

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ORLEANS

AB 511 DOE,

Plaintiff,

v.

DECISION

Index No. 20-46602

LYNDONVILLE CENTRAL SCHOOL DISTRICT,
LYNDONVILLE ELEMENTARY SCHOOL,

Defendants.

Defendant, in a motion in limine, seeks to add the alleged deceased perpetrator (Houseman) to the verdict sheet pursuant to Article 16 of the CPLR. (NYSCEF 008, Point VIII). Defendant argues pursuant to the Estate Powers and Trust Law (EPTL) §11-3.2, the cause of action against Houseman survived his death. Therefore, defendant argues Houseman should be on the verdict sheet unless plaintiff establishes that after due diligence, he was unable to obtain jurisdiction over the decedent.

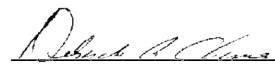
The plaintiff argues he cannot obtain jurisdiction because the decedent died over a decade before the commencement of this action, the decedent had no property or assets in New York at the time the action was commenced, his wife and son do not reside in New York and there was never an estate created. Plaintiff counters defendant's position that an administrator could have been appointed with the argument that pursuant to the definition of an "estate" under the EPTL and the Surrogates Court Procedure Act (SCPA), there is a requirement that for an estate to exist, there must be property to administer. Plaintiff also argues he engaged in due diligence in determining there is no property for the Surrogate Court to administer and to seek an

appointment of an administrator under the circumstances of this case runs afoul of the definition of “estate”.

Though the plaintiff is correct that an “estate” refers to the property a decedent had interest in or owned, (EPTL 1-2.6; SCPA 103), and that Surrogate’s Court has jurisdiction over the property of the decedent, that does not define the entire jurisdiction of the Surrogate Court. The Surrogate Court has “full and complete general jurisdiction in law and in equity to administer justice in *all matters relating to estates and the affairs of decedents*, (SCPA §201 (3), emphasis added). Hence, plaintiff could have petitioned Surrogate’s Court seeking an administrator be appointed to accept service and represent decedent in the action pending before this Court. Had such application been rejected by Surrogate’s Court, then arguably jurisdiction could not have been obtained. No such proof was submitted to the court and the motion to add Houseman on the verdict sheet is granted in so far as evidence is presented at trial to substantiate such a determination.

Counsel for defendant is to prepare an Order and submit it to the Court upon approval of plaintiff’s counsel. The Order shall be submitted within 30 days and shall reference and attach the Court’s Decision to the Order.

DATED: March 4, 2024
Buffalo, New York



Hon. Deborah A. Chimes, J.S.C.