

No. 19-410

IN THE

Supreme Court of the United States



RICHARD J. FIELDS,

Petitioner,

v.

DIANA PALMERI,

Respondent.

*On Petition for an Extraordinary Writ of Mandamus
to the New York Court of Appeals and
the New York County Surrogate's Court*

OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

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PRELIMINARY STATEMENT

Sydney Field's Will dated October 6, 2014, was admitted to probate by a final decree of the New York County Surrogate's Court dated July 20, 2018. The Decree dismissed the objections interposed by Sydney's son, Richard, who was represented by counsel in the Surrogate's Court proceedings. Richard had been estranged from his father for nineteen (19) years prior to his father's death and had engaged in a campaign of terror directed at his father, Sydney's wife, Teresa, as well as Sydney's other son, Kenneth and Kenneth's children.

Richard's numerous appellate filings with the New York Appellate Division and New York Court of Appeals were all denied based upon clear procedural and substantive grounds. The underlying basis of Richard's objections which included lack of due execution, undue influence, and fraud, were found by the trial Court to be meritless. The Will itself, as well as the prior Will, specifically disinherited Richard pursuant to Article FIFTH (b) which stated: "Because my Son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife Teresa, I deliberately make no provision for him in the Will and it is my intention that he receive no part of my estate."

Richard's Petition to this Court seeks a Writ of Mandamus directed to the New York Court of Appeals to re-open his appeal in that Court and to

the New York County Surrogate’s Court to vacate the probate of the Will. Such relief should be denied on the ground that it is meritless.¹

In sum, the probate exception to federal jurisdiction precludes a federal court from reviewing a purely local issue regarding the validity of the Will and the administration of Sydney’s estate at the most basic level.

Moreover, the Petition itself fails to present any underlying basis for federal subject matter jurisdiction by this Court. Mandamus is an extraordinary remedy which is to be rarely granted and does not confer subject matter jurisdiction by itself. Petitioner has not presented evidence of extraordinary circumstances surrounding a local probate dispute over the validity of a New York Will to support this Court’s intervention. The petition should be dismissed.

STATEMENT OF FACTS

This Petition for Extraordinary Writ concerns the Last Will and Testament of Sydney Fields dated October 6, 2014 (the “Will”). Sydney Fields died on November 10, 2015. Supp. Appx. 16a. The

¹ The Appendix submitted by Richard with his Petition and Brief contains material not used in any of the courts below. He has also altered transcripts of testimony. At the beginning of Respondent’s Supplemental Appendix, we have included a chart indicating which items are *dehors* the record. He has also included respondents who were not parties in any of the courts below. Supp. Appx. 1a-5a. Only Diana Palmeri is a correctly named party.

Will left the bulk of Sydney's estate to the family of Sydney's third and last wife, Teresa. Diana Palmeri, Teresa's niece, was nominated in the Will to be the Executor and appears on the petition in the Surrogate's Court proceeding propounding the Will. Richard Fields, the petitioner herein, is the son of Sydney's marriage to his second wife Gladys.

Family History Leading Up to the Will

Sydney was born on December 30, 1918. Appx. 187a. In 1943, he married his first wife, Sarah. Appx. 173a. In or about 1946, Sarah and Sydney had a child, Kenneth. Appx. 187a. In 1949, Sarah became mentally ill and Sydney and his mother raised Kenneth without her. In 1957, Sydney had his marriage to Sarah annulled.

In 1960, Sydney married his second wife, Gladys. They had a son, Richard, the petitioner herein, in 1963. Appx. 187a. Also, in 1963, Kenneth left home to go to MIT and never returned to his family home. Appx. 187a. Gladys was cruel to Kenneth. Appx. 187a. In 1969, Sydney divorced Gladys, but she maintained custody of Richard. Appx. 173a, Pet. Brief at 28-29.

In 1975, Sydney married his third wife, Teresa. Appx. 173a. In 1977, Kenneth returned from living in the West and resumed a familial relationship with Sydney. Appx. 173a. In 1980, Sydney loaned \$83,000 at below market rate to Kenneth and his wife, Alice, to buy a home. App 174a.

In 1982, Alice gave birth to Elizabeth, Kenneth's first child. App 174a. A second child, Alexander, was born thereafter. Appx. 174a. Sydney described the period from 1982 to 1992 as "best of relations with Ken, his wife and especially the grandchildren". Appx. 187a.

Beginning in February 1989, Richard began a campaign of threats and harassment against Sydney, Kenneth, Sydney's uncle Sol, and Kenneth's minor children Elizabeth and Alexander. In 1989 Sydney forwarded a packet of threatening letters that Richard wrote to Sydney and Sol to Kenneth. More correspondence followed. Appx. 175a-178a. In 1991, Richard began writing threatening letters to Kenneth. Appx. 179a. Sydney finally agreed to have Richard examined by two psychiatrists who diagnosed Richard as suffering from schizophrenia. Sydney did not consent to Richard's institutionalization. Appx.178a.

In May 1991, Kenneth concluded that he should sever ties with Sydney in the hope that it would lessen Richard's animosity toward Kenneth and his family. Kenneth was afraid that Richard was a danger to Kenneth's family. After the break, Richard's threats ceased. Appx. 179a. In 1992, Kenneth and Alice repaid the mortgage debt to Sydney and cut off contact with Sydney. Appx. 174a. By 1995, Sydney had Richard arrested on a complaint of domestic violence. Appx. 179a.

On May 2, 1997, Sydney made his first Will. Richard received a small (\$35,000) bequest and

money was to be left in trust for the minor grandchildren Elizabeth, Alexander, and Richard's son Lewis. Sol Rosen was also to receive a small bequest. The Will expressly disinherited Kenneth with no explanation. Appx. 130a-136a. In 1998, Sydney sued Kenneth and Allison in New Jersey under that state's Grandparent Visitation Statute, N.J.S.A. 9:2-7.1 in an effort to maintain contact with Kenneth's children (Sydney's grandchildren). Appx. 173a. After an evidentiary hearing, the New Jersey Court concluded that "Kenneth's fears, although they have not been realized, are indeed very real. Richard's threats cannot be ignored." The Court entered an order denying Sydney's application for visitation. Appx. 184a-185a.

Some years later, Sydney Fields prepared and sent a handwritten draft of the bequest provisions for a new Will to Edward Curtin, the attorney who had drafted the 1997 Will. Appx. 144a-146a. Mr. Curtin drafted a new Will including in it the changes set forth in Sydney's handwritten instructions. On July 27, 2006, Sydney executed his second Will. Teresa was the primary beneficiary and there are bequests to some members of Teresa's family, a small bequest to Richard's son Lewis and to Solomon Rosen. Appx. 137a-143a.

Paragraph FIFTH (a) of the 2006 Will disinherits Kenneth: "Because my son Kenneth L. Fields refused to let me visit my grandchildren, Elizabeth and Alex P. Fields and refused to have a relationship with me even after a lawsuit where I sought visitation rights, I deliberately make no provision

in this Will and it is my intention that he receive no part of my estate. Paragraph FIFTH(b) of the 2006 Will also disinherits Richard: "Because my Son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa[,] I deliberately make no provision for him in the Will and it is my intention that he receive no part of my estate." App 137a-143a.

Subsequent to the execution of the 2006 Will, Sol died. Teresa died on September 5, 2014. Supp. Appx. 19a. Because Teresa was the major beneficiary of Sydney's 2006 Will, Sydney contacted Attorney Curtin to draft an updated will. Sydney hand wrote out a list of beneficiaries and the percentages of his estate that they were to receive. Supp. Appx. 32a. On October 6, 2014, Sydney executed his third and final Will. This Will was the subject of the probate proceeding in the Surrogate's Court. Paragraph FIFTH (a) and (b) carried over from the 2006 Will and specifically disinherits Kenneth and Richard. Paragraph FIFTH(c) disinherits all three (3) grandchildren "[b]ecause [they] refused to have a relationship with me after reaching adulthood.". Appx.147a-152a.

The October 6, 2014 Will signing was supervised by Edward Curtin, Esq. who also notarized the signatures of the attesting witnesses to the Will, Jill Curtin and Susan Lehman. Appx. 151a-156a.

PROCEDURAL HISTORY

In the New York County Surrogate's Court probate proceeding, Richard filed objections to the Will. Supp. Appx. 7a. Following joinder of issue and discovery, in November 2017, Diana Palmeri, the proponent of the Will, filed a Notice of Motion for Summary Judgment with Exhibits. Supp. Appx. 10a-12a. The motion sought a decree dismissing Richard's objections to the Will and admission of the Will to probate. In January 2018, Richard Chen, the attorney for Richard, filed an Opposition to Motion for Summary Judgment with Exhibits. Supp. Appx. 16a-38a. A Reply Affirmation with Exhibits was filed in February 2018. Supp. Appx. 40a-108a.

Oral argument was held on March 20, 2018 (Supp. Appx. 110a-139a) and the Surrogate's Court issued a bench decision followed by a written Order on March 26, 2018 which provided that the March 20th transcript plus the March 26th Order together constituted the decision on the Summary Judgment motion and directed "Settle Probate Decree". Supp. Appx. 141a-149a. The decision dismissed Richard's objections and admitted the Will to probate. The March decision determined the Motion for Summary Judgment but was not the final Judgment in the case. On April 10, 2018, a Notice of Settlement of Decree was served on Richard. Supp. Appx. 151a-155a.

On May 9, 2018, Richard filed a Civil Appeal with the Appellate Division, First Department.

Supp. Appx. 164a-167a. On July 5, 2018, Richard filed a paper entitled Note of Issue with the Appellate Division, First Department with Appellate Brief and Appendix. Supp. Appx. 169a-171a.

On July 20, 2018, the Decree of Probate was signed by the New York County Surrogate. Appx. 8a-11a. On July 31, 2018, a Notice of Entry of Probate Decree was served. Supp. Appx. 174a-180a. Entry of the Decree of Probate terminated the right to appeal from the March 26th interlocutory Order. A Notice of Appeal from the Decree of Probate was never served.

In August 2018 Diana's Notice of Motion to Dismiss Appeal or to Strike Portions of Brief and Record with supporting affirmation detailing Richard's improper attempt to inject new evidence in the record that was not presented to the trial Court was filed with the Appellate Division First Department. Supp. Appx. 187a-227a.

In August 2018, Richard filed a motion for a stay with the Appellate Division, First Department. Supp. Appx. 253a-258a. His motion was denied on August 17, 2018.

In September 2018, Richard filed a Summons and Complaint in the New York County Supreme Court to enjoin the administration of the Estate of Sydney Fields. Supp. Appx. 260a-272a. The Supreme Court, New York County declined to sign the Order to Show Cause with Temporary Restraining Order that same day. Supp. Appx. 274a-277a.

On September 25, 2018, the Appellate Division, First Department dismissed Richard's appeal and denied his application for a stay. Appx. 6a-7a. Notice of Entry was served on Richard on September 25, 2018. Supp. Appx. 279a-284a.

In October 2018, Richard filed a motion to restore his appeal to the Appellate Division calendar and to proceed as a poor person. Supp. Appx. 286a-292a. That motion was denied on December 27, 2018. Appx. 4a-5a. On January 2, 2019, a Notice of Entry of the Appellate Division, First Department's December 27, 2018 Order was served. Supp. Appx. 277a-300a.

On January 22, 2019, Richard filed a Notice of Appeal to the New York State Court of Appeals. Supp. Appx. 302a-303a. On January 28, 2019, the Clerk of the Court of the New York State Court of Appeals sent a letter directing submissions by February 11, 2019. Supp. Appx. 305a-306a.

On January 30, 2019, Diana's Motion to Dismiss Richard's Complaint was granted by the New York State Supreme Court, New York County. Appx. 3a.

In February 2019, Opposition to Richard's Motion for Leave to Appeal is filed with the New York Court of Appeals. Supp. Appx. 319a-331a. On April 2, 2019, the New York Court of Appeals issued an order dismissing Richard's appeal and denying his Motion for Leave to Appeal. Appx. 1a-2a. On April 4, 2019, a Notice of Entry of the April 2, 2019, Order was served on Richard. Supp. Appx. 336a-339a. Subsequently, in April 2019, Richard

filed an application with the New York State Court of Appeals for leave to reopen the Appeal. Supp. Appx. 341a-358a. In May, Diana opposed the Motion to Reopen. Supp. Appx. 360a-368a. On June 27, 2019, the Court of Appeals issued an Order denying Reargument. Appx. 20a. On July 1, 2019, a Notice of Entry of the June 27th Order was served on Richard. Supp. Appx. 372a-379a.

ARGUMENT

POINT I

THIS MATTER IS NOT SUBJECT TO FEDERAL JURISDICTION

A. The Petition should be denied because it is precluded by the Probate Exception

The Judiciary Act of 1798 (All Writs Act, 28 U.S.C. § 1651(a)) did not confer subject matter jurisdiction over probate matters to the federal courts. Instead, jurisdiction over probate matters was reserved to the state courts. *Markam v. Allen*, 326 U.S. 490, 494. (1946) reversed on other grounds *Clark v. Allen*, 331 U.S. 503 (1947). “[T]he probate exception reserves to state probate courts the probate or annulment of a will and the administration of the decedent’s estate; it also precludes federal courts from disposing of property that is in the custody of the state probate court.” *Marshall v. Marshall*, 547 U.S. 293, 311-312 (2006), *Curtis v. Brunsting*, 704 F.3d 406, 409 (5th Cir. 2013). In the instant petition, petitioner seeks to have this Court

issue a Writ of Mandamus, *inter alia*, to “direct the New York County Surrogate’s Court to vacate the order of Probate and enter judgement in favor of petitioner”. Pet. Brief at 3-4.

This Court’s decision in *Marshall* established that the probate exception applies, and denies the federal courts jurisdiction, in three areas: 1) probating the will, 2) administering the decedent’s estate, 3) assuming *in rem* jurisdiction over property already in the custody of the probate court. *Id.* at 296, and see, *Three Keys Realty v. SR Util. Holding Co.*, 540 F.3d 220, 227 (3rd Cir. 2008).

Though the “Questions Presented” in the petition (Pet. Brief at i) are actually questions of fact rather than law, they all go to the issue of how the Will was probated and what evidence the probate court deemed credible or relevant when deciding to probate the Will. Clearly, this falls squarely within the remaining contours of the post *Marshall* probate exception. “[A] claim falls within the probate exception if it raises ‘questions which would ordinarily be decided by a probate court in determining the validity of the decedent’s estate planning instrument,’ whether those questions involve ‘fraud, undue influence [,or] tortious interference with the testator’s intent.’” *Marshall* at 304, quoting, the same case in the court below, 392 F.3d 1118, 1133 (2004).

Further, in the Conclusion section of the petitioner’s Brief, petitioner appears to suggest that this Court take jurisdiction over the property

already in the custody of the New York County Probate Court and turn it over to him and his ex-wife. Pet. Brief at 31-36. At the very least, this goes to the heart of how the estate is to be administered.

Federal jurisdiction fails under all three prongs of the *Marshall* standard for a probate exception. *Luellen v. Luellen*, 972 F. Supp.2d 722, 732-733 (W.D.Pa. 2013), generally.

As shown above, the petition should be denied because it is precluded by the Probate Exception. The March 26, 2018 Decision and Order on the motion for summary judgment (sometimes referred to as the “interlocutory order”) and the July 20, 2018 final Decree of Probate (sometimes referred to as the “final order”) concern only the probate of the Will and the limited objections interposed by Richard as to the Will’s validity.

B. There is No Federal Question or other basis for Subject Matter Jurisdiction

It is well settled that federal courts are courts of limited jurisdiction, unlike state courts, and cannot entertain a matter unless there is federal subject matter jurisdiction. This petition is not a petition for certiorari seeking ultimate appellate review, it is a Petition for Extraordinary Writ under the All Writs Act.

The All Writs Act allows for issuance of Writs of Mandamus but does not itself confer jurisdiction which must be separately established. Title 28 USC § 1651.

The All Writs Act does not confer subject matter jurisdiction. “[T]he All Writs Act and the extraordinary relief the statute authorizes are not a source of subject matter jurisdiction.” *U.S. v. Denedo*, 556 U.S. 904, 913 (2009). This Court held that the All Writs Act should not be construed to grant jurisdiction to hear and determine the underlying cause of action. *Id.* at 914. “The authority to issue a writ under the All Writs Act is not a font of jurisdiction.” *Id.*

“The All Writs Act is not an independent grant of jurisdiction; it merely permits courts to issue writs in aid of jurisdiction acquired to grant some other form of relief.” *Telecommunications Research and Action Center v. F.C.C.*, 750 F2d 70, 77 (1984). “The All Writs Act is not an independent basis of jurisdiction, and petitioner must initially show that the action sought to be corrected by mandamus is within the court’s statutorily defined subject matter jurisdiction. *Baker Perkins, Inc v. Werner and Pfleider Corp.* (710 F.2d 1561 (1983).

In *Firestone Rubber v. General Rubber and Firestone Rubber v. Hon. Frank Battisti*, the appellant asked the Court of Appeals to issue a Writ of Mandamus directing the District Judge to either reverse his ruling on the issue of patent misuse or to certify that the appellant should be allowed an interlocutory appeal. The Court rejected the first request as “a transparent attempt to substitute a writ of mandamus for an appeal and we reject it as being without merit.” 431 F.2d 1199, 1200 (6th Cir. 1970), cert. den. 401 U.S. 975. The Court also declined

“to issue a writ of mandamus directing the District Judge to certify an interlocutory appeal. *Id.* The Court of Appeals did “not consider his refusal to certify an interlocutory appeal ‘a clear abuse of discretion or usurpation of judicial power warranting issuance of an extraordinary writ. . .’.” *Id.* internal citations omitted.

A federal Court has no general jurisdiction to issue Writs of Mandamus where that is the only relief sought. “A federal court cannot issue a writ of mandamus that compels state officials to comply with state law”. *Skaggs v. Brunner*, 588 F. Supp. 2d 828, 833. (S.D. Ohio 2008) vacated on other grounds 549 F.3d 468 (6th Cir. 2008), *relying on Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984). “It is well settled that a federal court has no general jurisdiction to issue writs of mandamus where that is the only relief sought.” *Id.*

“[T]he All Writs Act allows a court to order a remedy only where subject matter jurisdiction already exists. *Carson v. Office of Special Counsel*, 534 F. Supp.2d 103, 104 (D.D.C. 2008). “[A]ll Writs Act, . . . , is not an independent grant of jurisdiction, it merely permits courts to issue writs in aide of jurisdiction acquired to grant some other form of relief.” *College Sports Council v. Government Accountability Office*, 421 F. Supp. 59, 71 (D.D.C. 2006).

The All Writs Act does not provide an independent basis for federal subject matter jurisdiction and a plaintiff cannot sue invoking only the Court’s All

Wrists power. *Henson v. Ciba-Geigy Corp*, 261 F.3d 1065, 1070 (2001) cert. granted 534 U.S. 1126, cert. denied 534 U.S. 1134, affirmed 537 U.S. 28.

Richard has failed to assert any independent jurisdictional basis for his Petition for Extraordinary Writ. Richard's petition and supporting brief are a naked request for mandamus without the necessary jurisdictional underpinning.

C. A Writ of Mandamus Is not a Method for a Backdoor Appeal.

It is well settled that a Writ of Mandamus is not to be used as a substitute for an appeal. *Ex Parte Fahey*, 332 U.S. 258, 259-260 (1947). A Writ of Mandamus is not to be used when the most that can be said is that the District Courts erred in ruling on matters within their jurisdiction. *Schlagenhauf v. Holder*, 379 US 104, 112 (1964). The Writ of Mandamus is appropriate when there is a clear abuse of discretion. *Id.* at 110.

“Federal courts have no authority to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties where mandamus is the only relief sought.” *Conner v. Texas Court of Crim. Appeals*, 481 Fed. Appx. 952 (5th Cir. 2012). Federal Courts “cannot, as a general rule anyway, . . . , use [its] power to control or interfere with state court litigation, thus exceeding [its] jurisdiction. *In re: Campbell*, 264 F.3d 730, 731 (7th Cir. 2001).

“It is not disputed that the remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” *Allied Chem. Corp. v. Daiflon, Inc.* 446 US 33, 34 (1980). “Although a simple showing of error may suffice to obtain a reversal on direct appeal, to issue a writ of mandamus under such circumstances ‘would undermine the settled limitations upon the power of an appellate court to review interlocutory orders.’” *Id. quoting Will v. U.S.* 389 U.S. 90, 98 (1967). “The peremptory writs are among the most potent weapons in the judicial arsenal.” *Will* at 107. As such, they are reserved for really extraordinary causes. *Id.*

A Writ of Mandamus directing a federal judge to certify an interlocutory appeal would not be issued where the judge’s refusal to certify was not a clear abuse of discretion. *Firestone Tire & Rubber Co. v. General Tire & Rubber Co.*, *supra* 431 F.2d 1200. “[W]here a matter is committed to discretion, it cannot be said that a litigant’s right to a particular result is clear and indisputable, a writ of mandamus will only be granted for clear error of law.” *Sporck v. Peil*, 759 F.2d 312, 314 (1985) cert. den. 474 US 903.

Richard has not presented a scintilla of fact or even an assertion that any extraordinary situation exists or that there was an abuse of discretion. The underlying facts of this matter and its procedural history conclusively establish that the Will was duly executed under attorney supervision without any undue influence or fraud. The language of the Will itself demonstrates that Richard was disinher-

ited for the entirely logical reason of his threatening behavior toward Sydney and Teresa and his decades long estrangement from his father. There was nothing unusual or abusive in the proceedings in the state courts and the credibility determinations were well within the normal discretion of a court of first instance and well supported by competent evidence.

POINT II

THE COURTS TO WHOM THE ORDERS OF MANDAMUS WOULD BE DIRECTED ARE NECESSARY PARTIES

The Surrogate's Court and the Court of Appeals were not made parties to this petition. The failure to join them as parties is fatal to the petition.

The Petition states that it seeks a Writ of Mandamus directed at the New York State Court of Appeals. Pet. Brief at 1. The petition erroneously claims that the Court of Appeals should be directed to declare that a final decision exists from which an appeal can be taken. Id. at 3. Petitioner misreads the Order of the Court of Appeals.

Petitioner also seeks a Writ of Mandamus “direct[ing] the New York County Surrogate's Court to vacate the [existing July 20, 2018] Order of Probate and enter judgment in favor of Petitioner”. Pet. Brief at 3-4. The petition does not, however, name the Surrogate's Court or the New York Court

of Appeals as respondents in the petition.² See *Peters v. Noonan Surrogate's Court Judge*, 871 F. Supp.2d 218 (W.D.N.Y. 2012). See also *In re Special March Grand Jury, Ingram Corp. v. Hon. James B. Parsons, United States District Court*, 541 F.2d 166 (7th Cir. 1976). *Firestone Rubber v. General Rubber* and *Firestone Rubber v. Hon. Frank Battisti, supra*.

There was a “final order” of the Surrogate’s Court on July 20, 2018, its title is Decree of Probate. Appx. 8a-11a. Petitioner did not appeal that final Order within the deadline for taking such appeal. Instead, he appealed an interlocutory Order dated March 26, 2018, the Decision and Order of the Surrogate’s Court of New York. Appx. 12a-19a. The Appellate Division dismissed that appeal on September 25, 3018. Appx. 6a-7a. Petitioner then made a motion to restore the appeal of the non final interlocutory Order, which was denied on December 27, 2018. Appx. 4a-5a. He then applied for leave to appeal to the New York State Court of Appeals. Appx. 1a-2a. The Court of Appeals denied his application for leave to appeal from the September 25, 2018 Appellate Division Decision because it was not appealed in a timely manner. The Court of Appeals denied the appeal from the

² The petition names Diana Palmeri, Olga Palmeri, Victor Palmeri, Cynthia Palmeri, and Ana Garzon Yepez. Only Diana Palmeri, executrix of the estate, was a party to the proceedings below. There is no explanation in the petition as to why the other parties, who along with Diana are beneficiaries under the will, were added or what jurisdiction is obtained over them since they were not parties to the proceedings below.

