

Beerman v Brier

2025 NY Slip Op 33540(U)

September 22, 2025

Supreme Court, New York County

Docket Number: Index No. 162251/2024

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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STACEY BEERMAN, individually, ALENA BEERMAN,
individually, STACEY BEERMAN as Administrator of the
ESTATE OF SUSAN HAZAN and ALENA BEERMAN as
Administrator of the ESTATE OF SUSAN HAZAN,

Plaintiffs,

- v -

RACHEL ZACHARIA BRIER, individually and as Trustee of
the SUSAN HAZAN REVOCABLE TRUST and SUZANNE
BRIER,

Defendant.

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INDEX NO. 162251/2024

MOTION DATE 03/24/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, and after a final submission date of June 20, 2025, Defendants Rachel Zacharia Brier (“Rachel”) in her individual capacity and in her capacity as Trustee of The Susan Hazan 2020 Revocable Trust, and Suzanne Brier (“Suzanne”) (collectively “Defendants”) motion to dismiss Plaintiffs Stacey Beerman (“Stacey”) and Aleena Beerman (“Aleena”), individually and as Administrators of the Estate of Susan Hazan’s (collectively “Plaintiffs”) Complaint pursuant to CPLR 3211(a)(1), (a)(5), and (a)(7) is granted.

I. Background

Susan Hazan (“Susan”), now deceased, was Plaintiffs and Suzanne’s grandmother and was Rachel’s mother. Rachel is Plaintiffs’ aunt and Suzanne’s mother. Plaintiffs allege Susan wanted her financial assets to be split equally amongst her three granddaughters upon her demise. Plaintiffs further allege that Rachel exerted undue influence upon Susan who made changes to her estate plan for the benefit of Rachel and Suzanne. Specifically, on February 11, 2020, Susan executed a

will (the “2020 Will”) and created The Susan Hazan 2020 Revocable Trust f/b/o Suzanne Brier (the “Trust”), and in January 2023 Susan made her Morgan Stanley account transferrable on death to Rachel. Plaintiffs now sue seeking a declaratory judgment that the Trust and the transfer on death executed by Susan transferring her Morgan Stanley account to Rachel are invalid because of undue influence. Plaintiffs also allege fraud and rescission. Defendants move for partial dismissal of any claims regarding the formation of the Trust, arguing that Surrogate’s Court already found that when Susan executed the 2020 Will, which was the same day the Trust was created, she was “in all respects competent” and “not under restraint.” They also argue Plaintiffs failed to allege adequately with specificity fraud and undue influence. Plaintiffs oppose.

II. Discussion

Defendants’ motion to dismiss pursuant to CPLR 3211(a)(5) is granted. As held by the Court of Appeals, a valid final judgment bars future actions between the same parties once a claim is brought to a final conclusion, and “all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.” (*see Simmons v Trans Express Inc.*, 37 NY3d 107, 111 [2021] citing *O’Brien v City of Syracuse*, 54 NY2d 353, 357 [1981]). This rule exists “to ensure finality, prevent vexatious litigation and promote judicial economy” (*Xiao Yang Chen v Fischer*, 6 NY3d 94, 100 [2005]). To determine whether two claims arise out of the same transaction or series of transactions, the Court must determine whether they “are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage” (*Xiao, supra* at 100-101 quoting Restatement [Second] of Judgments §24[2]).

Here, in July of 2023, Plaintiffs petitioned Surrogate's Court to probate the 2020 Will, to which Defendants were served with notice and waived all objections (NYSCEF Docs. 12-13). As a result, on January 29, 2024, Surrogate's Court issued a decree finding "the [Will] was duly executed, and that the testator at the time of execution was in all respects competent to make a Will and not under restraint" (NYSCEF Doc. 14). The parties in this action were also parties in the Surrogate's Court proceeding which resulted in a final judgment finding Susan executed the 2020 Will with the requisite capacity and free of restraint. The issue then is whether the execution of the Trust can be considered part of the same series of transactions as the execution of the 2020 Will for purposes of *res judicata* regarding issues of undue influence exerted on Susan. There is no dispute that the probated 2020 Will and the Trust were executed on the same day.

