

Matter of Yan

2026 NY Slip Op 31319(U)

April 2, 2026

Surrogate's Court, New York County

Docket Number: File No. 2021-754/A

Judge: Rita Mella

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

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Probate Proceeding, Will of

ROBERT W. YAN,

DECISION and ORDER

Deceased.

File No.: 2021-754/A

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M E L L A, S.:

The following papers were considered in determining the Petitioner's motion for summary judgment and Objectants' cross-motion for summary judgment (CPLR 2219[a]):

| <u>Papers Considered</u> | <u>Numbered</u> |
|--|-----------------|
| Notice of Motion (Amended) by Petitioner to Dismiss Probate Objections and Strike Notice of Spousal Election; Affirmation of Brooke S. Morris, Esq., with Exhibits | 1-2 |
| Memorandum of Law in Support of Petitioner's Motion | 3 |
| Notice of Cross-Motion by Objectants in Opposition and for Summary Judgment on Lack of Due Execution Objection; Affirmation of Frank T. Santoro, Esq., in Opposition to Petitioner's Motion and in Support of Objectants' Cross-Motion with Exhibits with Exhibits | 4 |
| Memorandum of Law in Opposition to Petitioner's Motion and in Support of Objectants' Cross-Motion | 5 |
| Petitioner's Reply Memorandum of Law in Further Support of Petitioner's Motion and in Opposition to Objectants' Cross-Motion | 6 |
| Objectants' Reply Memorandum of Law in Further Support of Cross-Motion | 7 |

In this probate proceeding in the estate of Robert Yan (Decedent), two motions came before the court on January 20, 2026. In the first motion, Petitioner Shirley Lynn (Petitioner) sought summary judgment dismissing the objections to probate filed by Gladys Yan (Gladys) and Decedent's son, Robert Yan, Jr. (Robert), as well as an order striking Gladys's notice of spousal election (*see* EPTL 5-1.1-A). In the second motion, Gladys and Robert cross-moved for summary judgment on their objection that the will was not duly executed pursuant to EPTL 3-2.1. After hearing oral argument, the court granted in part and denied in part Petitioner's motion and denied the cross-motion in its entirety.

Background

Decedent was an accountant, who died on August 16, 2020, at age 81, leaving a substantial estate. At his death, Decedent had been separated for many years from Gladys, whom he married in 1966 and with whom he had one child, Robert. Gladys and Decedent never formally divorced but executed a separation agreement in 1977 (Separation Agreement) in which each waived the right to take a share of the other's estate, including any right of election pursuant to EPTL 5-1.1-A. No one disputes that the Separation Agreement is valid or that its terms control Gladys's right to inherit from Decedent's estate.

In July 2021, Petitioner, as nominated executor, offered for probate a two-page instrument, dated November 4, 1999 (1999 Will) in which Decedent left his entire estate to Petitioner, his long-term romantic partner with whom he resided and had two other children, neither of whom has appeared in this proceeding. The record shows that an attorney did not oversee the execution of the 1999 Will, the drafter of which is unknown. Further, there is no dispute that the Decedent signed the instrument, which contained a standard attestation clause, or that two individuals, Ming Fong Wang and Chin Lin, signed their names as witnesses after the attestation clause, and their signatures were "subscribed, sworn to, and acknowledged" by a notary public. The witnesses also executed SCPA 1406 affidavits in support of due execution after Decedent's death.

Thereafter, on September 15, 2021, Gladys filed a Notice of Election in which she purported to exercise her right of spousal election against Decedent's estate under EPTL 5-1.1-A. She and Robert also filed standard objections to probate, alleging that Decedent lacked testamentary capacity, that the 1999 Will was not duly executed and that it was the product of fraud and undue influence. After the conclusion of discovery, the instant motions were filed.

