

SUPREME COURT OF NEW YORK

In re Morderno

28 Abb. N. Cas. 57 (1892) · Decided January 15, 1892

SUMMARY

The court held that an assignee of a claim against a decedent is a creditor with standing under Code section 2717 to petition the surrogate’s court for payment from the estate. It reversed the surrogate’s refusal to direct payment of the assigned claims, with costs and disbursements, while the excerpt does not address the separate claims for probate-related expenses.

CASE DETAILS

COURT	Supreme Court of New York
WRITING FOR THE COURT	Van Brunt, P.J.; Lawrence, J.
JURISDICTION	New York
DECIDED	January 15, 1892
DISPOSITION	reversed
PROCEDURAL POSTURE	The petitioner appealed from the portion of a surrogate's decree refusing to direct payment of claims against the decedent's estate that she had acquired by assignment.
STANDARD OF REVIEW	De novo review of the surrogate's construction of Code of Civil Procedure section 2717.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Widow of Antonio J. Morderno v. Temporary administrator of the estate of Antonio J. Morderno

TOPICS

- creditor claims
- probate procedure
- statutory interpretation
- appellate procedure
- probate

PRACTICE AREAS

- probate
- estate administration
- creditor claims
- appellate procedure

QUESTIONS PRESENTED

1. Whether an assignee of a claim against a decedent's estate is a creditor entitled under Code of Civil Procedure section 2717 to petition the surrogate for an order directing payment of the claim.

HOLDINGS

1. An assignee of a claim against a decedent's estate is a creditor within the meaning of Code of Civil Procedure section 2717 and has standing to petition the surrogate for a decree directing payment.

KEY QUOTATIONS

“The assignee of a claim is certainly a creditor of the estate.” (58)

“The language of the section does not limit it to original creditors, but to any person who, at the time of filing his petition, is a creditor of the estate, embracing, therefore, those who have acquired their claims by assignment as well as those who were original creditors, there being no distinction between the position of an assignee of a claim and the original owner of a claim if it had not been assigned.” (58)

FACTUAL BACKGROUND

The decedent's widow paid various expenses incurred for services rendered to the decedent during his lifetime, including hotel charges and nursing, and claimed to have become the assignee of those claims. She petitioned for payment from the estate, along with claims for vault and funeral expenses and expenses related to establishing the decedent's death and assisting with probate. The appeal concerned only the surrogate's refusal to allow payment of the assigned claims.

PROCEDURAL HISTORY

The petitioner sought an order from the surrogate directing the temporary administrator to pay several claims. The surrogate held that an assignee of a claim lacked standing under Code of Civil Procedure section 2717 and denied payment of the assigned claims. The petitioner appealed that portion of the decree; the appellate court reversed it.

DISPOSITION

reversed

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