

Matter of Goodman
2026 NY Slip Op 31468(U)
April 10, 2026
Surrogate's Court, New York County
Docket Number: File No. 2016-1799/L
Judge: Rita Mella
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

ENTERED

APR 10 2026

DATA ENTRY DEPT
New York County Surrogate's Court

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

-----X
In the Matter of the Petition of TAMARA STACK
to Construe the Alan H. Goodman 2011 Revocable Trust
u/a/d September 30, 2011, as Amended and Restated by

DECISION and ORDER
File No.: 2016-1799/L

ALAN H. GOODMAN,

Grantor.

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

The Court considered the following submissions in determining the instant motion (*see*
CPLR 2219[a]):

<u>Documents Considered</u>	<u>Numbered</u>
Ellen Goodman's Notice of Motion to Dismiss the Verified Petition; Memorandum of Law in Support; Affirmation in Support of Alice K. Jump, Esq., with Exhibits	1-3
Ellen Goodman's Amended Notice of Motion to Dismiss the Verified Petition; Amended Affirmation in Support of Alice K. Jump, Esq., with Exhibit	4-5
Affirmation in Opposition of Jeffrey A. Asher, Esq., with Exhibits	6
Reply Memorandum of Law, with Exhibit	7

Tamara Stack, as Trustee of a Trust created by Alan H. Goodman (Grantor) on January 23, 2008, as restated in its entirety on September 30, 2011, and amended on March 12, 2015 (Trust), has asked the court—for the second time—to determine that certain conduct by Trust beneficiary Ellen Goodman violates the in terrorem clause added by Article SECOND of the 2015 amendment, thereby effecting a forfeiture of her beneficial interest. Ellen Goodman (Movant) has moved to dismiss the Trustee's petition pursuant to CPLR 3211(a)(1) and (7).¹

¹ In 2023, the court granted Movant's motion to dismiss a construction petition wherein the Trustee sought a determination that Movant violated the in terrorem clause based on conduct different from that

Background

The in terrorem clause at issue states in full:

FORFEITURE OF INTEREST: Notwithstanding anything herein to the contrary, in the event that any beneficiary or beneficiaries of any trust created herein, or of Trust Property to be distributed hereunder, **shall make or offer, or permit to be made or offered, any objection to the probate of the Grantor's Will or the administration of any trust² of which the Grantor is a grantor, or make or permit to be made any attempt to revoke or alter the probate or carrying into effect of any provision of any such will or trust,** each beneficiary who shall make or offer to permit to be made or offered any such attempt or objection, or who shall inaugurate or raise or abet any such contest (and all lineal descendants of such beneficiary) shall, by reason of such conduct, cease to be a beneficiary of any trust created herein, and shall lose all right, privilege and interest, vested or contingent, choate or inchoate, to any distribution from such trusts, whether of income or of principal, on account of the termination of such trust or for other cause, and upon such event, each such beneficiary shall immediately be treated for all purposes of such trust as though he or she were then deceased, without lineal descendants and thereafter neither he or she nor any lineal descendant which he or she may have shall have any right, privilege or interest under such trust (emphasis and footnote added).

While the Trustee contends that Movant violated this clause in numerous ways, Movant insists that the alleged infractions fall outside of the clause's ambit, and that in any event, the doctrine of laches precludes the clause's application under the circumstances here.

Discussion

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court must accept as true the facts alleged in the petition and accord a petitioner the benefit of every possible inference (*see Leon v Martinez*, 84 NY2d 83, 87 [1994]). The court may also freely consider affidavits submitted by a petitioner to remedy any defects in the pleading (*see id.* at 88). Moreover, whether a petitioner can ultimately establish his or her allegations is not part of the calculus in

alleged in the instant proceeding (*see Matter of Alan H. Goodman Trust*, Sur Ct, NY County, Dec. 29, 2023, Mella, S., Index No. 2016-1799/I).

² The Trustee acknowledges that for public policy reasons, the in terrorem clause cannot be triggered by complaints regarding her administration of the Trust.

determining a motion to dismiss (*see EBC I, Inc. v Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]).

