

SURROGATE'S COURT : SUFFOLK COUNTY

In the Matter of the Accounting of
GEORGE SASSOWER,
as Preliminary Executor of the Estate
of
EUGENE PAUL KELLY
Deceased.

DECISION

By: HON. ERNEST L. SIGNORELLI
Surrogate
Dated: February 24, 1978
File # 736 P 1972

This is a contested accounting proceeding involving a relatively modest estate. Because of its unusual history the court is of the opinion that it would serve a constructive purpose to retrace the path of this estate since its inception.

The decedent, who expired on April 26, 1972, nominated in his will his attorney, George Sassower, as his executor, who filed a petition to probate the decedent's last will and testament on May 10, 1972. Objections to probate were filed and thereafter preliminary letters testamentary were issued to the petitioner on June 8, 1972. The objections to probate were ultimately settled, the will was admitted to probate on September 9, 1974, and letters testamentary were issued to the petitioner.

On November 13, 1974, a petition to compel the executor to account was filed with the court and citation issued returnable December 9, 1974. It was difficult to serve Sassower thereby necessitating the issuance of two supplemental citations. The court ultimately issued an order permitting service by substituted service after it became apparent that he was evading service of process. On the return date of the citation, namely March 17, 1975, Sassower defaulted and the court then issued an order dated March 27, 1975, ordering him to account.

Upon his failure to account, an order to show cause was then issued by my predecessor, Judge Hildreth, and made returnable on October 20, 1975, directing petitioner to show cause why he should not be removed as executor and punished for contempt of court because of his failure to obey the court's order of March 27th, 1975 directing him to account. At Sassower's request the said application was adjourned on three separate occasions, and was finally submitted to the court for decision on January 12th, 1976. By an order dated March 25th, 1976, Sassower was removed as fiduciary and determined to be in contempt of

Exhibit "B"

Decision

Estate of: Eugene Paul Kelly

court, but permitting him an additional thirty days from the date thereof to purge himself of the contempt by filing his account.

Mr. Sassower on April 15th, 1976 filed his account as preliminary executor with a petition for its judicial settlement for the period from April 26th, 1972 to September 9th, 1974. Although the citation was made returnable on June 8th, 1976, it was adjourned on a number of occasions and a supplemental citation was then issued returnable July 27th, 1976. After an additional adjournment to September 7th, 1976, jurisdiction was completed, objections filed and the matter was accordingly placed on the reserve trial and hearing calendar and scheduled for conference for September 21st, 1976. The matter was adjourned on five separate occasions to March 2nd, 1977.

On March 2nd, 1977, the guardian ad litem and counsel for a legatee filed objections to his account. The guardian ad litem and the attorney for the legatee had not filed objections sooner in the hope that a conference would result in a settlement of the proceeding.

Incidentally, Doris Sassower, the wife of the petitioner herein, had at the inception of this estate filed a notice of appearance, appearing as attorney for the executor. She was expressly directed by the court to be present for the scheduled court conferences, but has defaulted in appearance for any of the said dates.

On March 25th, 1977 the court issued an order appointing the Public Administrator, as temporary administrator, and on April 28th, 1977 Sassower who had been previously ordered removed as executor was then served in open court with a written order directing him to turn over to the Public Administrator all books, papers and other property of this estate in his possession and under his control on or before May 5th, 1977. On that day the matter was scheduled for trial on June 1st, 1977, and the parties were ordered to conclude their examinations before trial on May 2nd, 1977.

Mr. Sassower brought on a series of motions seeking a disqualification of the undersigned, the vacating of prior orders of this court dated March 27th, 1975 and March 9th, 1976, and an examination before trial of one of the objectants. All of the motions were denied except the application for the examination before trial. The party to be examined before trial, who incurred the loss of a days wages, appeared for the examination on the scheduled date, but Sassower defaulted in appearance.

In the interim, Sassower then filed appeals to the Appellate Division of the orders of this court dated March 25th, 1977 and April 28th, 1977, providing respectively for the appointment of the Public Administrator as temporary administrator and ordering him to turn over the estate's assets to the Public Administrator. The Appellate Division dismissed the said appeals by unanimous decision dated June 12th, 1977. The trial date, at petitioner's request, had been adjourned from June 1st, 1977 to June 15th, 1977.

Decision

Estate of: Eugene Paul Kelly

On the scheduled date for trial, counsel representing the Public Administrator advised the court that he could not proceed to trial because of Sussower's refusal to comply with the court's order of April 28th, 1977, directing him to turn over the assets of the estate to the Public Administrator. When questioned by the court, Sussower informed the court that he would not accede to the court's directive and when he was then advised by the court that he would be held in contempt of court, he relented and assured the court that he would comply and was granted an adjournment to June 22nd, 1977 for that purpose. He was directed to return on June 22nd, 1977 to insure his compliance therewith. On June 22nd, 1977, he failed to appear, and the court then conducted a hearing and, thereupon, determined that he had contumaciously failed to comply with the court's order to turn over the books, records and assets of the estate to the Public Administrator of Suffolk County. He was adjudged to be in contempt of court, and sentenced to thirty days to the county jail.