December 27, 2018 Appellate Division decision on the motion to restore the appeal to the Appellate Division's calendar as not an appeal from a final order. On June 27, 2019, the New York State Court of Appeals denied a motion for reargument. Appx. 20a.

At no time did Petitioner actually take an appeal from the final Order of the Surrogate's Court (the July 20th Decree of Probate) and his time to do so has long since expired. Further, as both Orders of the Surrogate's Court demonstrate, the correct decision was reached in that Court. Appx. 12a-19a and 8a-11a.

POINT III

PETITIONER DID NOT EVEN ENUNCIATE A BASIS FOR FEDERAL JURISDICTION

On page 2 of the petitioner's Brief is the following assertion: "This Petition for Extraordinary Writ of Mandamus is filed pursuant to Sup. Ct. R. 20.4 (a). This Court has jurisdiction under 28 U.S.C. § 1651. S.C.R 20.4(a) relates to *habeas corpus* petitions, not mandamus petitions. Section 1651, as noted above, does not confer jurisdiction; it allows the issuance of extraordinary writs in aid of jurisdiction that otherwise already exists. Review of the remainder of petitioner's brief does not reveal an assertion of a basis for jurisdiction. *Schnagelhauf*, *supra*.

POINT IV

USE OF EXTRAORDINARY WRITS IS RARE

The power of federal courts to issue a Writ of Mandamus comes from the All Writs Act. 28 U.S.C. § 1652(a) allows: “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate to their respective jurisdictions and agreeable to the usages and principles of law.” “Although courts have not confined themselves to an arbitrary and technical definition of ‘jurisdiction’,” (*Will v. U.S.*, 389 U.S. 90, 95 (1967).) “only exceptional circumstances amounting to a judicial “usurpation of power”,” (*ibid.*) or a “clear abuse of discretion” (*Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383 (1953).) “will justify the invocation of this extraordinary remedy” (*Will*, 389 U.S. at 95.). *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 380 (2004).

Only the truly exceptional cases warrant a Writ of Mandamus. *In re Attorney General of the U.S.* 596 F.2d 58, 63, cert. denied 444 U.S. 903 (1976). [N]ot every hardship to a litigant warrants issuance of a writ [of mandamus]. *American Fidelity Ins. Co. v. U.S. Dist. Court for No. Dist. Of Cal.*, 538 F2d 1371,1376 (1976).

A party who seeks the extraordinary remedy of mandamus to compel a court to take a certain action has a heavy burden. *In re Grand Jury Subpoenas*, 581 F2d 1103, 1107 (4th Cir. 1978) cert.

den. 440 U.S. 971. The Court must “be persuaded that the petitioner has a clear and indisputable right which the district court by its action has abridged, . . .”. *Id.* The instant petition does not even allege that Richard has a clear and indisputable right to his late father’s estate. It speculates about whether or not his father should have forgiven Richard’s threats to Sydney, to Teresa, to Richard’s brother Kenneth and to Richard’s niece and nephew. The undisputed facts are that Richard’s threats and the fear for personal safety that he created destroyed the family bonds and Richard’s carping that it’s not fair that his father didn’t forgive him hardly meets this stringent standard.

Before issuing a Writ of Mandamus the Court must be satisfied by a three-pronged test. “[F]irst, the party seeking relief must have ‘no other adequate means to attain the relief he desires,’ second, the petitioner must show that his right to the writ is ‘clear and indisputable’, and third, the issuing court must be satisfied that the writ is appropriate under the circumstances.” *Stein v. KPMG, LLP*, 486 F.3d 753, 759-760 (2nd Cir 2007), quoting *Cheney v. U.S. Dist. Court*, 542 U.S. 367, 380-81 (2004). “The placing of such a heavy burden on the party seeking mandamus and the requiring of exceptional circumstance to activate appellate jurisdiction arise from the same policy that gave rise to the finality statute.” *In re Special March 1974 Grand Jury, Ingraham Corp. v. Hon. James*

Parsons, United States District Court, 541 F.2d 166, 171-172 (7th Cir. 1976).

This Court has the power to issue Writs of Mandamus against judges, but such remedies are drastic and extraordinary and should be reserved for cases where appeal is inadequate. *Bankers Life and Cas. Co. v. Holland*, 346 U.S. 379, 384-385 (1953). Mandamus does not lie where a decision, even if erroneous, does not involve an abuse of judicial power. *Id.* 382.

POINT V

**MANDAMUS DOES NOT LIE WHEN
PETITIONER HAS ALREADY HAD
HIS CASE HEARD APPROPRIATELY.
IT IS NOT A SUBSTITUTE FOR
APPELLATE REVIEW**

The instant petition is not one for certiorari. It does not seek appellate review by this Court. It is a Petition for Mandamus and, thus, the Court's role is limited to the relief requested by petitioner.

Three conditions must be met before a writ of mandamus can issue: 1) the party seeking the writ must have no other adequate means to attain the relief he desires; 2) petitioner must satisfy the burden of showing that his right to issuance is clear and undisputable, 3) the issuing Court, in the exercise of its own discretion, must be satisfied that issuance is appropriate under the circumstances. *Cheney v. U.S. Dist. Court for Dist. Of Columbia*,

452 U.S. 367, 380-381 (2004) on remand 406 F.3d 723. The traditional use of mandamus is to confine an inferior Court to the lawful exercise of its prescribed jurisdiction or to compel it to exercise authority when it has a duty to do so. *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382 (1953).

Petitioner had the opportunity to take an appeal from the Surrogate's Court's final order, the July 20, 2019 Decree of Probate. He did not do that. He was represented by counsel in the Surrogate's Court proceedings. At the time petitioner filed his Notice of Appeal on April 24, 2018, no final judgment had been entered in the Surrogate's Court. (the March 26, 2018 Order states “[t]his decision, together with the transcript of the March 20, 2018 proceedings, constitutes the order of the court. Settle Probate Decree. Appx. 19a. It is well settled that '[n]o appeal lies from a decision directing settlement of judgment." *Weiser LLP v. Coopersmith*, 74 A.D.3d 465, 469 (1st Dept. 2010). See CPLR § 5512(a); *Rodriquez v. Chapman-Perry*, 63 A.D.3d 645, 646 (1st Dept. 2009) ("Since the record does not contain the settled order that the motion court directed to implement its decision to dismiss the complaint as to respondents, the issues regarding the finding that respondents are entitled to summary judgment are not properly before this court. No Appeal lies from that decision").

The petitioner not only improperly appealed from the Order directing the settlement of the Probate Decree, he improperly appealed from the interlocutory March 26, 2018, Order alone and not from the

two (2) documents that the Surrogate's Court stated constitute the Order of the Court, the March Order plus the transcript of the hearing. Appx. 19a.

On July 20, 2018, the final Decree in this matter issued Appx. 8a-11a. It is well settled that any right to appeal from an interlocutory order terminates with the entry of the final judgment. *Matter of Aho*, 29 N.Y.2d 241, 248 (1976). *See Zheng v. City of New York*, 92 A.D.3d 412, 413 (1st Dept. 2012) ("This Court is now obligated to dismiss plaintiffs' appeal since well-established precedent mandates that, once a final judgment is entered, the right to directly appeal from an interlocutory order terminates"). Thus, even if Petitioner had a right to prosecute his Appellate Division appeal of the March 26th Decision, and even if he had done so correctly, the appeal would have terminated by action of law when the July final Decree was issued. CPLR §5513(a) states that an appeal as of right must be taken within 30 days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry. The Decree of Probate with Notice of Entry was served on July 31, 2018. Supp. Appx. 151a-155a. Clearly, the time to take that appeal was long past by the time the Appellate Division dismissed the appeal of the March 26th Decision on September 25, 2018. Appx. 6a-7a. The petitioner's motion to restore the case to the Appellate Division calendar was denied as well in December of 2018. Appx. 4a-5a.

Instead of taking a timely appeal from the Appellate Division rejections, petitioner filed a new action in New York County Supreme Court, which was dismissed for lack of jurisdiction in January 2019. Appx. 3a. Petitioner's Motion for Leave to the Court of Appeals was denied. The Appeal from the September 25, 2018 Appellate Division decision was untimely under CPLR 5513[a] and CPLR 5513[b]. The appeal from the December 2018 Appellate Division decision regarding restoring the case to the Appellate Division calendar was dismissed because it was not an order that finally determines the proceedings, but rather a post determination procedural decision. Appx. 1a-2a.

Despite the fact that the second Appellate Division decision (December 27, 2018) and the Court of Appeals decision (April 2, 2019) were made on a procedural basis, both sides argued the underlying merits at each juncture. Both the Appellate Division and the Court of Appeals had the underlying merits available to them and could have chosen to waive procedural defects if they had any qualms about an injustice occurring.

POINT VI

THE CASE WAS CORRECTLY DECIDED AT EVERY STAGE BELOW

Petitioner is the estranged adult child of the maker of a Will offered for probate in New York County Surrogate's Court. Appx. 8a. Objections were made to the Will by petitioner who was repre-

sented by counsel. Appx. 9a. Petitioner admits that he did not see his father for the last 19 years of the father's life (Appx. 12a.) and that he sent harassing letters and photos to his father and to his half brother and that Orders of Protection were issued against him and criminal charges were filed against him in connection with his behavior towards the father, the father's third wife and the half brother and the half brother's children. Appx. 12a-13a, footnote 1.

In reality, this "harassment" constituted death threats (Appx. 1776a-178a) and photos of petitioner with guns and bombs to demonstrate that he wanted his family to believe that he had the wherewithal to carry out those death threats. Appx. 190a-191a. Because Sydney refused to end his relationship with Richard when Richard began to threaten the lives of Richard's niece and nephew, Sydney lost contact with his other son Kenneth and Kenneth's two children. Pet. Brief at 29. Kenneth's family was also disinherited in the probated Will. Appx. 148a-149a.

Both the Will that was probated and the Will that it replaced contained identical clauses making it crystal clear that the testator explicitly disinherited his son, the petitioner herein. Appx. 13a. Article Fifth (b) of the Will states: "Because my son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa[,] I deliberately make no provision for him

in this Will and it is my intention that he receive no part of my estate." *Id.*

Petitioner raised several objections to the probate of the Will: lack of testamentary capacity; undue influence; duress, mistake or fraud, and that it was not duly executed. Appx. 14a. Extensive discovery was taken, excerpts of which were included in the petitioner's appendix despite being *dehors* the record. See the table appearing at 1a-5a of the Supp. Appx. It is respectfully requested that the court take judicial notice of this chart, and use it to take note of petitioner's attempts to misrepresent the record and to inject new allegations that are *dehors* the record, as detailed in said table. In the March 26, 2018, interlocutory Decision and Order issued on the motion for summary judgment dismissing the objections and directing the probate of the Will, Judge Mella discussed the various medical records, testimony and contemporaneous records which she relied on in determining each of the objections. Appx. 12a -19a. She also made credibility determinations, something well within the discretion of a Court of original jurisdiction. Eleanor Swift *One Hundred Years of Evidence Law Reform: Thayer's Triumph*, 88 Cal. L. R. 2437 *et seq.* (2000).

The final, appealable, decision of the Surrogate's Court, the July 20, 2018, Decree of Probate specifically lists the information which the Court relied upon in reaching the decision to declare the Will admitted to probate. Appx. 8a-11a.

For reasons unknown to the opponents of the Petition of Extraordinary Writ, petitioner took an appeal from the interlocutory March motion Decision, not the final July Decree of Probate. Appx. 6a. It was his failure to appeal the Decree of Probate that led to the procedural decisions in the New York appellate Courts, *See* Point V above. The underlying merits were in the records on appeal and all the appellate judges had the ability to consider them and avert a miscarriage of justice if it appeared to them. Clearly, given the uncontested facts, the validity of the Will was soundly recognized at all judicial levels.

CONCLUSION

In view of the above, Richard's Petition for mandamus relief should be denied in its entirety. Both the probate exception and the fundamental lack of any jurisdictional basis to support mandamus relief is fatal to the Petition and require its dismissal. Moreover, the underlying factual setting provides overwhelming evidence that the Surrogate's Decisions were soundly made and that Richard's objections to the probate of the Will were meritless.

Respectfully submitted,

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October 28, 2019

APPENDIX

<u>Appendix</u>	<u>Page</u> <u>No.</u>	<u>Document</u>	<u>Note</u>
Appendix B	34a	Subpoena Duces Tecum to Dr. Janet Searle	Records were our Exhibit Q but the subpoena itself is not part of the record ¹
Appendix B	53a	Letter dated March 24, 2016 from Objectant forwarding Vanguard's USB to Petitioner	This letter is not part of the record
Appendix B	59a	Vanguard telephone transcripts; phone conversation between Jeffrey Kern and Sydney Fields	This is not part of the record
Appendix B	64a	Letter from Sydney Fields to Jeffrey Kern (no date)	This letter is not part of the record

¹ The words "not part of the record" means that the documents were not presented to the trial court by any party on the motion for summary judgment.

<u>Appendix</u>	<u>Page No.</u>	<u>Document</u>	<u>Note</u>
Appendix C	68a	Testimony of Diana Palmeri	Excerpts from this page are not in the record. Portions of the excerpts on this page are from page 26 of Diana Palmeri's transcript and from page 30 of Edward Curtin's transcript.
Appendix C	Page 69a	Testimony of Diana Palmeri	Excerpts from this page are not in the record
Appendix C	Page 70a	Testimony of Diana Palmeri	Excerpts from this page are not in the record
Appendix C	Page 78a	Testimony of Ed Curtin	Excerpts from this page have been changed from the original testimony
Appendix C	Page 78a	Testimony of Ed Curtin	Excerpts from this page have been altered from the original transcript

<u>Appendix</u>	<u>Page No.</u>	<u>Document</u>	<u>Note</u>
Appendix C	Pages 78a and 79a	Testimony of Ed Curtin	The testimony at the bottom paragraph of page 78a is from page 49 of the deposition tran- script until the sentence begin- ning with “I know he was focused on”, and the words completing the same sentence “the certain boil- erplate that he was quite famili- ar with” is from page 52 of the deposition tran- script, ending with the words “was there.” The quoted excerpt is misrepresented as a continuous excerpt when in fact it was man- ufactured from two separate pages from the same transcript.

<u>Appendix</u>	<u>Page No.</u>	<u>Document</u>	<u>Note</u>
Appendix C	Page 81a-84a	Testimony of Ed Curtin	Excerpts from this page are not in the record
Appendix C	90a	Letter from Novick & Assoc. to Richard Chen, Esq. dated 08.24.18	This letter is not part of the record
Appendix D	93a-96a	Testimony of Pia Fields	This testimony is not part of the record
Appendix D	97a-105a	Pia Fields Provides in Deposition (Exhibit 3)	Not part of the record
Appendix G	164a	Letter from Jules Haas, Esq. To Jay C. Laubscher, (Court Referee)	Not part of the record
Appendix G	168a	Letter from Dr. Mihailescu and Dr. Giove	Not part of the record

<u>Appendix</u>	<u>Page No.</u>	<u>Document</u>	<u>Note</u>
Appendix H	171a	Letter from Albert V. Messina Jr., Esq. To Richard Chen, Esq. Dated April 16, 2019	Not part of the record
Appendix H	172a	Opinion of Superior Court of New Jersey, Chancery Division dated May 14, 1998	Not part of the record
Appendix H	187a	Sydney Fields Brief Autobiography	Not part of the record
Appendix H	196a	Family Photo	Not part of the record

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EXHIBIT 1

Exhibit List

Exhibit A: Probate Petition dated Dec. 1, 2015

Exhibit B: Last Will and Testament dated October 6, 2014

Exhibit C: Objections to Probate dated Feb. 24, 2016

Exhibit C-1: Preliminary Letters Testamentary dated Jul. 19, 2016

Exhibit C-2: Death Certificate of Sydney H. Fields

Exhibit C-3: Affidavit of Diana Palmeri sworn to on Nov. 28, 2017

Exhibit C-4: Death Certificate of Teresa Fields

Exhibit C-5: Affirmation of Edward R. Curtin, Esq. dated Nov. 27, 2017

Exhibit D: Deposition Transcript Excerpts of Susan Lehman, Nov. 14, 2016

Exhibit E: Deposition Transcript Excerpts of Jill Curtin, Nov. 14, 2016

Exhibit F: Deposition Transcript Excerpts of Edward Curtin, Feb. 1, 2017

Exhibit G: Handwritten Last Will and Testament

Exhibit H: Last Will and Testament dated July 27, 2006

Exhibit I: Demand for a Verified Bill of Particulars

Exhibit J: Amended Verified Bill of Particulars

Exhibit K: Deposition Transcript Excerpts of Richard Fields, Feb. 24, 2017 & Apr. 20, 2017

Exhibit L: Deposition Transcript Excerpts of Pia Fields, Jun. 14, 2017

Exhibit M: Deposition Transcript Excerpts of Maxine Neil, Jul. 24, 2017

Exhibit N: Chase Bank Subpoena Response

Exhibit O: Vanguard Records

Exhibit P: Dr. Elizabeth B. Harrington Records

Exhibit Q: Dr. Janet B. Searle Records

Exhibit R: Dr. Arthur J. Kennish Records

Exhibit S: Pre-Trial Stipulation Apr. 20, 2017

Exhibit T: Handwritten Residuary Percentages

Exhibit U: Markup Draft

Exhibit V: Orders of Protection

Exhibit W: Richard Fields Affidavit sworn to on May 24, 2016

Exhibit X: Family and Criminal Court Documents

Exhibit Y: Photographs and Letters from Richard Fields

Exhibit Z: Signature Exemplars

Exhibit AA: William McAllister Affidavit sworn to on September 30, 2016

Exhibit BB: Arthur Fishelman Affidavit sworn to on June 12, 2017

9a

- Exhibit CC: Adrienne Lawler Affidavit sworn to on September 14, 2016
- Exhibit DD: Stuart Michael Affidavit sworn to on September 14, 2016
- Exhibit EE: Irving Rothbart Affidavit sworn to on September 14, 2016
- Exhibit FF: Gloria Madero Affidavit sworn to on July 12, 2017

10a

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

File No.: 2016-111

Filed November 30, 2017

Probate Proceeding, Will of

SYDNEY H. FIELDS,

Deceased.

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the affirmation of Jules Martin Haas, Esq., dated November 28, 2017, with exhibits annexed thereto, the affirmation of Edward R. Curtin, Esq., dated November 27, 2017, the affidavit of Diana Palmeri, sworn to on November 28, 2017, the affidavit of Adrienne Lawler sworn to on September 14, 2016, the affidavit of Stuart Michael sworn to on September 14, 2016, the affidavit of Irving Rothbart sworn to on September 14, 2016, the affidavit of William McAllister sworn to on September 30, 2014, the affidavit of Gloria Madero sworn to on July 12, 2017, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court, at 31 Chambers Street, Room 503, New York, New York, on **January 9, 2018** at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order pur-

suant to CPLR § 3212 granting Petitioner Diana Palmeri's motion for summary judgment dismissing objections to probate Richard Fields to the Last Will and Testament of Sydney H. Fields and admitting said instrument to probate, together with such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §2214(b), opposing papers, answering affidavits and notices of cross-motion with supporting papers, if any, must be served upon the undersigned no less than seven (7) days before the return date of this motion.

Dated: New York, New York
November 28, 2017

/s/ JULES MARTIN HASS
Jules Martin Hass, Esq.
Co-Counsel for Petitioner
845 Third Avenue, Suite 1400
New York, New York 10022
212-355-2575

To:

Richard Alan Chen, Esq.
Attorney for Objectant, Richard Fields
41-60 Main Street, Suite 203
Flushing, New York 11355
(718) 886-8181

12a

Attorney General of the State of New York
Lisa Barbieri, Esq.
Assistant Attorney General
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8396

13a

EXHIBIT 2

EXHIBIT LIST

- EXHIBIT A: Affidavit of Richard Fields
- EXHIBIT B: Probate Proceedings of Teresa Fields
- EXHIBIT C: Will of Sydney Fields dated May 20, 1997
- EXHIBIT D: Will of Sydney Fields dated July 27, 2006
- EXHIBIT E: Last Will of Sydney Fields dated October 6, 2014
- EXHIBIT F: Pages of Deposition Transcript of Edward Curtin, February 1, 2017
- EXHIBIT G: Pages of Deposition Transcript of Jill Curtin, November 14, 2016
- EXHIBIT H: Deposition Transcript of Susan Lehman, November 14, 2016
- EXHIBIT I: Pages of Phone Conversation Between Jeffrey Kern and Sydney Fields dated October 1, 2014
- EXHIBIT J: Medical Records subpoenaed by Mount Sinai Hospital
- EXHIBIT K: Letters from Richard Fields to Sydney Fields
- EXHIBIT L: Handwriting Expert Report by Curt Baggett dated October 13, 2017
- EXHIBIT M: Affidavit of Gloria Madero and Petitioner's List of Witnesses

15a

EXHIBIT N: Bates Stamp 1965 Exhibit

EXHIBIT O: Pages of Phone Conversation dated
March 17, 2016 between Jeffrey Kern
and Diana Palmeri

EXHIBIT P: Deposition Transcripts of Diana
Palmeri and Edward Curtin on the
“Will Reading”

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

File No.: 2016-111

In the Matter of the Last Will and Testament of

SYDNEY H. FIELDS,

Deceased.

**AFFIRMATION WITH LEGAL CITATIONS
IN OPPOSITION TO PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

RICHARD ALAN CHEN, an attorney admitted to practice in the State of New York, hereby affirms under penalty of perjury:

1. I am the attorney for the Objectant, Richard Fields, in this action and, as such, I am familiar with the facts and circumstances of this case.
2. I make this Affirmation in opposition to Petitioner's Motion for Summary Judgment, which seeks to (1) dismiss all objections filed by Objectant; and (2) admit the Will to probate.

BACKGROUND

3. Sydney H. Fields ("Decedent"), a C.P.A., died on November 10, 2015, at 96 years old, leaving an estate of approximately \$9,729,286.00.

4. Objectant, Richard Fields, is one of only two offsprings of the Decedent. The other, Kenneth Louis Fields, has not filed objections or appeared in this proceeding.
5. Decedent was born on December 30, 1918, one day after his father died due to an influenza pandemic. Decedent's religion was Judaism, and Decedent was forced to work to support his mother from 16 years old, due to his father's death at the early age of 32. Decedent grew up with strong work and family values, and his goal in life, according to his son, Objectant Richard Fields, was to "bring his family up to the middle class." *See* Affidavit of Richard Fields, attached hereto as Exhibit A.
6. Decedent married, Sarah Fields in 1943, when he was 23. Decedent did not serve in the armed forces during WWII as he had extreme myopia, which gave him an exemption from the draft. Decedent and Sarah had one child, Kenneth Louis Fields, who was born on February 26, 1946. (Again, Kenneth Louis Fields has not filed any objections to the Will proffered for probate or otherwise appeared.) Sarah was institutionalized in 1948 with a mental illness, and Decedent annulled the marriage on April 8, 1957. *See* Exhibit A.
7. Decedent married Gladys Fields, a NYC public school teacher, on December 11, 1960. Their child, Objectant Richard Fields, (half-brother to Kenneth Fields), was born on February 6,

1963, in Brooklyn, New York. Decedent separated from Gladys in 1968, and they divorced in September, 1969. Objectant continued to live with his mother after the separation. Gladys suffered from mental illness after the separation from Decedent. Gladys died in Queens on July 26, 2010. *See Exhibit A.*

8. Objectant Richard Fields has a bachelor's degree attained from Hunter College, City College of New York, in 1992. Objectant has suffered from mental illness from childhood. Decedent was very concerned about Objectant's health and wellbeing through his young adulthood. Decedent helped Objectant, when Objectant was 23 years old, to obtain an apartment in Manhattan, and paid all tuition, fees and books for Hunter College, and used his connections to obtain employment for Objectant. *See Exhibit A.*
9. Gladys, still smarting from the separation from Decedent, drove a wedge between Objectant and Decedent, causing him to resent his father for not supporting the family to his mother's satisfaction. *See Exhibit A.*
10. Thus, as pointed out in Petitioner's Affirmation in Support, Objectant's mental illness drove him to send harassing communications to Decedent, seeking to get his father to give him money, and do other improper actions. Objectant has been diagnosed as a paranoid schizophrenic, penniless, and lives in a group home. Although

he tried to contact the Decedent by phone over the last nineteen years, Objectant did not have any direct contact with Decedent for that period. *See Exhibit A.*

11. Decedent married Teresa Fields (maiden name Garzon) on September 26, 1975. They did not have any children. Teresa Fields died on September 4, 2014. Her Will is being probated in this Court. *See Probate Proceeding of Teresa Fields attached hereto as Exhibit B.*
12. The Petitioner, Diana Palmeri, is the niece of Teresa Fields and all other individual distributees under the Will are related to Teresa Fields, by blood or marriage. No blood relatives of Decedent are distributees under the Last Will of Decedent dated October 6, 2014.