For documentary evidence to be a basis for dismissal under CPLR 3211(a)(1), it must “utterly refute[] plaintiff’s factual allegations, and conclusively establish[] a defense to the asserted claims as a matter of law” (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 103 [1st Dept 2014] [citations and internal quotation marks omitted]; *see Leon v Martinez*, 84 NY2d at 88).

The Trustee first alleges that Movant violated the in terrorem clause by commencing an action against Denise Goodman (Denise), who is Grantor’s surviving spouse and another Trust beneficiary, in Supreme Court in 2021 (Supreme Court Action). The Supreme Court Action was dismissed in May 2023 after all parties failed to appear at a calendar call.³ However, according to the Trustee, in the Supreme Court Action, Movant accused Denise of pressuring Grantor into changing his estate plan, thereby diverting funds away from the Trust, at a time when Grantor was mentally and physically incapacitated. The Trustee states that in an effort to fund what Movant interpreted as a \$3 million bequest to Movant and her siblings in the Trust, Movant sought the imposition of a constructive trust and alleged unjust enrichment. The Trustee characterizes the Supreme Court Action as “an act clearly intended to object, revoke and/or alter the carrying into effect of the Grantor’s Trust, thus violating the In Terrorem Clause” (Petition ¶7).

In her motion to dismiss, Movant argues that the affirmative conduct alleged in the instant petition concerns actions wholly unrelated to “the probate of Grantor’s Will or the administration of the Trust.” Moreover, she posits, even if the Supreme Court Action was

³ Movant was aware of the Trustee’s first petition to construe the in terrorem clause and had already moved to dismiss it (Movant’s Ex. C), when the Supreme Court Action was dismissed due to Movant’s failure to appear at the May 3, 2023 calendar call (Movant’s Ex. I).

somehow related to the Trust, its purpose was to effectuate Grantor's intent rather than to challenge the Trust.

In opposition, the Trustee asserts that Movant filed the Supreme Court Action in an attempt to deprive Denise of her interest under a prenuptial agreement between Denise and Grantor that was to be paid out of estate or Trust assets. The Trustee further opines that the Supreme Court Action included allegations of undue influence, fraud, and lack of capacity, which are grounds to test the validity of testamentary instruments.

Recently, in *Carlson v Colangelo* (44 NY3d 116, 124 [2025]), the Court of Appeals stated that “in terrorem clauses in trust agreements, like those in wills, are enforceable but not favored, and must be strictly construed.” It observed that the purpose of such clauses “is to discourage challenges to the Trust that would upset the grantor's distributive intent” (*id.* at 127). The *Carlson* Court determined that because plaintiff's lawsuit sought “to enforce the Trust provisions as written and intended by the grantor, plaintiff did not attempt to nullify the Trust or challenge its terms,” and therefore “did not violate the in terrorem clause” (*id.* at 123).

Here, while the allegations on their face may be sufficient to survive a challenge under CPLR 3211(a)(7), documentary evidence in the form of the complaint, the prenuptial agreement, and the Trust documents reveals that the Will and Trust provisions were not challenged in the Supreme Court Action. Although the Trustee correctly observes that here, unlike in *Carlson*, Movant mentioned Grantor's alleged incapacity as of 2015 in her complaint, Movant did not seek to nullify either the Will or the Trust based on that allegation. Accordingly, to the extent that the Trustee's petition is based on the complaint in the Supreme Court Action, Movant is entitled to dismissal pursuant to CPLR 3211(a)(1).