Pursuant to a warrant of commitment, he was apprehended by the Sheriff of Suffolk County on June 23rd, 1977, and brought before the court whereupon he was given an opportunity to purge himself of the contempt. When he persisted in his refusal to comply with the court's order, he was remanded to the Suffolk County Jail to serve his sentence. On the same day, he procured a writ of habeas corpus from a Justice of the Appellate Division, Second Department, who scheduled the matter for a hearing on the following day, June 24th, 1977, in the Suffolk County Supreme Court. The said Appellate Division Justice denied his application for bail. Later, that same day, he applied for and received another writ of habeas corpus from a Suffolk County Supreme Court Justice which contained a provision for bail. In both habeas corpus applications, he alleged that no previous application had been made for the relief requested.

Petitioner was released on bail on the second writ and a hearing was scheduled thereon. The hearing was ultimately conducted by Supreme Court Justice McInerney who then dismissed the court's contempt order on technical grounds without prejudice to a renewal of the contempt proceedings.

It is the contention of the undersigned that the said Supreme Court Justice preempted the function of the Appellate Division in choosing to act as an appellate court and reviewing the order of the Surrogate, a judge of coordinate jurisdiction. Since a proper and complete record had been, in fact, compiled in the Surrogate's Court the contemnor's sole recourse was to seek review of the contempt order by the Appellate Division. People v. Zweig 32 A.D. 2d 659, 300 N.Y.S. 2d 651; People v. Clinton 42 A.D. 2d 815, 346 N.Y.S. 2d 345; Waterhouse v. Collin 71 Misc. 2d 600, 336 N.Y.S. 2d 960.

As a result of the above decision, Sussower has, with impunity, continued to flaunt the orders of this court and severely hampered and unduly delayed the resolution of this estate at great

Decision

Estate of: Eugene Paul Kelly

harm and expense to the legatees and infant beneficiaries named in the will. He did successfully evade service of further process to adjudge him in contempt of court until served with a new contempt citation by counsel for the Public Administrator on the date the accounting trial was commenced.

In addition to the foregoing, Sassower's inexplicable conduct has affected other courts as well. He caused Justice Furstein of the Supreme Court, Nassau County to issue an order to show cause requesting the staying of a warrant of commitment allegedly issued by this court, without first verifying that the warrant of commitment had in fact been issued. The fact of the matter is that a warrant of commitment had not been issued and the order to show cause was consequently dismissed. Sassower then commenced a civil action in the Federal District Court against the undersigned, the Sheriff of Suffolk County, the Assistant Attorney General of the State of New York, and other attorneys and individuals involved in this estate. The said action was dismissed by the court, and Sassower then filed an appeal of the order of dismissal with the Second Circuit Court. During the pendency of this appeal Sassower saw fit to file a second suit essentially in duplication of the action which was dismissed.

On December 13th, 1977, the court scheduled this matter for pre-trial conference, and all parties appeared except for Sassower. The court then set the matter down for trial on January 25th, 1978, and directed that a final notice be sent to the petitioner advising him of the trial date and its peremptory marking.

On January 25th, 1978, all parties appeared for the trial. The issue of the petitioner's failure to comply with the court's order was once again raised, and in response to the court's question as to whether or not he had obeyed the order to turn the assets over to the Public Administrator, the petitioner refused to answer the question, claiming his Fifth Amendment privilege against self-incrimination and requested the opportunity to consult counsel. The court thereupon held in abeyance the question of his contempt of the court's order until the following day, pending his appearance with counsel. In the interim, the accounting trial was commenced and was continued to the following day. Prior to recessing for the day, the court directed Sassower to return the following morning at 9:30 to continue the trial, and to resolve the further question of his contemptuous conduct.

The petitioner failed to appear in court the following day, and a telephone communication was received by the court from the petitioner's wife, an attorney and his former counsel in this estate. She stated that Sassower could not appear because he was in the Appellate Division on another matter, but refused to identify the case or the particular department of the Appellate Division. A member of the court's staff called the First and Second Departments of the Appellate Division, and it was finally determined that Mr. Sassower was arguing a case in

Decision

Estate of: Eugene Paul Kelly

Hon. Milton Mollen, Presiding Justice
Appellate Division Second Department
45 Monroe Place
Brooklyn, New York 11201

Hon. Harry E. Seidell, Acting Surrogate
County Court
Criminal Courts Bldg.
Center Drive, South
Riverhead, New York 11901

Charles E. Abuzn, Esq.
Attorney for Legatee
551 Fifth Avenue
New York, New York 10017

Ernest G. Wruck, Esq.
Guardian ad Litem
31 Oak Street
Patchogue, New York 11772

Siben & Siben, Esqs.
Attorneys for Claimant
90 East Main Street
Bay Shore, New York 11706

George Sussower, Esq. pro se
75 Wykagyl Station
New Rochelle, New York 10804

Vincent G. Berger Jr., Esq.
Attorney for Public Administrator
6351 Jericho Turnpike
Commack, New York 11725

Doris Sussower, Esq.
75 Wykagyl Station
New Rochelle, New York 10804