

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D14748  
W/gts

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Submitted - March 12, 2007

ROBERT A. SPOLZINO, J.P.  
GLORIA GOLDSTEIN  
STEVEN W. FISHER  
WILLIAM E. McCARTHY, JJ.

2006-01066

DECISION & ORDER

In the Matter of Bartholomew DiChiaro, deceased.  
Meredith Say, appellant; Bart DiChiaro, et al.,  
respondents.

(Index No. 229/04)

Chadbourne, O'Neill, Thomson, Whalen & Fitzgerald, Sleepy Hollow, N.Y. (Dennis M. Fitzgerald of counsel), for appellant.

Richard S. Birnbaum, White Plains, N.Y., guardian ad litem for respondents Kristen DiChiaro, Katelyn DiChiaro, Julian DiChiaro, Andrew DiChiaro, and Derek DiChiaro.

In a proceeding, inter alia, to probate the last will and testament of Bartholomew DiChiaro, deceased, the petitioner appeals, as limited by her brief, from so much of an order of the Surrogate's Court, Westchester County (Scarpino, S.), dated December 7, 2005, as denied those branches of her motion which were for summary judgment dismissing the objections to the probate of the last will and testament of the decedent, and for summary judgment on her petition to probate the last will and testament and to issue letters testamentary to her.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The Surrogate's Court properly denied the petitioner's motion for summary judgment dismissing objections to the probate of the last will and testament of Bartholomew DiChiaro, based on lack of due execution, lack of testamentary capacity, fraud, and undue influence. The petitioner failed to make a prima facie showing of entitlement to judgment as a matter of law in this regard (*see generally Zuckerman v City of New York*, 49 NY2d 557, 562). Accordingly, she failed to establish,

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as a matter of law, her entitlement to the relief sought in her petition.

SPOLZINO, J.P., GOLDSTEIN, FISHER and McCARTHY, JJ., concur.

ENTER:

  
James Edward Helges  
Clerk of the Court