At an I.A.S. Trial Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 2 day of DEC. 2021

P R E S E N T :
Hon. VELASQUEZ
Justice

WILLIAM RAFAEL RODRIGUEZ, as Limited Adminstator of the Estate of Rafael Rodriguez Sr., Deceased **Plaintiff(s)**

Cal. No.

Index No. 514041/2020

- against -

21 HERKIMER MANAGEMENT LLC ET AL

Defendant(s)

The following papers numbered 1 to 43-65 **read on this motion**	**Papers Numbered**
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed	43-55; 57-63
Answering Affidavit (Affirmation)	57; 64
Reply Affidavit (Affirmation)	65
Affidavit (Affirmation)	
Pleadings - Exhibits	
Stipulations - Minutes	
Filed Papers	

Defendant's motion for an Order, pursuant to CPLR Rule 3211(a)(1), (3), and (7) dismissing the Verified Complaint and Demand for a Jury Trial in this action, dated and verified on February 11, 2021 in its entirety due to William Rafael Rodriguez's lack of standing to bring this action "as Limited Administrator of the Estate of Rafael Rodriguez, Sr., Deceased" is hereby granted in its entirety, the plaintiff lacks standing to bring this claim.

Specifically, the Limited Letters issued to Plaintiff with respect to Rafael Sr.'s estate only empower Plaintiff to bring a proceeding under SCPA §§ 2103 and/or 2104, which only provides a mechanism for the discovery and turnover of property belonging to the estate. Here, Plaintiff seeks the imposition of some sort of a constructive trust with respect to 21 Herkimer Street, Brooklyn, New York (the "Property"), which property Rafael Sr. sold to Defendant Herkimer while he was still alive, and/or money damages, arising out of alleged claims of fraud, breach of fiduciary duty, conversion and related claims.In the present case, the claims and relief sought in the Complaint are not provided for in SCPA §§ 2103 and/or 2104, and thus, this action clearly exceeds the limited powers granted to Plaintiff with respect to the administration of Rafael Sr.'s estate. Plaintiff's cross-motion seq. No. 3 to add additional defendants is hereby denied for the same reasons as stated above.

Therefore, Plaintiff's motion to add additional defendants is hereby denied in its entirety. Defendant's motion pursuant to CPLR 3211 is hereby granted in its entirety, and this action is hereby dismissed.

For Clerks use only
MG___
MD___
Motion Seq. #
2, 3

E N T E R FORTHWITH

J.S.C.

Hon. Richard Velasquez, JSC

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