

SHORT FORM ORDER

Sum

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

Present:

**HON. DANIEL PALMIERI
Acting Justice Supreme Court**

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PATRICK LoPRESTI,

**TRIAL TERM
PART 50**

Plaintiff,

-against-

INDEX NO.:017237/06

**MOTION DATE:11-8-06
SUBMIT DATE: 11-8-06
SEQ. NUMBER -001,002**

**LINDA M. DEVITO and LORAINA BELLIO
as Preliminary Executors of the Estate of
Sonia LoPresti, a/k/a Sonia M. LoPresti and
Sonia Ferro,**

Defendant

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The following papers have been read on this motion:

**Order to Show Cause, dated 10-27-06.....1
Memorandum of Law, dated 10-27-06.....2
Emergency Affirmation, dated 10-27-06.....3
Notice of Cross Motion, dated 11-3-06.....4
Affirmation in Opposition, dated 11-7-06.....5
Defendant's Memorandum of Law In Opposition, dated 11-7-06....6
Affirmation in Opposition to Cross Motion, dated 11-6-06.....7
Reply Affirmation, dated 11-16-06.....8
Reply Affidavit, dated 11-16-06.....9
Reply Memorandum, dated 11-16-06.....10**

Upon the foregoing papers and oral argument by counsel held this date, it is ordered that the motion for a preliminary injunction is granted for the reasons set forth on the record, to the extent set forth therein, that is, the defendants or any person acting on their behalf are enjoined from entering upon the subject property located at 80 Hunters Drive, Muttontown, New York, presently occupied by the plaintiff, unless upon agreement of the parties or

pursuant to a further order of a court of competent jurisdiction, including any order made during the course of proceedings in the Surrogates Court of Nassau County. This relief is conditioned on the plaintiff's continued maintenance of the property in its present condition, including payment of necessary expenses. Bond is fixed at \$200,000 (CPLR 6312[b]). The motion is otherwise denied.

The cross motion is granted, and this matter is hereby transferred to the Surrogate's Court, Nassau County. By such transfer this Court cedes all jurisdiction over this matter to the Surrogate of Nassau County, including any further application that may be directed to this order.

It is apparent that the relief sought by the plaintiff "affects the administration of a decedent's estate which is within the jurisdiction of the surrogate's court" (CPLR 325[e]), and thus should be transferred. Further, in this case a sharp issue exists as to rights in the decedent's home, which the Court has been informed constitutes the bulk of the estate's assets. This adds additional force to the general law that " 'whenever possible, all litigation involving the property and funds of a decedent's estate should be disposed of in the Surrogate's Court' " (*Cipo v Van Blerkom*, 28 AD3d 602 [2006], *citing and quoting Nichols v Kruger*, 113 AD2d 878 [1985]).

The Court notes that notwithstanding the language of CPLR 325(e) there is no requirement of an order of the Surrogate seeking or consenting to the transfer (*Garland v Raunheim*, 29 AD2d 383 [1968]; *Matter of Weinberg*, 125 AD2d 398 [1986]).

This shall constitute the Decision and Order of this Court.

DATED: November 22, 2006

ENTERED
NOV 27 2006

NASSAU COUNTY
COUNTY CLERK'S OFFICE

ENTER


HON. DANIEL PALMIERI

Acting Supreme Court Justice

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