

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

IN THE MATTER OF THE APPLICATION OF

THOMAS F. BONADIO,
AS CO-EXECUTOR OF THE ESTATE OF

ANTHONY J. COSTELLO,

DECEASED.

AFFIDAVIT

FILE NO. 2016-787/F

FOR ADVICE AND DIRECTION PURSUANT TO
SURROGATE'S COURT PROCEDURE ACT §2107 AND §2102(6)

STATE OF NEW YORK)
COUNTY OF MONROE)^{ss}

I, ANDREA L. DILIBERTO, BEING DULY SWORN, SWEARS AND SAYS:

1. I am one of the four children of the Decedent, Anthony Costello.
2. I am a remainderman of one of the Testamentary Trusts created under his Will, but not yet funded.
3. I am also a fractional owner of several of the business entities created by my father, as described in Exhibit "C" appended to the Petition of Thomas F. Bonadio, seeking advice and direction of this Court. Those entities are currently being "managed" by my brother Brett Costello under the ostensible authority of the Will, as are all the business concerns of created by my father.
4. I make this affidavit, in support the relief requested in the instant petition, in an attempt to insure that the my father's obvious desire to leave an estate amply providing for my mother, and passing a legacy of financial security to his children and grandchildren, is not undermined by imprudent business decisions, unnecessary conflict with my father's closest advisor and family friend, "Tom" Bonadio, and with the remainderman.

5. No man can see all of the circumstances that will occur beyond his death.
Certainly, my father could not anticipate business conditions a decade and a half after the execution of his will. However, he put in place a plan that if properly and cooperatively implemented, could offer his wife and progeny substantial protection from the unforeseen: Two executors, a son in the business, and his accountant and advisor, Mr. Bonadio, who was intimately familiar with the finances of the business operations.
 6. Mr. Bonadio's nomination and appointment in the multimillion dollar estate was not meant to be the window dressing that my brother has reduced it to by refusing to immediately share financial information and to consult in good faith with the person next to my father who has the most comprehensive understanding of the businesses and who is utterly without any economic conflict.
 7. Regrettably, my brother has just such a conflict in the decisions that must be made in order to protect the interests of my Mother and my siblings in this estate, and in the interests in which my siblings have independently in several businesses.
 8. The Court, I hope, will forgive the absence from this affidavit of the precise financial information it might otherwise have every reason to require. I must proceed on the best information I have from any source, because my brother has failed to disclose to me, to the other remainder beneficiaries, and to his Co-Executor, the information we have for so long sought.
 9. Brett has given himself an award of management fees for the very services he is required to perform as a fiduciary under the Will and testamentary trusts, and for which he may be amply compensated by statutory commissions. I understand,
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perhaps erroneously, but only erroneously because it has not been disclosed, that his management fee may have so far been more than three hundred thousand dollars, an amount I assure the Court is more than any amount paid into the trust, or distributed to any beneficiary.

10. The manner of the calculation of these fees is largely undisclosed. However, I do know that all of the businesses contribute to the fund for that purpose, and the sale of any project, particularly the larger projects, would result in a precipitous drop in his income and lifestyle.
11. As has been cited by other affidavits, some of these projects, holdings and developments are losing money each year. The figure of \$1.2 to \$1.4 million dollars annual loss from a single residential project under his management has been cited by others. It is not, of course the only business that is bleeding the estate. As Everett Dirksen once said, "A million here, a million there, and soon, you're talking real money."
12. I have to wonder if in the business world, a manager could be so handsomely rewarded for continuing to lose someone else's money.
13. My brother has undertaken a fiduciary obligation to my mother, my siblings and to the estate. I know nothing of estate law, but I hope that the Court does not sanction or tolerate a fiduciary who in the face of dire, substantial and imminent warnings, in constant apparently irresolvable conflict with the majority of the beneficiaries, and with his co-fiduciary, continues to lose substantial amounts of the estate's money and who, by delaying the sale and diversification of assets risks very grave injury to the estate and the futures of the decedent's heirs.
14. An offer to give disclosure now would be both far too late and clearly disingenuous. There is no valid reason that full disclosure was not provided to

Mr. Bonadio from the outset. If the Court accepts what will surely be some excuse for his failure to have disclosed heretofore, a year from now I am certain we will be discussing the shape of the table at which we will sit, and who will get to sit at it, when the disclosure is finally given.

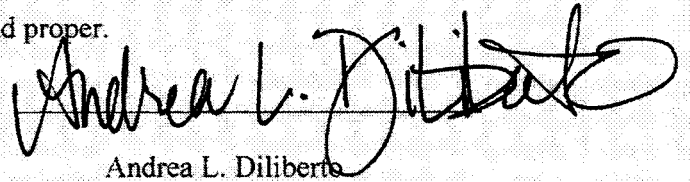
15. I urge the Court to take interim action during the pendency of this proceeding to protect the estate and encourage the full, prompt presentation of a plan for the divestiture of assets, diversification of the estate and trust holdings, reduction and prompt elimination of the unsustainable estate losses, as well as the termination of financial incentives to Brett Costello to hold and manage rather than plan for the estate's future.
16. One does not need to look far to see that there are many potential threats to economic stability in the local, national and world economies. The lack of diversification in this estate means it is vulnerable to those forces.
17. I ask the Court to consider not only the ultimate relief sought by the Petition, but also to fashion some protection for the estate. The Court could, for example, appoint an interim additional co-fiduciary to resolve some of the disputes by a majority vote, a sort of tie-breaker; it could require a bond (to be paid from his compensation) for Brett's activities as manager; it could require that any management fees be escrowed pending the presentation of a plan for the profitability of the assets under management.
18. There may be a claim that notwithstanding the business conditions and losses, it was evident from my father's Will that he wanted the business continue to be run by the Estate. Leaving aside the question of whether a testator's direction to hold what has become, after death, a losing or even disastrous portfolio is enforceable, the best evidence of my father's intentions for the future is not what

