$ share, leaving her with a total $\frac{5}{18}$ share of the Property.

Pursuant to EPTL § 4-1.1 (a) (3), a 1/18 share of the Property passed directly from the estate of Antoinette Colucci to Joanne Felty and Michael Colucci, Jr., the children of Michael Colucci, Sr., who had predeceased his mother. Joanne Felty and Michael Colucci, Jr. each inherited a 1/36 interest in the Property.³

1998: Upon the death of John Colucci, his 1/6 interest in the Property passed in intestacy to his wife, Yaeko Colucci, and his daughter, Stella Colucci. Pursuant to the applicable statute at that time, EPTL § 4-1.1 (a) (1), Yaeko Colucci was entitled to receive fifty thousand dollars and ½ of her husband's intestate estate, while Stella Yaeko would receive the balance. While the court lacks information about the other assets held by John Colucci at his death, and the distribution of these assets, the question of precisely how much of the Property passed to each of Yaeko Colucci and Stella Colucci became moot upon the subsequent death of Yaeko Colucci in 2007, discussed below, when Yaeko Colucci's share of the Property passed to Stella Yaeko, who then became the owner of the entire 1/6 share of her father, John Colucci.

2004: Upon the death of Joseph Colucci, his 1/6 interest in the Property passed pursuant to the terms of his will. His son, Vincent Colucci, was appointed by the Surrogate's Court of Bergen County, New Jersey, to serve as the executor of his estate. Under the terms of the will of Joseph Colucci, his sons, Vincent Colucci and Ralph

³As the interest in the Property did not pass through the estate of Michael Colucci, Sr., his wife, Anna Colucci, received no interest in the Property.

Colucci, will each receive a 1/12 interest in the Property. In order to transfer real property located in New York State, Vincent Colucci, as the executor of his father's estate, will be required to apply for ancillary letters (SCPA 1607 [1]).

2007: Yaeko Colucci died intestate, survived by her daughter, Stella Colucci. Pursuant to EPTL § 4-1.1 (a) (3), any interest that Yaeko Colucci had in the Property passed to her daughter, Stella Colucci, and combined with the interest in the Property that Stella Colucci received directly from her father, John Colucci, upon his death. Stella Colucci now owns the entire 1/6 interest in the Property that was originally inherited by her father, John Colucci, from the decedent.

2012: Consiglia Colucci Binetti, who held a 5/18 interest in the Property, died intestate. Her share passed to her two distributees, Rosalia Sambo and Pantaleone (Leo) Binetti, who each received a 5/36 interest.

2014: Corrado Colucci died intestate in 2014, survived by his wife, Felicissima Colucci, who is the administrator of his estate.

IV. CONCLUSION

Based upon a preliminary analysis, it appears to the court that title to the Property is vested in the following individuals:

Marie DeLuca-Becht: 1/6 share as a tenant in common;

Stella Colucci: 1/6 share as a tenant in common;

Felicissima Colucci, as administrator of the estate of Corrado Colucci:

1/6 share as a tenant in common;

Vincent Colucci, as the executor of the estate of Joseph Colucci:

1/6 share as a tenant in common;

Rosali Sambo: 5/36 share as a tenant in common;

Pantaleone (Leo) Binetti: 5/36 share as a tenant in common;

Joanne Helty: 1/36 share as a tenant in common; and

Michael Colucci, Jr.: 1/36 share as a tenant in common.

However, the matter cannot be finally adjudicated at this time for the following two reasons:

A. The petition does not state “the interest or share of the petitioner and of each distributee of the decedent in the property . . .” as required by SCPA § 2113 (1). The wherefore clause of the petition also failed to include this required information. The citations that issued and the waivers and consents do not reflect this information, and were therefore not knowledgeable and must be served again or, in the case of waivers, resubmitted.

B. The proposed decree reflects the petitioner’s mistaken belief that Joanne Helty and Michael Colucci, Jr. have no interest in the Property, due to the deed executed by their father, Michael Colucci, Sr., in 1952, in which he gave all of his interest in the Property to Consiglia Colucci Binetti. However, as the children of a predeceased child, in 1989 Joanne Helty and Michael Colucci, Jr. inherited an interest in the Property directly

from their grandmother, Antoinette Colucci, upon her death. The 1952 deed executed by Michael Colucci, Sr. has no impact on the right of the grandchildren to subsequently inherit from the estate of Antoinette Colucci.

Within 45 days of the date of this decision, the petitioner is directed to file an amended petition which correctly sets forth the interests of all of the parties, as reflected in this decision, along with a knowledgeable citation or knowledgeable waivers for all of the interested parties, including Joanne Helty and Michael Colucci, Jr.

This is the decision and order of the court.

Dated: September 26, 2016
Mineola, New York

E N T E R:

HON. MARGARET C. REILLY
Judge of the Surrogate's Court

cc: Robert H. Solomon, Esq.
24 East Park Avenue
Post Office Box 58
Long Beach, New York 11561