

Matter of Long

2025 NY Slip Op 34613(U)

August 18, 2025

Surrogate's Court, Bronx County

Docket Number: File No. 2020-1522

Judge: Nelida Malave-Gonzalez

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SURROGATE'S COURT, BRONX COUNTY

August 18, 2025

ESTATE OF LILLIAN LONG, Deceased
File No.: 2020-1522

In this contested proceeding, Laverne Long (“Petitioner”), one of the decedent’s sisters, seeks to probate the decedent’s purported Last Will and Testament dated February 27, 2019 (the “2019 will”), under which she is the estate’s executor and sole beneficiary.

Objections have been interposed by another sister, Helen Long (“Helen”) and a nephew, Noel McIntosh (“Noel”) (collectively, Helen and Noel are the “Objectants”). Helen is the executor and Noel the sole residuary beneficiary under a prior instrument dated January 19, 2014 (the “2014 will”) filed with the court.

The matter is now before the court on separate motions from Helen and Noel for summary judgment denying probate of the 2019 will. Petitioner cross-moves to dismiss all objections and for summary judgment admitting the 2019 will to probate.

BACKGROUND

The decedent died on May 2, 2020, survived by four sisters--Petitioner, Helen, Marion Alexander (“Marion”) and Ruth Brown (“Ruth”)--as her only distributees. During her lifetime, the decedent held substantial real estate in the Bronx, Brooklyn and Manhattan, in addition to stocks, bonds and an investment account worth approximately \$5 million. When she died, her only remaining asset was a five percent interest in a Manhattan property.

An action is pending in the Bronx County Supreme Court (the “Supreme Court Action”) to recover the decedent’s interests in two Brooklyn properties, one located at 133 St. Marks Avenue (“133 SMA”), the other at 179 St. Marks Avenue (“179 SMA”) (collectively, the “SMA Properties”). There, Petitioner alleges the SMA Properties were fraudulently transferred out of the decedent’s name by her two prior attorneys: (i) William Covington (“Covington”) who

held the decedent's power of attorney and (ii) Lorin Lewis ("Lewis"), purportedly Covington's close friend and business associate.

The 2014 will and liquidation of the decedent's assets

Drafted by Lewis, the 2014 will bequeaths securities held in the decedent's safe deposit box to Covington and specifically devises properties to the decedent's brother, Clarence Brown ("Clarence"), Ruth and a niece. When Clarence predeceased the decedent, Noel became the sole residuary beneficiary under the instrument.

Neither the decedent's investment account nor the SMA Properties passed through the 2014 will. The account had been made payable on death to Covington, with its statements mailed directly to him. On the same day the 2014 will was signed, the decedent executed two deeds for no consideration, one giving Noel a remainder interest in the 133 SMA, the other transferring a remainder interest in 179 SMA to Covington. Each of those deeds reserved a life estate for the decedent.

All properties devised under the 2014 will were sold within months of the instrument's execution. Allegedly, the proceeds derived from those sales, on which Covington received commissions, were deposited into the decedent's investment account which named Covington as its beneficiary. After the decedent died, Covington transferred 179 SMA into an LLC owned by Covington and Lewis, for no consideration.

The Article 81 guardianship proceeding

The decedent, needing assistance with her daily living activities, began residing with Petitioner in or about 2016. After moving in with Petitioner, the decedent (i) executed a durable power of attorney authorizing Petitioner to handle all her financial affairs; (ii) gave Petitioner her health care proxy; and (iii) converted the investment account which named Covington as its beneficiary into a new investment account, payable to Petitioner upon the decedent's death.

On February 6, 2019, Marion commenced an Article 81 proceeding to become the decedent's personal needs and property management guardian, alleging that Petitioner was not providing the decedent with adequate care and misappropriating her assets. The matter's presiding judge, Hon. Robert T. Johnson, J.S.C., appointed R. Brent English, Esq. to serve as court evaluator (the "Court Evaluator").

According to his report, dated February 19, 2020, the Court Evaluator first met decedent on March 26, 2019. He observed that the decedent was unresponsive, and that her comprehension and cognitive awareness seemed low. Subsequent visits did not change that assessment. Although he never received the decedent's medical records, the Court Evaluator opined her conduct indicated she suffered from dementia.