In *Matter of Estate of Kronik*, 192 A.D.3d 489 (1st Dept 2021), the First Department addressed an analogous situation. In *Kronik*, the decedent executed a will in 1976, which was subsequently revoked in 2000. The 2000 Will stated that the testator's estate would pour-over into a trust formed on the same date that the 2000 Will was executed (*Id.* at 489). However, in May of 2000, the decedent's wife instituted a guardianship proceeding, where the decedent was found incapacitated, and the trust created in 2000 was invalidated. When the decedent died in 2009, certain individuals sought to probate the 1976 Will, but there were objections claiming the 2000 Will superseded the 1976 Will. The First Department held that because the trust executed on the same day as the 2000 Will was invalidated in the guardianship proceeding, *re judicata* required a finding that the 2000 Will was also invalid for lack of capacity, for the 2000 Will "was part of a series of transactions that included the formation of the trust, which was found to have been the product of undue influence" (*Kronik* at 490).

The logic applies similarly to this case, albeit to the inverse, because here there is a final judgment ruling the 2020 Will is valid, and therefore the Trust, which was executed on the same day and as part of the same transaction, must also therefore be valid. Plaintiffs do not contend, and the Surrogate's Court has found, that the Will executed by Susan on February 11, 2020 is valid and is not the result of undue influence. Plaintiffs never raised the validity of the 2020 Trust in Surrogate's Court – instead they argued before Surrogate's Court that the 2020 Will, which bequeathed certain property to Plaintiffs, was valid and not the product of undue influence. Now Plaintiffs come to this Court and ask this Court to declare the Trust, which was not to Plaintiffs' benefit, invalid. However, the Trust, which was executed the very same day as the 2020 Will, is part of the same transaction that was found to be valid and is therefore not subject to collateral attack in this proceeding.

A “testator must have the same mental capacity to revoke a will as to execute a testamentary instrument” (*Kronik, supra* at 490 citing *Matter of Davis*, 154 AD2d 461 [2d Dept 1989]). As Plaintiffs do not dispute Susan freely executed the 2020 Will, have benefitted from inheriting property under the 2020 Will, never raised the issue of fraud or undue influence in Surrogate's Court, and the Surrogate's Court has issued an order stating the 2020 Will is valid and was not made under restraint, Plaintiffs cannot now come to this Court and contest the validity of the Trust, which was created the very same day as the 2020 Will. Therefore, Plaintiffs' claims as they relate to the Trust are dismissed.

Because Defendants' do not move to dismiss Plaintiff's claims with respect to the transfer on death form executed by Susan transferring her Morgan Stanley account to Rachel upon Susan's death, this case shall proceed with respect to those claims. Indeed, the form was executed three years after the 2020 Will and creation of the Trust, and was executed just weeks prior to Susan's

death, which raises unique and separate issues of capacity and undue influence as opposed to the 2020 Will and Trust.

Accordingly, it is hereby,

ORDERED that Defendants' motion to dismiss the portions of Plaintiff's Complaint which allege fraud, undue influence, and seek a declaration invalidating The Susan Hazan 2020 Revocable Trust f/b/o Suzanne Brier is granted, and the claims as they relate to The Susan Hazan 2020 Revocable Trust f/b/o Suzanne Brier are dismissed; and it is further

ORDERED that the remainder of Plaintiffs' Complaint survives, and within twenty days of entry of this Decision and Order, Defendants' shall file an Answer to Plaintiffs' claims as they relate to the transfer of Susan's Morgan Stanley Account to Rachel upon Susan's death; and it is further

ORDERED that the parties shall meet and confer and submit a preliminary conference order to the Court via e-mail to SFC-Part33-Clerk@nycourts.gov on or before November 19, 2025; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/22/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN