

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Springer v. McGinn

Springer, 2026 NY Slip Op 03838 (Supreme Court of the State of New York Appellate Division Second Judicial
Department 2026) · No. 2024-13017 · Decided June 17, 2026

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Jane Springer, appellant, v Jacqueline McGinn, etc., respondent, et al., defendant. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 17, 2026 2024-13017, (Index No. 619429/21) Betsy Barros, J.P. Helen Voutsinas Lourdes M. Ventura Donna-Marie E. Golia, JJ. Falcon Rappaport & Berkman LLP, Rockville Centre, NY (Karen C. Davakis and Kyle R. Stefurak of counsel), for appellant.

McGiff Halverson Dooley, LLP, Patchogue, NY (Robert R. Dooley of counsel), for respondent. [*1] DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Joseph Farneti, J.), dated February 6, 2023.

The order denied the plaintiff's motion pursuant to CPLR 3211(a) and (b) to dismiss the counterclaims and certain affirmative defenses of the defendant Jacqueline McGinn, denied the plaintiff's application for leave to amend the complaint, and granted the cross-motion of the defendant Jacqueline McGinn pursuant to CPLR 325(e) to remove the action to the Surrogate's Court, Suffolk County.

ORDERED that the appeal from so much of the order as denied the plaintiff's application for leave to amend the complaint is dismissed, as no appeal lies as of right from an order which does not determine a motion made on notice (see CPLR 5701[a][2]), and we decline to grant leave to appeal (see id. § 5701[c]; Weissman v Weissman, 103 AD3d 886); and it is further, ORDERED

that the order is affirmed insofar as reviewed; and it is further, ORDERED that one bill of costs is awarded to the defendant Jacqueline McGinn.

In October 2021, the plaintiff commenced this action against the defendant Jacqueline McGinn (hereinafter the defendant), individually and as executrix of the estate of Robert Springer (hereinafter the decedent), and another defendant, asserting causes of action, inter alia, to recover damages for breach of contract and to impose a constructive trust.

The plaintiff alleged, among other things, that the defendant received the proceeds of certain life insurance policies maintained by the decedent in violation of a divorce settlement agreement between the plaintiff and the decedent.

The defendant joined issue and asserted counterclaims for declaratory and injunctive relief and affirmative defenses. In March 2022, the plaintiff moved pursuant to CPLR 3211(a) and (b) to dismiss the defendant's counterclaims and certain affirmative defenses.

The defendant thereafter cross-moved pursuant to CPLR 325(e) to remove the action to the Surrogate's Court, Suffolk County. In an order dated February 6, 2023, the Supreme Court, inter alia, denied the plaintiff's motion and granted the [*2] defendant's cross-motion.

The plaintiff appeals. "The Supreme Court and the Surrogate's Court have concurrent jurisdiction over the administration of a decedent's estate" (*Rodriguez v Rodriguez*, 229 AD3d 824, 826 [internal quotation marks omitted]; see *Goodwin v Rice*, 79 AD3d 699, 700). "However, wherever possible, all litigation involving the property and funds of a decedent's estate should be disposed of in the Surrogate's Court" (*Rodriguez v Rodriguez*, 229 AD3d at 826 [internal quotation marks omitted]; see *Nichols v Kruger*, 113 AD2d 878, 878-879).

Since the present action involved the property and funds of the decedent's estate, the Supreme Court properly granted the defendant's cross-motion pursuant to CPLR 325(e) to remove the action to the Surrogate's Court, Suffolk County (see *Joffe v Widelitz*, 134 AD3d 766, 767; *Cipo v Van Blerkom*, 28 AD3d 602, 602).

The parties' remaining contentions either are without merit or have been rendered academic in light of our determination. BARROS, J.P., VOUTSINAS, VENTURA and GOLIA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

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