The court arrives at the same conclusion with respect to the Trustee’s claim that Movant violated the in terrorem clause by objecting in writing in 2023 to the payment of bequests with Trust funds. Article II(A)(3) of the Trust instructs the Trustee to “pay to or on behalf of the Grantor’s estate such amounts as the Executor of the Grantor’s estate certifies are necessary for the payment of bequests under the Grantor’s Will, Debts and Expenses, and Transfer Taxes.” At the time of Movant’s objection, the Will had not been probated, although Grantor died in 2016. Thus, no executor—and by extension, no certifications setting forth the necessity of payment—existed. Movant’s objection to the Trustee’s use of Trust funds in the absence of an executor’s certification therefore constituted a permissible challenge to the Trustee’s management of the Trust (*see Carlson v Colangelo*, 44 NY3d at 123 [stating that an attempt to enforce Trust provisions “as written and intended by the grantor” does not violate an in terrorem clause]), and cannot serve as a basis for forfeiture here. Accordingly, based on the plain language of the Trust (*see Matter of Alan H. Goodman 2011 Revocable Trust*, 241 AD3d 1152, 1153 [1st Dept 2025] [concluding that the Trust “allows for the payment of the bequest to [Grantor’s stepson] upon certification by the executors that the probate estate is insufficient”]), Movant is entitled to dismissal pursuant to CPLR 3211(a)(1) as to the part of the Trustee’s petition that is based on Movant’s objection to the payment of bequests in the absence of certification.

The Trustee also alleges that Movant, who is a nominated executor under Grantor’s Will, violated the in terrorem clause by objecting to probate of the Will. She references a December 1, 2017 email wherein Movant stated, “I will therefore object to any introduction of my father’s Will to probate on the basis of it being unnecessary.” The court finds that this language fails to state a cause of action, and thus dismissal is warranted under CPLR 3211(a)(7). As previously noted, in terrorem clauses are to be construed strictly (*see Carlson v Colangelo*, 44 NY3d at 124;

Matter of Grupp, 160 Misc 2d 407, 415 [Sur Ct, Erie County 1994]). Here, while Movant used the words “object” and “probate” in the same sentence, she did not “make” or “offer” an objection to probate. She simply stated that she *would* object at some future date, and there is no allegation that Movant, in fact, filed objections (*see Matter of Fairbairn*, 46 AD3d 973, 974 [3d Dept 2007]).

The Trustee posits that Movant’s refusal to probate the Will constitutes an additional violation of the in terrorem clause. The court is deeply troubled by the fact that Movant’s recalcitrance forced the Trustee to compel Movant’s production of the Will, pursuant to SCPA 1401, and to initiate the probate proceeding herself. Nevertheless, Movant appeared in the probate proceeding in 2025 and has signed an oath and designation. Accordingly, the documentary evidence renders the Trustee’s claims academic, warranting dismissal under CPLR 3211(a)(1) to the extent that the petition is premised on a failure to probate the Will.

The Trustee also deems violative of the in terrorem clause Movant’s efforts to reduce Grantor’s \$50,000 bequest to Grantor’s stepson by 50%, pointing to various written communications in which Movant unequivocally asked the Trustee to make this reduction. The Trustee alleges that Movant essentially tried to alter the terms of the Will, thereby making “an attempt to revoke or alter the probate or carrying into effect of any provision of any such will or trust.” Notably, Movant glosses over this allegation in her initial motion papers, but raises a flurry of arguments for the first time on reply.

Viewing the facts alleged as true and affording the Trustee the benefit of every possible inference, the court finds that the Trustee has stated a cause of action. To the extent that Movant claims on reply that the Trustee made any concessions by appending documents to her opposition papers or that this court previously ruled that her request to reduce the bequest cannot

trigger the in terrorem clause, such claims are belied by the record, and do not provide a basis for dismissal under CPLR 3211(a)(1).

Movant's argument, citing EPTL 3-3.5(b)(3)(C), that she was merely raising an objection in the context of a request to waive all rights under the Will and Trust, is without merit. That EPTL provision, which states that "[a] refusal or failure to join in a petition for the probate of a document as a last will, or to execute a consent to, or waiver of notice of a probate proceeding" cannot result in forfeiture, has no bearing on the topic of the reduction request. In any event, based on the allegations in the petition and the Trustee's supporting documents, Movant did not merely refuse to sign a document. Rather, she expressly sought to change the terms of Grantor's Will (*cf. Carlson v Colangelo*, 44 NY3d at 126 [finding that the in terrorem clause was not triggered in part because plaintiff did not "challenge any of the Trust's bequests"]).