PRIOR WILLS

13. On May 20, 1997, Decedent executed a testamentary instrument, which had been prepared by Attorney Edward Curtin. Under the instrument, Decedent bequeathed money to Teresa Fields' family members, by blood or marriage. Decedent also bequeathed \$35,000 to Objectant and the same to Objectant's son, Lewis Fields, leaving Pia Fields, Objectant's former wife as Trustee. Objectant did not leave any money for his son, Kenneth Louis Fields. *See Will of Sydney Fields dated May 20, 1997, attached hereto as Exhibit C.*

14. On July 27, 2006, Decedent, at the age of 87, executed a new will, which was also drafted by Attorney Edward Curtin. Decedent bequeathed money to grandchildren of Teresa Fields's nieces and nephews, by blood or marriage. The provision for Objectant's son, Lewis Fields, remained the same. In this will, however, Decedent did not leave any money to Objectant because Objectant hired an attorney to sue Decedent. *See* Will of Sydney Fields dated July 27, 2006, attached hereto as Exhibit D.
15. The Decedent executed a new will on October 6, 2014, the subject of this probate proceeding. In this last will, Decedent bequeathed almost the entire estate to the Teresa Fields' family members, leaving nothing to Objectant and Objectant's son, and Kenneth Louis Fields, his only living blood relatives. *See* Last Will and Testament dated October 6, 2014, attached hereto as Exhibit E.

LEGAL STANDARD

16. Summary judgment is rare in a contested probated proceeding. *Matter of Castiglione*, 40 Ad3d 1227 (3rd Dept. 2007), lv denied 9 NY3d 806 (2007).
17. Summary judgment is proper where the proponent established a *prima facie* case for probate and the objectant fails to raise a material triable issue of fact. *Matter of Leach*, 3 Ad3d 763 (3rd Dept. 2004).

18. However, where “there is conflicting evidence or the possibility of drawing conflicting inferences from undisputed evidence” summary judgment is inappropriate. *Matter of Kumstar*, 66 NY2d 691 (1985); *Matter of Williams*, 13 AD3d 954 (3rd Dept. 2004), lv denied 5 NY3d 705 (2005).
19. Petitioner’s motion for summary judgment is improper as there clearly exist triable issues of fact. This Court should not dismiss the Objections filed by the Objectant Richard Fields and should not admit the Will to probate.

ISSUES OF FACT PRESENTED

- I. THE ATTORNEY DRAFTSMAN AND THE ATTESTING WITNESSES ARE NOT CREDIBLE**
 - A) FAILURE TO IDENTIFY CARETAKER AT WILL SIGNING**

Incredibly, the attorney-draftsman, Edward Curtin, and the two attesting witnesses, Susan Lehman (paid witness) and Jill Curtin, all claimed in deposition testimony that they were unable to *identity, the name, or even race or color, of the caretaker who arrived with Decedent for the Will execution.* See their deposition testimony at Exhibits F, G and H. Despite discovery requests, no further information about the identity of the caretaker has been provided by Petitioner, and Objectant has

been unable to obtain any information on that person.

On the Day of the Will Signing, Edward Curtin saw a caretaker assisting Decedent to his office. He knew that it was a "she", but was not able to provide any racial description of the caretaker.

Q: Did Mr. Fields have an assistant or someone, an attendant, with him at the time the will was executed in your office?

A: Yes.

.....

Q: That aide, can you describe her physical characteristics?

A: I thought about this and I can't. I just have no recollection of what she looked like.

Q: As you sit here today, do you recall if she was white or black?

A: I do not.

See Deposition of Edward Curtin, Page 33: 13-20, attached hereto as Exhibit F.

Jill Curtin was aware that a caretaker accompanied the Decedent to Edward Curtin's office for the Will Signing. However, she was unable to provide any racial description of the caretaker. She testified:

Q: Did he have any anyone with him?

A: Yes.

Q: Who did he have with him?

A: I don't know this person. It was an aide, home help, or something. And he said, I don't need her (indicating), and he pointed to her behind him.

Q: Can you describe the person at all?

A: It was a woman and I'm going to guess she was in her 40s.

Q: I have to ask this: Was she white, black or Hispanic?

A: You know, I can't recall. I'm sorry.

See Deposition of Jill Curtin, Page 21: 2-14, attached hereto as Exhibit G.

Susan Lehman, a paid attesting witness, also recalled a caretaker with the Decedent as she entered Edward Curtin's office for the Will Signing. However, when asked the description of the caretaker, she had no recollection. She testified:

Q: Now, you said that Mr. Fields had an aide with him; is that correct?

A: I think he had an aide, but I don't remember that the aide came into the room where the signing happened.

Q: As you sit here today, could you please describe the aide to me; physical attributes, racial characteristics, ethnic—whatever you can pick out—age?

A: Senior person. I think it was a woman. I think it was an aide.

Q: White or black, if you remember?

A: I don't think about that. I don't remember.

Q: But you said "senior," so you mean over 50?

A: Yeah, I think so. As I remember.

See Deposition of Susan Lehman, Pages 35: 6-24, attached hereto as Exhibit H.

It is obvious the Petitioner does not want Objectant, or this Court, to hear from that caretaker, who has important information on the Decedent's condition at the time alleged Will signing. *See Deposition testimony of Edward Curtin, Jill Curtin, and Susan Lehman at Exhibits F, G and H.*

B) DECEDENT WAS LEGALLY BLIND, YET THE ATTESTING WITNESSES TESTIFIED DECEDENT'S EYESIGHT WAS NOT A PROBLEM FOR WILL SIGNING

There is no question that prior to and at the time of Will execution, Decedent was legally blind. On October 1, 2014, five days before Will execution, Decedent spoke to Jeffrey Kern, his Vanguard Financial Advisor, informing him that he had difficulty filling out forms since Decedent was "legally blind."

Kern: I also understand that you were having some difficulty with the, the forms that Andrew had sent to you.

Fields: Yes, because I can't read, know, I'm, I'm legally blind, although I—that's not like being actually blind, but—

Kern: Right, I know I called you—

Fields: I can't read, I can't read, I can't read any type, you know, and, and that's why I can't handle those pages, you know, I, I have, I have the Death Certificate of Theresa Fields and I can mail you in the Death Certificate, but I, I can't fill out those, those papers that were mailed to me.

Kern: Okay, can you see them at all to read them or even if you—

Fields: I, I, I, I, I can't, I can't read them, no, I can't read.

Kern: Okay.

Fields: I mean, with my magnifying glass I can read large print, but I can't read anything that's 00 that's on, that's on the papers.

See Transcript of Phone Conversation between Decedent and Jeffrey Kern on October 1, 2014, obtained by subpoena, attached hereto as Exhibit I.

Medical records subpoenaed from Mount Sinai Hospital dated October 7, 2014, the day after the

Will Execution, confirming the Decedent was "legally blind." *See* Medical records, attached here-to as Exhibit J.

Attesting witnesses Susan Lehman and Jill Curtin testified that Decedent had no problem at all with his eyesight at the Will Execution. At deposition hearing, Susan Lehman stated that Decedent was able to see, and that Decedent did not have any impairments of sight or hearing.

Q: Was he able to see? Was he able to see you, as far as—

A: Yes, yes.

Q: Was he able to speak to you?

A: Oh, yes.

See Exhibit H, Pg. 39.

Q: Did he seem to have any impairments of sight or hearing or anything like that?

A: No.

See Exhibit H, Page 56:24-25; Page 57:1-3

Jill Curtin testified Decedent's eyesight was not a problem either, although she contradicted herself by mentioning she "wasn't sure" if he used a magnifying glass.

Q: As far as his eyesight, was it clear or did he appear to need any help or have a problem with that?

A: It appears to be clear. I have this little memory of maybe a magnifying glass, but I'm not sure if that was Mr. Fields.

Q: When you say "magnifying glass," do you recall if he was using a magnifying glass?

A: He might have used it and then initialed, and he signed (indicating).

Q: But you're not sure?

A: I am not sure.

Q: Also, since you testified Mr. Curtin did not read—or you didn't hear Mr. Curtin hear Mr. Curtin read the will out loud—

A: Yes.

Q: —did you see Mr. Fields read the will, with or without the magnifying glass?

A: Well, I have this little memory of him with the magnifying glass, but. . .

Q: Sitting here today, do you know any reason why Mr. Fields would be using a magnifying glass to read his will

A: I don't know what the reason—I don't know of any reason.

Q: Was there any mention at the table about that before, during or after the signatures?

A: No. There was no—I don't recall any mention of it, except that we had—I remember him saying he didn't—he didn't like the eyedrops or something. He had to get eyedrops.

Q: So is it correct to state that, as you sit here today, in your memory, you're saying it's

possible that he had a problem with his eyesight at the time that you signed the will?

A: Maybe. I don't know. I don't know.

See Exhibit G, Pages 54-56.

Yet, once again incredibly, both attesting witnesses swore to an attestation affidavit that Decedent ". . .was suffering from no defect of sight. . ." at the time of Will signing. Thus, under oath, both witnesses have been shown not credible, by Decedent's own words, and his diagnosis at Mount Sinai hospital, as "legally blind."

Q: Did you see Mr. Curtin put these Xs there?

A: He may have. I don't recall.

Q: Did you see Sydney put these Xs there?

A: I don't recall.

Q: But you do recall Mr. Sydney Fields signing here?

A: Yeah.

See Exhibit G, pages 32: 23-25; 33: 2-13.

Further, the Will does not contain "X's" where Decedent supposedly initialed the Will on pages "1" and "2." There is an open question how Decedent was able to initial without "X's," but was unable to sign without "X's."

Note also Susan Lehman did not mention the X's, and she stated in deposition she "did not recall watching him (Decedent) sign" the Will.

Ms. Lehman also did not recall who asked her to sign the Will and attestation Affidavit, or even the order she signed the Will and Attestation clause. At her deposition testimony, Ms. Lehman testified:

Q: Did you see Sydney Fields sign this document?

A: I must have.

Q: But sitting here today, do you recall him sign—

A: I don't recall.

See Exhibit H, pg. 72: 16-21.

This outside of the requirement of EPTL Section 3-2.1, "Each of the witnesses signed the instrument as a witness at the testator's request." A trial is necessary to determine if the EPTL requirements were met for this alleged Will dated October 6, 2014 signing by Decedent.

Note, *there were no "X's" placed on the Will where Decedent supposedly "initialized" the Will.* If Decedent was not able to sign on page 3, how was it that he was able to "initial" without the help of "X's?" Further, this confirms that Decedent had a problem with his eyesight and signing the Will, *contrary to the testimony of the two witnesses.*

It is obvious, there is a contradiction between the two attesting witnesses, Jill Curtin and Susan Lehman, as to whether the Will Execution Procedures of Section 3-2.1 of the EPTL were complied with, requiring a trial to determine if Decedent did

sign the Will, ask the Witnesses to do same, and his health and eyesight at the time.

D) THE WILL AND ATTESTATION AFFIDAVIT HAS OTHER IRREGULARITIES

The witness clause of the WILL on page 3 indicates "Testator. . .declared same to be *her* Last Will and Testament; We, thereupon at *her* request and in *her* presence. . ."

As stated in response to Petitioner's last Summary Judgment Motion, there is a question if the Witnesses *read the attestation clause* and when they signed it, being the mistake on it is so glaring.

Further, the Attestation Affidavit of the Witnesses has the wrong date, which Edward Curtin stated *he corrected and initialed*, which renders the same ineffective and a trial is necessary to prove the proper procedures were followed and Decedent signed the Will. *See S CPA Sec. 1406 (a)*, as Objectant is raising objection to the Affidavit of the Witnesses. At deposition, Mr. Curtin testified:

Q: If you would, please explain us how those initials came to pass, who they are and how that happened?

A: Okay. The—after the two witnesses had read and signed this affidavit and I had signed as the notary, Jill, my wife, was making copies of the will and she pointed out to me in the process of making copies that this was—there was a blank in there and there was the date July 2006 and at

that point I realized it was a carryover from a prior will, probably the prior will of Sid Fields off my word processing computer. And so in the presence of the witnesses and Mr. Fields, I made the correction on the—to reflect the actual date that it was, October 6, 2014, and initialed it.

Q: Did you request the witnesses to initial that change on their affidavit?

A: No.

Q: Why not?

A: I didn't think it was necessary.

See also Exhibit F pg. 66:9-25; 67:1-7, Deposition testimony of Edward Curtin concerning the date mistake, which Mr. Curtin and his attorney are alleging was not a “mistake.”

The handwritten document concerning the residuary estate given to Edward Curtin by Decedent at the October 3 meeting is at question since Edward Curtin testified that he was not sure if the Decedent wrote this document. At the deposition testimony, Mr. Curtin testified:

Q: Now, Mr. Curtin, you testified that you recognize this document. Can you tell me what it is, that's Exhibit 8?

Mr. Hass: Which document are you referring to?

A: Eight

Mr. Hass: You testified that you recognized that before?

A: Yes. Just a short while ago.

Q: Yes.

A: This is a piece of paper with handwritten names and numbers next to those names that was given to me when I met with Mr. Sid Fields the first time for the purpose of preparing this 2014 will.

Q: Did Mr. Fields make out this sheet in front of you no?

A: No.

Q: Can you tell me what he said, what you said, concerning when this was handed to you?

A: He said this is the way I want to have the —his estate, his residuary estate distributed.

Q: And, do you know if this document was made out by Mr. Fields?

A: I don't know for certain, but he is the only person that gave it to me, so.

Q: So, all you know is that he gave it to you, correct?

A: Yes.

See Handwritten Document Bates Stamp 1965, attached hereto as Exhibit N.

E) SUSPICIOUS CIRCUMSTANCES SURROUNDING TIMING OF WILL EXECUTION

The initials "SHF" of the Decedent are in question surrounding the timing of the Will Execution.

At deposition testimony, Mr. Curtin stated that Decedent put his initials in a Sharpie marker on the lower-left hand pages of the Will before Decedent signed the last page. He also testified that it was his practice to ask the testator to initial the pages that he was not signing the will. Mr. Curtin testified:

Q: At the time he signed, did you instruct Mr. Fields as to where to sign as he was signing?

A: Well, with respect to the Pages 1 and 2, I asked him to initial the lower left-hand corner. And on Page 3 I asked him to sign above where his name was typed. At that time he asked me to put Xs there to help guide him and then he processed to sign.

Q: Is it correct to state that at the title that this will was executed, it was your practice as the supervising attorney to ask the testator to initial the pages that he was not signing on the will?

A: That is my practice.

See Exhibit F, Page 65: 6-20.

However, Curt Baggett, a handwriting expert, submitted by the Petitioner, analyzed the signatures of the Decedent from various documents

including the same. Mr. Baggett concluded that someone, besides the Decedent, forged the initials of the Decedent on the last page of the Will. He reported in his own words:

“Based upon thorough analysis of these items, and from an application of accepted forensic document examination tools, principles and techniques, it is my professional expert opinion that a different person authored the initials of SHF on the questioned document. Someone did indeed forge the initials of SHF on the questioned document, ‘Q2’.

See Handwriting Expert Report Curt Baggett dated October 13, 2013, attached hereto as Exhibit L.

Petitioner has not provided a handwriting expert nor any reports from a handwriting to disqualify Mr. Baggart’s report. This requires a trial to determine whether the Decedent initialed the pages of the Will dated October 6, 2014. Thus, Petitioner’s motion for summary judgment should be denied.

F) FROM THE PREVIOUS WILL, DRASTIC CHANGES BENEFIT THE “PALMIERI” FAMILY IN THE LAST WILL, RAISING QUESTIONS OF THE VERACITY OF THE PRESENT WILL

The proffered 2014 Will contains significant changes to the bequests as compared to the alleged 2006 Will. Charitable bequests to the United Jewish Appeal of New York, and several CUNY entities were reduced from large percentages of the Estate

to minute fixed bequests in the nominal amount of \$500 a piece, while the Palmeri family (individuals who were not named in the alleged 2006 Will and are also not blood relatives of the Decedent), suddenly became the primary beneficiaries of the Estate. The Estate presents no evidence from individuals with knowledge who might be able to explain the Decedent's reasoning or the circumstances that lead to such dramatic changes to those bequests. Without such evidence it appears those charities received nominal gifts simply because their complete absence from the Will would undoubtedly should undue influence on the part of those beneficiaries who took their place, and they wanted that undue influence to go unnoticed. Petitioner's Motion for Summary Judgment must be denied to these questions of fact.

G) Party Not Listed in Petitioner's List of Witnesses Must be Deposed

The affidavit of Gloria Madero should be ignored as the following: 1) she was not listed as a witness or otherwise advised by Petitioner's attorney to Objectant's attorney; 2) she was never deposed; and 3) there was no supporting documentation as to why her testimony is included in the motion. *See* Petitioner's List of Witnesses, attached hereto as Exhibit M.

WHEREFORE, Objectant RICHARD FIELDS respectfully requests that Petitioner's Motion for Summary Judgment be denied in total,

TOGETHER WITH costs, disbursements, fees and such other and further relief as the Court deems just, fair, and equitable.

Dated: Flushing, New York
January 22, 2017

Law Offices of Richard Alan Chen, Esq.

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EXHIBIT LIST

- EXHIBIT A: Affidavit of Richard Fields
- EXHIBIT B: Probate Proceedings of Teresa Fields
- EXHIBIT C: Will of Sydney Fields dated May 20, 1997
- EXHIBIT D: Will of Sydney Fields dated July 27, 2006
- EXHIBIT E: Last Will of Sydney Fields dated October 6, 2014
- EXHIBIT F: Pages of Deposition Transcript of Edward Curtin, February 1, 2017
- EXHIBIT G: Pages of Deposition Transcript of Jill Curtin, November 14, 2016
- EXHIBIT H: Deposition Transcript of Susan Lehman, November 14, 2016
- EXHIBIT I: Pages of Phone Conversation Between Jeffrey Kern and Sydney Fields dated October 1, 2014
- EXHIBIT J: Medical Records subpoenaed by Mount Sinai Hospital
- EXHIBIT K: Letters from Richard Fields to Sydney Fields
- EXHIBIT L: Handwriting Expert Report by Curt Baggett dated October 13, 2017
- EXHIBIT M: Affidavit of Gloria Madero and Petitioner's List of Witnesses

EXHIBIT N: Bates Stamp 1965 Exhibit

EXHIBIT O: Pages of Phone Conversation dated
March 17, 2016 between Jeffrey Kern
and Diana Palmeri

EXHIBIT P: Deposition Transcripts of Diana
Palmeri and Edward Curtin on the
“Will Reading”

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EXHIBIT 3

Exhibit List to Reply Affirmation

- Exhibit A Pages 185-186 from the deposition testimony of Richard Fields
- Exhibit B Pages 33-34 from the deposition testimony of Edward Curtin
- Exhibit C Pages 153-156 from the deposition testimony of Edward Curtin
- Exhibit D WebMD Article
- Exhibit E American Foundation for the Blind Article
- Exhibit F Letter from Jules Martin Haas, Esq. to Richard Alan Chen, Esq. dated March 20, 2017
- Exhibit G Vanguard Subpoena
- Exhibit H Letter from Richard Alan Chen Esq., to Albert V. Messina Jr. Esq. dated March 22, 2017
- Exhibit I Letter from Albert V. Messina Jr. Esq. to Richard Alan Chen, Esq. dated March 23, 2017
- Exhibit J Page 152 from the deposition testimony of Edward Curtin
- Exhibit K Pages 149-150 from the deposition testimony of Edward Curtin
- Exhibit L Objectant's Amended Verified Bill of Particulars

- Exhibit M Petitioner's Demand for Expert Witnesses
- Exhibit N Pages 79-80 from the deposition testimony of Edward Curtin
- Exhibit O Richard Fields Affidavit sworn to on May 24, 2016
- Exhibit P Pages 378-379 from the deposition testimony of Richard Fields
- Exhibit Q Pages 381-382 from the deposition testimony of Richard Fields
- Exhibit R Pages 383-384 from the deposition testimony of Richard Fields
- Exhibit S Page 82 from the deposition testimony of Edward Curtin
- Exhibit T Petitioner's September 22, 2017 Amended Witness List

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

File No: 2016-111

PROBATE PROCEEDING

Will of SYDNEY H. FIELDS,
Deceased.

**REPLY AFFIRMATION IN
SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

JULES MARTIN HAAS, an attorney admitted to practice in the State of New York, hereby affirms under penalty of perjury:

1. I, along with Edward R. Curtin, Esq., and Novick & Associates, P.C., represent Diana Palmeri (“Diana”) the petitioner herein and the named Executor in the instrument offered for probate herein.

2. This Reply Affirmation is based upon my review of the evidentiary matter and the prior proceedings in this case. This Reply Affirmation is submitted in further support for Diana’s Motion for Summary Judgment: (i) dismissing all of the Objections filed by Richard; and (ii) admitting the Will to probate as Sydney’s Last Will and Testament and granting letters testamentary to Diana.

3. The shortened references and abbreviations referred to in my Affirmation in Support of the Motion dated November 28, 2017 are sometimes utilized herein. Additionally, it is respectfully noted that for purposes of economy this Affirmation contains references to legal authorities as well as factual information.

4. As set forth below, Richard has failed “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v. Prospect Hospital*, 68 NY2d 320, 324, 508 NYS2d 923 (1986) (internal citations omitted). “[M]ere conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient” *Zuckerman v. City of New York*, 49 NY2d 557, 562, 427 NYS2d 595 (1980) (internal citations omitted). The Will was executed in conformity with EPTL 3-2.1. There are no substantive issues regarding the Objections based on lack of testamentary capacity or the presence of any alleged false statements, forgery, duress, fraud, mistake or undue influence. In fact, Objectant has abandoned his fraud, duress, mistake and undue influence objections.

5. In this regard, the Affirmation with Legal Citations in Opposition to Petitioner’s Motion for Summary Judgment of Richard Alan Chen dated January 22, 2017 (the “Chen Affirmation”), along with its accompanying Exhibits, is entirely insufficient to give rise to any issue of fact.