The Court Evaluator concluded that the decedent was (i) completely dependent on others for her comfort and care; (ii) unable to manage her finances; and (iii) unable to understand the nature of the Article 81 proceeding or meaningfully participate in a hearing. Based on his investigation, he concluded that the decedent's interests would be best served by appointment of an independent property guardian and one or more family members as a personal needs guardian.

In or around June 30, 2019, Marion and Petitioner attempted to settle the Article 81 proceeding with a written stipulation wherein they agreed, inter alia, that qualified health aides would be present for the decedent's care 24 hours a day, seven days a week; they would share the decedent's medical information; they would each have visitation rights and access to the decedent; and the Article 81 proceeding would be withdrawn upon the stipulation being so-ordered. The decedent was not a party to the stipulation.

The Article 81 court declined the request to so-order the stipulation, and the matter went to a hearing on February 24, 2020. The decedent did not attend the hearing, and the only evidence offered was testimony from Marion, who had not seen the decedent in over

five years. On this sparse record the Article 81 court dismissed Marion’s petition, without prejudice, by a decision and order dated April 9, 2020.

The 2019 will and the objections

The 2019 will is a three-page document drafted by Rannilyn S. Dalley, Esq. (“Attorney Dalley”). The instrument contains an attestation clause from two witnesses who also swore in an annexed self-proving affidavit that (i) the instrument’s execution was supervised by Attorney Dalley; (ii) the execution ceremony met all the requirements of EPTL 3-2.1; (iii) the decedent appeared to sign the 2019 freely, voluntarily and with testamentary capacity.

Attorney Dalley and the witnesses were deposed pursuant to SCPA 1404 and provided affirmations in support of the cross-motion. Notably, Attorney Dalley testified that (i) she had multiple discussions with the decedent regarding the 2019 will; (ii) she took notes during their first meeting, a copy of which are attached to the cross-motion; and (iii) when she supervised the 2019 will’s execution the decedent appeared alert, coherent and fully capable of understanding her actions.

In opposition, Noel and Helen each filed verified objections based on undue influence; fraud; lack of testamentary capacity; lack of due execution; and the instrument’s deviation from the decedent’s prior testamentary plan. Noel’s pleading includes a claim that the estate lacks standing to recover 133 SMA.¹

THE MOTIONS AND THE CROSS-MOTION

Summary of the arguments

Petitioner’s arguments

Petitioner argues that the 2014 will is fraudulent in nature, does not reflect the decedent’s true testamentary intent, and serves as no basis to reject the 2019 will. She

¹ Helen’s objections included the claim that she was not properly served with process, but that defense is rendered moot by her appearance, pleading and participation in this proceeding (see SCPA 203, 401).

asserts that the 2019 will should be presumed to be properly executed as its signing ceremony was supervised by Attorney Dalley, the instrument's attorney/drafter, it contains an attestation clause signed by two witnesses and those witnesses provided a self-executing affidavit. Also, Petitioner contends that the evidence submitted with her cross-motion, i.e. the testimony of the will witnesses and Attorney Dalley, establishes a prima facie case that the decedent had testamentary capacity when she executed the 2019 will, and that she did so voluntarily, free from duress or coercion.

Petitioner alleges that the Objectants have not met their burdens of proof relative to undue influence and fraud, nor have they raised any material issues of fact precluding the court from admitting the 2019 will to probate. While acknowledging that the decedent had been diagnosed with Alzheimer's, Petitioner maintains that this fact, in and of itself, does not create a presumption of incapacity. She notes there is no competent medical or testimonial evidence demonstrating the testator did not understand the consequences of executing the 2019 will. As for the Article 81 proceeding, Petitioner points out that it was dismissed and should therefore raise no triable issues regarding the decedent's testamentary capacity.

The Objectants' arguments

Regarding his claim that the estate has no standing to challenge the transfer of 133 SMA, Noel alleges that Petitioner's claims to the property were dismissed in the Supreme Court Action. Noel further posits that the court must find, as a matter of law, that 133 SMA is not an estate property because it is undisputed the decedent had testamentary capacity when she executed the deed transferring a remainder interest to Noel; the decedent never sought to vacate the deed during her lifetime; and Petitioner has not provided any evidence that the deed was the product of undue influence or fraud.

