

Matter of Lydia Sandler Trust

2025 NY Slip Op 32665(U)

July 24, 2025

Surrogate's Court, New York County

Docket Number: File No. 2019-2734/F

Judge: Rita Mella

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JUL 24 2025

DATA ENTRY DEPT
New York County Surrogate's Court

SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Proceeding for Determination of the Validity and Effectiveness
of the Purported Revocation of the Lydia Sandler Trust,
Lynne Boyarsky Trustee, Estate of

DECISION and ORDER
File No.: 2019-2734/F

LYDIA SANDLER,

Deceased.

-----X
M E L L A, S.:

The court considered the following submissions in determining the instant motion for
Summary judgment:

| | <u>Numbered</u> |
|---|-----------------|
| Petitioner Lynne Boyarsky's Notice of Motion for Summary Judgment; Affidavit of Lynne Boyarsky in Support of Summary Judgment, with Exhibits | 1-2 |
| Respondent Rochelle Klein's Affidavit in Opposition to Petitioner's Motion for Summary Judgment, with Exhibits | 3 |
| Respondent's Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment | 4 |
| Petitioner's Verified Reply to Respondent's Verified Opposition to Motion for Summary Judgment, with Exhibits | 5 |
| Petitioner Lynne Boyarsky's Affidavit of Correction to Petitioner's Verified Reply to Respondent's Verified Opposition to Motion for Summary Judgment | 6 |
| Petitioner Lynne Boyarsky's Further Submission in Support of Summary Judgment, with Exhibits | 7 |
| Affirmation of Philip T. Simpson in Further Opposition to Petitioner's Motion for Summary Judgment, with Exhibits | 8 |
| Respondent's Supplemental Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment | 9 |
| Petitioner's Verified Reply to Further Submissions in Opposition to Summary Judgment | 10 |

This is a proceeding by Lynne Boyarsky (Petitioner), as Trustee of the Lydia Sandler Grantor Trust (Trust), seeking a determination that the purported revocation of the Trust by Lydia Sandler (Grantor) is invalid and that Petitioner, as Trustee, holds the valid stock certificate and proprietary lease appurtenant to a cooperative apartment located at 17 Chittenden Avenue in Manhattan (Apartment). At the call of the calendar on May 16, 2025, the court denied Petitioner's motion for summary judgment (CPLR 3212) for the reasons stated below.

Background

Grantor died on May 19, 2019, at the age of 93, survived by three nieces, Petitioner, Rochelle Klein (Rochelle), and Karen Boyarsky (Karen), who are sisters. Since then, the estate has been mired in litigation. Currently, two other contested proceedings are pending, including a proceeding to probate an April 5, 2016 will under which Rochelle is the nominated executor and primary beneficiary.¹

This proceeding pits Petitioner against Rochelle, who claims on behalf of the estate that the Trust was revoked and the Apartment is an estate asset. Petitioner filed the instant motion before discovery had been completed, and Rochelle opposed the motion on that ground, among others. The court determined that the motion was premature under CPLR 3212(f) and adjourned the motion to December 10, 2024, to allow the parties to complete discovery and file supplemental motion papers related to the additional discovery obtained (*see Matter of Sandler*, NYLJ, July 24, 2024, at 9, col 4 [Sur Ct, NY County]). Thereafter, Rochelle's counsel withdrew from the case, and the court adjourned the motion again, this time to May 16, 2025, to permit

¹ Petitioner is Preliminary Executor of Grantor's estate, having obtained letters under an earlier instrument she had offered for probate first. Upon a removal application by Rochelle, the court, in its discretion under SCPA 1412, determined that Petitioner should remain Preliminary Executor pending the outcome of the probate proceeding, and Rochelle should receive limited letters of administration to represent the estate in matters related to the Apartment (*see Matter of Sandler*, NYLJ, Nov. 22, 2022, at 5, col 2 [Sur Ct, NY County]).

Rochelle to retain new counsel and the parties to file the remaining supplemental motion papers. Rochelle, having retained new counsel and the supplemental motion papers having been timely filed, the court heard arguments on Petitioner's motion for summary judgment on May 16, 2025, as scheduled.

Undisputed Facts

Petitioner and Rochelle dispute almost every aspect of the other's narrative about the Trust and the circumstances of its purported revocation. However, the following facts relevant to the instant motion are not in dispute. Petitioner moved into the Apartment, Grantor's residence, in 2014. On December 22, 2014, Grantor executed a will in which she left the Apartment to Petitioner and divided her residuary estate as follows: Rochelle (2/3), Petitioner (1/6), and Karen (1/6). Grantor then established the Trust on March 25, 2015, for her lifetime benefit with remainder to Petitioner, whom she appointed as Trustee. The Trust was funded with Grantor's interest in the Apartment. A new stock certificate and proprietary lease issued to Petitioner, as Trustee, on June 1, 2015.