6. For purposes of efficiency, the Objectant's responses to Diana's motion are discussed in the order presented in the Chen Affirmation. Reference is first made to the portion of the Chen Affirmation at page 3 labeled *Background*. Mr. Chen wrongly asserts at ¶10 of his affirmation that petitioner "pointed out" that "Objectant's mental illness drove him to send harassing communications to Decedent, seeking to get his father to give him money, and do other improper actions". Petitioner never sought to provide such an excuse for Objectant's blatant and offensive conduct. The Objectant's attempt to falsely portray himself as a innocent misguided individual is disingenuous and contrary to the factual information in this matter. The Objectant's sole motivation in threatening and attempting to intimidate his father was pure greed. The Objectant's attempts to pull at the heart-strings of the Court should not be considered. The Objectant clearly acted with intent in formulating a scheme to frighten his father and his wife, Teresa. The Objectant intentionally created photographs of himself bearing weapons and explosives and sent them to the decedent. As admitted by Objectant in his deposition:

A. *Oh, I just wanted to add one thing.*

Q. *Sure.*

A. *I got motor vehicle records for my father from these private investigators. Ok, go ahead.*

Q. *What was your motivation against for getting all this information about your dad?*

A. *I wanted to know what his net worth was.*

Q. *And why is that? Why. Why did you want to know.*

A. *A lot of people do that.*

Q. *But why did you want to know?*

A. *I wanted to know what my mother could ask for in a court proceeding. My mother was going to court all the time suing him for money and I wanted to know what I could possibly get when he died as an inheritance.*

Q. *And that's because you were concerned that Teresa or your brother might interfere with your inheritance; is that correct?*

A. *Well, I know that they could get something, but that doesn't mean I wouldn't get more or I wouldn't get a substantial amount. I was concerned they would interfere with it, but I wouldn't—but I would understand I would get some of it and not all of it in regards to the inheritance.*

Q. *But you wanted all of it, correct?*

A. *Yeah. But I wouldn't do anything illegal. It was just a hypothetical or theoretical situation. Yes, I wanted all of it, but a lot of people do.*

Richard Depo. at p. 185 ln 5 - p.186 ln 20 (**Exhibit A** hereto).

A. *The reason why I threatened my father is because I both legally and illegal obtained records of my father's assets or finances, assets, however you want to say it. Any assets, income and finances which showed that he had millions of dollars in assets. I don't remember the exact number. I didn't calculate exactly that number. But it was a few million dollars and I can't be more specific than that. And I wanted him to either give me something while he's alive or leave it to me as an inheritance, and I thought if he saw pictures like this he would think that if he doesn't something bad could happen. Something violent could happen with regards to these weapons. I wasn't actually going to do anything like that, but I thought he would think that and leave me—he would either give it to me when he was alive or leave it to me as an inheritance.*

Q. *So would it be a fair statement to make that your motivation in doing this was to instill some type of fear or concern in your dad with respect to violence so he would then make you a beneficiary of his estate?*

A. *Yes, that's correct.*

Richard Depo. at p. 253 ln 5 - p. 254 ln 11 (Haas Nov. 28, 2017 Aff. Exhibit K).

7. Another misstatement is made at ¶14 of the Chen Affirmation where it is noted that “*Decedent did not leave any money to Objectant because Objectant hired an attorney to sue Decedent*”. In fact, as provided by the decedent in Article *FIFTH*(b) of the Will, which the decedent himself wrote, the full and unabridged reason the Objectant was disinherited was:

Because my son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa I deliberately make no provision for him in this Will and it is my intention that he receive no part of my estate.

8. With regard to Objectant’s substantive response to petitioner’s motion, the Chen Affirmation at page 5 provides only one main category constituting Objectant’s opposition, that being “1. The Attorney Draftsman and the Attesting Witnesses Are Not Credible.” This category regarding credibility is then discussed in Sections A-G of the Chen Affirmation.

9. Section A is entitled “Failure to Identify Caretaker at Will Signing”. Beginning at page 5, the Chen Affirmation recounts that neither Mr. Curtin nor the attesting witnesses, Jill Curtin (“Jill”) and Suzanne Marie Lehman (“Suzanne”), could recall any details regarding the so-called “caretaker” who accompanied the decedent to Mr. Curtin’s office on October 6, 2014, which was the day the Will was

executed. Mr. Chen then concludes that “*it is obvious the Petitioner does not want Objectant, or this Court, to hear from that caretaker, who has important information on the Decedent’s condition at the time alleged Will signing.*” (Chen Aff. at p.7).

10. Mr. Chen’s above statement lacks any substantive value and is blatant speculation. Moreover, it is entirely false.

11. Mr. Chen fails to provide any factual support that any of the witnesses have not testified truthfully. Such a baseless accusation is highly improper. Moreover, Mr. Chen’s unsubstantiated insinuation that petitioner in some manner prompted the witnesses to secrete information and alter their testimony is outrageous.

12. A similar factually deficient assertion is made by Richard in his Affidavit sworn to on January 22, 2018 (the “Richard Affidavit”), which is annexed as Exhibit A to the Chen Affirmation, where Richard provides at ¶14 “*For instance, the attorney-draftsman and the witnesses all conspiring to not ‘remember’ the identity or race or ethnic group of the caretaker. . . .*”

13. Neither Richard nor Mr. Chen provide any facts to support their preposterous claim of a conspiracy or coverup.

14. Significantly, the Objectant has been engaged in discovery in this case for well over a year. Mr. Chen has demanded and received hundreds of documents from the petitioner and third parties. Furthermore, nothing prevented Objectant

from issuing subpoenas or utilizing other discovery devices. If Objectant was of the opinion that any discoverable information was not forthcoming pursuant to any of the Objectant's discovery demands, then an appropriate application should have been made to this Court. No such application was filed with this Court because no discovery was withheld.

15. As noted by the Court in *Estate of Korn*, 25 A.D. 3d 379, 808 NYS2d 48 (1st Dept. 2006), where the admission of a Will to probate was upheld: "*Insofar as the Objectant insists that summary judgment was improper without permitting him to continue discovery, this claim is undermined by his failure to move for additional discovery or to seek a continuation so he could procure necessary affidavits.*"

16. Furthermore, Mr. Chen fails to identify the nature of the so-called "important information on the Decedent's condition" that such caretaker may possess. The "caretaker" did not act as a witness to the Will. According to all of the uncontroverted and admissible evidence, the caretaker was not present at or a participant at the Will signing ceremony. As a result, the "caretaker's" identity reasonably appears to have been a non-factor for Mr. Curtin, Jill and Susan who were clearly focused on, and attentive to, their roles regarding the execution of the Will.

17. While p. 5 of the Chen Affirmation provides a limited portion of Mr. Curtin's deposition, Mr. Curtin's deposition testimony continues at page 33

line 21 through page 34 line 24 (**Exhibit B**, hereto), as follows:

Q. On that day what did you observe of her interaction with Mr. Fields in your office, I will make it specific?

A. Well, she didn't come into my office. They came into the entry of my suite, my apartment, really had no interaction. I believe that Sid came into my office, we sat down and reviewed the will and provisions but sat out in the living room area and I think with my wife, Jill, but I had no interaction with her at all.

Q. Was she present in the room when the will was signed?

A. No.

Q. And the will?

A. No.

Q. Do you happen to know of what agency she worked for?

A. No idea.

Q. Were you introduced to this person at all by anyone?

A. Possibly Sid stated that, I don't know if he introduced her by name, but that there was somebody who was there to help him ambulate.

18. As noted by the Court in *In re James*, 62 A.D.3d 707, 708, 878 N.Y.S.2d 195 (2nd Dept. 2009), in affirming summary judgment dismissing objections and admitting a Will to probate:

The Objectants have now deposed the executor, the drafting attorney, the two witnesses to the execution of the will, and all but one of the beneficiaries. The whereabouts of the sole beneficiary yet to be deposed are unknown, and she is not within the control of anyone involved in the proceedings (see Karras v. County of Westchester, 71 A.D.2d 878, 419 N.Y.S.2d 653). Moreover, there is no need for additional discovery. The objectants' contention that the missing beneficiary, who was a child when the will was executed, has information relevant to this matter is purely speculative (see Matter of Korn, 25 A.D.3d 379, 380, 808 N.Y.S.2d 48; Matter of Leach, 3 A.D.3d at 766, 772 N.Y.S.2d 100; Matter of Wilson, 266 A.D.2d 164, 698 N.Y.S.2d 854; Friend v. Regina, 189 A.D.2d 853, 592 N.Y.S.2d 973). Accordingly, the Surrogate's Court properly denied the objectants' cross motion.

19. In view of the above, the non-identification of the "caretaker" is a non-event having no bearing factually or otherwise on the validity of the Will. No issue of fact is created regarding this matter and no additional discovery is required or permissible.

20. *Section B*, appearing on page 7 of the Chen Affirmation, is entitled “Decedent was legally blind, yet the attesting witnesses testified Decedent’s eyesight was not a problem for Will signing”. While in Section B the Objectant asserts that the decedent had diminished eyesight, the Objectant fails to demonstrate that such physical defect, to the extent it actually existed at the Will signing, created an issue of fact regarding the decedent’s testamentary capacity or the due execution of the Will. The Objectant’s presentation regarding these statutory prongs for probate is confined solely to an attempt to question the credibility of the attesting witnesses.

21. The law in New York is clear that blindness or some other physical impairment does not prevent someone from validly executing a Will. The issue that arises in such cases is whether such disability affected the decedent’s capacity or interfered with the due execution process. As stated by the Court in *In re McCabes Will*, 75 Misc 35, 36 134 NYS 682 (Surr. Ct. NY County 1911):

A blind person may make a will. Such a condition as that of testatrix merely casts upon the proponents the burden of proving, with greater particularity, that the paper propounded was the conscious act of a free and capable testatrix, and that no imposition was practiced on her. It seems to me that the proponents have discharged this burden resting upon them sufficiently in this cause. That the provisions of the will were dictated by testatrix herself, and

that the Will was read over to her before execution, is established, and it is not contradicted. There is an absence of proof of weakness of mind. The will is sufficiently rational on its face to furnish no inherent evidence of a disordered intellect.

Here, Mr. Curtin testified that he read the provisions of the 2014 Will to the Decedent “that related to who was getting what and the two sections dealing with his sons and the executor” on October 6, 2014. (Hass Nov. 28, 2017 Aff. Exhibit F at p.52-53).

22. As noted above, the Objectant does not present any factual evidence that the decedent’s testamentary capacity was affected whatsoever by any alleged physical disability. Additionally, the Objectant does not provide any evidence as to what extent, if any, the decedent’s eyesight resulted in the execution of the Will failing to satisfy the dictates of EPTL 3-2.1.

23. The uncontradicted combined testimony of Mr. Curtin, Jill and Suzanne was that the decedent made a conscious decision to have his Will re-done after Teresa died, that he intentionally and with purpose consulted Mr. Curtin in furtherance of such re-draft and that his actions and conduct on the day of the Will execution were competent and free from restraint and that he participated in the Will preparation and signing process naturally and intelligently under the supervision of Mr. Curtin and in the presence of the witnesses.

24. As recounted by Mr. Curtin in his deposition testimony, prior to signing the Will, Mr. Curtin and the decedent sat together and reviewed the Will contents:

I think my recollection—my recollection is that we sat side by side and we went over page by page and there was certain boilerplate that he was quite familiar with, since this was our third will, one of which in fact in 2006 he had written himself, so he was conversed with that boilerplate part of the will, but that we both focused on and reading the who was getting what and who wasn't getting what, and those he was particularly interested in. And in those cases, I think he also used his magnifying glass to ascertain that what I was saying was there, was there.

Curtin depo. at p. 51 ln 23-25 and p. 52 ln 1-12. (Haas Nov. 28, 2017 Aff. Exhibit F). See *In re McCabe's Will*, 75 Misc at p. 36.

25. The Objectant has not offered a scintilla of evidence, admissible or otherwise, that could possibly present a factual issue on these matters.

26. In this regard, the Objectant's conclusion at the end of the Section B on page 9 that the witnesses are “*not credible*” because the Witness Affidavit provides that the decedent “*was suffering from no defect of sight. . . .*”, is misleading and meritless. The actual text of the paragraph in the Witness Affidavit provides that such “*impairment* would affect his capacity to make a valid Will.” Objectant

has not established that any defect of sight affected the decedent's testamentary capacity.

27. The Witness Affidavit and deposition testimony are clear that no factor existed that affected the decedent's testamentary capacity. Thus, the witness testimony is totally credible and uncontested.

28. The topic regarding the decedent's eyesight, as well as the referenced wording in the Witness Affidavit, was testified to by Mr. Curtin at his deposition, as follows:

- Q. Now, if you go back to the affidavit, the witness affidavit.*
- A. Right.*
- Q. That is on Page 4 of the Objectant 6, on Page 4 of that document. If you just take a second and read through the paragraphs there.*
- A. Okay.*
- Q. Would you say that the statement in that affidavit accurately reflects the events that occurred on October 6, 2014?*
- A. Yes.*
- Q. Would you have supervised the execution of this will if you believed that it was not done in accordance with the statutory requirements required for the execution of a will? Would you have supervised this Will if you believed that it wasn't prepared*

and executed in accordance with the statutory requirements.

A. No.

Q. *Would you have supervised the execution of this Will if you believed that Sydney Fields did not have the capacity to sign the will on that date?*

A. *I would not have.*

Q. *Is it your belief that on October 6, 2014 that Sydney Fields appeared to be of sound mind, memory and understanding?*

A. Yes.

Q. *Is there any doubt in your mind that he totally understood that he was signing his will on that date?*

A. *No doubt whatsoever.*

Q. *Now, you testified that Sydney Fields complained about his eyesight?*

A. *Well, he complained about his eyedrops.*

Q. *His eyedrops. And that based on your observation of him he did have some difficulty with his eyesight; would that be correct?*

A. *That would be correct.*

Q. *When he came to the will signing on October 6, 2014, you testified that he brought his own pen, which was called a Sharpie with him; is that correct?*

A. *That's correct.*

Q. *And he insisted on using that pen to sign the will?*

A. *That is correct.*

Q. *You also said that during the little session that you had with him before the will was signed, that you read portions of the will aloud to him and that he also read portions of the will himself; is that correct?*

A. *With a magnifying glass, yes.*

Q. *And, the magnifying glass that he read the will with, where did that come from?*

A. *He brought it.*

Q. *He brought the magnifying glass with him?*

A. *That's correct.*

Q. *What did that look like?*

A. *As I recall, it was a rectangular lens with some kind of stick, I guess.*

Q. *So, he put that down to the paper and he looked through it.*

A. *Yes.*

Q. *And he used it to read?*

A. *Yes.*

Q. *Based on your observation, you saw him reading that will?*

A. Yes.

Q. *So, would it be fair to say that whatever inability or deficit he had with respect to eyesight, based on his use of the magnifying glass and your reading the will to him, that his eyesight didn't affect his ability to read and understand that will?*

A. *He knew everything that was in that will.*

Q. *So, the statement in this affidavit where it says he was suffering from no defect of sight, hearing or speech, would be an accurate statement; am I correct?*

A. *Well, coupled with what words that are directly after that, which would affect his ability to make a valid will.*

Q. *This is correct.*

Curtin Depo. at p. 153-156 ln. 22 (**Exhibit C** hereto).

29. Moreover, the assertions set forth by the Objectant mischaracterize the nature of the decedent's eyesight. At the outset of Section B, Mr. Chen states on page 7 of his Affirmation that "*there is no question that prior to and at the time of Will execution, Decedent was legally blind.*" Mr. Chen does not assert to have any personal knowledge regarding the extent of the decedent's eyesight. Nowhere in Objectant's opposition is there provid-

ed any credible or authenticated medical diagnosis¹ or evidence as to the decedent's eyesight at the time the Will was executed.

30. The Chen Affirmation at page 7 refers to an alleged conversation by the decedent with a Vanguard Financial Advisor named Jeffrey Kern. Putting aside the unauthenticated nature and objectionable use of this paper (see discussion below), the decedent allegedly states in said communication that "I'm legally blind, although I – that's not like being actually blind. . . ." (Chen Aff. Exhibit I).

31. Not only does the decedent's alleged statement reflect his cognitive awareness of his physical abilities, as explained below, it points to the misleading and falsity of the Objectant's attempt to portray the decedent as incapable of viewing his Will. It is also noted that the decedent appears to be conversing with his financial advisor by himself and without reference to anyone else and without any assistance.

32. As to the decedent's eyesight, a simple Google search provides that "legal blindness" is only a government definition used to determine a person's eligibility for benefits. It is not a medical definition regarding a person's ability to see or read. The term is not synonymous with complete blindness and does not mean that a person cannot

¹ Objectant's bald, conclusory allegation that the decedent had "eye cancer" has no support in the record. (Richard Fields Aff. ¶ 14).

otherwise function. Annexed as **Exhibit D** hereto is a printout from WebMD which I obtained from an on-line search on February 10, 2018. As stated therein:

What Does It Mean To Be Legally Blind:

You might be surprised to learn that it's Uncle Sam, not the doctor, who defines whether you're legally blind.

The government uses the term "legal blindness" to decide who can get certain benefits, like disability or job training. It is not the same as being totally blind. If you're completely blind, you can't see any light or form. Only about 15% of people can see nothing at all. If you're legally blind, you can still see – just not that clearly.

Normal vision is 20/20. That means you can clearly see an object 20 feet away. If you're legally blind, your vision is 20/200 or less. That means if an object is 200 feet away, you have to stand 20 feet from it in order to see it clearly. But a person with normal vision can stand 200 feet away and see that object perfectly.

An estimated 1.1 million Americans are legally blind. Some conditions, like glaucoma, cataracts, and diabetes, can affect your sight to the point that you may be diagnosed with the condition.

Tests for Legal Blindness

Your doctor will check your vision during a standard eye exam.

She'll measure your eyesight while you're wearing glasses or contact lenses. Your vision might fall below 20/200 without them. It is improves when you put on your glasses or contacts, you're not considered legally blind.

What's It Like to Have the Condition

It varies from person to person. You might be able to see objects at a distance but not from the sides of your eyes (peripheral vision). Or, you might have great peripheral vision but trouble seeing objects far away.

33. Annexed as **Exhibit E** hereto is a copy of an excerpt printed by me from the internet site of the American Foundation for the Blind on February 10, 2018 which simply states:

***Legal blindness** is a level of vision loss that has been legally defined to determine eligibility for benefits. In the United States, this refers to a medically diagnosed central visual acuity of 20/200 or less in the better eye with the best possible correction, and/or a visual field of 20 degrees or less. See the Blue Book Disability Evaluation Under Social Security. Often, people who are diagnosed with legal blindness still have some usable vision.*

34. Similarly, the alleged medical excerpts from Mount Sinai Hospital (see discussion below) while making a reference to “legally blind” at page 1 provides on page 2 of 3 of Dr. Elizabeth B. Harrington’s Vascular Consult dated October 7, 2017 that the decedent has “*No Blurred Vision, No Diminished Vision, No Discharge, No Blindness, No Eye Pain, No Red Eyes.*”

35. As noted above, the information provided by Vanguard and its use by Objectant herein were previously objected to by petitioner and such objection is continued herewith with regard to those portions of Chen’s Affirmation which encompass such information.

36. Annexed hereto as **Exhibit F** is a letter sent by me to Mr. Chen dated March 20, 2017 which sets forth petitioner’s objections to discovery demands made by Mr. Chen to third parties. In particular, one of these items related to subpoenas sent by Mr. Chen to “Jeffrey A. Kern c/o Vanguard Group, Inc. Attn: Legal Department – M35, 400 Devon Park Drive, Wayne, Pennsylvania 19087” and to “Vanguard Group, Inc.” at the same address (**Exhibit G** hereto).

37. The essence of petitioner’s objection, as set forth in detail in my letter, related to Mr. Chen’s failure to provide opposing counsel with proper notice regarding the service of such subpoenas [CPLR § 3120(3)] and the issuance of subpoenas to out-of-state parties.

38. Mr. Chen refused to withdraw his subpoenas. His responsive letter dated March 22, 2017 (**Exhibit H** hereto), states, in part:

Vanguard's response to the Subpoena was received Monday, March 20, 2017, on an encrypted USB flash drive. I will forward you a copy of same after I determine how to duplicate the drive (either another drive or hard copies of documents).

There is no prejudice to the Estate as to Vanguard production and you haven't alleged any. Your objections are reserved anyway until trial. I will not withdraw the Subpoena—but I will supply you with the production by Vanguard.

39. The “flashdrive” which was forwarded to petitioner’s counsel contains alleged unauthenticated recordings which apparently were transcribed by Objectant (unauthenticated) and utilized in the Chen Affirmation. In addition, the “flashdrive” was not accompanied by a business records certification pursuant to CPLR § 3122-a. The “flashdrive” and its contents are, therefore, inadmissible.

40. Significantly, the Chen Affirmation does not contain any authentication reference for the alleged conversation between Mr. Kern and the decedent. Moreover, Objectant has submitted no evidence showing that the transcript of this conversation was sent to one of the alleged participants for review and signature pursuant to CPLR § 3116(a). The transcript does not have a CPLR

§ 3122-a business records certification either. The purported transcript annexed as Exhibit O to the Chen Affirmation is dated March 17, 2016, containing an alleged conversation between Mr. Kern and the decedent, who had died five months earlier on November 10, 2015. The entire Vanguard production is, therefore, inadmissible.

41. Similarly, the Objectant never forwarded to petitioner any discovery records Objectant received from Mt. Sinai Hospital despite the fact that Petitioner demanded the production of any documents pursuant to any “subpoena to which notice had not been provided” as well as any documents responsive to “any authorization previously provided by Petitioner”, which includes the Mt. Sinai Hospital records. (**Exhibit I** hereto). The first five (5) pages of Objectant’s Exhibit J have not previously been produced. In any event, the entirety of Objectant’s Exhibit J is not accompanied by a business records certification pursuant to CPLR § 3122-a and the documents are therefore inadmissible. Thus, any use or reference to such documents by Objectant for the purposes of this motion, albeit without any merit, is objected to. Additionally, no authentication of such records is produced in the Chen Affirmation.

42. While Objectant’s use of the Vanguard and Mt. Sinai materials is improper, there is no dispute that any deficiencies regarding the decedent’s eyesight had no impact regarding the decedent’s capacity to execute the Will and to fully comply with the requirements of EPTL 3-2.1. Therefore,

Section B has not presented any issue of fact that would prevent the granting of summary judgment to petitioner.

43. *Section C*, beginning at page 10 of the Chen Affirmation, is referred to as “Attorney Draftsman and Witnesses Did Not Follow Required Will Execution Procedures”. This section contains various assertions by Objectant none of which raise an issue of fact that would preclude the granting of petitioner’s motion.

44. The section begins with a reference to Mr. Curtin’s deposition testimony regarding the placing of two “X” marks on the signature line of the Will. Mr. Chen then notes that attesting witness Jill could not recall who placed the X’s on the Will although Jill recalls the decedent signing the Will (Chen Aff. at p. 11). Mr. Chen then notes that the Will does not contain “X” marks on pages 1 or 2 where the decedent placed his initials. Chen Aff. at p.11.

45. Based upon the above, Mr. Chen asserts that “there is open question how Decedent was able to initial without “X’s”. Chen Aff. at p. 11. Similarly, Mr. Chen asserts on page 12 of his affirmation that *“If Decedent was not able to sign on page 3, how was it that he was able to ‘initial without the help of “X’s?”*.

46. Once again, the thrust of Objectant’s assertions completely mischaracterize the events taking place and fail to create any issue regarding the decedent’s capacity to execute his Will. The fact

that the decedent placed his initials randomly on the lower portion of pages 1 and 2 and between two X marks on the signature line is inconsequential regarding his capacity and the requirements of due execution.

47. Mr. Curtin in his deposition testimony explicitly set forth the procedure that was followed with regard to the decedent's initialing and signing the Will, as follows:

Q. So, is it correct to state that Mr. Fields brought the Sharpie to the will signing?

A. That's correct.

Q. In looking at the document, the will, from the handwritten Page Number 1 and 2, there are initials there. Can you tell me how those initials in a Sharpie were placed there?

