

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

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In the Matter of the Application of  
LYNETTE C. WARD,  
Beneficiary of the Last Will and Testament of

**AFFIDAVIT  
IN SUPPORT**

**File no. 2016-787/L/M**

ANTHONY J. COSTELLO, Deceased,

For Removal of Brett Costello and Thomas F. Bonadio  
As Co-Executors and Trustees of the Estate of Decedent

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ALICIA M. SMITH, being duly sworn, deposes as says as follows under penalty of perjury:

1. I am a person interested in the Estate of Anthony J Costello, as a beneficiary of said estate, as 10% owner of the various assets & LLC's promised to Trusts according to terms of decedent's probated will, and as beneficiary of two separate trust agreements owning interests in at least two of these same assets, and as such I am fully familiar with the facts stated herein.
2. As I have previously stated on record before this Court, I support the removal of co-executors Costello and Bonadio on the grounds that they have neglected their responsibilities as Trustees and Executors of my father's estate and the various trusts established by his probated will and prior to his death, and have negligently and willfully mismanaged the assets owned by my father at the time of his death, and as a result virtually all of those asset values have been seriously diminished.
3. I offer the following material instances in support, which are not meant to be all inclusive:

- 1) Despite adequate cashflow, manager and co-executor Costello's failure to pay property taxes on USAirports and Clinton Crossings properties has cost the owners of these companies over \$1 million and counting in interest, penalties & fees on property tax delinquencies, lien sales and foreclosure actions, well over 30% across years. Instead, monies available for the payment of property taxes were redirected for other purposes via exorbitant intercompany management fees and related party transactions, and to fund large cash purchases of equipment for USAirports.
- 2) Despite adequate and growing cash balances in the various companies comprising the estate, \$2 million in *additional* bank borrowings was used to pay delinquent property taxes, interest and penalties. Still outstanding is nearly \$1.9m and counting in delinquent property taxes, interest, fees and penalties for Buildings ABC at Clinton Crossings, which along with their mortgages have not been paid since 2018, all while the ABC LLC's continue to collect tenant rents and pay exorbitant management fees. These amounts will likely be paid from the proceeds of an eventual sale, in effect robbing the owners of equity in an equal amount. This is especially egregious given the co-executors repeated reminders to the minority owners about the disastrous individual tax consequences of a sale.
- 3) Manager and co-executor Costello's failure to pay and/or address tax bills due the City of Rochester for the City Gate properties (totaling about \$700k at the time), after given numerous opportunities to do so, resulted in the cancellation of a lucrative payment in lieu of taxes incremental financing agreement (PIF), which had an appraised value of \$25.725 million. Around the same time, there became \$6.2 million available from a July 2017 equity refinancing of Clinton Crossings Bldg D, some of which could have been used to keep the PIF alive, since it (PIF) undoubtedly would provide significant value to potential buyers and/or to further the success of the development, and thereby preserve value for the Estate beneficiaries and owners. Instead, the manager and co-executor

chose to use \$500k from the Bldg D equity proceeds to pay down a mortgage on the vacant Westfall Development land adjacent to City Gate. The managers willful actions and inactions in this instance set off a chain of events that resulted in the loss of the PIF (and with it \$26 million in appraised value), a much-publicized Democrat and Chronicle investigative report, the City's eventual foreclosure on the properties, and ironically the certain loss of value of the Westfall Development property.

- 4) It was my father's stated intent that the co-executors work together, however, it wasn't long before each retained legal counsel and took actions, and it is because of their impasse that we are still here, almost 6 years later, faced with properties under receivership, broken promises, and the threat of personal bankruptcy. Their personal, selfish battle has cost creditors, owners, and beneficiaries countless millions. For their part, the co-executors and their attorneys have claimed they are owed \$5 million in commissions and legal fees.
- 5) Both executor's have neglected their important responsibilities to ensure that my father's probated will was administered properly, most prominently my father's specific directions that his assets including his business interests pass to the trusts established by his will and in accordance with values reported on his Estate tax return. Mr. Bonadio, for his part, failed in his fiduciary capacity to investigate or report material instances of willful mismanagement and his own suspicions of missing monies. His repeated pointing to the Consent Order ignores that it contains a clause stating specifically that Bonadio could request a review by the Surrogate as to the fitness of the Manager to continue to manage the day-to-day business operations, as he himself has questioned. The Consent Order also contained provisions for the timely production (quarterly) of specific financial information to the owners and himself. Despite my own pleadings to the court and to Tom, these important provisions of the Consent order were ignored over the past 3 years. Tom had the responsibility and

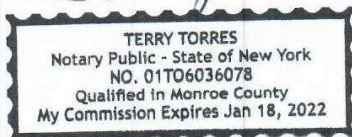
authority (and of course the expertise and knowledge) to take important actions on behalf of the beneficiaries to protect them from the consequences that have resulted. Sadly, instead he has chosen to hide behind legal positions that have prolonged the administration, and allowed for the mismanagement and erosion of my father's estate. Ironically, this is what he predicted, and has passively allowed to happen.

- 6) One of the most obvious and evident reasons to remove the co-executors and trustees is that when ordered to provide a compulsory accounting, both entered two completely separate reports. Bonadio's was a defensive diatribe about how he has limited access and authority, and yet still somehow deserves to remain in place. Mr. Bonadio also submitted an accounting that was from a year and a half ago. Mr. Costello submitted an accounting of his own, yet there are several large discrepancies from Mr. Bonadio's accounting from the same time period.

WHEREFORE, I respectfully request the Court grant judgment in favor of plaintiff and remove Brett Costello and Thomas F. Bonadio as co-executors and trustees of the Estate of Decedent, and appoint an independent administrator/trustee to ensure that the assets left in my father's estate are maximized, and recovered if illegitimately removed or unreported, by order of a forensic accounting and such other and further relief that the Court deems just and proper.

Rochester, New York  
November 12, 2021

*Terry Torres*



By: *Alicia M. Smith*  
Alicia M. Smith, *pro se*