Discussion

The court first addressed the portion of Petitioner's motion that asked the court to strike Gladys's Notice of Election, which Gladys did not oppose. The court concluded that Petitioner demonstrated that Gladys unequivocally waived her right to elect against the Decedent's estate in the Separation Agreement, a copy of which Petitioner submitted with her moving papers (*see Matter of Sturmer*, 303 NY 98 [1951] [spouse relinquished interest in estate in separation agreement]; *Matter of Saperstein*, 254 AD2d 88 [1st Dept 1998] [valid waiver by spouse of right to elect]; *see also Matter of Strout*, 155 AD3d 1135 [3d Dept 2017]; *Matter of Frisch*, 49 Misc 2d 898 [Sur Ct, NY County 1965]). Accordingly, the court granted that portion of Petitioner's motion that sought to strike Gladys's Notice of Election. In addition, the court dismissed all of Gladys's objections to probate for lack of standing to assert them because, apart from waiving her right of election in the Separation Agreement, she also waived her right to share in Decedent's estate generally.

The court then turned to the merits of Petitioner's motion for summary judgment as it related to Robert's objections. The standards for summary judgment are clear. A movant seeking summary judgment must, by tendering evidence in admissible form, make a prima facie case establishing entitlement to judgment as a matter of law (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Matter of Korn*, 25 AD3d 379 [1st Dept 2006]). 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 movant makes that showing, the burden shifts to the party opposing the motion to demonstrate through admissible evidence the existence of a triable issue of material fact (*see e.g. Friedman v Pesach*, 160 AD2d 460 [1st Dept 1990]; *Matter of Camac*, 300 AD2d 11 [1st Dept

2002]).

Applying these standards, the court determined that Petitioner made a prima facie case for summary dismissal of Robert's objections alleging lack of capacity, fraud, and undue influence. Petitioner demonstrated, through proof submitted in support of her motion, including transcripts of the SCPA 1404 examinations of the witnesses, the attestation clause, and the witnesses' SCPA 1406 Affidavits, that Decedent had the requisite testamentary capacity on November 4, 1999, when he executed the 1999 Will, and that such instrument, which benefits his long-time companion and mother of his youngest children, was not the product of fraud and undue influence (*see Matter of Haley*, 189 AD3d 2000 [3d Dept 2020]; *Matter of Cameron*, 126 AD3d 1167 [3d Dept 2015]).

In response, Robert did not address, much less oppose the dismissal of these objections. Accordingly, the court's having determined that Petitioner made a prima facie case for dismissal of Robert's objections based on lack of testamentary capacity, undue influence, and fraud, the court deemed those objections abandoned and dismissed them (*see Gary v Flair Beverage Corp.*, 60 AD3d 413, 413 [1st Dept 2009]; *Genovese v Gambino*, 309 AD2d 832, 833 [2d Dept 2003]).

As for Robert's remaining objection, that the 1999 Will was not duly executed, EPTL 3-2.1 requires that the proponent of the will show that: (i) the testator signed at the end of the instrument; (ii) the testator either signed in the presence of at least two attesting witnesses or acknowledged his/her signature to them; (iii) the testator declared to each of the attesting witnesses that the instrument was his/her will; and (iv) the witnesses signed at the testator's request (*see generally Matter of Kellum*, 52 NY 517 [1873]). Here, because the execution of the 1999 Will was not supervised by an attorney, no presumption of regularity exists (*see Matter of Halpern*, 76 AD3d 429 [1st Dept 2010]).

Nonetheless, the court determined that Petitioner made a prima facie showing that the 1999 Will was duly executed based on the instrument's attestation clause, the SCPA 1406 affidavits of witnesses Ming Fong Wang and Chin Lin, as well as Ming Fong Wang's SCPA 1404 examination testimony and other proof (*see Matter of Cottrell*, 95 NY 329, 335 [1884])["A regular attestation clause, shown to have been signed by the witnesses and corroborated either by the circumstances surrounding the execution of the instrument, the testimony of other witnesses to the fact of due execution or other competent evidence has been held . . . to be sufficient to establish a will signed by the testator, even against the positive evidence of the attesting witnesses to the contrary."]; *Matter of Halpern*, 76 AD3d at 431 ["[A] valid attestation clause raises a presumption of a will's validity, although it is nonetheless incumbent upon Surrogate's Court to examine all of the circumstances surrounding the execution of the document in order to ascertain its validity" (citations omitted)]; *see also Matter of Natale*, 158 AD3d 579 [1st Dept 2018]; *Matter of Swing*, 85 Misc 3d 1253[A] [Sur Ct, Oneida County 2025]; *Matter of McGurty*, 151 Misc 2d 42 [Sur Ct, Bronx County 1990]).

