

<p>Matter of Watson</p>
<p>2019 NY Slip Op 31467(U)</p>
<p>May 23, 2019</p>
<p>Surrogate's Court, New York County</p>
<p>Docket Number: 2014-3902/A</p>
<p>Judge: Rita M. Mella</p>
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<p>This opinion is uncorrected and not selected for official publication.</p>

[*1]
SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court

Date: MAY 23, 2019

In the Matter of the Petition of FREDERICK DESMOND
WATSON as Administrator of the Estate of

BRIAN WATSON,
Deceased,

DECISION and ORDER

File No.: 2014-3902/A

For an Order Turning Over Proceeds of Sale of Real Property.

In the Matter of the Petition of FRANCES SEKERAK, as
Executor of the Estate of

WILLIAM J. VICIC,
Deceased,

File No.: 2015-3980/A

For Declaration of a Constructive Trust and Turnover
Pursuant to SCPA 2103 and 2104.

M E L L A, S.:

The following papers were considered in determining this motion and cross-motion for summary judgment:

Papers Considered Numbered

Notice of Motion, dated January 2, 2019, for Summary Judgment, With Affidavit, dated December 19, 2018, of Frederick Desmond Watson, in Support, Providing Exhibits A through G, Affidavit of Alison Arden Besunder, Esq., dated January 2, 2019, in Support, Providing Exhibits A through O, and Statement of Undisputed Material Facts	1-4
Memorandum of Law, in Support of Motion for Summary Judgment	5
Second Amended Notice of Cross-Motion, dated March 13, 2019, with Affidavit, dated February 28, 2019, of Lawrence Rosenstock, Esq., Providing Exhibits 1 through 14.....	6-7
Affidavit of Frances Sekerak, dated February 27, 2019 in opposition to the motion and in support of the cross-motion.....	8
Affidavit of Jennifer L. Naso, dated February 20, 2019 in opposition to the motion and in support of the cross-motion.....	9
Affidavit of Christina Johnson, dated February 22, 2019 in opposition to the motion and in support of the cross-motion.....	10

Affidavit of Olga Piantieri, dated February 25, 2019 in opposition to the motion and in support of the cross-motion.....	11
Affidavit of Gayle Sorrentino, dated February 25, 2019 in opposition to the motion and in support of the cross-motion.....	12
Memorandum of Law, In Opposition to Motion and in Support of Cross-Motion	13
Reply Affidavit of Allison Arden Besunder, Esq., in Further Support of the Motion for Summary Judgment, with Exhibits	14
Reply Memorandum of Law in Further Support of the Motion for Summary Judgment and in Opposition to the Cross-Motion	15
Reply Affidavit of Lawrence M. Rosenstock, Esq., in Further Support Of Cross-Motion, with Exhibits.....	16
Reply Memorandum of Law of Frances Sekerak in Support of Cross-Motion.....	17

Since the death of Brian Watson (“Brian”) in 2014, and the death of his life partner, William Vicic (“William”) in 2015, the fiduciaries of their respective estates have engaged in a dispute over the ownership of the shares of stock allocated to their cooperative apartment, valued at approximately \$1.7 million dollars. Frederick Watson (“Watson”), the administrator of the estate of Brian Watson, has petitioned for an order directing Frances Sekerak (“Sekerak”), executor of the will of William Vicic, to turn over one half of the net proceeds of the sale of the apartment. Sekerak, in turn, has petitioned for an order declaring that William’s estate is the sole owner of the apartment on a theory of constructive trust. Watson has moved and Sekerak has cross-moved for summary judgment on their respective petitions.

At the call of a special calendar on April 23, 2019, the court denied both motions for summary judgment. Preliminarily, Watson established, by means of the stock certificate and Proprietary Lease for the apartment, that Brian and William owned the shares of stock as tenants-in-common from the time that the apartment was purchased¹ until Brian’s death, thus making a

¹ The apartment was a combination of two adjoining apartments. The first was purchased solely by William in 1997. The second apartment was purchased in 2002, and the shares to the

prima facie showing of entitlement to judgment as a matter of law on his claim that Brian's estate has a 50 percent interest in the contested property. The proof submitted by Sekerak in opposition, however, has raised an issue of fact that requires a trial: namely whether Brian and William held the tenancy in unequal shares. If the proof at trial establishes that William contributed more than half toward the purchase price and maintenance of the apartment and, moreover, that William did not intend the overage to be a gift to Brian, the court may determine, as a matter of equity, that the share, if any, of Brian's estate should be reduced accordingly (*Ampratwum v Appiah*, 125 AD3d 513, 514 [1st Dept 2015], *citing McGuire v McGuire*, 93 AD3d 701 [2d Dept 2012]; *Moran v Thomas*, 280 App Div 1037 [4th Dept 1952]).

In her cross-motion for summary judgment in her proceeding for a determination that William was the sole beneficiary owner, Sekerak has failed to establish her entitlement to judgment as a matter of law. The proof submitted in support of the cross-motion does not show that Brian held his one-half interest in the property in constructive trust for the benefit of William. Sekerak's evidence does not establish, for instance, any promise by Brian that would have caused William to believe that he could place the apartment in both names with impunity. Similarly, on this record, Sekerak has not established entitlement to judgment as a matter of law on her claim that, as a matter of equity, William's estate should be deemed to be the owner of 100 percent of the interest in the apartment because William alone contributed all or substantially all of the funds to purchase the apartment. While Sekerak's proof tends to show a disproportionate financial contribution by William toward the purchase price of the apartment, such proof does not resolve the issue of what the precise share of ownership of William's estate ought to be. Determination of such issue between tenants in common requires "consideration of

combined apartment, along with the proprietary lease, were put in the names of both Brian and William.

the various equities..., including the nature of the parties' relationship and whether [one of the parties] intended his disparate contributions to be a gift" (*Laney v Siewert*, 26 AD3d 194, 195 [1st Dept 2006]). Accordingly, the motion and the cross-motion were denied.

The alternative relief requested by Sekerak – namely the immediate payment of 50 percent of the proceeds of the sale of the apartment to William's estate – was referred to the law department for a conference to discuss a possible agreement to an advance disbursement.

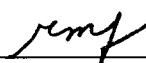
There being common questions of law and fact in these two proceedings, they are consolidated for all further purposes of this litigation (SCPA 501 [2][a]).

A trial on the issues of whether the cooperative apartment was held in constructive trust and to what extent, if any, the shares of the cooperative apartment were held unequally, has been set for September 24, 2019. A pretrial conference has been scheduled for August 27, 2019.

This decision, together with a transcript of the proceedings of April 23, 2019, constitutes the order of the court.

Clerk to notify.

Dated: May 23 , 2019



SURROGATE