A. Yes, after I asked Mr. Fields in the presence of the witnesses whether he had read this will and that he was declaring it to be his last will and testament, I asked him to initial the lower left hand pages of Pages 1 and 2 because 3 he was going to sign.

Q. And he did so?

A. He did. Those are his initials with his Sharpie, yes.

Curtin Depo. at p. 63 ln 15 - p. 64 ln 8. (Haas Nov. 28, 2017 Aff. Exhibit F).

48. The happenstance that “X’s” were placed on the signature line of the Will and not on pages 1 or 2 where initials are typically randomly placed in the lower margin area of the page, is completely irrelevant to the issues of capacity and statutory compliance.

49. Contrary to the Objectant’s unsubstantiated and clearly inaccurate assertion that the “Decedent was not able to sign on page 3” (Chen. Aff. at p. 12), the deposition testimony of Mr. Curtin, Jill and Suzanne and the presence of the attestation clause and the Witness Affidavit all combine to demonstrate without any doubt that the decedent had full capacity and that the Will was a result of his intentional actions.

50. There is not a scintilla of evidence, authenticated or otherwise, that the decedent’s eyesight impacted in any manner on his capacity and ability to have his Will prepared and duly executed on October 6, 2014.

51. In Section C, the Objectant also refers to a small portion of Susan’s deposition testimony in a misleading manner by pointing to her lapse of memory regarding the particulars of the Will signing ceremony.

52. The law is clear that while an attesting witness may have a lapse of memory regarding details of a Will ceremony, such deficiency does not mean that the formalities required by EPTL 3-2.1 did not take place. Moreover, a failed memory of a witness does not diminish the various presumptions of due

execution. As noted by the Court in *In re Lambros*, 2007 WL 7686326, 2007 N.Y. Misc. LEXIS 8160 (Surr. Ct. NY 2007), where the Court granted judgment admitting a Will to probate:

*As to objectant's other challenge to due execution, namely that the execution ceremony itself was deficient, he relies primarily on misleading excerpts of Mrs. Zitniak's testimony. In any event, her testimony that she had no specific recollection of the execution ceremony is not, as objectant contends, evidence of lack of due execution (see e.g. Matter of Collins, 60 NY2d 466; Matter of Finocchio, 270 AD2d 418; Matter of Russo, 212 AD2d 846) Instead, when read in its entirety, Mrs. Zitniak's testimony supports a finding of a due execution (see Matter of Collins, 60 NY2d 466, *supra*; Matter of Rosen, 291 AD2d 562).*

Id. See also *Estate of Russo*, 212 A.D.2d 846, 847 622 NYS2d 137 (3rd Dept.1995):

The failure of the attesting witnesses to recollect the event may be significant in determining whether the formalities of execution were followed, but it does not preclude the court as a matter of law from admitting the will to probate (see Matter of Collins, 60 N.Y.2d 466, 473, 470 N.Y.S.2d 338, 458 N.E.2d 797).

53. A reading of Suzanne's entire deposition transcript (annexed as Exhibit H to the Chen Affirmation) demonstrates without any doubt that the formalities required by EPTL 3-2.1 were adhered to

and, in fact, participated in by Suzanne. Suzanne's testimony recounts that she was a neighbor of Mr. Curtin and was requested by Mr. Curtin to act as a witness to the Will on October 6, 2014. On said date, Suzanne was present in Mr. Curtin's office along with Mr. Curtin, the decedent and Jill, and no one else. Suzanne signed as a witness. Excerpts from Suzanne's testimony (annexed as Exhibit H to Mr. Chen's affirmation) are as follows:

Q. So is it correct to state that when you witnessed Mr. Sydney Fields' will, it was October 6th, 2014; is that correct?

A. That's correct.

Q. And the document reflects your recollection; is that correct?

A. That's correct.

Suzanne Depo. at p.14, lns 12-19.

Q. Mr. Curtin, he asked you to be a witness for the will; is that correct?

A. That's correct.

Suzanne Dep. at p. 19, lns 21-23.

Q. On October 6th, 2014, what time did you go to Mr. Curtin's apartment?

A. Very often, around 1:00. For that day I think it would have been 1:00-ish.

Suzanne Depo. at p. 29, lns 5-9.

Q. For this particular will—and you did sign that document? You recognize your signature?

A. Oh, yes.

Q. And you recall signing it; is that correct?

A. Oh, I do.

Suzanne Depo. at p. 41, lns 3-9.

A. I signed after the prior witness, which is Jill Curtin.

Suzanne Depo. at p. 41, lns 21-22.

A. It's a process that you sign, you sign, this is where you sign, which I did as I was instructed to do so.

Q. Did you see Mr. Fields sign the document?

A. Yes. Yes.

Suzanne Depo. at p. 42, lns 17-22.

Please forgive me, but I don't remember exactly, but it was all of a piece. We all—we signed, we signed, he signed, and that's—and I definitely saw him sign the will.

Q. You did see him sign the will?

A. Absolutely, because I recognize—I recognize the—the name, because I—because—as I'm seeing this here, he signed basically over—his own name is down here (indicating), but I can see and I knew it was him. I—Sidney H. Fields.

Suzanne Depo. at p. 44, lns 8-20.

Q. I presume that Mr. Curtin was involved?

A. It was as if we were being guided—he was the lawyer—we were guided as to what to do. Whether it was a—different than—he signed, I signed, Jill signed, or Jill² signed, I signed, he signed, it was all of the same process that was the will signing of Mr. Fields' will.

Suzanne Depo. at p. 48, lns 14-23.

Q. The question is, sitting here today, was Mr. Fields competent to make his will, based on what you said in this affidavit?

A. I thought so, absolutely, at the time.

Q. On what did you base your judgment?

A. He spoke only when spoken to. He did not—as you have indicated, he might have said—asked me about this stuff—he would not have done that. It was up to his lawyer to do that. He was able to discern what was being said to him.

Suzanne Depo. at p. 55, lns 20-25 and p. 56, lns 2-11.

² Ultimately, Suzanne testified at her deposition that she signed the Will after the decedent signed the Will. Suzanne Depo. at p. 87, ln 16 - p. 88, ln 17. (Chen Aff. Exhibit H) (“Q. –do you recall if you signed before or after Mr. Fields signed that document? A. I signed after he did.”).

Q. Now, when you signed this paper, did you sign this paper in the presence of Sydney Fields and the other witness, Jill Curtin?

A. Yes.

Q. Did you see the other witness, Jill Curtin, sign her name on this paper?

A. Yes.

Q. And you were all present at the same time?

A. Yes.

Q. At the time you signed this paper, you also saw Sydney Fields sign this paper; is that correct?

A. Yes.

Suzanne Depo. at p. 78, lns 9-23.

Q. Now, would you say that this affidavit accurately reflects the events that occurred on October 6th, 2014?

A. Yes.

Q. Would you have signed this affidavit if any part of it was not true?

*A. Would I have signed it if it was not true?
No.*

Suzanne Depo. at p. 80 lns 21-25 and p. 81 lns 2-4.

54. Based upon the above Section C has not presented any issue of fact to preclude the granting of summary judgment.

55. *Section D*, appearing on page 12 of the Chen Affirmation, is entitled “The Will and Attestation Affidavit Has Other Irregularities.” There are no matters set forth in Section D that raise any issue of fact precluding summary judgment.

56. On page 12 of the Chen Affirmation the Objectant asserts that the use of the word “her” instead of “him” in the attestation clause of the Will calls into question whether the decedent read the Will. The Objectant’s contention in this regard fails to overcome the clear and overwhelming evidence regarding the decedent’s testamentary capacity and full compliance with EPTL 3-2.1. As stated by the Court in *Probate Proceeding, Will of Eleanor Martinico*, 2014-3403, NYLJ 1202270885618 at 1, 10/28/2016 N.Y.L.J. 41 (Surr. Ct. Kings 2016), where the Court granted summary judgment admitting a Will to probate:

Based on the record presented, the proponent has provided prima facie evidence of due execution of the propounded instrument. In re Weinberg, 1 A.D.3d 523 (2nd Dept. 2003). The supporting affidavits of the attorney-drafter and Caruso, who both witnessed and supervised the propounded instruments execution, support a finding that the propounded instrument was duly executed in accordance with the requirements of EPTL § 3-2.1. Further, where, as here, an attestation clause accompanies the instrument, there is a presumption that the statutory requirements have been met (Matter of Farrell, 84 AD3d 1374 [2nd Dept. 2011]),

thus shifting the burden to the objectants to proffer evidence in admissible form that the instrument was not duly executed. The decedent's so-called lack of objection to being erroneously described as a "he" in the propounded instrument does not negate the propounded instrument's execution in accord with EPTL § 3-2.1, nor does it negate the testimony of the two witnesses, both attorneys, who knew the decedent for many years, and represented her on other matters.

57. On page 12 of the Chen Affirmation, it is similarly wrongfully asserted that Mr. Curtin's correction of a typographical error regarding the date of the Will execution on the Witness Affidavit somehow "renders the same ineffective and a trial is necessary to prove the proper procedures were followed and the Decedent signed the Will"

58. In this regard, there is nothing put forward by Objectant that in any way diminishes the presumptions and direct evidence concerning the Will being duly executed for all purposes.

59. The Objectant's bare statement that a trial is needed to determine if the "Decedent signed the will", is totally flawed and is nothing more than an unsubstantiated fabrication.

60. The attesting witnesses both testified completely as to the above execution of the Will. The Objectant has failed to provide any indicia of factual evidence to upset the presumptions of compli-

ance with the standards needed for the Will to be admitted to probate.

61. At page 13 of the Chen Affirmation, reference is made to handwritten notes provided to Mr. Curtin by the decedent at a meeting during which the terms of the Will were being discussed. With regard to this document, a copy of which is annexed to the Chen Affirmation as Exhibit N, Mr. Curtin testified that he did not know whether such document “was made out by Mr. Fields”.

62. Based upon this circumstance, the Chen affirmation at page 13 concludes that “*the handwritten document concerning the residuary estate given to Edward Curtin by Decedent at the October 3 meeting is in question. . .*”

63. Significantly, the precise “question” being raised is not disclosed by Mr. Chen. More importantly there is no disclosure or identification of any actual facts or issues that are being raised by this circumstance that concern the due execution of the Will or could overcome the uncontested evidence presented in support of probate. In fact, Mr. Curtin testified that the decedent “gave me that piece of paper, appears to be handwritten. I know it was handwritten by him because he told me that.” (Haas Nov. 28, 2017 Aff. Exhibit F at p.13 ln 21-24). In response to this testimony, Objectant submitted no proof to show that this document was not written by the decedent.

64. Therefore, Section D does not raise an issue of fact.

65. Section E of the Chen Affirmation is entitled “Suspicious Circumstances Surrounding Timing of Will Execution”. In this Section, which begins on page 14 of the Chen Affirmation, reference is again made to the decedent’s initials which appear at the left hand bottom of pages 1 and 2 of the Will. The Chen Affirmation at page 15 then asserts that *“Curt Baggett, a handwriting expert, submitted by the Petitioner, analyzed the signatures of the Decedent from various documents including the same. Mr. Baggett concluded that someone, besides the decedent, forged the initials of the Decedent on the last page of the Will.”*

66. The Baggett Report is annexed to the Chen Affirmation as Exhibit L. The Chen Affirmation then provides: *“Petitioner has not provided a handwriting expert nor any reports from a handwriting to disqualify Mr. Baggett’s report. This requires a trial to determine whether the Decedent initialed the pages of the Will dated October 6, 2014. Thus, Petitioner’s motion for summary judgment should be denied.”* Notably, in assembling, laying bare and revealing his proofs, as required on this motion for summary judgment, *Rosado v. Kulsakdinun*, 32 AD3d 282, 284 (1st Dep’t 2006); *Schiraldi v. U.S. Mineral Prods.*, 194 AD2d 482, 483 (1st Dep’t 1993), Objectant argues that the “initials” are forged. Objectant does not argue that the decedent’s signature was forged. He is, therefore, limited by the evidence he submitted on this motion.

67. Objectant's contention regarding the need for a trial and his reliance upon the Baggett Report are misplaced.

68. As a preliminary matter, EPTL 3-2.1 does not require that the pages of a Will be initialed. The decedent's Will was executed by him on page 3. There is no dispute that such signature is genuine since Objectant does not challenge the authenticity of the decedent's signature on page 3. While the Chen Affirmation refers to an alleged forgery of the decedent's *"initials on the last page of the Will"* (Chen Aff. at p. 15), there are no initials on the last page of the Will which is page 3. Page 3 only contains the full decedent's signature. The Baggett Report refers to initials on page "Q2" which are referred to in the Report as "Initials bottom of Page 1. The Chen Affirmation does not clarify these inconsistencies. The Chen affirmation also does not explain why exemplars of the decedent's signatures contained in the Baggett report were not written with a Sharpie pen, unlike the October 6, 2014 Will. Therefore, the Court should not be fooled by this transparent effort to concoct an issue of fact.

69. The initials that appear on page 2 of the Will seem virtually the same as the initials on page 1. Objectant does not challenge the authenticity of the decedent's initials that appear on p. 2 of the Will or the decedent's signature on page 3.

70. While it seems that Objectant's contention is that the page 1 initials were made by someone other than the decedent, the Objectant is not questioning

the decedent's capacity or the validity of the execution ceremony that resulted in the unchallenged signature on page 3.

71. Moreover, the Baggett Report itself fails to raise any issue of fact regarding the authenticity of the due execution of the Will. Paragraphs 1 and 2 of the Baggett Report allege that:

I have examined three (3) documents with the known signatures of Sydney Fields. For the purpose of this examination I have labeled these exhibits "K1" through "K3".

Today I have compared the signatures of Sydney H. Fields on the 'K' documents to the SHF initials on the questioned document, identified herein as 'Q2', to determine if the author of the Sydney H. Fields signatures on the 'K' documents was the same person who authored the initials on SHF on the questioned document: Typed Last Will and Testament, Initials bottom of Page 1.

72. With regard to the above, Baggett does not claim to have examined any original or authenticated documents. Remarkably, Baggett does not claim to have even examined the original of the Will. Baggett merely says that he "compared the signatures of Sydney H. Fields on the 'K' documents to the SHF initials on the questioned document, identified herein as 'Q2'. . . ."

73. The 'K' documents referred to by Baggett, which are annexed to the Baggett Report, are as follows:

- (a) K1 – partial copy of what appears to be the front of a check dated 9/24/91.
- (b) K2 – partial copy of what appears to be the front of a check dated September 10, 2014.
- (c) K3 – copy of what appears to be a check dated January 3, 2015.

74. None of the 'K' documents are authenticated in any manner and none of the 'K' documents have any alleged "SHF" initials.

75. The so-called "questioned document", "Q2", is a photocopy of what appears to be page 1 of the Will upon which there is a check — mark in the margin at Article *THIRD*. There is also a handwritten notation at the bottom of page "Q2" as follows: "Q2 Problem page". There is no indication as to the manner by which these extraneous writings were made on the "Q2" page.

76. CPLR 4536 provides: "Comparison of a disputed writing with any writing proved to be the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing shall be permitted."

77. The McKinney's Practice Commentaries to CPLR 4536 (Vincent C. Alexander) (2017), note that: "[w]hen proof of handwriting is made on the basis of comparison, CPLR 4536 requires that the

genuineness of the specimen first be established to the court's satisfaction." The Practice Commentaries continue by pointing out that the Court of Appeals in "*People v. Molineux*, 1901, 168 N.Y. 264, 329-30. . . . identified several methods by which the genuineness of the sample may be established; concession by the adversary either before or during trial; testimony by the adversary; testimony by a witness who observed the creation of the sample; testimony by a witness who is familiar with the handwriting of the author of the sample; or evidence that the purported author of the sample had recognized it or acted upon it in his or her business transactions or other activities. 168 N.Y. at 328."

78. The Objectant has not demonstrated, or even attempted to demonstrate, that the alleged specimen handwritings are genuine or authentic. See *Kanterakis v. Minos Realty I, LLC*, 151 AD3d 950, 55 NYS3d 452 (2nd Dept. 2017); where the Court stated:

The plaintiff failed to present evidence authenticating the group of 31 exemplars upon which the plaintiffs handwriting expert primarily relied (see CPLR 4536; see also Banco Popular N. Am. v. Victory Taxi Mgt. 1 N.Y.3d at 384, 774 N.Y.S.2d 480, 806 N.E.2d 488; Matter of Dane, 32 A.D.3d 1233, 1234, 821 N.Y.S.2d 699; Matter of James, 17 A.D.3d 366, 367, 792 N.Y.S.2d 601).

151 AD3d at 952.

79. Following paragraph 1 and 2 of the Baggett Report, the Report contains 6 paragraphs which

are only general statements regarding handwriting document examination. These paragraphs consist almost entirely of reproduced excerpts from an alleged professional text. Following the recitation of this general textual matter, the Baggett Report provides the following conclusion:

Based upon thorough analysis of these items, and from an application of accepted forensic document examination tools, principals and techniques, it is my professional expert opinion that a different person authored the initials of SHF on the questioned document. Someone did indeed forge the initials of SHF on the questioned document, 'Q2'

80. Notwithstanding, the above alleged conclusion or opinion, the Baggett Report does not provide any “analysis” or any detail regarding the “application” of so-called “examination tools, principals and techniques”. Instead, the Baggett Report is nothing more than: (i) a reference in paragraphs 1 and 2 to unauthenticated non-original papers allegedly signed by the decedent; (ii) followed by general references to brief parts of an alleged handwriting book; and (iii) which then ends with the conclusion that “someone” forged “the initials of SHF” on document ‘Q2’. Most significantly, there is no assertion whatsoever that the SHF initials on page 2 of the Will do not match the “S”, “H” or “F” of Sydney H. Fields’ signature on page 3 of the Will, which has not been challenged.

81. It is submitted that the Baggett Report fails to provide any reasonable professionally accepted indication that the so-called 'Q2' initials are not authentic. Clearly, no issues of fact are raised in light of the completely unsubstantiated and speculative quality of this submission by Objectant. Any expert opinion that amounts to nothing more than bare conclusions unsupported by any evidentiary matter cannot provide a basis to deny summary judgment. As stated by the Court in *Murphy v. Conner*, 84 NY2d 969,622 NYS2d 494 (1994), where a summary judgment dismissal was upheld:

Plaintiff provided an affidavit of an engineering expert. Ordinarily, the opinion of a qualified expert that a plaintiffs injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants (see, e.g., Trimarco v. Klein, 56 N.Y.2d 98, 106, 451 N.Y.S.2d 52, 436 N.E.2d 502). Here, however, there was no indication by plaintiff of exactly where she fell and the expert's examination of a part of the general area is insufficient to preclude summary judgment for defendants. Moreover, the expert's affidavit was conclusory, raised no triable issues of fact and, as such, was properly disregarded by the Appellate Division.

84 NY2d at 972. See also *Rosario v. Trump Management, Inc.*, 7 A.D. 3d 504, 775 N.Y.S.2d 578 (2nd Dept. 2004) "In opposition, the plaintiff submitted the report and affidavit of an engineering

expert whose conclusions were, among other things, conclusory and failed to raise a triable issue of fact (citation omitted).

82. It cannot be overlooked that Mr. Baggett cannot be certified as a handwriting expert in this case. His alleged ‘certification’ is from the “American Bureau of Document Examiners.” (Chen Aff. Exhibit L). However, research has been unable to uncover the existence of *any* accredited organization with this name. It appears that Mr. Baggett is attempting to make it appear as though he is certified with the American Board of Forensic Document Examiners. *See Wolf v. Ramsey*, 253 F. Supp. 2d 1323, 1342 (N.D. Ga. 2003) (“The only recognized organization for accrediting forensic document examiners is the American Board of Forensic Document Examiners (‘ABFDE’)”). While Mr. Baggett claims to have a “certificate of completion from the American Institute of Applied Science”, there is no indication that such a certificate is related in any way to forensic document examination or that this institution is certified with the ABFDE. Moreover, it cannot be overlooked that Mr. Baggett has been denied certification as a handwriting expert numerous times in Federal Court, most recently in January, 2017. *See Balimunkwe v. Bank of Am., N.A.*, 2017 U.S. App. LEXIS 19875 at *2-3 (6th Cir Jan.17, 2017) (excluding Mr. Baggett as an expert “due to his lack of qualifications as an expert and because his methodology was not reliable”); *U.S. v. Revels*, 2012 U.S. Dist. LEXIS 65069 at *22 (E.D. Tenn. May 9, 2012) (finding that Mr. Baggett’s tes-

timony cannot pass the “minimum indicia-of-reliability” standard); *Dracz v. Am. Gen. Life Ins. Co.*, 426 F. Supp.2d 1373, 1378-79 (M.D. Ga 2006) affd 201 F. Supp.2d 1373 (11th Cir. 2006) (noting, *inter alia*, Mr. Baggett’s “paltry” qualifications, his lack of certification “by or of any of the twenty recognized document examiner trade organizations in the United States” and that his “training in the field” was from “Dr. Ray Walker, whose own qualifications as a document examiner are suspect”). Mr. Baggett’s alleged ‘credentials’ here are nonexistent. The report of Objectant’s “expert” concerning the “Initials on bottom of Page 1” lacks a reliable foundation.

83. Even putting aside the total lack of evidentiary sufficiency appearing from the face of the Baggett Report, the Objectant has not provided any particulars in authenticated form or otherwise, regarding the events or circumstances by which such alleged forgery occurred. In *In re: Herman*, 289 A.D.2d 239, 734 NYS2d 194 (2nd Dept. 2001), the Court granted summary judgment admitting a Will to probate, stating:

*The petitioners’ motion for summary judgment dismissing the objections to the probate of the decedent’s will dated May 18, 1994, and to admit the will to probate should have been granted. The petitioners demonstrated, *prima facie*, that the will was properly executed pursuant to the formal requirements set forth in EPTL 3-2.1. “Where, as here, the attorney-draftsman supervised the will’s execution,*

there is a presumption of regularity that the will was properly executed in all respects" (*Matter of Finoccio*, 270 A.D.2d 418, 704 N.Y.S.2d 634; *see; Matter of Esberg*, 215 A.D.2d 655, 627 N.Y.S.2d 716; *Matter of Posner*, 160 A.D.2d 943, 554 N.Y.S.2d 666). *In opposition, the objectants failed to raise a triable issue of fact as to whether the decedent's signature was a forgery. Where the objectant intends to offer that the instrument has been forged by another, the proponent is entitled to particulars of the forgery, and where known, the name and addresses of the person or persons who forged the instrument*" (*Matter of DiScala*, 131 Misc. 2d 532, 534, 500 N.Y.S.2d 976). *Here, the objectants failed to provide any such particulars. Therefore, their claim of forgery did not warrant denial of the motion.*

289 AD2d 239-40. See also *Matter of Harper*, 11/12/2014 N.Y.L.J. 22 (col. 4) (Surr. Ct. Bronx County) ("The objectant has not provided any specific details as to the alleged act of forgery other than her conjecture about the different possible ways the forgery may have occurred. Having failed to offer evidence in admissible form as to the existence of an issue of fact with respect to the genuineness of the decedent's signature, the proponent is entitled to have the objection alleging forgery dismissed."); *In re: James*, 17 A.D.3d 366, 792 N.Y.S.2d 601 (2nd Dept. 2005) ("[T]he testimony of the objectants' expert did not, as a matter of law, establish that the will was forged.").

84. The deposition testimony of Mr. Curtin and the attesting witnesses all unequivocally show that "Q2" was not and could not have been forged. Mr. Curtin testified as follows:

Q. At the time you gave the October 6, 2014 will to him, would you say that the will that you're looking at here today which is Exhibit 6, which is a certified copy of that will, is exactly the same as the will that you gave him duly executed on October 6, 2014?