According to the Objectants, Petitioner has a history of manipulating vulnerable family members, including Clarence and his longtime partner, for financial gain. The Objectants

identify the following facts and circumstances as establishing the 2019 will was a product of undue influence: (i) the decedent's 2018 medical records, attached as a motion exhibit, including a diagnosis of dementia; (ii) the Court Evaluator's report of his observations in 2019 that the decedent was in a feeble state of mind and body; (iii) the decedent resided with Petitioner and depended on her care; (iv) Petitioner engaged Attorney Dalley and was integrally involved with the 2019 will's drafting and execution; (v) Petitioner receives nothing under the 2014 will but is the sole beneficiary under the 2019 will; (vi) millions of dollars in decedent's assets have transferred to Petitioner since she became the decedent's caregiver; and (vii) Petitioner held the decedent's health care proxy, power of attorney, and apparently the authority to negotiate a settlement of the Article 81 proceeding on her behalf, the terms of which indicate that Petitioner controlled the decedent's personal and property affairs. The Objectants further allege that Petitioner maintained a confidential relationship with the decedent, thereby making it incumbent upon Petitioner to establish, by clear and convincing evidence, that the changes in the decedent's estate plan were free from undue influence.

With respect to their fraud objection, the Objectants do not allege that a material misrepresentation was made prior to the execution of the 2019 will inducing her to sign the instrument under false pretenses. Instead, the Objectants argue that Petitioner forged the decedent's signature on the 2019 will, an act they characterize as a form of fraud. In support of their position, the Objectants contrast the signature on the 2019 will as bearing little resemblance to the decedent's signatures on the 2014 will, the deed transferring a remainder interest in 133 SMA to Noel or in her medical records.

Addressing the issue of the decedent's capacity, the Objectants note the 2019 will was executed shortly before (i) Court Evaluator met with the decedent and observed that her "comprehension and cognitive awareness seemed low," and (ii) the stipulation of settlement in that proceeding, wherein Petitioner all but admitted that the decedent was incapacitated.

Compounding this with the decedent's medical records indicating cognitive decline marked by progressive dementia and memory loss, the Objectants contend Petitioner has not met her burden of establishing testamentary capacity.

Finally, as to whether the 2019 will's execution complied with the formalities of EPTL 3-2.1, the Objectants argue there is no proof that the decedent (i) attested and declared to the witnesses that the 2019 will is her last will and testament, or (ii) asked them to act as witnesses to its execution. The Objectants cite multiple inconsistencies in the witnesses' SCPA 1404 deposition testimony as raising significant questions about the circumstances of signing ceremony. According to the Objectants, these questions rebut the presumption of proper execution asserted by Petitioner and, at the very least, require a hearing pursuant to SCPA 1408.

DISCUSSION AND FINDINGS

Standard of review

Summary judgment is a drastic remedy that must be exercised cautiously. It should not be granted if there is any doubt as to the existence of a triable issue (*see Phillips v Joseph Kantor & Co.*, 31 NY2d 307 [1972]; *Matter of Pollock*, 64 NY2d 1156, 1168 [1985]; *Matter of Kumstar*, 66 NY2d 691, 692 [1985]).

The Court's primary function in deciding a summary judgment motion is issue identification, not issue determination (*see Barr v County of Albany*, 50 NY2d 247 [1980]); *Sillman v Twentieth Century Fox-Film Corp.*, 3 NY2d 395 [1951]). To obtain summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, proffering evidence in admissible form which demonstrates the absence of any material issues (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

If the movant meets this burden, the opposing party must then present sufficient evidence to establish there are material issues of fact requiring a trial (CPLR 3212[b]; *Alvarez, supra*; *Zuckerman, supra*). The opposing party may not successfully rely on conjecture, surmise or the hope that somehow his or her allegations can be substantiated at trial (*Jones v Surrey Coop. Apts., Inc.*, 263 AD2d 33 [1st Dept 1999]). A party opposing summary judgment must be accorded every favorable inference and issues of credibility may not be determined on the motion but at a trial (see *F. Garofalo Elec. Co. v New York Univ.*, 300 AD2d 186, 754 N.Y.S.2d 227 [1st Dept 2002]). When there is conflicting evidence or the possibility of drawing inferences from undisputed evidence, the issue is one for the trier of fact at a trial (see *Matter of Kumstar, Hagan v Stone*, 174 NY 317 [1903]). For purposes of defeating a summary judgment motion the court must assume factual allegations to be true provided they are more than conclusory allegations (see *Matter of Doody*, 79 AD3d 1380 [3^d Dept 2010]).

