

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

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**Petition for a Compulsory Accounting and Related
Relief in the Estate of**

VIDA GREENIDGE,

Deceased.
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DECISION AND ORDER

**File No. 2043/A-2011 &
2043/B-2011**

JOHNSON, S.

The following papers were considered in this Order to Show Cause for an order, *inter alia*, vacating the sale of real property:

<u>Papers</u>	<u>Numbered</u>
Order to Show Cause and Affidavits	1, 2, 3
Affidavit in Opposition	4
Hearing Transcript and Evidence	5

In this proceeding to compel the fiduciary to account, the petitioner, Joel Greenidge (Greenidge), has brought an Order to Show Cause for an order vacating the sale of the estate's real property located at 284 Gates Avenue, Brooklyn, New York (Subject Property) and/or directing that the proceeds of any sale be held in escrow.

The decedent's will was admitted to probate by the Decree of this Court dated February 23, 2012 and provided that the decedent's estate pass in equal shares to his surviving children. Pursuant to the will, letters testamentary were granted to Marlene Robinson¹ (Robinson) with no restrictions save those specified in the statute (*see* Article 11 of the Estates

¹ The court notes that letters testamentary previously issued to Marlene Robinson were revoked in a Decision and Order dated July 1, 2014.

Powers and Trusts Law).

Greenidge commenced the current proceeding to compel the fiduciary to account and brought the current Order to Show Cause to vacate the sale alleging that the property was clearly sold below market value. The respondent, Robinson, alleged that the property had to be sold due to “mounting bills” and for distribution and that the price was a fair price based upon the “comparables and the condition of the property.”

The purchaser of the property, Johnny Huggins, moved to intervene. Johnny Huggins died before his motion could be determined. After fiduciaries were appointed for his estate, to wit: E. Laverne Huggins and Barbara Huggins, said fiduciaries were substituted as parties and granted permission to intervene in this proceeding in a Decision dated October 31, 2013. Subsequently, a hearing was held before a court attorney-referee wherein the parties offered proof of their allegations regarding Greenidge’s request to, *inter alia*, vacate the sale of the Subject Property to the now-deceased Johnny Huggins.

In the absence of any limiting provision in the decedent’s will, a court order or decree or any other instrument, a fiduciary is authorized to sell real property, on such terms as in the opinion of the fiduciary will be most advantageous to those interested therein (*see* EPTL 11-1.1 (b) (5) (B)). Despite the discretion granted to the fiduciary in determining the terms, price and conditions of the sale, the actions of the fiduciary must still comport with the best interests of the estate (*see Matter of Kane*, 98 AD2d

851 [3d Dept 1983]). Where the fiduciary acts negligently in his duties or with an absence of diligence or prudence which an ordinary person would exercise in his or her own affairs, the remedy is to surcharge the fiduciary (*see Matter of Lovell*, 23 AD3d 386 [2d Dept 2005]).

Here, the movant, Greenidge, seeks vacatur of the sale. In determining whether to vacate a sale of real property, the movant must show evidence of, *inter alia*, fraud, duress, overreaching, or unconscionability (*see Matter of Lovell*, 23 AD3d 386 [2D Dept 2005]; *Provident Savings Bank, F.A. v Bordes*, 244 AD2d 470 [2d Dept 1997] [where the court sets forth the conditions under which a judicial sale will be set aside]). In his papers and at the hearing, the movant offered proof that he and/or other beneficiaries of the decedent's will received offers to purchase the Subject Property for sums ranging from \$750,000 to \$1,800,000. The movant has lived in the Subject Premises for 33 years, originally with the decedent, and currently with his spouse, children and pet dogs housed in the back yard. Other family members occasionally inhabit the residence. He further stated that while potential purchasers came to visit the premises, neither the petitioner nor his family permitted them to enter the premises for inspection because the premises was being sold "as is." However, he later stated that he had been willing to show the premises had such a showing been requested by the respondent, Robinson, or her counsel. The movant further alleged that he believed that the purchaser knew the respondent's son, Ian Robinson, and had done business

with him in a prior transaction.

At the close of the movant's case in chief, the intervenor/purchaser, by their attorney, moved for dismissal of the motion. Decision was reserved. Based upon the record, the motion is denied and this Court will make a determination based upon the entire hearing record.

The respondent offered proof that she had difficulty gaining access to the premises and was not able to obtain access to allow prospective purchasers to view the premises. The respondent further testified that she retained a broker to assist her in selling the Subject Property. She received three offers from her broker and chose one of those offers. She denied receiving any notice from any of her siblings regarding other offers to purchase the premises. She further offered testimony from a broker that the property was worth between \$500,000 and \$600,000.