A. Yes.

Q. There's no change in this document, whatsoever, from the time you gave it to him until the time you're looking at it presently?

A. Correct.

Curtin Depo. at p. 152, lns 13-25. (Exhibit J here-to).

Q. Now, at the time that the will was signed and you were together with Sydney Fields and Jill Curtin and Suzanne Lehman, did you or do you have any knowledge regarding anyone forging or otherwise tracing the signature of Sydney Fields that appears on the October 6, 2014 will?

A. No, I saw Sydney Fields sign the will.

Q. So, you have no knowledge or any information that that document was in any way forged; is that correct?

A. *It could not be; I saw him sign the will with his own Sharpie.*

Curtin Depo. at p. 149, lns 15-25 and p. 150, lns 2-4. (**Exhibit K** hereto).

85. Both Jill and Suzanne also testified at their depositions that they did not see any indication of a forgery:

Q. *At the time the will was signed, did you see anyone that attempted to forge Mr. Fields' signature?*

A. No.

Q. *At the time the will was signed, did you see anyone that attempted to trace or otherwise fake Mr. Fields' signature?*

A. No.

Suzanne's Depo. at p. 81, lns 17-24. (Chen Aff. Exhibit H).

Q. *Now, at the time that the will was signed, did you notice anyone that attempted to forge Mr. Fields' name on the will?*

A. No.

Q. *Or on any document that was signed on that day?*

A. No.

Jill Deposition at p. 51, lns 9-16. (Haas Nov. 28, 2017 Aff. Exhibit E).

86. Annexed as Exhibit J to my Affirmation dated November 28, 2017 in Support of Petitioner's Motion is a copy of the Objectant's Amended Verified Bill of Particulars dated October 11, 2016. A copy of such document is annexed hereto as **Exhibit L** for convenience.

87. The Objectant's responses in said Verified Bill include the following:

(a) Under Answer 1(2):

the persons aforementioned did conspire with each other, or independently, or both, with EDWARD CURTIN, as attorney draftsman, JILL CURTIN and SUSAN LEHMAN, as witnesses, and possibly with third parties yet to be discovered, to forge and/or trace with black permanent marker the signature of SYDNEY H. FIELDS on the will proffered for probate and pretend same was signed by SYDNEY H. FIELDS.

(b) Under Answer 2 (2):

SYDNEY H. FIELDS was without the mental and physical capacity to execute the Will at the time of alleged execution. All parties above named, including the beneficiaries of the Will and attorney draftsman and attesting witnesses, did cajole, threaten, intimidate, misrepresent as to contents, or otherwise tricked SYDNEY H. FIELDS into executing the Will proffered for probate or forged or traced his signature with or without his presence.

88. During the course of Richard's deposition testimony, Richard was unable to provide any particulars or information regarding any alleged forgery of the Will. The testimony concerning the Amended Bill of Particulars was as follows:

Q. Mr. Fields, you signed that document, correct? That is your signature at the end of the document, correct?

A. Yes.

Q. And you verified that everything in this document is true to your knowledge, correct?

A. Yes.

Q. Okay. So if you take a look then again at the Amended Verified Bill of Particulars.

A. Yes.

Q. In the little paragraph 2, which is on the second page—

A. Yes.

Q. —and if you read that little paragraph it says, the persons aforementioned did conspire with each other or independently or both, all right, with Edward Curtin, Jill Curtin and Suzanne Lehman as witnesses and possibly third-parties yet to be discovered to forge and/or trace with black permanent marker the signature of Sydney Fields.

Now, again, none of these individuals that are named here, Edward Curtin, Jill Curtin, Suzanne Lehman are named in your objection to probate; is that correct?

A. Yes.

Q. *So could you tell me in what manner or based on what information Edward Curtin, Jill Curtin and Suzanne Lehman conspired with each other or with anyone else to either forge or trace the signature of Sydney Fields?*

A. *I don't have any information with regard to that.*

Q. *Do you have any information with respect to any person, all right, to the extent that they conspired with each other to forge or trace with black permanent marker the signature of Sydney Fields?*

A. *No. I can't tell you that.*

Richard Depo. at p. 369 lns 1-25, p. 370 lns 2-25 and p. 371 lns 2-8. (Haas Nov. 28, 2017 Aff. Exhibit K).

Q. *And if you read further down in paragraph 2 under Answer 2, it says, All parties above named, including the beneficiaries of the will and attorney draftsman and attesting witnesses, did cajole, threaten, intimidate, misrepresent as to contents or otherwise tricked Sydney H. Fields into executing the will proffered for probate or*

forged or traced his signature with or without his presence.

Do you have information with respect to any specific acts or facts that any of those parties engaged in any of those activities?

A. No.

Q. *And so you didn't have any of those facts at the time that you signed this; is that correct?*

A. Yes.

Q. *And do you have any of those facts as we sit here today?*

A. No.

Richard Depo. at p. 372 lines 21-25 and p. 373 lns 2-19. (Haas Nov. 28, 2017 Aff. Exhibit K).

89. As shown herein, the Objectant has not and could not provide any particulars whatsoever regarding any alleged forgery as it relates to the initials on "Q2" or otherwise. All of the parties who attended the Will signing ceremony provided uncontroverted testimony that there was no indication of a forgery. Neither the petitioner nor anyone else who is a beneficiary under the Will were involved with the preparation or execution of the Will.

90. Objectant also fails to inform the Court that the October 13, 2017 report from Mr. Baggett was not provided to Petitioner's counsel in discovery.

Petitioner served an expert witness demand on July 28, 2016. (**Exhibit M**, hereto). The October 13, 2017 report was not seen in this case until Objectant filed his opposition to the instant motion on January 22, 2018. Objectant has shirked his obligations under CPLR § 3101(h). Objectant knowingly kept this report secret until his opposition to the instant motion was filed, while complaining that “Petitioner has not provided a handwriting expert” to “disqualify Mr. Haggart’s [sic] report.” (Chen Aff. At p.15). Since the October 13, 2017 report was not disclosed until after Petitioner filed her motion for summary judgment, it is unclear how an expert could “disqualify” Mr. Baggett’s October 13, 2017 report when Objectant filed his opposition papers on January 30, 2017. The Court cannot condone Objectant’s ridiculous conduct.

91. Based upon the above, the Objectant’s submission of the Baggett Report, which provides a purely speculative conclusion coupled with Objectant’s inability to particularize a factual predicate for a claim of forgery, fails to raise an issue of fact. The Baggett Report cannot overcome the clear presumptive validity of the Will. Thus, *Section E* cannot preclude petitioner’s summary judgment motion.

92. *Section F*, appearing on page 16 of the Chen Affirmation, is entitled “From The Previous Will, Drastic Changes Benefit The ‘Palmeri’ Family in the Last Will, Raising Questions of the Veracity of the Present Will.” There are no matters set forth in

Section F that raise any issue of fact precluding summary judgment.

93. The meritless assertion presented in Section F is that the changes made to the decedent's Will as executed on October 6, 2014 as compared to the dispositions provided in the decedent's prior Will dated July 27, 2006, reflect the presence of undue influence and, therefore, create issues of fact regarding the validity of the will.

94. The Objectant's position is completely flawed on a number of grounds. While the provisions of a prior Will that deviate from a Will under consideration is a factor to consider to indicate whether undue influence is present, *In re Zirinsky*, 10 Misc. 3d 1052 (A), 809 NYS2d 484 (Surr. Ct. Nassau 2005), “*it is also important to remember that in order to defeat a motion for summary judgment, the Objectant must demonstrate that there is a genuine triable issue by allegations which are specific and detailed, substantiated by evidence in the record and that mere conclusory assertions will not suffice (Matter of O'Hara, 85 A.D.2d 669, 671 [1981]).*” *Id.*

95. As fully set forth in petitioner's papers submitted in support of her motion for summary judgment, the Objectant has not provided any particulars with regard to undue influence by anyone associated with the Will whatsoever.

96. Furthermore, the Chen Affirmation does not provide any indication of undue influence. As discussed above, the only category of opposition to petitioner's motion set forth in the Chen Affirma-

tion appears on page 5 and refers only to the alleged credibility³ of the attorney draftsperson and the attesting witnesses.

97. Section F contains the words “undue influence” but does not set forth any facts concerning the basis for such claim.

98. Annexed to the Chen Affirmation as Exhibit H is a copy of the decedent’s Will dated July 27, 2006. A review of the 2006 Will shows that no radical change to the decedent’s testamentary plan occurred in the October 6, 2014 Will. First and foremost, both the 2006 Will at Article FIFTH(b) and the 2014 Will at Article FIFTH (b) contain the same exact language:

Because my son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa I deliberately make no provision for him in this Will and it is my intention that he receive no part of my estate.

99. In the 2006 Will the decedent left the vast majority of his estate to his wife, Teresa. In Article *THIRD* the decedent’s condominium apartment 20P at 372 Central Park West, New York, NY was devised to Teresa, as well as an outright disposi-

³ Objectant’s claim that Petitioner is not credible concerned events that occurred after the Decedent’s death which are barred by 22 NYCRR § 207.27 and are, in any, event irrelevant to the execution of the October 6, 2014 Will. (Richard Fields Aff. ¶19; Chen Aff. Exhibit P).

tion of 50% of the decedent's "remaining gross estate". Also, the residue of the estate (Article *SIXTH*) was left to Teresa in trust.

100. The 2006 Will also recognizes and makes provisions for Teresa's family which includes Victor Palmeri, Jr., Cynthia Palmeri and Diana Palmeri Lukac (Article *FOURTH*). In fact, Victor Palmeri is named as a Fifty Percent (50%) remainder beneficiary of Teresa's trust (Article *SIXTH*) and also of the estate residue if Teresa was to pre-decease the decedent (Article *SIXTH*). Victor Palmeri, Jr. was named as a Co-Trustee of the trust and as the alternate executor (Article *EIGHTH*).

101. Teresa died on September 5, 2014. The decedent was then motivated to redraft his Will. As Mr. Curtin testified in the deposition:

Q. I'm specifically going to read a section that you wrote concerning the will. And it would be in the middle of that Section 2. In the previous superseded will, Mr. Fields had left the bulk of his estate to his wife, Teresa Fields, but when she died in September of 2014, Mr. Fields was compelled to have a new will drafted, wherein he provided for his residuary estate to be distributed amongst members of his deceased family whom he had come . . .

A. Deceased wife's family.

Q. Deceased wife's family, whom he had come to embraces as his own family. Specifically

I'm going to zero in on questioning about Mr. Fields was compelled to have a new will drafted. You did write this, right, Mr. Curtin?

- A. *Those are my words.*
- Q. *So, could you please just explain what you meant by Mr. Fields was compelled to have a new will drafted?*
- A. *What I intended to convey there was that Mr. Fields on his own initiative determined that he needed to have a new will. It may have been inartfully stated by me; the word compelled was not in any way intended to indicate that he was under any kind of duress, but that it was his own initiative to have a new will drafted because his wife had died.*
- Q. *Did he ever tell you why he wanted to change his will from the previous will in effect, which was the 2006 will?*
- A. *Yes, because the 2006 will left substantial portions of his estate, there was some kind of life estate, was left to his wife, his then living wife, Teresa. After she had died, she was no longer there to be a beneficiary and Mr. Fields decided to have a new will drafted.*

Curtin Depo. at p. 78 lns 23-25 and p. 79 lns. 2-25 and p. 80 lns. 2-15. (**Exhibit N** hereto).

102. In view of the above, the decedent created a new Will dated October 6, 2014. However, the 2014 Will reflected the same testamentary scheme as the 2006 Will. Teresa and her family were the dominant beneficiaries and Richard, as well as Kenneth and his children, were still explicitly disinherited.

103. While the charitable bequests in the two Wills differed, it is clear that the charitable provisions were limited and did not dominate the 2006 Will and were only secondary in nature. In this regard, Richard was questioned at his deposition regarding references made concerning the decedent's charitable bequests in an affidavit Richard had submitted to this Court sworn to by him on May 24, 2016 entitled "Affidavit of Richard Fields" (the "2016 Richard Affidavit"). A copy of the 2016 Richard Affidavit is annexed hereto as **Exhibit O**. In paragraph 4 of said Affidavit Richard asserted as follows:

My father always put a lot of pressure on me and my brother to pursue education. I know he valued CUNY, and I not believe he would revise his will to diminish his gifts to City College and Baruch from a significant percentage of his estate to only \$500 dollars a piece. The gift to United Jewish Appeal was also diminished significantly. My father was traditional. He had a strong connection to his Jewish heritage. He was buried in a Jewish Ceremony. Given how significant the changes are, and the fact that they went from percentage gifts to

fixed dollar amounts, it looks like someone said we better put nominal amounts in the will for those charities, otherwise someone may question what happened.

104. In this deposition testimony (Exhibit A hereto) Richard stated that his Affidavit allegations were nothing more than “conjecture”:

Q. Now, when you say, I did not believe — continued on page 4, front page. See at the bottom it says, And I do not believe?

A. And I do not believe — it should say it do not believe.

Q. Okay, it's typo. I not believe, right, see that?

A. Yes.

Q. I not believe he would revise his will to diminish his gifts to City College and Baruch. Did you see that?

A. Yes.

Q. What is the basis upon which you made that statement?

A. Conjecture.

Q. You have no basis, correct?

A. Correct.

Q. It's pure speculation?

A. Correct.

Richard Depo. at p. 378 ln 9- p. 379 ln 5 (**Exhibit P** hereto).

Q. Now, you go on to say that a significant percentage of his—reducing essentially, a significant percentage of his estate to only 500 a piece. See the rest of that statement?

A. Yes.

Q. And, again, would it be correct to say that that's pure speculation?

A. Yes.

Q. You have no facts to base that statement on, am I correct?

A. You're correct.

Q. Thank you. Now, with respect to the next sentence it says, The gift to United Jewish Appeal was also diminished significantly. Do you have any information that your father gave charitably at any point to the United Jewish Appeal?

A. No.

Richard Depo at p. 381 ln 4- p. 382 ln 3 (**Exhibit Q** hereto).

Q. Okay. So if you take a look at the next sentence beginning with the word “given”. Given how significant the changes are, and the fact that they went from percentage gifts to fixed dollar amounts, it looks like someone said we better put nominal amounts in the will for those charities,

otherwise someone may question what happened. Do you see that sentence?

- A. *Yes.*
- Q. *Do you have any factual basis for making that assertion?*
- A. *I have no factual basis for making that assertion.*
- Q. *And would it be correct to say that that's all based on pure speculation?*
- A. *That would be correct. I know that he gave a hundred dollars to Baruch College Fund. Not in the will, but when he was alive, they asked for a contribution from the alumni and I read on the computer when I was looking it up that for him it was a hundred dollars.*

Richard Depo at p. 383 ln 21 - p. 384 ln 22.

105. As shown above, there is no factual basis to Objectant's claim that the decedent's intentions regarding his charitable bequests were somehow affected by undue influence. No Objections to the Will were interposed by any of the charities. More importantly, the decedent's testamentary plan as reflected in the 2014 Will was a reflection of his desires that permeated both the 2006 and 2014 Wills.

106. The words of the Court in *In re Dunn*, 184 A.D. 386, 171 NYS 1056 (3rd Dept. 1918), in which

the Court reversed a denial of probate, are reflective of the within matter:

Where a will, made by a concededly competent person, is identical in its scheme with that of a subsequent will, varying merely in detail, and the details of which are not unreasonable or freaky, the natural inference would be that the later will was merely the result of maturer deliberation, not that it was the result of irrationality on the part of the testator, or fraud on the part of those who chanced to be benefitted by the changes.

184 AD at 390.

107. After Teresa died, the decedent immediately prepared and signed a new Will which provided for Teresa's family in the same manner the 2006 Will provided for Teresa. The decedent clearly wished to benefit Teresa's family which the decedent had embraced as his own family after her death. As stated in paragraph 6 of the Affidavit of Arthur Fishelman, a disinterested person, sworn to on June 12, 2017 which was submitted by petitioner as Exhibit BB in support of her motion:

After Teresa died in 2014, I spoke with Syd on several occasions by telephone. Each time he underscored how helpful his niece Diana was and how grateful he was to Diana and her family for their ongoing support. Syd referred to Diana and her family as his only family.

108. A similar sentiment was stated by Stuart Michael, a neighbor and disinterested person, in paragraph 4 of his affidavit sworn to on September 14, 2016 (Exhibit DD to petitioner's motion):

Sydney also spoke to me about the affection and gratitude he had for his niece Diana and the other members of his deceased wife Teresa's family for the love and care they gave him when his physical health began to deteriorate. He also told me he had two sons but had not been in touch with them for many years and was not at all happy with them, although he didn't tell me the reasons.

109. Finally, no member of the Palmeri family was involved with the preparation or execution of the 2014 Will. As testified by Mr. Curtin:

Q. *Prior to Mr. Fields executing this particular will, had you personally had any contact with parties by the name of Olga Palmeri, Victor Palmeri Senior, Diana Palmeri, David Palmeri, Victor Palmeri junior, Cynthia Palmeri and Ana Maria Garzon Yepez?*

A. *None of the above.*

Q. *Thank you. No contact at all?*

A. *No contact at all.*

Q. *Did Mr. Fields mention to you when he was telling you how to put together this will that we are objecting to, any of those*

parties beside the fact that they were distributees? Did he mention anything about his relationship with any of them?

A. *I think there was a discussion as to who they were. I — I believe he indicated that Olga was his deceased wife's sister and that Diana was her daughter, sister's daughter.*

Curtin Depo. at p. 82 lns 2-23. (**Exhibit S** hereto). Objectant has abandoned his undue influence objection by failing to allege facts to show motive, opportunity or the actual exercise of undue influence.

110. Based upon the above, Section E fails to raise any issue regarding the presence of undue influence as indicated by a change in the decedent's testamentary plan or otherwise.

111. *Section G*, appearing on page 16 of the Chen Affirmation, is entitled "Party Not Listed in Petitioner's List of Witnesses Must Be Deposed". Not only does Section G fail to raise any issue of fact, Gloria Madero was listed in petitioner's Amended Witness List dated September 22, 2017 that was served upon Mr. Chen. (See **Exhibit T** with affidavit of service annexed hereto).

112. Therefore, Section G provides no basis that could preclude summary judgment for petitioner.

113. As fully discussed above, the Objectant has not set forth any substantive matter that presents an issue of fact regarding any of the allegation in

the Objections. While the Objectant has attached his affidavit to the Chen Affirmation as Exhibit A, this Affidavit fails to provide any substantive foundation for the Objectant's claims. Essentially, the Objectant's case is nothing more than a reflection of his disdain for his father and Teresa and the Palmeri family which is clear from Objectant's statement in paragraph 14 of his January 22, 2018 affidavit in opposition to the instant motion that: "*I do not think it is fair that the Teresa Fields' relatives, none of whom are blood related to my father, should divvy up 10 Million Dollars of my father's money, when there are questions as to the validity of Will execution.*" What the Objectant, who repeatedly threatened the life of decedent and his wife with graphically menacing photographs and letters, deems to be unfair, is irrelevant to the validity of the Will.

Conclusion

113. In support of her motion, Petitioner has set forth a *prima facie* case of entitlement to judgment as a matter of law dismissing the objections to probate. In addition to the presumptions of regularity and testamentary capacity, she has submitted testimony and documentary evidence demonstrating that the October 6, 2014 Will was duly executed in compliance with EPTL § 3-2.1, that the decedent had the requisite testamentary on October 6, 2014, that the decedent was not unduly influenced, that the decedent was not defrauded and that the Will is genuine in all respects.

114. In opposition to this *prima facie* showing, Objectant has submitted pure" conjecture" in support of his conclusory allegations. Objectant's opposition does not address the elements of his duress, mistake, fraud or undue influence objections. Similarly, Objectant's attempt to elevate allegations of poor eyesight to show a lack of testamentary capacity has no basis in law or fact. Objectant's attempt to distract this Court by alleging that the identity of an aide must be established is irrelevant and it does contradict the testimony of the attorney-drafter and attesting witnesses that the Decedent was fully coherent and intended to execute his Will on October 6, 2014 and that he did so in compliance with EPTL § 3-2.1. Objectant's previously-undisclosed handwriting expert's conclusion that the "Initials on bottom of Page 1" *did not* conclude that the *signature* of the Decedent is forged. (Chen Aff. Exhibit L). Nothing has been submitted to contradict the fact that the attorney-drafter and the attesting witnesses unanimously testified in unison that the October 6, 2014 Will was duly executed in compliance with EPTL § 3-2.1.

115. In sum, Objectant's "mere conclusions, expressions of hope or unsubstantiated allegations or assertions" are insufficient to demonstrate the existence of a material issue of fact to avoid summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 577, 562 (1980). As demonstrated above, his submissions are based entirely on speculation, conjecture and misrepresentations. The uncontro-

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verted prima facie evidence requires that summary judgment be granted to petitioner.

Dated: New York, New York
February 23, 2018

/s/ JULES MARTIN HAAS
Jules Martin Haas

Exhibit List to Reply Affirmation

- Exhibit A Pages 185-186 from the deposition testimony of Richard Fields
- Exhibit B Pages 33-34 from the deposition testimony of Edward Curtin
- Exhibit C Pages 153-156 from the deposition testimony of Edward Curtin
- Exhibit D WebMD Article
- Exhibit E American Foundation for the Blind Article
- Exhibit F Letter from Jules Martin Haas, Esq. to Richard Alan Chen, Esq. dated March 20, 2017
- Exhibit G Vanguard Subpoena
- Exhibit H Letter from Richard Alan Chen Esq., to Albert V. Messina Jr. Esq. dated March 22, 2017
- Exhibit I Letter from Albert V. Messina Jr. Esq. to Richard Alan Chen, Esq. dated March 23, 2017
- Exhibit J Page 152 from the deposition testimony of Edward Curtin
- Exhibit K Pages 149-150 from the deposition testimony of Edward Curtin
- Exhibit L Objectant's Amended Verified Bill of Particulars

Exhibit M Petitioner's Demand for Expert Witnesses

Exhibit N Pages 79-80 from the deposition testimony of Edward Curtin

Exhibit O Richard Fields Affidavit sworn to on May 24, 2016

Exhibit P Pages 378-379 from the deposition testimony of Richard Fields

Exhibit Q Pages 381-382 from the deposition testimony of Richard Fields

Exhibit R Pages 383-384 from the deposition testimony of Richard Fields

Exhibit S Page 82 from the deposition testimony of Edward Curtin

Exhibit T Petitioner's September 22, 2017 Amended Witness List

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EXHIBIT 4

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

File No. 2016-111

Bench Decision

In the Matter of the estate of

SIDNEY H. FIELDS

Deceased.

31 Chambers Street
New York, New York 10007
March 20, 2018

BEFORE:

THE HONORABLE RITA MELLA,
Surrogate Court Judge

APPEARANCES:

For the Petitioner movant:

JULES M. HAAS ATTORNEY AT LAW
845 3rd Avenue #1400
New York, New York 10022
By: Jules M. Haas, Esq.

NOVICK & ASSOCIATES, PC
202 East Main Street, Suite
By: Albert V. Messina, Esq.,
co-counsel

For the Objectant, R. Fields:

LAW OFFICES OF
RICHARD ALAN CHEN, ESQ.
4160 Main Street
Huntington, New York 11743
By: Richard Alan Chen, Esq.

Proceedings recorded by electronic sound recording.

P R O C E E D I N G S

(The proceedings began at 10:06:37.)

COURT CLERK: Calling number 7, Sidney Fields.
MR. CHEN: Good morning, your Honor.

COURT OFFICER: Your appearances.

MR. HAAS: Jules Haas for petitioner and movant.
Good morning, Judge.

MR. MESSINA: Good morning.
Albert Messina co-counsel for petitioner and
movant.