The Objections

Standing

Noel's "objection" alleging that the estate lacks standing to recover 133 SMA has nothing to do with the validity of the 2019 will. The issues regarding the transfer of 133 SMA to Noel are being litigated in the Supreme Court Action and are not properly entertainable in this probate proceeding. Inasmuch as the standing claim is irrelevant to whether the 2019 will should be probated, the objection is dismissed as a matter of law, without prejudice to Noel asserting it in an appropriate separate proceeding.

Deviations from the 2014 will

A court may consider a testator's deviation from a prior estate plan in a will contest. Generally, however, this does not constitute an independent objection, as a testator has an absolute right to change his or her testamentary intent. Moreover, the validity of the 2014 will has not been established, and this proceeding is not the forum for litigating its status as a

legal instrument. Accordingly, this objection is dismissed as a matter of law, without prejudice to any subsequent application to probate the 2014 will.

Undue Influence

An objectant's burden to prove undue influence never shifts (*Matter of Driscoll*, 1998 NY Misc LEXIS 802 [Sur Ct, Westchester County 1998]). To prove undue influence, an objectant must show by a preponderance of evidence that the will was not the product of the decedent's independent action, but the result of mental coercion or irresistible importunity that compelled the decedent to execute the instrument against her free will (*Matter of Walther*, 6 NY2d 49, 53 [1959]; *Maisannes v Ryan*, 34 AD3d 212 [1st Dept 2006]; *Matter of Kaufman*, 20 AD2d 464 [1st Dept 1964], *affd*, 15 NY2d 825 [1965]).

The proof must be of a substantial nature showing motive, opportunity and the actual exercise of influence that subverted the mind of the testator at the time of the instrument's execution to the extent that, but for the influence, the decedent would not have executed the instrument (*see Matter of Fiumara*, 47 NY2d 845 [1979]; *Matter of Makitra*, 101 AD3d 1579 [4th Dept 2012]). Undue influence cannot be established with mere speculation and conclusory allegations (*Matter of Colverd*, 52 AD3d 971 [3rd Dept 2008]; *Matter of Walker*, 80 AD3d 865 [3rd Dept 2011]). Since direct proof of undue influence is rarely available, it can be proved circumstantially (*Matter of Malone*, 46 AD3d 975, 977 [3rd Dept 2007]).

The Objectants have submitted compelling proof suggesting that the decedent was highly susceptible to being unduly influenced by Petitioner when she allegedly executed the 2019 will, and that Petitioner received millions of dollars of the decedent's assets by exercising such influence. This proof raises a triable claim regarding the existence of a confidential relationship between Petitioner and the decedent (*see Matter of Rozof*, 219 AD3d 1428, 1430 [2nd Dept 2023]). Moreover, credibility issues are raised by the stark contrast between the Objectant's evidence with the affidavits and deposition testimony offered by

Petitioner. On this record, therefore, summary judgment as to undue influence cannot be granted.

Fraud

The Objectants have the burden of proving fraud by clear and convincing evidence, regardless of whether their objection is based on a material misrepresentation or forgery (*Neuman v Neuman*, 109 AD2d 886, 888 [2nd Dept 2013]). They have not, however, provided any expert's opinion on the forgery issue, handwriting analysis or particulars on the forgery claim (see, e.g., *Matter of Herman*, 289 AD2d 239 [2nd Dept 2001]). Their visual comparison of signatures on other documents is insufficient to meet their burden of proof. A prima facie case not having been established, the fraud objection must be dismissed as a matter of law (see *Ayotte v Gervasio*, 81 NY2d 1062 [1993]).

Lack of testamentary capacity and due execution

Petitioner has the burden of proving by a preponderance of the evidence that the decedent possessed testamentary capacity and the 2019 will was duly executed (see *Matter of Slade*, 106 AD2d 914 [4th Dept 1984]; see also *Matter of Falk*, 47 AD3d 21 (1st Dept 2007)), lv to appeal denied 10 NY3d 702 [2008]).

