

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

New York County Surrogate's Court

February 15, 2018

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Probate Proceeding, Estate of

CHI-CHUAN WANG,

Deceased.
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DECISION

File No.: 2003-2550/I

M E L L A, S.:

Presently before the court is an application by Yien-Koo Wang King ("YK") for preliminary letters in the estate of her father, Chi-Chuan Wang ("CC"). The application is incident to YK's petition for probate of an instrument dated June 13, 2000, and a codicil dated July 10, 2002, and for denial of probate as to a codicil dated February 10, 2003. The application for preliminary letters is opposed by decedent's son, Shou-Kung Wang ("SK"), and SK's son, Andrew Wang.

For purposes of the present application, a brief recital of the pertinent history of this long-embattled estate is warranted.

Background

Decedent, an artist and prominent collector of classical Chinese paintings, died on July 3, 2003, at the age of 96, survived by two daughters, a son, and three grandchildren (the offspring of a predeceased child). YK filed her petition for probate of the June 2000 instrument and the July 2002 codicil within a week of decedent's death. Some days later, SK and Andrew filed a cross-petition for probate of an instrument dated February 18, 2003, under which they were named as executors. Incident to their cross-petition (to which YK eventually objected), SK and Andrew sought appointment as preliminary executors. YK opposed that application. On August 4, 2003, this court issued an order granting preliminary letters to Andrew and letters of temporary

administration to the Public Administrator, the appointees to serve jointly. The court also denied without prejudice the relief requested in YK's petition and her request for the issuance of preliminary letters to her.

Following the lifting of a lengthy stay of the probate proceeding, a trial was conducted on the cross-petition of SK and Andrew, and, on April 26, 2017, a jury found that decedent did not have testamentary capacity at the time he executed the February 18, 2003 instrument and that the instrument was the product of fraud and undue influence. In a May 9, 2017 decree, the court denied probate to the February 18, 2003 instrument, dismissed the cross-petition of SK and Andrew, and revoked Andrew's preliminary letters. On June 19, 2017, SK and Andrew filed a notice of appeal from this court's May 9, 2017 decree. Their appeal remains pending. The relief requested in YK's original petition for probate having been denied, she has filed a new petition for probate, as described at the outset of this decision, and process has issued on this petition.

Instant dispute

SK and Andrew argue that the court should not issue preliminary letters to YK because: (1) she is dishonest and therefore unfit to serve as fiduciary of decedent's estate (*see* SCPA 707 [1] [e]); (2) as estate fiduciary, she would have a conflict of interest as she claims that decedent gave her a large portion of his assets during his life; and (3) SK and Andrew, and not YK, are nominated executors under the February 10, 2003 codicil, which SK and Andrew contend is likely to survive probate.

In her reply, YK correctly points out that the February 10, 2003 codicil has not been offered for probate and maintains that its existence therefore does not bar YK's appointment as preliminary executor.

DISCUSSION

Process having been issued in YK's instant probate petition, this court must issue preliminary letters to her as nominated fiduciary under the propounded instrument "unless bona fide issues of wrongdoing [are] raised" (*Matter of Rattner* 107 AD3d 600, 600 [1st Dept 2013]). In *Rattner*, the Appellate Division held: "[I]t is actual misconduct, not a conflict of interest, that justifies the removal of a fiduciary" (*Matter of Rudin*, 15 AD3d 199, 200 [1st Dept 2005] *lv denied* 4 NY3d 710 [2005]). Nor does the hostility between cross petitioner and petitioners require denial of preliminary letters to petitioners" (*Rattner, supra* at 601). And further: "Although petitioners tried to probate decedent's [earlier in date] will rather than his latest [. . .] will, 'a nominated fiduciary need not offer for probate a will which he believes to be invalid' (*Matter of Mandelbaum*, 7 Misc 3d 539, 540 [Sur Ct, Nassau County 2005])" (*id.* at 600).

The dishonesty on YK's part, as alleged by SK and Andrew, relates to her involvement in transactions in which she engaged while managing decedent's finances, or concerning corporations created to hold decedent's paintings, during his life. Whether in fact YK is, as a result of these transactions, in possession of estate assets is one of the questions at the center of the SCPA 2103 turnover proceeding commenced by the Public Administrator in 2003, shortly after her appointment as Temporary Administrator in this estate. The turnover proceeding was stayed by this court pending the determination of the probate application of SK and Andrew and remains unresolved. Therefore, any misconduct by YK is yet to be proven. Additionally, the restraint imposed on YK from disposing of any asset owned by decedent as an incident of the

2103 proceeding remains in effect.¹

For the purposes of the present application for preliminary letters, there is no reason for the court to spend resources in a determination of whether YK has engaged in “actual misconduct.” The Public Administrator has acted as the Temporary Administrator in this estate for 14 years and will continue to do so. There is no peril, under these circumstances, in allowing YK to serve as fiduciary and in allowing her access to the estate as co-manager.

Accordingly, YK’s application for preliminary letters testamentary is granted. Letters will issue upon her compliance with the provisions of SCPA 708. YK will serve jointly with the

¹ A Supplemental Order to Show Cause, dated October 28, 2003, issued in the Public Administrator’s SCPA 2103 proceeding contains the following restraint:

“ORDERED, that[,] pending the hearing and determination of the within petition, respondents Yien-Koo Wang King and Kenneth King, and their respective agents, employees, representatives and assigns, are [restrained] from selling transferring, encumbering, leasing, assigning, consigning or otherwise disposing of (i) any property which is property of the estate; (ii) any property formerly owned by decedent Chi-Chuan Wang . . . which any respondent claims was gifted to the respondent or the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control; (iii) any property formerly owned by Decedent which any respondent claims was sold to the respondent or the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control; or (iv) any property formerly owned by Decedent which any respondent claims was given on consignment to the respondent or the respondent’s agent, employee, representative, assignee or any corporate entity which the respondent may control.”

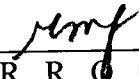
At the November 7, 2003 return day of this order to show cause, counsel for YK represented to the court that YK and her husband, Kenneth King, agreed to be bound by this restraint and would not transfer shares of stock in a company holding title to paintings allegedly owned by decedent during his life, a company of which they apparently were sole shareholders. An attempt by the Kings to modify this restraint to permit the disposition of works of art owned by this and another company also controlled by them was rejected by the Appellate Division, First Department (*see Matter of Wang*, 8 AD3d 10 [1st Dept 2004]).

Public Administrator whose Letters of Temporary Administration will be modified to allow her to act jointly with YK.

Order signed.

Clerk to notify.

Dated: February 15, 2018


S U R R O G A T E