Evidence was also offered on behalf of the intervenor, the estate of the now-deceased Johnny Huggins, that Huggins learned that the Subject Property was for sale from his plumber, Fred Thomas. He had no knowledge of the decedent, the respondent, Robinson, or any of the beneficiaries of the estate. He agreed to the price of \$640,000 for the property based upon his knowledge of the values of the property in the area as an owner of same and his understanding that one of the beneficiaries was residing in the property "rent free" possibly requiring additional legal action for possession.

This Court has been unable to adduce from the record before it any

credible evidence to invalidate the sale of this property upon the grounds of fraud, duress or collusion. No evidence was offered to show that the sale was anything other than an arms-length transaction between the respondent (who obtained a broker to assist her in the sale of the premises) and the buyer. The movant's belief that the purchaser knew respondent's son and had done business with him in a prior transaction was unsupported by the record and is alone insufficient to support vacatur upon the aforementioned grounds.

The only substantial evidence that has been presented to the court is the disparity between the offers allegedly received by the movant and the other beneficiaries and the price for which the Subject Property was sold. The movant offered evidence that he and other family members received offers to purchase the property for sums ranging from \$750,000 to \$1,800,000. On the other hand, the respondent offered evidence from a broker that the property held a market value ranging from \$500,000 to \$600,000.

The mere inadequacy of price alone is an insufficient reason to vacate a sale unless the price is so inadequate as to shock the conscience of the court (*see Provident Savings Bank, F.A. v Bordes*, 244 AD2d 470 [2d Dept 1997] [where the court upheld a judicial sale of real property where the sale price was more than 50% of the appraised value]; *Polish National Alliance of Brooklyn, U.S.A. v White Eagle Hall Company, Inc.*, 98 AD2d 400 [2d Dept 1983][where the court declined to vacate a judicial sale for property

sold at a price that was 37% of its value]). The caselaw provides that a determination in the vacatur of sale due to the inadequacy of the sales price must be evaluated on a case by case basis taking into consideration the factors of each case (see *Polish National Alliance of Brooklyn, U.S.A. v White Eagle Hall Company, Inc.*, 98 AD2d 400 [2d Dept 1983]).

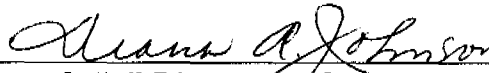
In the case at bar, no persons seeking to purchase the property were allowed admittance. By the movant's own admission, the Subject Property was in a "livable" condition, but needed repairs. The movant described the property as being a large house and acknowledged that "a lot of things can go wrong with a large house, especially when nobody puts anything into it." The movant went on to state that he put very little money into the upkeep of the Subject Property. The movant paid no taxes for the Subject Property, nor did he maintain any insurance for same. He did some repairs himself and alleged that he spent no more than \$3,000 to fix the boiler and other things necessary for the upkeep of the Subject Property since the death of the decedent on February 24, 2011. He further testified that no prospective buyers were allowed admission to the Subject Property for inspection. In fact, the record reflects that even the respondent had difficulties gaining access to the Subject Property during her tenure as fiduciary for this estate. The movant has failed to show enough of a disparity between the value of the property and the sale price in the circumstances of this proceeding to warrant vacatur of the sale.

Based upon this record, the movant has failed to show that the

circumstances of this transaction between the decedent's estate and the now-deceased, Johnny Huggins, warrant the vacatur of the sale of the Subject Premises. However, the court makes no evaluation or determination regarding the respondent's diligence or prudence in carrying out her responsibilities while she was the fiduciary of this estate and a request for a surcharge, if any, will be determined in an accounting proceeding.²

Accordingly, the portion of the Order to Show Cause seeking an order vacating the sale of the Subject Property is hereby denied. However, the portion of the Order to Show Cause seeking an order directing that the proceeds of the sale be held in escrow is granted and the proceeds held in escrow pursuant to this Court's Order dated January 29, 2013 shall continue to be held in the manner directed therein pending further order of the court.

This constitutes the decision and order of the court.


HON. DIANA A. JOHNSON
Surrogate

Dated: Brooklyn, New York
April 24, 2015

² At the hearing, after all of the testimony and evidence had been taken and entered, the movant, by his attorney, requested that the respondent be surcharged and barred from recovery of any portion of the estate. This relief was not requested in the Order to Show Cause and is an issue better determined after an accounting has been filed.