The capacity to execute a will is lower than that required to execute most other legal documents or contracts (*In re Coddington*, AD 143 [3rd Dept 1952], affd 307 NY 181 [1954]). It may be established with evidence that the testator understood the nature and extent of his property, his relation to the natural objects of his bounty, and the scope and provisions of the instrument (see *Matter of Kumstar*, 66 NY2d 691, 692 [1985]).

The elements of due execution are (i) the will must be in writing; (ii) the testator's signature must be at the end of the will; (iii) the signature must be affixed in the presence of each of the attesting witnesses or acknowledged by the testator to each of the witnesses that it is his signature; (iv) the testator must declare to each of the witnesses that it is her will; and

(v) the witnesses must sign within a 30 day period and at the testator's request (EPTL 3-2.1; *Matter of Falk, supra*).

As the 2019 will's execution was attorney-supervised, a presumption arises that it satisfied all statutory requirements (*Matter of Scaccia*, 66 AD3d 1247, 1250-1251 (3rd Dept 2009); *Matter of Philbrook*, 185 AD2d 550 [3rd Dept 1992]). The instrument's attestation clause accords great weight to the witnesses' testimony and creates a presumption of validity (see *Matter of Collins*, 60 NY2d 466 [1983]; see also *Matter of Malan*, 56 AD3d 479 [2nd Dept 2008], lv to appeal denied, 12 NY3d 702 [2009]). Furthermore, the witness' self-proving affidavit permits the court to infer testamentary capacity and due execution (*Matter of Cameron*, 126 AD3d at 1168; *Matter of Pilon*, 9 AD3d 771, 772 [2004]); *In re Nelson's Will*, 141 NY 152, 156 [1894]; *In re Estate of Leach*, 3 AD3d 763, 765 [3rd Dept 2004]).

The foregoing presumptions are not absolute, however, and can be rebutted by direct or circumstantial evidence (see *Matter of Pilon*, 9 AD3d 771 [3rd Dept 2004]; *Matter of Jacinto*, NYLJ, Feb. 2, 1990, at p29 [Sur Ct, Nassau County]). The totality of the issues raised by the Objectants, including (i) the inconsistencies in the witnesses' deposition testimony; (ii) the Court Evaluator's observations of the decedent's mental incapacity; (iii) the decedent's dementia diagnosis; and (iv) the inference of incapacity that can be drawn from the Article 81 proceeding's stipulation of settlement, could be sufficient to rebut any presumptions of capacity or regularity, a question for the trier of fact to determine (see *Matter of Clark*, NYLJ, Aug. 23, 2013, at p38 [Sur Ct, NY County]).

Moreover, regardless of any presumptions of capacity or regularity that may exist, the court must be independently satisfied that all relevant questions relating to the validity of the 2019 will are addressed before allowing its admission to probate (*Matter of Falk*, 47 AD3d 21, at 26; see *Matter of Collins*, at 473; SCPA 1408). In determining the decedent's testamentary capacity and whether a will has been duly executed, the court is not "confined to the spoken

word of the witnesses” but may look to the “surrounding circumstances and to the substance of the transaction” (*Matter of Cardwell*, 176 Misc 1059 [1941]). Considering all the circumstances attendant to the execution of the 2019 will, it is incumbent upon the court to examine the decedent’s testamentary capacity and the propriety of the 2019 will’s execution through live testimony.

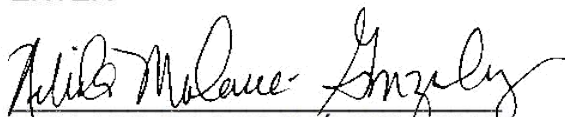
CONCLUSION

The Objectants’ summary judgment motions are denied. Petitioner’s cross motion is granted solely to the extent of dismissing the objections based on (i) lack of standing to recover 133 SMA and (ii) fraud. In all other respects, Petitioner’s motion is denied.

Petitioner shall file a note of issue and certificate of readiness for trial within thirty days hereof. The parties and their respective counsel are directed to appear, in person, at a pre-trial conference with Court Attorney-Referee John J. Hughes, Esq. in courtroom 406 on September 29, 2025, at 9:30 a.m.

The Chief Clerk shall a mail copy of this decision, constituting the order of the court, to all appearing counsel.

ENTER


HON. NELIDA MALAVÉ-GONZÁLEZ
SURROGATE