

2-16-12
CC

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: HON. MARILYN T. SUGARMAN

PART 88R

MARILYN T. SUGARMAN
SPECIAL REFEREE

Special Referee

STATE OF NEW YORK,

Plaintiff(s),

- v -

MARK LEWIS and MARK LEWIS SPORTS
MEMORABILIA, INC., a New York business
corporation,

Defendants.

INDEX NO. 400191/08

MOTION DATE 2/7/12

MOTION SEQ. NO. 002

MOTION CAL. NO.

FILED

FEB 17 2012

The following papers, numbered 1 to _____, were read on this motion to/for

NEW YORK
PAPERS NUMBERED
COUNTY CLERK'S OFFICE

Notice of Motion / Order to Show Cause - Affidavits - Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [X] No

Upon the foregoing papers, it is ordered that the April 8, 2011 order of reference by the Honorable Doris Ling-Cohan for an inquest on damages, and amended order, dated February 7, 2012, for an inquest as to the relief sought in the complaint, is disposed of in accordance with the decision and order that was placed on the record on February 7, 2012.

As set forth on the record, despite having been duly notified, defendants Mark Lewis and Mark Lewis Sports Memorabilia, Inc. failed to appear on the date of the hearing. Defendants are in default. Defendants have waived the right to testify, and to cross-examine plaintiff and plaintiff's witnesses.

As set forth on the record, there is sufficient evidence that defendant Mark Lewis is in possession of the original Last Will and Testament of George Herman "Babe" Ruth (the "Will"). Pursuant to Surrogate's Court Procedure Act § 2504, the will is the property of the State of New York (the "State"). By letter dated January 28, 2005, the State demanded the return of the Will. Defendant failed to comply.

The Clerk is directed to enter judgment in favor of plaintiff and against defendants for the return of the Will, together with any costs and disbursements incurred by plaintiff in the recovery of the Will, including the cost of the transcript of these proceedings. Defendant is ordered to return the Will to plaintiff within thirty (30) days of the date of service of a copy of the judgment with notice of entry.

This constitutes the decision and order of the court. The clerk is directed to enter judgment in accordance with this decision and order.

Dated: FEB 16 2012

MARILYN T. SUGARMAN
SPECIAL REFEREE

[Signature]
MARILYN T. SUGARMAN
Special Referee

Check one: [X] FINAL DISPOSITION [] NON-FINAL DISPOSITION

[] DO NOT POST [X] SUBMIT JUDGMENT

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

STATE OF NEW YORK by ANDREW M. CUOMO
as ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Plaintiff,

-against-

MARK LEWIS,

Defendant.

-----X

Index No. 400191/08

February 7, 2012
60 Centre Street
New York, New York 10007

B E F O R E : HON. MARILYN SUGARMAN, Special Referee

A P P E A R A N C E S

ANDREW M. CUOMO
ATTORNEY GENERAL
STATE OF NEW YORK
For Plaintiff
BY: JANE R. GOLDBERG, ESQ.,
& JASON BUSKIN, ESQ.

FILED

FEB 17 2012

NEW YORK
COUNTY CLERK'S OFFICE

Heyward C. Davis,
Official Court Reporter

Proceedings

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THE WITNESS: Thank you.

THE COURT: Any additional witnesses?

MS. GOLDBERG: No, I do not.

THE COURT: Okay.

Off the record for a second.

(Conference held between the Court and
counsel.)

THE COURT: Back on the record.

The following constitutes the decision and
order of the Special Referee: I note first for the
record it is almost 11:30 a.m. and despite having been
given due notice of today's proceeding, defendant Mark
Lewis and Mark Lewis Sports Memorabilia, Inc. are not
present and have not been present for this hearing.

Again, I find that by not being present and
having defaulted, Mr. Lewis and Mark Lewis Sports
Memorabilia, Inc. have waived the right to testify, to
examine and cross examine witnesses, and to present any
evidence in mitigation of damages.

I specifically note they have waived any
objection to the qualification of Ms. Sulik as an expert
in archival management, and have waived any objection to
any of the hearsay evidence that I allowed in.

I find that sufficient evidence was presented
that Mr. Lewis is in fact in possession of the last will

Proceedings

1
2 and testament of George Herman Ruth, Babe Ruth, which
3 was probated on August 16, 1948.

4 I specifically take judicial notice of section
5 2504 of the Surrogate's Court Procedures Act that, "A
6 written will which has been admitted to probate must
7 remain in the court, except where the will is on file in
8 a court or public office of another state or country
9 under the laws of which it can not be removed."

10 Although no evidence was presented with
11 respect to whether in fact it was Mr. Lewis who removed
12 the last will and testament of George Herman Babe Ruth,
13 again, there was sufficient evidence that it is
14 currently in his possession.

15 The complaint as filed by the State of New
16 York seeks to recover possession of the will. I order
17 that plaintiff is entitled to immediate possession of
18 the will.

19 I further order that the will be delivered by
20 defendants to plaintiff.

21 There was no testimony with respect to any
22 dollar amount of damages for any damage or devaluation
23 of the will, but I will allow plaintiffs to recover any
24 costs that they can prove with respect to the recovery
25 of the will from the defendants, including the cost of
26 the transcript and the preparation of any judgment.

Proceedings

In the event Mr. Lewis does not return the will to plaintiff within 30 days after service of a copy of the order and judgment with notice of entry -- Strike that. Plaintiff shall be allowed to pursue any other remedy against the defendants. The foregoing constitutes the decision and order of the court. Plaintiff is directed to order at least the order portion of the transcript. I will send out a short form order once I get the transcript. And I believe that concludes the proceedings today.

MS. GOLDBERG: Thank you, your Honor.

MR. BUSKIN: Thank you.

* * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

 Heyward C. Davis,
 Official Court Reporter

So ordered:

FILED

FEB 16 2012

Marilyn T. Sugarman

FEB 17 2012

NEW YORK
COUNTY CLERK'S OFFICE

**MARILYN T. SUGARMAN
SPECIAL REFEREE**

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