As pertinent here, the Trust provides in Article II(C) that "[t]he Grantor shall have the right, at any time and from time to time, to withdraw part or parts or all of the Trust Estate, without the consent of any other person." Further, Article XI provides:

"The Grantor hereby declares this trust to be revocable and she hereby reserves the right, at any time or from time to time during her lifetime, by an instrument signed and acknowledged by her, and delivered to the Trustees, to revoke the trust hereby created, in whole or in part, or to alter or amend this Trust Agreement; provided, however:

- A. No alteration or amendment to this Trust Agreement shall be effective without the prior written consent of the Apartment Corporation, which cannot be unreasonably withheld or delayed, provided that the foregoing provisions of this Paragraph "A" shall not apply to an alteration or amendment which relates solely to a dispositive provision of the Trust Agreement; and

B. Written notice shall be given to the Apartment Corporation if this Trust is revoked.

It is undisputed that, on January 11, 2016, Grantor signed a Police Domestic Incident Report, which describes an altercation between Grantor and Petitioner in the Apartment. That same day, a New York County Family Court judge issued the first of several Temporary Orders of Protection, which directed Petitioner to “stay away” from Grantor and the Apartment.² Grantor also signed a power of attorney naming Rochelle as her agent at about this time.

On March 1, 2016, Grantor executed a new will. The will provided for Rochelle to receive 70 percent of Grantor’s estate and for Petitioner and Karen to share the remaining 30 percent, but before signing it, Grantor increased Rochelle’s share of the estate to 90 percent and reduced Petitioner and Karen’s share to 5 percent by making handwritten changes to the will and then initialing them. Thereafter, on April 5, 2016, Grantor executed the instrument that has been propounded by Rochelle, now incorporating the handwritten changes.

In December 2016, Grantor executed a series of documents drafted for the purpose of revoking the Trust and transferring ownership of the Apartment back to her. Included among those documents was an instrument entitled “Revocation of Trust,” signed and acknowledged by Grantor on December 12, 2016 (Revocation Instrument). The Revocation Instrument states as follows: “I, LYDIA SANDLER, Grantor, do hereby revoke the Trust and declare that all principal thereof with all rights, titles and interests in said principal revert absolutely to me and to no other.” On January 27, 2017, the corporation in which the Apartment shares were held (Apartment Corporation) issued a new stock certificate and proprietary lease in Grantor’s name.

² The last Order of Protection made part of the record was issued on February 10, 2017, with the consent of Petitioner, and remained in force until February 9, 2018.

Discussion

Summary judgment is available only where no material issues of fact exist (*see e.g. Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). The party seeking summary judgment “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*id.* at 324 [citations omitted]). A movant’s “[f]ailure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). However, once a movant’s burden is satisfied, the party opposing summary judgment must come forward with proof in admissible form that establishes a genuine issue of material fact or must provide “an acceptable excuse for [the] failure to do so” (*Zuckerman v City of New York*, 49 NY2d 557, 560 [1980]).

Petitioner based her motion for summary determination on the “effectiveness and validity” of the documents purporting to revoke the Trust and transfer the Apartment out of the Trust and back into Grantor’s name. Specifically, she asked that the court “quiet[] title of [the Apartment] in favor of [her] and dismiss[] as ineffective those purported trust-related documents ...” Rochelle, for her part, argued that the evidence she submitted in support of the validity of the documents at issue and Grantor’s intent to revoke the Trust and transfer the Apartment out of the Trust created fact issues that precluded summary judgment.

After considering the parties’ motion papers and hearing oral argument on the motion, the court determined first that Petitioner had failed to make the required prima facie showing of entitlement to judgment as a matter of law with regard to her claim that the Revocation Instrument is invalid. At the outset, the court considered that, in Article XI of the Trust, Grantor reserved the right to revoke the Trust “by an instrument signed and acknowledged by [the

Grantor], and delivered to the Trustees” and that it is undisputed that such a revocation document was signed and acknowledged by Grantor but was not delivered to Petitioner. However, the court concluded that Petitioner did not demonstrate on the record before the court that, by the language in Article XI, Grantor intended to condition the validity of the revocation on delivery of the Revocation Instrument to the Trustee.

When construing a trust agreement, “a court must look within the four corners of [the] instrument to determine the grantor’s intent” (*Matter of Piel*, 10 NY3d 163, 166 [2008] [citations omitted]). The court found unavailing Petitioner’s argument that delivery to the Trustee of the Revocation Instrument was required for the Trust to be revoked effectively because it ignored an ambiguity in the Trust created when Paragraph C of Article II, which allows the Grantor to withdraw parts or all of the Trust assets, is read in conjunction with the revocation language in Article XI.

