

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

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In the Matter of the Petition of the Public  
Administrator, New York County, and Thomas  
LeViness, as Co-Administrators CTA of the Estate of

HUGUETTE CLARK,

Deceased,

For a Decree Directing the Turnover and Delivery  
Of Property, and for Discovery of Information  
Regarding Estate Assets Pursuant to SCPA § 2103,  
Awarding Damages, Rescission of Purported Gifts,  
Impress of Constructive Trusts and Related Relief

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

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In the Matter of the Proceeding by PA of New York  
County, and Thomas LeViness as Co-Administrators  
CTA of the  
Estate of

HUGUETTE CLARK

Deceased,

For a breach of Fiduciary Duty and other Requested  
Relief.

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A N D E R S O N, S.

Before the Court are two petitions by the co-administrators of the estate of Huguette Clark. The petitions seek damages and equitable relief against a hospital (H), two physicians (S), and (R), and a nurse/companion (C). All Respondents move to dismiss the various claims alleged by Petitioners, which include but are not limited to, breach of a fiduciary duty owed to decedent by H and S, aiding and

New York County Surrogate's Court  
MISCELLANEOUS DEPT.

AUG 19 2015

**FILED**

Clerk \_\_\_\_\_

File No. 1995-1375/I

File No. 1995-1375/E

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abetting S by H in the breach, as well as R, C, H, and S for undue influence, unjust enrichment, and assert the defense of the respective statutes of limitations.

Decedent was an extremely wealthy New York socialite who spent the last twenty years of her life as a patient in H. During her last nineteen years, there was no medical necessity which required her continuous hospitalization. Indeed, she could have voluntarily returned to any one of her several homes in New York, California or Connecticut. There is substantial disagreement as to whether decedent chose to remain at H of her own free will, or whether she was persuaded to do so by others, including S, R, C, and H. However, it is not disputed that throughout her hospitalization, decedent made substantial transfers to Respondents and members of their families; as follows: to

H : \$940,000 cash and a Monet painting valued at \$3,100,000;

S : \$667,951 cash; and \$33,857 for payment of S's malpractice premiums; to S's son ; \$50,000 cash, and to S's wife: \$150,000 cash;

R : \$958,000 cash and \$1,000,000 in loans allegedly forgiven after maturity, and to R's wife: \$210,000 cash.

C: \$685,000 cash, \$997,500 for the purchase of a Park Avenue condominium, and \$85,555 for payment of tuition for C's children.

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Decedent died in May 2011 at the age of 104. She executed her will on April 19, 2005. All parties to the instant litigation were also parties to a highly contested probate proceeding in which they agreed and the Court found that, at the time of the execution of her will, decedent was possessed of testamentary capacity, the lowest acceptable level of cognitive ability required by law. Whether or not decedent possessed the higher level of mental capacity to support the ability to make valid gifts was not then before the Court. Indeed, this question is the mainspring of both proceedings now pending. All parties are familiar, and the record is replete, with the unusual facts underlying this litigation.

The Court is presented, on the one hand, with claims that there was no medical reason for decedent to remain in the hospital beyond the first year of her admission. The parties do not dispute that decedent was essentially deaf and legally blind, and that prior to entering the hospital she was afraid to leave her home because of severe facial disfigurement due to untreated cancer. Petitioners assert that decedent, who spent her days playing with her extensive doll collection and watching cartoon videos, was denied psychiatric treatment which could and should have been afforded her.

The opposition, on the other hand, portrays decedent's condition in an entirely different light. Respondents describe her as intelligent, multi-lingual, a habitual reader of the New York Times and French magazines, and familiar with current events. Far from being isolated, Respondents contend that

decedent enjoyed regular visits from a few close friends and that she spoke frequently by telephone with many others. They also assert that she engaged with her personal assistant on a daily basis and that she understood her various professional advisors. Finally, the opposition argues that decedent remained in H of her own volition and, that while there, she refused several requests by Respondents for various gifts.

Thus, by any view, there is a sharp factual dispute between the parties concerning elements which would form the basis of any alleged misconduct, including those of undue influence and unjust enrichment as discussed further within. These disputes cannot be resolved on papers. In the absence of anything in the pleadings which would permit resolution without a trial, the motions to dismiss the claims of undue influence and unjust enrichment must be denied.