MR. CHEN: Richard Alan Chen for objectant,
Richard Fields.

THE COURT: Good morning—

MR. CHEN: Good morning.

THE COURT: —everyone.

I have read all of your papers and I am very
familiar with this file as well as with the argu-
ments that you are making.

Mr. Chen, I have a question.

MR. CHEN: Yes, ma'am.

THE COURT: I know that your client is still pursuing his objection based on lack of due execution because your papers concentrate on that a lot. My question is is your client still pursuing the objection based on lack of testamentary capacity?

MR. CHEN: I would like to answer yes, your Honor; however, I don't have, at this time after discovery, the evidentiary support for that. so, I have to say at this time I'm not contesting that (inaudible) matter because I just don't have it. I'll assume the (inaudible) answer to support that. If your Honor sees fit to pursue it, allows us to pursue it further, I will—I have a certain amount of evidence that I can present on that. So, I guess the answer to that is I've answered what I can answer and I point out that I don't have the support for that at this time.

THE COURT: Well, Mr. Chen, you filed a (inaudible) indicating that this copy was complete here.

MR. CHEN: Yes.

THE COURT: I'm assuming, Mr. Haas and Mr. Messina, that that is your decision as well.

MR. HAAS: That is correct, your Honor.

THE COURT: Now, again, I'm familiar with your arguments because I have read all of your papers here and looked at the exhibits, including the transcript of the deposition testimony of the different witnesses that were called here to testify before trial and is here anything that you would like to

highlight from your papers or anything that you would like to add that is not in your papers, Mr. Chen?

MR. CHEN: Your Honor, I have three pages of presentation, but I—if you—

THE COURT: Three pages of?

MR. CHEN: I had three pages of my presentation prepared, but I don't know if we have that type of time. So, if you'd like, I'll—gather information that I think I should highlight at this moment.

THE COURT: Correct. (Inaudible).

MR. CHEN: Briefly, the situation (inaudible), obviously the will execution. The three parties that were involved at the will execution besides the decedent were Mr. Curtin, who was the attorney drafter, as well as the two witnesses. All three of them are not credible and the reason I say that is because at deposition all three of them, all three of those parties did not identify the name, race, even color of the aide who came with the decedent to the will signing. And that person was, would be critical to the status, if you will, and the condition of decedent, who actually went to the emergency room at the hospital the next day and stayed in the hospital for over a month the day after the will execution.

All three of those parties, including the attorney draftsman, said that the decedent was in the peak of health that day; he had no problems. As a matter of fact, the witnesses even testified that he was able to see his will and without a problem, actually as my documents showed in the summary judg-

ment, he was legally blind at the time of the supposed will execution.

If you look at the will it also has X's supposedly placed by the attorney draftsman on it where the decedent was to sign; however, as the witnesses in deposition testified that the will there were supposed initials on the will by the decedent that were not corrected by these X's. So, it's an interesting situation where looking at the will you have the decedent must be shown by X's, large X's in magic marker. By the way, your Honor, the decedent signed with a magic marker, but then looking at the will it doesn't appear that he initials were done with a magic marker. So, I have to look at that, but the point is is that there's a discrepancy there.

Also, that the witnesses, as I said, and the attorney draftsman appear to be in collusion in deciding not to tell the objectant in testimony exactly the identity of the caretaker who was there and brought Sidney to—Sidney the decedent to the will signing. So, that I do want to highlight. Also, I know that credibility is an issue here and concerning the will execution as the attorney draftsman, Mr. Curtin testified that there was no will signing after the decedent passed away, but his executor, who is the petitioner, testified she found out first that she was getting a part of that large sum of money from the \$10 Million estate at the will signing. So, there's a question as to who's telling the truth.

And so, I submit that that initially is the issue that brings us out of summary judgment, that there's a question as to whether or not those wit-

nesses are, and the attorney draftsman, are credible. And it pertains specifically to the will execution, again, the decedent was legally blind. I submitted that on papers, your Honor, and I have—as a matter of fact, I think two days before, and I submitted that in my papers, two days before the will execution the descendant specifically told his broker do not come to my apartment to have me look at documents; I can't read them. He didn't mention anything about, as petitioner's attorneys have mentioned, that he was using a magnifying glass and this and that. He just said simply, I cannot read the documents. So, there you have it.

Also, I have pointed out that all of the petitioner's witnesses including attorney draftsman and two witnesses, did not say that the will was read to him prior to execution. There's an elaborate story about how he contacted the attorney draftsman and he submitted some document that they submitted in their papers claiming that the decedent himself wrote it on (inaudible) that's in the papers of the Summary Judgment Motion and what's interesting is that even that that's supposedly was very schematic and I submit that these are foundational evidence at a hearing as to exactly how this came about. It's claimed the decedent wrote this and it doesn't even match what the will provisions are for the—for those—for the petitioner (inaudible) in effect who are getting the entire estate except for nominal amounts for charity. I just note that the parties that are (inaudible) in the will are not in any way blood related to the decedent. My client,

obviously is one of two sons of the decedent, biological sons.

Again, I don't want to take up too much time, your Honor, it's in my papers, but I'll just highlight what I checked off here. It should also be noted that the paid witness Susan Leeman had testified that she had done a number of will signings for the petitioner's attorney.

THE COURT: Why do you call her a paid witness?

MR. CHEN: She was paid.

THE COURT: For—for—

MR. CHEN: For witnessing wills and I just find it unbelievable that three people can say in deposition testimony, yeah, I remember it was a female, but I don't remember who that aide was in terms of her race or her age. And, by the way, the decedent was 95 or 96 years old when the will was executed.

THE COURT: Now, Mr. Chen, I have the medical records from Mount Sinai that you actually attached to your opposition papers.

MR. CHEN: Yes, ma'am.

THE COURT: And there is a neurological examination conducted of the decedent the day after he executed this will.

MR. CHEN: Yes.

THE COURT: And it indicates no gross neurological deficits are present. Also, says speech normal, no memory loss, not anxious, not depressed, not stressed. Oriented to person, place and time. So,

that again is the day after, would that actually go to—would that actually be evidence that, in fact, he was aware of his circumstances and what he was doing at the time?

MR. CHEN: I can't say no to that question, your Honor, so, I guess, for the moment the answer has to be yes, that that would show that the day after he at least had that—those conditions, but as pertaining to whether or not he knew what he was signing at the time—and there's a reason why you go to the emergency room the day after you sign a will. It wasn't because he was in peak health.

THE COURT: Wasn't it related to—to—

MR. CHEN: I can't hear you, I'm sorry.

THE COURT: Wasn't it related to an open wound that he had on his leg?

MR. CHEN: Yes. In my—I mean, again, I wasn't there, your Honor, but in my estimation what—

THE COURT: Neither was I.

MR. CHEN: Yes. Yes.

THE COURT: I'm looking at—I'm looking at the records, you know.

MR. CHEN: But he was admitted for over a month and I think a week or two after the day after the will was executed. He obviously went there because of distress. Obviously, he was in pain, but I can't answer your question no. The doctors observed what they observed, as far as that goes, but they admitted him and he stayed in the hospital for—

so, in effect, what we have is a will that was executed prior to an emergency admittance to a hospital and I'm talking about the day before, with questionable testimony. There's a question as to how the decedent (inaudible) and this will was executed.

I'd also like to point out, your Honor, we did have a, and I submitted it in my papers, we did have an expert witness, which counsel for petitioner claimed in his responding papers that I had submitted proof he's never seen before, but the reality was that our expert witness has been there since the original Summary Motion to Dismiss by Mr. Curtin (sic) and that is what—that was on file with the Court then. So, that's what I have in terms of questioning of the will, the initial (inaudible).

Petitioner has mentioned, as far as I can see from his papers, an expert witness, but I don't have a report to that effect. I have a report, but they didn't —petitioner's attorney, Mr. Haas, (inaudible) stresses that I didn't tell him about my witness and the report. That's not true, because if you look, your Honor, at our own court records or the first Motion made to Dismiss by Mr. Curtin, and included it. That (inaudible).

My expert was ready to testify and his credentials (inaudible) and then I later heard because I said (inaudible), unfortunately I had to do this sur reply, which is know is unusual (inaudible), I indicated, I included that on a list of witnesses, expert and other (inaudible) on the same (inaudible). So, it's not a mystery that there's a question about the will.

And by the way, your Honor, with the will execution, there are some other irregularities. For the instance, the witnesses signed they witnessed (inaudible) date, but date was crossed out and the attorney who had represented the decedent at the time, Mr. Curtin, supposedly crossed out the date of the (inaudible) on the witness affidavit and put in a different date and then he witnessed it himself the witnesses supposedly signed the bottom. When we look at those documents as well as the will, there's a (inaudible) change.

So, there's a question according to the witnesses and the attorney draftsman everyone knew it was done (inaudible), everyone knew this is a (inaudible), but yet it says her instead of him in a number of places in the documents. It doesn't sound like (inaudible), but what it indicates to me is that when you put it all together it there's some question as to why they're not telling me who that third party was there. The only independent party there, who was not going to be paid to be there or have an interest to be there, why they won't name—they just won't name that third party. At the end, (inaudible) to discover, but your Honor I even submitted to you a letter that I wrote the day after, their (inaudible) what they're saying and I said it's incredible that you won't tell me who the third party was, this alleged caretaker or aide who walked into that will signing stayed there the whole time and then took him out. They won't tell me.

THE COURT: You couldn't have served a subpoena?

MR. CHEN: I don't know—I don't have anyone to serve it on; that's the problem. They don't—all they said was it was a female.

THE COURT: And they said in response to your request for information from the proponent that they did not provide this information to you; that's what you're saying?

MR. CHEN: Not only did they not provide it, your Honor, I submit it's incredible that three adults who live in New York City are going to tell me in deposition testimony, you know, I don't see people like that. Three people, the attorney draftsman and two witnesses to a will. I don't see people like that. I know she was a female. I can't tell you what age, I can't tell you what race. Your Honor, I'm sorry, but that's—

THE COURT: Now—

MR. CHEN: —and we're talking about at the will execution. I'm not talking about, you know, what you said about his capacity or anything like that.

THE COURT: The—isn't it a fact, Mr. Chen, that the testimony of the witnesses was that in the room, in the room, where the execution took place there was no one but the decedent, Mr. Curtin and the two witnesses; isn't that the testimony?

MR. CHEN: Yes, that was the testimony, your Honor, and, again, I'll restate I wasn't there, but I am—all I have to say is the word suspicious and I think that that third party would be able to tell me the testator's condition at the time he executed the

will. I don't think he was in the peak of health as these—as the witnesses pretty much were saying that he walked in on his own with no problem and might have used a magnifying glass, but he was okay. That third party was (inaudible).

For instance, there's a question as to the credibility of the attorney draftsman and I understand there's a preface—there's a presumption that the will was properly executed when you have attorney draftsman. Again, the attorney draftsman testified there was no will reading after the testator passed, meanwhile, his own client the petitioner says I found out what I was getting out of the \$10 Million, I think 35 percent, I found out at the will reading after he died. So, he's pitched against his own client in terms of deposition testimony.

I say there's a question here and I appreciate maybe it's my strongest point and I'll have to emphasize it, your Honor, I need a hearing. I need to have these witnesses before a tryer of fact to show what they're talking about at the will execution, they are not credible. It's sample as that.

I have one more point to make, your Honor, and

—
THE COURT: Okay. Can you—

MR. CHEN: Yes, then I'll wrap it up.

THE COURT: Please. Please do that, because you know—

MR. CHEN: Yes. I'll keep my glasses on.

THE COURT: —I have other cases, too.

MR. CHEN: Yes. And I again, I can be sure, if you don't mind, I can put in my papers—my notes.

I also want to point out that there was a prior will, your Honor, I have to say it's not going to make or break us in any way, (inaudible), but the differences between what these parties being these non-family parties are getting versus what they were getting under the original prior will of 2006 is tremendous, is tremendous. None of my client's—his brother is not getting anything, he's not getting any part in this will. They take great pains, by the way, your Honor, to say that my client threatened his father, sent him threatening notes through his life since he was a teenager.

My client, admittedly, has been diagnosed paranoid schizophrenic, unfortunately, and as far as I'm concerned, from what I see of his behavior demanding money throughout his life and threatening his father, whatever he did, is all symptoms of that and he—we readily admit that, but my point is that it's very suspicious that before the decedent, the day before he's taken to an emergency room and was admitted for a month and a week, he supposedly signs a will where these non-blood related parties pretty much get the entire estate of \$10 Million and can this court allow, without testimony, without a trial, without seeing the attorney draftsman and those witnesses for will execution, in judgement of the credibility which I have already told you—set the facts as to why their credibility is in question, can this court allow that to pass on the summary judgment Motion?

I submit to the Court and based on my (inaudible) my speech this morning, the answer is no. Let us have a chance to show this Court why they are not credible, why the will was not properly executed pursuant to the state's powers and trusts law as with the (inaudible). Let me—let the objectants show why these witnesses and the attorney draftsman are not to be believed when they say he signed that will and the signage was (inaudible) proper, legally require (inaudible). Thank you.

THE COURT: Thank you, Mr. Chen.

MR. CHEN: Thank you.

THE COURT: Mr. Haas?

MR. HAAS: Yes, good morning, your Honor.

Your Honor, if there was ever a case that called out for summary judgment on behalf of the deponent, this is it. We have in this matter an objectant who is the son of the decedent who, by his own admission, and only ground I'm going to say is based on his testimony that he did not have contact with his father for decades. Based on the testimony, his last contact with his father was in 1999. Prior to that, it was in 1991.

During the course of time before the will, the objectant was concerned that he would be disinherited. So, what did the objectant do? He sent his father photographs in which the objectant was holding bombs and guns and sent his father and his father's wife Theresa, his then wife Theresa, whom he married in 1975, threatened whatever—threatened their lives. As a result of all of that, the father

had his son arrested and prosecuted and filed many other proceedings in Family Court to have him stop what he was doing.

So, it certainly didn't come as a surprise when the father wrote his will that the father disinherited his son. In fact, the will, as the Court knows from reading papers, has a provision that says I didn't leave anything to my son Richard because he threatened my life and my wife Theresa's life. So, that's the background of this case, Judge, and, in fact, in the prior will that counsel referred to had the same provision. So, the decedent clearly understood what he was doing. He clearly understood that he did not want his son to have any part of his estate or be part of his life in any way because he had no contact with him for many, many years.

The beneficiaries of this will were the members of Theresa's family. Theresa was the wife of the decedent. She—he had married her in 1975, that was his second family, that was his family that he loved and came to cherish and that's who he left his estate to. The reason that the will was changed was because shortly before this will was written, Theresa had passed away. So, instead of leaving his estate to Theresa which he did in a prior will, he left it to Theresa's family. And in fact, in the prior will Theresa's family is also mentioned in a smaller way, but that's because Theresa was alive and of course the logical conclusion would be that if Theresa was alive, she would have inherited the whole estate and there—and assuming that someday when she died, she would have left it to her family.

So, the fact that the will left everything to Theresa's family, Judge, is just a logical conclusion of this family dynamic where the son is nothing more than a person who's threatening his father and has no contact with him for years. It's just not surprising, Judge. What is surprising, in fact the most surprising part of this whole case, is that the son would go ahead and file objections to the will under those circumstances. That's the most surprising thing.

Now, Judge, I want to begin by bringing to the Court's attention, as the Court probably knows, yesterday we received in the mail a document from the objectant. It's called Affirmation in Further Opposition, I don't know if the Court's aware of this, but I—

THE COURT: I am not.

MR. HAAS: Okay. And I think that counsel referred to that and I'm making the Court aware of it because it's probably in the Court file and I would just ask the Court to disregard it. It's improper for it to be submitted and I really—I didn't respond to it because it's just outside of the parameters of what we have here, and I want to address myself to just a couple of points that objectant's counsel made.

With respect to the aide, this is—this is what the objectant's case is about. Their case is about the fact that the witnesses couldn't identify the by name or address or in some other way an aide who accompanied the decedent to the will signing. As the Court recognized, that aide was outside of the

room when the will execution occurred and the witnesses apparently didn't pay much attention to the aide and the aide certainly didn't identify herself and say this is who I am, my name and my phone number and my social security number.

So, counsel says that what the witnesses testify, counsel took their deposition, and they identified her to a limited extent and said I think she was a woman. I think she was in her forties. Whatever, but the fact of the matter is, Judge, that the fact that they can't or they could not identify the aide and the fact that counsel doesn't believe them doesn't go to their credibility. In fact, I find it to be offensive that counsel would stand there with nothing else, not one bit of evidence, not one item of reference to say that the witnesses are, in fact, lying.

In fact, that's what counsel is saying and that's what counsel wants the Court to take under consideration at trial. I think that that's totally wrong, Judge, and I would ask the Court to completely reject that. And, also, judge, as the Court pointed out counsel had full opportunity to engage in disclosure here. Counsel certainly could have interviewed dozens of other witnesses. In fact, in disclosure that we made to objectant there are hundreds, probably thousands of pages of document discovery. In that discovery, because I know, I put it together, there were many, many pages of lists of aides and bills and medical things that listed aides who the decedent had used over a course of time. Certainly counsel could have written letters to them, counsel could have subpoenaed them, coun-

sel could have called them up. Counsel could have done a hundred other things.

Counsel couldn't do that, didn't do that, and in fact, Judge, counsel's discussion with respect to the aide is purely discovery issue. It has nothing to do with credibility because there's no linking of the identification of that witness with anything whatsoever as far as the witnesses' credibility or lack thereof. So, I think it's a non-issue and it's really remarkable that the objectant's case is built around the fact that witnesses to a will could not identify some non-descript aide that accompanied the decedent to the will signing.

In the face of the testimony of the witnesses, and the attorney draftsperson, as to the due execution of the will and to the fact that the will is in perfect order. It has an attestation clause, its attorney drafted, and it's drafted by the same attorney who did the prior will, and it's the same clause disinheriting the objectant that the prior will had and all of the witnesses' testimony as far as execution was full and consistent with due execution and testamentary capacity. So, I don't think that there's an issue there whatsoever, Judge.

Now, as far as the issue that counsel, for a time I'm just going to talk about some of the issues that objectant's counsel raised. The X's on the will, all right, there are X's next to the decedent's signature that the decedent, from the testimony, asked the attorney draftsperson to put on the signature line. Those X's don't appear on the pages where the decedent initialed the will. Well, first of all, there's no requirement in the law that a will be initialed

and the fact that there are no X's to initial the will on the will pages, there's no particular line where you have to sign.

And, in fact, the fact that the decedent wanted to sign on the right line, all right, to make sure that his signature was in the right place, I think is an important factor. And the fact that the decedent had a limited—this limited eyesight, again, Judge, is a non-issue. All right? There's nothing to prevent a person who has limited eyesight from signing a will. All of the testimony shows that the will was gone over completely with the attorney draftsper-son, that he completely understood that the dece-dent is the one who basically guided what to put in his will and he signed his will under perfect cir-cumstances. There's no question as to how any of that occurred. So, I think all of this, again, Judge, is a non-issue. It's just a distraction, all right, because there is no question as question as counsel admitted about testamentary capacity. There is no issue about the way this will was executed. In fact, there is no issue of undue influence. In fact, coun-sel didn't even refer to undue influence. There are no issues about how any of these matters came to pass.

What we have is a son who had no contact with his father, who threatened his father, and who the —whose father left him out of the will for a very specific purpose that's—that's designated in the will.

As far as, you know, again, these are very side matters, Judge. Counsel mentioned that one of the witnesses was paid. Yes, the witness was paid \$25

to take a few minutes or an hour or two of her time, whatever it was. Again, the case law provides that there's nothing wrong with this, Judge. In fact, that's what occurred. It was a neighbor in the building and that's how that came about. So, I don't think that that—that in any way colors the testimony of this witness as to the due execution particularly since all the witnesses' testimony align with each other. They were all there. They saw the decedent sign it, they saw it being executed. They saw each other execute it. So, all of the parameters of a will execution were completely satisfied.

You know, Judge, there was—there was summation of this issue with an expert witness and there is a copy of an expert witness report attached to the opposition papers, which we—

THE COURT: I think the witness itself goes to that opinion letter or letter of opinion or something to that effect.

MR. HAAS: Yes, this witness, right. The expert, which we responded to basically. Our response is that there's no, in effect, basis for what this witness says to have any value with respect to this case. There's no basis for the opinion that was given. There's no authenticity of the samples that the witness refers to and I think when the Court looks at the totality of that, the witness' report, that the Court will discount it and not find that there's any issue with respect to the validity of the will. In fact, that expert witness' report goes to ini-

tials that appeared on the will. It does not even go to the signature on it.

Now, that's important, Judge, for this reason. In the paper that the objectant's counsel just submitted, which is outside of the parameters of procedure, which I just referred to, there's a different expert report and that's why I'm asking the Court to disregard this.

This expert report is a different report. It goes to different issues and it hasn't been submitted in connection with the opposition papers that were provided by objectant. So, that's why it's important that this paper not be regarded in any manner by the Court. It wasn't part of the opposition. I can't control what objectant puts in in opposition. I can only respond to it, but the objectant does not have a right after all that is done to submit a different witness' report the day before we have argument and ask the Court to give that any—any kind of notice whatsoever.

So, I would ask the Court again to totally disregard what was submitted.

MR. MESSINA: All right, if I may, your Honor, on that one point. The date of the report that was submitted in opposition to the Summary Judgement Motion was October 13th, 2017. The submission that Mr. Chen just filed with the Court yesterday is dated April of 2016. The October 2017 report was never disclosed to us in the course of discovery even after—I'm sorry, until after the Motion for Summary Judgment was submitted.

So, the first time that Petitioner's counsel saw the October 2017 report was in opposition to the Motion for Summary Judgment.

The April 2016 report was disclosed during discovery; however, counsel did not submit the April 2016 report in opposition to the Motion for Summary Judgment. He decided for some reason now to submit it one day before oral argument. So, based on that, we have not had an opportunity to respond to the April 2016 report. We ask that your Honor reject the submission.

THE COURT: Well, most definitely that is not part of the—it's not part of the record in the Motion for Summary Judgment.

So, did you want—

MR. HAAS: Very good, Judge.

MR. CHEN: May I just make one point on that, your Honor?

THE COURT: I'm sorry. Mr. Messina, were you done?

MR. MESSINA: I just have one other point to address on counsel's points. He referred to the deposition, sorry, the statement of the broker named Jeffrey Kern. That statement was not admittance to form. It's not a testimonial statement. It was not sworn to. Mr. Kern has not authenticated the statement. It was not submitted along with a business record certificate, and, without it, we submit that statement is inadmissible. Even if the Court were to rely on it, if you read the statement Sidney Fields actually states that he can read with a mag-

nifying glass. So, to the extent the Court wishes to rely on that, we ask the Court to also consider that fact.

In addition to the fact that the statement may say legally blind, which is a far cry from being actually blind. An actually blind person may still execute a will. Counsel indicated or alluded to—sorry, excuse me—alleged that Attorney Curtin did not read the will to the decedent. Testimony is the exact opposite of that fact. Mr. Curtin testified extensively that he sat side-by-side of the decedent, reviewed provisions of the will, including the provisions the decedent himself drafted and some boilerplate provisions. The parts that he couldn't read, Curtin read with him, and he'd seen him also use his magnifying glass with respect to the dispositive provisions of the will. Mr. Curtin testified the decedent knew everything that was in that will.

MR. HAAS: Just one more point and then I'll allow counsel to respond. With respect to the decedent's eyesight, Judge, his—there's nothing in the record where the objectant provides any indication as to any specific demission of the decedent's eyesight. There's nothing to—nothing provided as to the fact that he couldn't read or he couldn't see and the extent to which he could or couldn't see. So, basically what we have here is supposition and conclusions and nothing whatsoever based on the factual presentation to support—

THE COURT: But the client does not dispute that the decedent did not have perfect vision.