Significantly, neither this provision nor any other provision in the Trust requires notice to the Trustee if the Grantor withdraws or transfers assets out of the Trust. Thus, Grantor unequivocally reserved for herself the power to withdraw all of the Trust’s assets, without giving notice to the Trustee. The court found Paragraph C of Article 2 undermined Petitioner’s contention that, as a matter of law, delivery of the Revocation Instrument to the Trustee was required to revoke the Trust because it shows the possibility that Grantor did not consider notice to the Trustee an important or necessary condition when taking actions that affect the Trust, even when effectively revoking the Trust by removing all of its assets.

Further, it is clear from other provisions in the Trust that when Grantor wished to condition or mandate an action, she used language that made her intent clear. Thus, Paragraph A of Article XI specifically conditions the effectiveness of certain amendments to the Trust on the

prior consent of the Apartment Corporation, and Paragraph B of the same Article provides that notice “shall be given” to the Apartment Corporation if the Trust is revoked.

As for Petitioner’s other arguments in support of a summary determination that the Revocation Instrument is invalid, the court found them insufficient to make a prima facie case. Petitioner cited no authority for her contention that the Revocation Instrument, which makes specific reference to the article of the Trust affording Grantor the power to revoke (Article XI), must also quote verbatim the entire article as it applies to revocation. Nor did she offer any basis for the court to conclude that the failure to include the date of the revocation in one place on the Revocation Instrument when it is set forth elsewhere renders the instrument invalid. For all these reasons, the court denied the motion to the extent it sought a summary determination that the Trust was not effectively revoked.

The court also concluded that Petitioner failed to make a prima facie case for summary judgment on her request for a determination that Petitioner, as Trustee, holds the valid stock certificate and proprietary lease for the Apartment, notwithstanding that the Apartment Corporation issued a new stock certificate and proprietary lease in the name of Grantor. Specifically, the court found that, on the record before it, Petitioner’s argument that the new stock certificate and proprietary lease should be invalidated as a matter of law because Petitioner was entitled to notice of Grantor’s efforts to transfer the Apartment out of the Trust was unavailing. The Trust did not provide that the Trustee had to be notified if the Grantor exercised her right to withdraw assets from the Trust and Paragraph C of Article II allowed Grantor to make such withdrawals “without the consent of any other person.”

The court considered Petitioner’s argument that the court was required to invalidate the new stock certificate and proprietary lease because the documents that Grantor and the

Apartment Corporation executed to effectuate the transfer of the Apartment out of the Trust were insufficient on their face as a result of certain irregularities but found the argument without merit. Although it was Petitioner's burden to establish her entitlement to judgment as a matter of law, she offered no legal theory or case law that would support invalidating the stock certificate and proprietary lease in the circumstances here.

Finally, to the extent that Petitioner took issue with the Apartment Corporation's issuance of the new stock certificate and proprietary lease based on the documents submitted by Grantor, the court concluded that her arguments were insufficient to meet her burden on this motion. As Rochelle correctly noted, Petitioner has neither sought specific relief from the Apartment Corporation nor joined it as a party to this proceeding. Moreover, even if that were not the case, on this record, Petitioner offered no authority for the proposition that the Apartment Corporation's decision to accept those documents and transfer the Apartment to Grantor based on them was improper as a matter of law, particularly given the evidence supplied by Petitioner in her moving papers that the Apartment Corporation was aware that Grantor had the absolute power to withdraw assets from the Trust without the consent of anyone and without providing notice to the Trustee. For these reasons, the court concluded as well that Petitioner failed to make a prima facie case that Petitioner should be declared the holder of the valid stock certificate and proprietary lease for the Apartment. Accordingly, the motion for summary judgment was also denied as to this issue.

All discovery having been concluded and the court having denied the motion for summary judgment in its entirety, the court noted that the proceeding was ready to be placed on the court's trial calendar and directed the filing of a Note of Issue by June 30, 2025. However, the parties also agreed to mediate their dispute, and an Order of Reference to Appropriate

Dispute Resolution (ADR) issued on June 16, 2025. As a result, the court contacted the parties to inform them that the filing of a Note of Issue was unnecessary pending the outcome of the mediation process. If the mediation is unsuccessful, the court will direct a date for the filing of a Note of Issue and a pre-trial conference.

This decision, together with the transcript of the May 16, 2025 proceedings, constitutes the order of the court.

The Clerk of the Court is directed to email a copy of this Decision and Order to counsel of record and the parties whose names and respective email addresses appear below.

Dated: July 24, 2025



SURROGATE

To:

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