Matter of Farrant
2016 NY Slip Op 32640(U)
December 21, 2016
Surrogate's Court, Nassau County
Docket Number: 2013-376876/A
Judge: Margaret C. Reilly

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
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In the Matter of the Application of Bruce Farrant,
Administrator of the Estate of

VIOLET ADELINE FARRANT,

Deceased,

To Turnover and Discover Property Withheld
Pursuant to SCPA § 2103
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DECISION
File No. 2013-376876/A
Dec. No. 31889

PRESENT: HON. MARGARET C. REILLY

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

Motion for Summary Judgment and Exhibits.	1
Affirmation in Support of Motion.	2
Affidavit of Christine B. Oddo, Movant.	3
Affirmation in Opposition for Summary Judgment.	4
Reply Affirmation.	5
Petition to Turnover and Discover Property.	6

Movant Christine B. Oddo seeks an order pursuant to CPLR §§ 3211 and 3212 granting summary judgment dismissing the SCPA §2103 discovery proceeding commenced by Bruce Farrant.

BACKGROUND

Violet Adeline Farrant (the decedent), died on February 13, 2013 at the age of 98, survived by two adult children, Christine B. Oddo (Oddo) and Bruce Farrant (Farrant). Letters of Administration issued to Farrant on June 9, 2014. In an effort to collect all of the estate assets, Farrant served subpoenas on three banks, requesting bank statements in connection with accounts held by the decedent. The subpoenaed documents showed that

Oddo was named on all of the decedent's accounts, and had removed the majority of the funds in the accounts in January 2013, while the decedent was in a nursing home and shortly before her death.

On June 12, 2015, Farrant brought a petition pursuant to SCPA § 2103 for the turnover and discovery of the funds held in the accounts. Oddo's present motion seeks a dismissal of Farrant's petition.

THE TURNOVER PETITION

In his petition, filed June 12, 2015, Farrant asked the court to order that the following property belonging to the decedent's estate be turned over to Farrant as the administrator of the estate:

a. $200,000.00 which was removed from Ally Demand Notes on July 15, 2008;

b. $80,000.00 which was removed from Ally Demand Notes on September 4, 2008; and

c. $10,668.70 which was removed from Ally Demand Notes on January 7, 2013.

THE MOTION

In the present motion, Oddo seeks an order, pursuant to CPLR § 3211, dismissing Farrant's petition in its entirety, and pursuant to CPLR § 3212, for summary judgment dismissing Farrant's petition in its entirety.

In his affirmation in support of the motion, counsel for Oddo states that the funds that Farrant is seeking were originally held in Ally Demand Note accounts which were jointly held in three names: by the decedent, Farrant and Oddo. According to counsel, between July and September of 2008, the funds were withdrawn and deposited into a Capitol One VIP

interest checking account ending in xx8001 and a Bethpage Federal Credit Union account ending in xx8010. Both accounts were opened as joint tenancies with a right of survivorship in two names: the decedent and Oddo. Based upon the statutory presumption arising from that form of ownership, counsel for Oddo argues that the burden shifts to Farrant to show by clear and convincing evidence that the accounts were opened only as a matter of convenience and were not intended to be true joint accounts.

In support of the statutory presumption, counsel for Oddo notes that the monies in these new accounts were transferred from existing joint accounts, so that no additional convenience was created as a result of the transfers. According to counsel, the purpose of the transfers, which occurred more than five years prior to the death of the decedent, was to exclude Farrant from receiving the benefit of the accounts.

OPPOSITION TO MOTION

In response to the present motion, counsel for Farrant asserts that there are triable issues of material fact. Counsel maintains that when the decedent passed away, she was unaware that the accounts had been transferred from accounts under the names of the decedent, Farrant and Oddo to accounts solely in Oddo's name. According to counsel for Farrant, in July 2008 Oddo withdrew $200,000.00 from Ally Demand Notes, and then three months later, an additional $80,000.00. The funds withdrawn were subsequently deposited into two separate accounts that listed only the decedent and Oddo as account holders. On January 9, 2013, which was a month after the decedent was admitted to a nursing home, as well as a month before the death of the decedent, Oddo removed $100,000.00 from the decedent's account by a check made out to cash and signed by Oddo. In total, Oddo

withdrew $234,010.19 from various accounts belonging to the decedent. There is a question of fact as to whether the decedent agreed, or was competent to agree, to these substantial transfers and withdrawals of funds. Counsel for Farrant notes that Oddo has submitted no evidence, aside from bank statements, that these were not convenience accounts, leaving numerous triable issues of fact that require a fuller examination. No discovery has been conducted to date, and counsel asserts that Oddo has not met her prima facie burden to warrant an award of summary judgment in her favor.