some lawyer wrote for him fifteen years ago, but how he lived his life every day, until the last day. His first priority was always to provide for and protect his children and his wife; Family first, then business second. That is not what is being done now.

19. Certainly, my brother will argue that my father recognized this business as speculative, and by will, relieved him of the consequences of failure in such an enterprise. He would assert that he is therefore free to guess as he pleases, come what may. Speculative passes to foolish, wanton, recklessness when action in such an arena is taken against the advice of those highly knowledgeable in the very business in question. That Brett fired my father's top managers, and now is ignoring my father's closest and most trusted advisor evidences a business recklessness that worries me and should cause the Court grave concern.
20. It will doubtlessly be argued that the business entities which are being run at a loss are undermining the profitability and solvency of the estate. Brett may also argue that the supposedly unfortunate business projects left by my father can be improved under his direction, if given more time. In the last eighteen months Brett failed to demonstrate the skill to achieve that goal. What is required, and what we hope this Court will put in place in those entities, is a specialized turnaround management team dedicated to corporate renewal, one that uses analysis and planning to save troubled companies and returns them to solvency. Such a team can identify the reasons for failing performance in the market, and rectify them.
21. I am also concerned that my brother's health may be distracting him. He seems to have become unmindful of the consequences of his actions. The manner of firing Tom Reidy has exposed the Estate to some substantial potential liability.

Well considered, this could have been avoided. I am also informed that although Northwest Bank which holds a \$15 million dollar indebtedness, attempted to contact Brett before the August 30, 2017 maturity date so that he could avail the Estate of the first of two virtually automatic one year extensions, but Brett failed to respond. Of course, this report has not yet been confirmed by a review of documents or of correspondence, for the reasons stated above. If true, while it certainly is not sinister, it is concerning.

22. Wherefore, for the reasons stated herein, I request that the Court grant the relief sought in the Petition of Thomas Bonadio, and grant such other and further relief as to that Court may seem just and proper.


Andrea L. Diliberto

Sworn before me this 1st
of September, 2017
TERRENCE GRAY TRYON
NOTARY PUBLIC

TERRENCE GRAY TRYON
Notary Public, State of New York
No. 01TR6347356
Qualified in Monroe County
Commission Expires August 29, 2020

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

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IN THE MATTER OF THE APPLICATION OF

THOMAS F. BONADIO,
AS CO-EXECUTOR OF THE ESTATE OF

File No. 2016-787/F

ANTHONY J. COSTELLO
PURSUANT TO SCPA 2107 AND 2102(6)
Deceased.

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NOTICE OF HARD COPY SUBMISSION - - E-FILED PROCEEDING
(This Form Must be Annexed to Hard Copy Submissions in E-Filed Proceedings)

When permitted to submit original hard copy documents in e-filed proceedings, indicate the reason for hard copy submission by checking the relevant box and signing below.

Non-Participating Counsel

The attached is a court original unless and until uploaded to NYSCEF

- [] In a **consensual** proceeding, I am authorized to and have served on all other parties a declination of consent to e-filing on behalf of my client, a party to this proceeding.
- [X] In a **mandatory** proceeding, I am exempt from the requirement to e-file because I have filed with the clerk of the court where this proceedings is pending the opt-out notice required by the Rules or the court has granted my application upon good cause shown.

Participating Counsel and Participating Unrepresented Litigants

Submissions Requiring Subsequent E-Filing (filer is responsible for upload to NYSCEF)

- [] I am submitting a proposed order to show cause and supporting papers seeking a TRO, together with the required showing that I or my client will be significantly prejudiced by giving notice. If these documents are served in hard copy only, I shall e-file these documents within 3 business days after service unless the clerk of the court elects to e-file these documents.
- [] I am filing this document in hard copy under the emergency exception and am submitting the required affirmation/affidavit of explanation. I shall, as required by the Rules, e-file these documents within 3 business days unless the clerk of the court elects to e-file these documents.
- [] I am filing this document in hard copy because of a technical failure on the e-filing site as defined in the E-Filing Rules. I shall, as required by the Rules, e-file these documents within 3 business days after restoration of normal operations at the site unless the clerk of the court elects to e-file these documents.

Special Applications/Documents (filer may be responsible for upload to NYSCEF)

- [] I am applying for an order sealing / limiting access to document(s) and I am submitting the application in hard copy form, as permitted by court protocol/procedure.
- [] I am submitting documents for in camera review.
- [] I am filing an exhibit that cannot be e-filed (Rule 207.4-a(e)(9)).

Dated: 9/7/2017

(Signature)
WILLIAM J. BRONGO, ESQ. (Name)
SAME (Firm Name)

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