The court next rejects Movant's contention that the Trustee's effort to bring her actions within the scope of the in terrorem clause "stretches the language of the clause beyond reason" (Reply 1). While the in terrorem clause at issue is broad, Movant has neither argued nor established that it is in any way ambiguous, and no basis has been provided for deeming the provision that Movant is alleged to have violated as being void as against public policy (*see Koepfel v Koepfel*, NYLJ, Nov. 16, 1998, at 1, col. 3 [Sur Ct, NY County 1998], *affd* 268 AD2d 282 [1st Dept 2000]).

Lastly, the court addresses Movant's laches argument. Laches has been described as "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party. The mere lapse of time, without a showing of prejudice, is insufficient to sustain a claim of laches. Prejudice may be demonstrated by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay" (*Reif v Nagy*,

175 AD3d 107, 130 [1st Dept 2019] [citations and internal quotation marks omitted]; *see Moreschi v DiPasquale*, 58 AD3d 545, 545 [1st Dept 2009] [stating that “[t]he affirmative defense of laches requires a showing of undue delay by a party in asserting its rights, as well as prejudice to the opposing party as a consequence of the delay”]).

As an initial matter, contrary to Movant’s contention, the Trustee did not wait ten years to file the construction petition pending before the court. Although the petition is based in part on certain actions taken by Movant in December 2016, Movant was on notice as of March 2023 that the Trustee deemed these actions to be in violation of the in terrorem clause, and the instant petition was filed in March 2024, three months after this court issued its December 29, 2023 Decision and Order stating that the dismissal of Movant’s first construction petition was “without prejudice to seeking enforcement of the in terrorem clause on appropriate grounds independent from those asserted here.”

Moreover, Movant has not established that she was prejudiced in a manner that necessitates an equitable remedy. On this pre-answer motion to dismiss, all that has been presented to establish prejudice are Movant’s counsel’s vague and speculative statements that Movant spent time and money, that pending proceedings could be impacted, and that the Trustee could theoretically file yet another petition alleging that the in terrorem clause was triggered. These statements are insufficient to warrant dismissal under the laches doctrine (*see Bank of Am. N.A. v Lam*, 124 AD3d 430, 431 [1st Dept 2015] [laches doctrine did not apply where respondent “failed to make any actual and nonspeculative showing of prejudice”]; *Rockwell v 27 Sports Bar & Café Inc.*, NYLJ, June 12, 2025, at 17, col. 1, *8 [Sup Ct, Bronx County 2025] [denying defendants’ motion to dismiss under CPLR 3211(a)(1), (5), and (7), and stating that “[e]quitable

relief under laches requires concrete, demonstrated prejudice not speculative assertions by counsel”]).

In addition, the cases cited by Movant in support of her contention that the laches doctrine applies are inapposite (*see e.g. Mundel v Harris*, 199 AD3d 814, 815 [2d Dept 2021] [appellants’ claims were barred by laches where they failed to timely challenge, inter alia, a stipulation of settlement, and plaintiffs discontinued related actions in reliance upon the settlement]; *White v Priester*, 78 AD3d 1169, 1171 [2d Dept 2010] [laches doctrine applied where plaintiff knowingly allowed defendant to reside at certain premises, and “in reliance upon her unchallenged ownership of the premises, the defendant maintained the property solely at her own expense, and changed her position to her financial detriment by incurring mortgage debt in excess of \$700,000”]).

The court has considered the parties’ remaining contentions and finds them to be without merit.

For the foregoing reasons, the motion to dismiss is denied with respect to the laches doctrine and the cause of action premised on Movant’s alleged attempt to reduce Grantor’s stepson’s bequest, and otherwise granted.

This decision constitutes the order of the court.

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

Dated: April 10, 2026



SURROGATE

To:
Jeffrey A. Asher, Esq.
jasher@asherlawfirm.com

Alice Jump, Esq.
AJump@rpjlaw.com