REPLY AFFIRMATION IN SUPPORT OF THE MOTION

Counsel for Oddo cites *Matter of Grancaric* for the proposition that when a bank account is opened in two names, to be delivered to either and with a right of survivorship, a statutory presumption arises and the burden shifts to the challenger "to establish–by clear and convincing evidence–fraud, undue influence, lack of capacity . . . that the accounts were only opened as a matter of convenience and were never intended to be joint accounts" *(Matter of Grancaric* [91 AD3d 1104, 1105 [3d Dept 2012]). Based upon the fact that the funds were moved from one joint account to another, counsel takes the position that the transfer could not possibly have been for the sake of convenience, and that there are no issues of fact.

ANALYSIS AND CONCLUSION

Summary judgment is a drastic remedy (*see Sillman v Twentieth Century-Fox Film Corp*., 3 NY2d 395, 404 [1957]), awarded only sparingly (*see Ronder & Ronder, P.C. v Nationwide Abstract Corp*., 99 AD2d 608 [3d Dept 1984]), and only when there are clearly no triable issues of fact presented (see *NBT Bancorp. v Fleet/Norstar Fin. Group*, 87 NY2d

614, 625 [1996]). In a proper case, however, the court's granting of a summary judgment motion is not only appropriate, but denial of such a motion is reversible error, even in a probate proceeding (*see Matter of Greenspan*, 43 AD2d 998 [3d Dept 1974], *affd* 36 NY2d 737 [1975]). To prevail on a motion for summary judgment, the movant must establish a right to a directed verdict as a matter of law (*see Friends of Animals v Assoc. Fur Manufacturers, Inc*., 46 NY2d 1065, 1067 [1979]). If the movant meets this threshold, the burden then shifts to the party moved against to present proof in opposition in evidentiary form (*see Matter of Bank of New York*, 43 AD2d 105, 107 [1st Dept 1973], *affd* 35 NY2d 512 [1974]). The party moved against may not successfully rely merely on conjecture or surmise (*see Matter of Rosen*, 291 AD2d 562 [2d Dept 2002]); a mere hope that somehow or other the objectant will be able to substantiate allegations at trial is insufficient to deny summary judgment to a proponent who has made out a *prima facie* case (*see Jones v Surrey Coop. Apts., Inc*., 263 AD2d 33 [1st Dept 1999]; *Kennerly v Campbell Chain Co.*, 133 AD2d 669 [2d Dept 1987]). The remedy, however, is inappropriate where there are material issues of fact (*see Matter of Pollock*, 54 NY2d 1156 [1985]).

Joint bank accounts are governed by Banking Law § 675, which provides, in relevant part:

> "(a) When a deposit of cash . . . has been made . . . in the name of [a] depositor . . . and another person and in form to be paid or delivered to either, or the survivor of them, such deposit . . . and any additions thereto made, by either of such persons . . . shall become the property of such persons as joint tenants and the same, together with all additions and accruals thereon . . . may be paid or delivered to either during the lifetime of both or to the survivor after the death of one of them . . . ."

Banking Law § 675 (b) provides:

> "The making of such deposit . . . in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding to which the . . . surviving depositor. . . is a party, of the intention of both depositors . . . to create a joint tenancy and to vest title to such deposit . . . and additions and accruals thereon, in such survivor. The burden of proof in refuting such prima facie evidence is upon the party . . . challenging the title of the survivor."

In support of his petition for turnover of assets, Farrant accuses Oddo of fraud, and claims that Oddo orchestrated the transfer of $280,000.00 from the decedent's Ally Demand Notes account, on which Farrant was a named party, to other accounts which named only the decedent and Oddo. Further transfers were made in subsequent years. In January 2013, prior to the death of the decedent, Oddo liquidated some of the joint accounts, withdrawing approximately $194,010.19. Farrant claims that the total amount of funds wrongfully taken by Oddo from the decedent's accounts prior to the decedent's death is $334,010.19.

While Oddo is correct that the burden of proof is on Farrant to refute the presumption created by the banking law, there are triable issues of fact that require that the present motion for summary judgment be **DENIED**.

A conference will be conducted at the court on February 7, 2017 at 10 a.m.

This is the decision and order of the court.

Dated: December 21, 2016
Mineola, New York

E N T E R :

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

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