We are cognizant of the rule that in considering a motion to dismiss for failure to state a cause of action under CPLR § 3211 (7), “the court must afford the pleadings a liberal construction, accept the allegations of the complaint [petition] as true and provide [petitioners]...the benefit of every possible favorable inference.” (*People v Coventry First LLC*, 13 NY3rd 108, 115 [2009] citing *AG Capital Funding v State Street Bank and Trust Company*, 5 NY3rd 582, 591 [2005]).

If "the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law [,] a motion to dismiss will fail." (*Id.*, citing *Polonetsky v. Better Homes Depot*, 97 NY2d 46, 54 [2001]). Here, both petitions have met the standard of sufficiency. We must therefore consider whether, as a matter of law, movants have presented any basis which compels the Court to grant the motions, in whole or in part.

Petitioners allege that all Respondents breached a fiduciary duty owed to decedent during the twenty years she resided at H. However, they have pled no facts which permit the Court to find that the several relationships which existed between Respondents and decedent extended beyond any fiduciary boundaries other than those that are medical in nature. Therefore, all claims of breach of fiduciary duty are dismissed.

H is accused of aiding and abetting the other Respondents in their breach of fiduciary duty to decedent. However, Petitioners have not alleged the necessary element that H knowingly participated in assisting other Respondents in any unlawful activities. (*Roni v Arfa*, 15 NY 3d 826, 827 [2010]). Thus, claims for aiding and abetting such a breach against H are also dismissed.

Petitioners assert that decedent did not have the legal capacity to make the above-cited transfers and that the receipt of the transfers by Respondents constituted a conversion. Respondents

squarely deny the allegations and the Court is once again presented with questions of fact. However, before reaching the substance of this claim, consideration must first be given to the respective statutes of limitation. The statute of limitations for conversion is three years. (*D'Amico v First Union Nat'l Bank*, 285 AD 2d 166, 172 [1<sup>st</sup> Dept. 2001], *citing* CPLR § 214 [3]). According to the record before us, the last gift from decedent to H occurred in 2002, thus precluding a claim of conversion against H. The statute of limitations for a claim of undue influence is six years CPLR § 213 (8). Petitioners have not pled facts that H exercised any influence over decedent after the date of her last transfer to H in 2002, thus that claim against H is also dismissed.

Petitioners' claim of undue influence with respect to the transfers by decedent to S, R, and C is adequately pled (*Matter of Nofal* 35 AD3d 1132 [3<sup>rd</sup> Dept. 2006]). Respondents generally deny petitioners' allegations and argue that the pleadings lack particularity. However, incontrovertible proof is not required at the pleading stage (*Eurycleia Partners v Seward & Kissel*, 12 NY3d 553, [2009], *citing* *Pludeman v Northern Leasing* 10 NY3d 486, 492 [2008]) and the Court finds that the pleadings fairly apprise Respondents of the claim of the exercise of undue influence by R, S, and C. With respect to undue influence over decedent, the claims against R, S, and C, each of whom received gifts in the six years prior to her death, must be determined at trial. The motions to dismiss are denied.

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Petitioners assert that Respondents were unjustly enriched as a result of decedent's transfers.

To sustain a claim of unjust enrichment, "...a party must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." (*Goel v. Ramachandran*, 111 AD 3<sup>rd</sup> 783, 791 [2<sup>nd</sup> Dept 2013]).

The statute of limitations for a claim of unjust enrichment is six years. (CPLR 213[1], *see, generally* *Whitmore v Yeo*, 112 A.D. 3d 475 [1<sup>st</sup> Dept 2013]). The court has recognized the need for a trial of the undue influence claim, which directly impacts the claim of unjust enrichment. The claim of unjust enrichment for the period six years prior to decedent's death must also be tried against respondents S, R, and C.

Petitioners seek the imposition of a constructive trust based on their assertion that each respondent had a fiduciary or confidential relationship with decedent, and that each unduly influenced her to give them substantial gifts by which they were unjustly enriched. Unjust enrichment, which survives the motion to dismiss, is an element of a claim of a constructive trust (*In re Estate of Cohn*, 83 NY2d 148, 154 [1994]). It follows that this claim also must be tried against the same Respondents for the same time period.

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The matter is set down for trial on Tuesday, October 27, at 2:00 PM.



This constitutes the decision and order of the Court.



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SURROGATE

Dated: August 19, 2015