However, the court concluded that, in opposition to the motion, Robert raised material issues of fact as to due execution that precluded summary judgment (*see Matter of Christie*, 170 AD3d 718 [2d Dept 2019]; *Matter of Greene*, 89 AD3d 941 [2d Dept 2011]). In particular, the court noted, among other things, that the second witness to the 1999 Will's execution, Chin Lin, stated during his SCPA 1404 examination that his recollection was that Decedent did not state that the document that the witnesses were signing was a will. He further stated that he recalled signing documents only related to business interests and that the page he signed at the request of Decedent was blank. Because the court found that this evidence raised a material question of whether the 1999 Will was executed in accordance with the requirements of EPTL 3-2.1, the

court denied Petitioner's motion to the extent that it sought summary dismissal of Robert's objection that the 1999 Will was not duly executed (*see Matter of Hutchinson*, 13 AD3d 704 [3d Dept 2004]; *cf. Matter of Walter*, 283 App Div 745 [2d Dept 1954]).

The court also denied Robert's cross-motion for the same reason, namely, the existence of issues of fact as to due execution in view of the conflicting evidence about the circumstances of the execution of the 1999 Will, including where it took place. Attesting witness Chin Lin's testimony at his SCPA 1404 examination contradicted his statements in the affidavit that he executed pursuant to SCPA 1406. In that affidavit, Chin Lin asserted that, on the date that the instrument was executed, he "saw the decedent subscribe the same at the place where decedent's signature appears, and I heard the decedent declare such instrument to be his [. . .] last Will and Testament." In light of this evidence, the court determined that Objectant was not entitled to summary judgment on the issue of due execution and that resolution of this objection is reserved for trial.

In reaching its determination, the court considered Robert's reliance on this court's decision in *Matter of Ender* (NYLJ, July 10, 2019, at 22, col 6 [Sur Ct, NY County]) for the proposition that Petitioner, on the record before the court, could not satisfy the due execution requirement that the testator declare or publish to the witnesses that his will is being signed. However, *Matter of Ender* is distinguishable. In that case, there was no attestation clause or notarization of the witnesses' signatures, and neither witness indicated that the testator declared the instrument being witnessed was his will. Thus, unlike here, the record did not provide a basis upon which to infer fulfillment of the publication requirement (*see Matter of Turell*, 166 NY 330, 337 [1901] ["In all cases, a substantial compliance will be sufficient and no particular form of words is required, or is necessary, to effect publication" [of the instrument offered for

probate]”)). In addition, here, publication was confirmed by one of the attesting witnesses, Ming Fong Wang, in her SCPA 1404 examination testimony.

In summary, the court granted Petitioner’s motion to the extent of striking the notice of spousal election and dismissing all objections to probate by Gladys Yan for lack of standing and dismissing the objections of Robert as to lack of testamentary capacity, fraud, and undue influence. The court denied the motion and the cross-motion for summary judgment as they related to Robert’s objection that the 1999 Will was not duly executed, and thus that issue remains for trial.

This decision, together with the transcript of the January 20, 2026 proceedings, constitutes the order of the court.

The Clerk of the Court is directed to email a copy of this Decision and Order to the parties’ counsel listed below.

Dated: April 2, 2026



SURROGATE

TO:

- 1) Petitioner Shirley Lynn, to Counsel, Angelo Grasso, Esq., at agrasso@gss-law.com;
- 2) Objectants Gladys Yan and Robert Yan, Jr., to Counsel, Frank Santoro, Esq., at FSantoro@FarrellFritz.com, and Yi Stewart, Esq., at YStewart@FarrellFritz.com