MR. HAAS: We do not dispute that, Judge, but that doesn't mean that he couldn't fully and completely read and compare and execute his will. And the objectant hasn't presented anything in any viable form to show otherwise.

MR. MESSINA: One final point, your Honor? If I may—

THE COURT: No. Mr. Chen?

MR. CHEN: Yes. Your Honor, as far as my trying to pull a fast one on them in terms of submitting a report that they'd never seen; I'm not understanding that argument. I simply went back to my records as to the report that I have that—and I say to the Court I'll make it very easy. The one that I submitted previously on the previous initial Motion by Mr. Curtin to dismiss our case, that's the one that I was referring to because Mr. Haas doesn't mention that he makes a great deal in his responsive papers about how he's never heard of my witness, never saw a report.

Meanwhile, on the Court's record, what your Honor considered on the first decision is Mr. Baggett's (sic) report. I—I would even have to go, at this moment, to see if what they're talking about is correct and I understand that the Court will very well disregard it; however, it's not the same report. That's the report I'm deferring to, one that's in the court records already. However, I will say this, as far as that report, it's very important for them to have this court disregard any expert testimony because once again it goes to the surrounding situ-

ation concerning will execution and I will tell you that's where my case rests.

It doesn't rest on an aide that they refuse to identify. That's part of it, because as the case law says, these types of cases are not really right for summary judgment because credibility is involved. And, by the way, your Honor, you recently made a decision on a case and I looked at the listings of the documents that were submitted on that case concerning somewhat similar circumstances, very old party who died and certain family members were objecting to the will.

And just looking at the list of documents there, not only was a sur reply considered by the Court, but even a memorandum of law concerning the sur reply, and I wasn't looking to submit any sur reply. But what I'm responding to to Mr. Haas when he says I never heard of any expert, I never saw an expert report, whereas in the court record on that very first Motion I submitted that report. So, if the Court sees fit to disregard out of time report, whatever the case may be, I understand that, but it's not fair to say that petitioner's counsel was not aware of my witness that I have an expert witness and it does concern the initials, your Honor.

It does concern the initials because there's a question whether or not—the will was not read out loud and there is a question about will execution and there is a question whether or not the decedent knew what he was signing. And those witnesses as I said, your Honor, I don't want to, you know, to keep beating a dead horse. This is that unusual case, your Honor. This is that case where the pre-

sumption doesn't work because of the way the attorney draftsman and the two witnesses testified about the will execution and didn't testify about things that might lead us to find out exactly the condition of the decedent at the will signing.

If the proper procedures were followed, they can all testify, I wasn't there my client wasn't there. He's right in that respect, your Honor, they all did testify, everything was fine. As a matter of fact, they testified, if you go back to the testimony of the witnesses, you'll find Jill Curtin, by the way is the wife of the attorney draftsman, she's one of the witnesses. The other one is the paid witness. The attorney draftsman, oh, he was great. He walked in no problem he could see. One witness, Jill Curtin, said yeah, I don't really remember if he used a magnifying glass or not.

THE COURT: Mr. Chen, I think you made that point.

MR. CHEN: I made that point.

THE COURT: I (inaudible) on the papers.

MR. CHEN: Thank you. Thank you, your Honor.

THE COURT: It seems to me that one of your clients wants to talk to you. So, do you want to take a moment to talk to them?

MR. CHEN: I will say this, your Honor, I don't know (inaudible) I see you have a full room.

THE COURT: Correct.

MR. CHEN: If I—I know what's going to happen so, I'm just going to say ahead of time, if you allow me to talk to one of my clients, will you allow me to say one more sentence or two after I come back because if you don't I'm just going to (inaudible).

THE COURT: I'll give you one second to do that.

MR. CHEN: Thank you.

THE COURT: You can come back in and what is not going to be, I'm not going to be—give you a lot of time to do that.

MR. CHEN: I'm not looking for that, your Honor. Thank you.

THE COURT: Okay.

MR. CHEN: Thank you.

(PAUSE 10:51:13 TO 10:52:53.)

THE COURT: Mr. Chen, anything that you would like to add after speaking with your clients?

MR. CHEN: Yes. Just two other points, your Honor. The documents of Mr. Kern the broke where the decedent stated that he was not able to read documents two days before the will signing were provided in discovery. They were—I obtained them by subpoena that's all on that and they're submitted in opposition.

I did have a conversation with one of my client's relatives and they are asking me to stress to the Court that the question of whether or not the decedent knew what he was signing is an issue before the Court that the will was not read out loud. From

our standpoint and our documentation and our arguments, he did not know what he was signing and that is because the will was not read out loud. Even petitioner's own statements and it's in the record that she—that the draftsman attorney claimed was made by the decedent as to distribution under this particular will being proffered, don't match the actual will conditions and so, again, there's a question of credibility and that credibility affects whether or not the decedent knew the terms of what he was signing, what he actually signed, and what condition—I have to say I don't have the argument of testamentary capacity because your Honor is using documents of that were produced in discovery concerning, and by the way they're on the same level as the Jeffrey Kern document, because those are not sworn either. Where he went to the hospital the next day and the doctor made observations, but if you go further into the documentation, you'll see that there is some discrepancy even as to even what that doctor initially, at the emergency room, initially wrote down.

In any event, that was why the client asked me to step outside because she wanted me to stress that he did not know what he was signing and on a more far reaching theory, that in reality what he—what he allegedly signed, the will that's being proffered, is not and did not contain the terms that he wanted.

THE COURT: Okay. I am going to determine this Motion today, but only to extent of indicating that I conclude from all the proof submitted by proponents in support of this Motion for Summary

Determination that proponent made a *prima facie* showing of entitlement to judgment as a matter of law concerning the capacity of the decedent towards the instrument, the execution of the instrument by the decedent in compliance with statutory requirements and that the instrument was an actual will and not the product of undue influence, fraud or duress.

And, in opposition, objectant has failed to demonstrate through admissible evidence the existence of a material question of fact required in a trial as to any of the objections. So, proponent's Motion for Summary Determination in the probate proceeding is going to be granted and the objections to probate are dismissed.

I will issue a decision explaining my reasoning and that decision will be mailed to both sides. Thank you.

MR. HAAS: Thank you very much, Judge.

MR. CHEN: Thank you, your Honor. We (inaudible). Thank you.

(THE PROCEEDINGS ENDED AT 10:57:00.)

END OF PROVIDED RECORDING

* * *

I, Denise Gasowski, certify that the foregoing transcript of Proceedings in the Surrogate's Court of the State of New York, New York County, Sidney H. Fields, bench decision, File No. 2016-111, was prepared using the required electronic transcription equipment and is a true and accurate record of the Proceedings.

Signature _____
Denise Gasowski, REF #5439

Agency Name: Pugliese Court Reporting and
Transcription Service

Address of Agency: 4 Saddlebrook Lane
Manorville, New York 11949

Phone Number: (631) 878-8355

Date: April 8, 2018

140a

EXHIBIT 5

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

File No.: 2016-111
Dated: March 26, 2018

In the Matter of the Probate Proceeding, Will of
SYDNEY H. FIELDS,
Deceased.

DECISION and ORDER

MELLA, S.:

<u>Papers Considered</u>	<u>Numbered</u>
Notice of Motion, dated November 28, 2017, for Summary Judgment, With Affirmation, dated November 28, 2017, of Jules Martin Haas, Esq., in Support, Providing Exhibits A through Z and AA through FF, of which Exhibit C-3 is the Affidavit, dated November 28, 2017, of Diana Palmeri, Exhibit C-5 is the Affirmation, dated November 27, 2017, of Edward R. Curtin, Esq., Exhibit AA is the Affidavit, dated September 30, 2016, of William McAllister, Exhibit BB is the Affidavit, dated June 12,	

2017, of Arthur Fishelman, Exhibit CC is the Affidavit, dated September 14, 2016, of Adrienne Lawler, Exhibit DD is the Affidavit, dated September 14, 2016, of Stuart Michael, Exhibit EE is the Affidavit, dated September 14, 2016, of Irving Rothbart, and Exhibit FF is the Affidavit, dated July 12, 2017, of Gloria Madero	1-10
Memorandum of Law, In Support of Motion	11
Affirmation, dated January 22, 2018, of Richard Chen, Esq., In Opposition, Attaching Exhibits A through P, of which Exhibit A is the Affidavit, Dated January 22, 2018, of Objectant	12-13
Reply Affirmation, dated February 23, 2018, of Jules Martin Hass, Esq., Attaching Reply Exhibits A through T	14

At the call of the calendar on March 20, 2018, the court granted proponent's motion for summary determination, dismissed the objections, and directed probate of the October 6, 2014 instrument offered as the will of decedent Sydney Fields. Objectant is the child of decedent, and he admits that he did not have a relationship with decedent and that he never saw his father for the last 19 years of his life. Moreover, objectant admits that, over the years, he sent his father correspondence

and photographs that were harassing or threatening.¹

Decedent explicitly disinherited objectant in the instrument offered for probate,² which, instead, benefits members of the family of decedent's spouse, who was not objectant's mother. Decedent's spouse died before him in September of 2014, which lead decedent to seek to revise his penultimate will—from 2006—that had benefited her, but which also had disinherited objectant in terms identical to those used in the 2014 instrument. The attorney-drafter of decedent's two prior wills was also the drafter of the 2014 instrument here offered for probate, and he confirms that, despite decedent having been in his 90s, his mental faculties were intact and that it was decedent alone in a meeting who informed the attorney-drafter of who he wanted to benefit with his estate and in what percentages.

On the merits, the attestation clause in the instrument, the contemporaneous affidavit of the

¹ Objectant stated in opposition to this motion: “I wrote and sent harassing letters and photos to my father, and also to my half-brother . . . [who did not appear in this proceeding], and Orders of Protection were issued against me and criminal charges were filed against me. I am not proud I did that” (Objectant’s Affidavit in Opposition, dated January 22, 2018, ¶ 11).

² Article FIFTH(b) of the instrument states: “Because my son [objectant] hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa[,] I deliberately make no provision for him in this Will and it is my intention that he receive no part of my estate.”

attesting witnesses, as well as the sworn testimony of these witnesses and the attorney-drafter, established a *prima facie* case for probate (*Matter of Schlaeger*, 74 AD3d 405 [1st Dept 2010]). In response, objectant failed to demonstrate, through admissible evidence, the existence of a material question of fact requiring a trial on any of the objections on which he claims probate should be denied (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). He objected that decedent lacked testamentary capacity, that the will was the product of undue influence, duress, mistake or fraud, and that it was not duly executed.

As to mental capacity, all the medical records, the affidavit of the attesting witnesses and their testimony from the SCPA 1404 examinations, as well as the affidavits of several neighbors and friends confirm the lucidity and mental acuity of decedent both before and after the will execution, despite his advanced age and his having some visual impairment. No evidence submitted by objectant raises a question of whether decedent could hold in his mind the nature and extent of his assets, the identity of the natural objects of his bounty, and the consequences of executing the will, which is the traditional test for determining testamentary capacity (*Matter of Kumstar*, 66 NY2d 691 [1985]; *Matter of Khazaneh*, 15 Misc 3d 515 [Sur Ct, NY County 2006]).

Regarding undue influence, proponent's proof established that this was a natural will, benefiting members of the family of decedent's spouse, with whom decedent was close and whom he considered

his family. In opposition, objectant had to show, through evidence in admissible form, that the persons alleged to have unduly influenced decedent to make this will had the motive and opportunity to do so, together with some evidence, circumstantial or otherwise, indicating that undue influence was actually exercised on decedent (*Matter of Greenwald*, 47 AD3d 1036 [3d Dept 2008]). Objectant, however, provided no evidence that the will's beneficiaries had the opportunity to exercise undue influence or that they did so in light of the testimony of the attorney-drafter, which established that the beneficiaries had no direct involvement in the preparation or execution of the will (see *Matter of Camac*, 300 AD2d 11 [1st Dept 2002]).

Objectant offered no evidence of duress—a wrongful threat precluding the exercise of free will—allegedly inflicted on decedent (*Matter of Guttenplan*, 222 AD2d 255 [1st Dept 1995]), nor any evidence of mistake (*Matter of Seelig*, 302 AD2d 721 [3d Dept 2003]). Objectant also failed to provide evidence of a misrepresentation made to decedent for the purposes of inducing him to make a will that he would not otherwise have made, as would be necessary to create a question of fact as to a fraud claim (*Matter of Schwartz*, 154 AD3d 540 [1st Dept 2017]; *Matter of Capuano*, 93 AD3d 666 [2d Dept 2012]).³ These objections were thus dismissed.

³ Objectant's opposition papers state that he has not had an opportunity to depose the concierge at decedent's building, who provided an affidavit in support of the motion. However, after submitting his opposition to the motion, objectant filed

Finally, as to the will's execution, the claimed failure of the attesting witnesses to remember all its details are insufficient to rebut the presumption of regularity in the execution of a will (*Matter of Collins*, 60 NY2d 466 [1983]). When read in its entirety, the deposition testimony of the two attesting witnesses supports the conclusion that the signature on the instrument is decedent's and that decedent executed the instrument with full awareness of what he was doing and in compliance with all statutory requirements (EPTL 3-2.1). Additionally, when the execution was supervised by an attorney and when there is a contemporaneous affidavit of the attesting witnesses reciting the facts of due execution, as is the case here, a presumption of proper execution arises (*Matter of Natale*, 158 AD3d 579 [1st Dept 2018]).⁴ Here, the facts that the attesting witnesses could not confirm whether decedent had his magnifying glass that day (the attorney-drafter and one of the witnesses testified that he did) and could not provide a description of the aide who accompanied decedent to the will execution, but who appears to have stayed in a separate waiting area, were insufficient

a note of issue and certificate of readiness with the court stating that all discovery has concluded.

⁴ The fact that the attorney supervising the will execution corrected the date by hand in the text of this affidavit does not alter this analysis. Even if, for the sake of argument, it did, due execution of the will was confirmed by the testimony of the attesting witnesses and the attorney-drafter at their SCPA 1404 examinations, transcripts of which were provided in support of the motion.

to rebut the presumption under the circumstances presented (*see id.*).

The fact that decedent had some visual impairment, even to the point of “legal” blindness as objectant argues, does not change this conclusion because blind persons may make wills (*Matter of McCabe*, 75 Misc 35, 36 [Sur Ct, NY County 1911]). Here, the attorney-drafter testified that the dispositive terms of the proposed instrument were provided to him by decedent himself and that he confirmed those dispositive provisions of the will orally to decedent shortly before execution. Moreover, the fact that the attorney-drafter had to mark the signature line at the end of the instrument with “X’s,” as requested by decedent, but the attorney-drafter did not mark “X’s” where decedent’s initials on the preceding pages of the will should be, is not suspicious (*see id.*). The last page of the will has both the signature line for the testator and signature lines for the attesting witnesses. Accordingly, the only inference that can reasonably be drawn from the fact that the attorney-drafter marked the testator’s signature line with “X’s” is that the testator wanted to be sure to execute the document correctly in spite of his visual impairment.

The remaining evidence on which objectant relies to support his claim that the will was not duly executed is the sworn-to “Letter of Opinion” of a claimed handwriting expert,⁵ which merely con-

⁵ Movant contests the expertise of the person making the report, pointing to the fact that Federal courts have rejected him as an expert in handwriting. Movant cites the following

cludes that “a different person authored the initials of SHF” on the first page of the will⁶ offered for probate from the person who signed the will. This letter does not conclude that decedent’s signature at the end of the will is a forgery, or even that it might be (*see Matter of Dane*, 32 AD3d 1233 [4th Dept 2006]).

Even if the court were to consider this letter an affidavit of an expert, there is no requirement that a testator initial the pages of a will for it to be valid (*see EPTL 3-2.1[a][1]*). Instead, all that is required in this regard is that it have been signed “at the end thereof” (*id.*). The opinion letter is not addressed to the real issue—whether it is decedent’s signature at the end of the will—a fact that objectant does not contest with competent evidence (*Matter of Herman*, 289 AD2d 239, 239-240 [2d Dept 2001] [objectant’s burden is to provide particulars in order to create issue of fact on a claim of forgery]; *Matter of Taylor*, 32 Misc 3d 1277(A), 2011 NY Slip Op 51440(U), at *4 [Sur Ct, Bronx

cases in this regard: *Balimunkwe v Bank of Am.*, NA., 2017 US App. Lexis 19875 (6th Cir., Jan. 17, 2017); *U.S. v Revels*, 2012 US Dist. Lexis 65069, at *22 (ED Tenn, May 9, 2012); and *Dracz v Am. Gen. Life Ins. Co.*, 426 F Supp 2d 1373, 1378-379 (MD Ga 2006).

⁶ The will is three pages long, and only a copy of the first page of the proffered will is attached to the opinion letter reporting that the initials on it are not from the person who signed the instrument at the end. No opinion is offered as to initials on its second page, and the court considers this opinion letter as addressing only the initials on the first page of the proffered will.

County 2011], *citing Matter of Di Scala*, 131 Misc 2d 532, 534 [Sur Ct, Westchester County 1986]; *see also Celaj v Cornell*, 144 AD3d 590 [1st Dept 2016] [expert report on collateral issue does not require denial of summary judgment]). Thus, this letter is insufficient in this instance to resist summary dismissal of the objection that the will was not duly executed (*see Matter of James*, 17 AD3d 366 [2d Dept 2005]; *see also Kopeloff v Arctic Cat, Inc.*, 84 AD3d 890, 891 [2d Dept 2011]; *Murphy v Conner*, 84 NY2d 969, 972 [1994]). Finally, objectant's surmise that, "it is possible the first two pages of the Will were exchanged for other unknown pages" after the will was executed is mere speculation, insufficient to create an issue of fact requiring a trial (*see Matter of Weltz*, 16 AD3d 428 [2d Dept 2005]).

In examining all the evidence, the court determined that the October 6, 2014 instrument is valid and genuine and should be admitted to probate (*Collins*, 60 NY2d at 473; *see SCPA 1408*). Accordingly, the court granted proponent's motion for summary judgment, and the objections to probate were dismissed.

This decision, together with the transcript of the March 20, 2018 proceedings, constitutes the order of the court.

Settle probate decree.

Dated: March 26, 2018 /s/ [ILLEGIBLE]
S U R R O G A T E

150a

EXHIBIT 6

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

File No.: 2016-111

Probate Proceeding,
Will of

Sydney H. Fields,

Deceased.

NOTICE OF SETTLEMENT

Please Take Notice, that the within Decree of Probate, the annexed of which is a true copy, will be submitted for settlement and signature to the Honorable Rita Mella, Surrogate of the New York County Surrogate's Court, located at 31 Chambers Street, New York, New York, on the 21st day of April, 2017 at 9:30 a.m.

Dated: Huntington, New York
April 10, 2018

/s/ _____ [ILLEGIBLE]
Novick & Associates, P.C.
By: Albert V. Messina Jr., Esq.
Trial Counsel for Petitioner, Diana Palmeri
202 East Main Street, Suite 208
Huntington, New York 11743
(631) 547-0300

TO:

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

File No.: 2016-111

Probate Proceeding, Will of

SYDNEY H. FIELDS,

Deceased.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On April 10, 2018, deponent served a **Notice of Settlement of Decree of Probate** upon:

Richard Alan Chen, Esq.
Attorney for Objectant, Richard Fields
41-60 Main Street, Suite 203
Flushing, New York 11355
(718) 866-8181
Tracking#: 771956898364

Jules Martin Haas, Esq.
Co-Counsel for Petitioner, Dianna Palmeri
845 Third Avenue, Suite 1400
New York, New York 10022
(212) 355-2575
Tracking#: 771957063386

Edward Curtin, Esq.
Co-Counsel for Petitioner, Dianna Palmeri
220 West 71st Street, Suite 31
New York, New York 10023
(212) 686-6744
Tracking#: 771956959999

Attorney General of the State of New York
Lisa Barbieri, Esq.
Assistant Attorney General
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8396
Tracking#: 771957394887

by overnight courier by depositing a true copy
thereof in a postpaid, wrapper in an official depos-
itory under the exclusive care and custody of
Federal Express within the County of Suffolk and
State of New York.

/s/ KELLY GARONE
Kelly Garone

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Sworn to before me this
10th day of April, 2018

ALBERT V. MESSINA, JR.
Notary Public

ALBERT V. MESSINA, JR.
Notary Public, State of New York
No. 02ME6178564
Qualified in Suffolk County
Commission Expires December 03, 2019

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EXHIBIT 7

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION; FIRST DEPARTMENT

INDEX No. 2016-111

RICHARD FIELDS (PLAINTIFF)

AGAINST

DIANA PALMERI (RESPONDENT)

**NOTICE OF MOTION FOR
REOPENING THE CASE**

STATE OF NEW YORK)

ss:

COUNTY OF)

RICHARD FIELDS, BEING DULY SURNED, DEPOSES AND
SAYS:

1. I am the appellant in this action and make this affidavit in support of my motion for permission to proceed as a poor person.
2. I reside at 2830 Pitkin Avenue Brooklyn, NY 11208, a psychiatric facility funded by the government.
3. This action was brought by the plaintiff against the respondent for the reasons stated below:

Respondent Diana Palmeri is the niece of Sydney Fields' third wife, she predeceased him. Diana probated Sydney's Will in 2016 which took away all his 9.9 million dollars (in the previous Wills the Palmeri family had less than \$100,000). Five days before the Will was signed Sydney Fields had a statement recorded by Vanguard's telephone system saying that "I can't read, I can't read them, no, I can't read". "I mean, with my magnifying glass I can read large print, but I can't read anything that's on paper." A doctor proved two month later that Sydney's two eyes were actually blind and not just legally blind. However, the respondent, three attorneys, and one of their wives **committed perjury** by insisting that Sydney read the Will with a magnifying glass. The executor **did not read the Will out loud in front of the witnesses which is** what he is supposed to do for blind people. **Yet the execution was considered duly by the court below because of the perjury that they made.** (Exhibit A)

The initial on the page indicated the distribution was considered a forgery by a handwriting expert. Substituting that page can change the whole Will. They had no witnesses who could prove the probated Will was the Will that Sydney signed. They did not have a duly executed Will process, did not have qualified witnesses, and did not have valid supporting documents. The note they provided had only

names and numbers and did not mention anything about the Will. She needed the Will drafter Curtin to testify that the note was written by Sydney and the numbers were the percentages of all his assets. The only note they provided did not look like it was written by a blind man who is 96 years old. The signature in that will shows that Sydney could hardly handle his pen. However, that note was written on the same line by a strong stroke and in an identical way. (Exhibit B)

Curtin also testified that is the reason Sydney considered the Palmeri family like his family members and he did not have any documents to prove that. They cannot explain why Sydney gave five of those nieces \$9.9 million, double what he gave his wife in the previous Will. (Exhibit E).

Curtin's credibility is questionable. He did not mention anything about Sydney's vision problem in his April, 2016 affirmation. (Exhibit E). They attacked me for harassing my father without mentioning my mental problem. (Exhibit F). They said they deserved the money because the Fields family did not contact each other for twenty years. That is because there were three mental patients in my family who messed up the relationship. My father actually loved our family very much (Exhibit D). Diana Palmeri took advantage of the sad situation. I hope the court reconsiders the case and gives me a fair trial. I am living on SSI at this time

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due to a mental disability Wherefore, I respectfully ask that an order of this Court be granted permitting me to appeal as a poor person.

x /s/ RICHARD FIELDS x

Sworn to before me this ____ day
Of _____, 20

To Whom It May Concern:

Please review the above motion and reopen the Case #2016-111 which was filed in the Appellate Division First Department of the Supreme Court of the State of

New York in April, 2018.

Thank You.

Yours Truly,

/s/ RICHARD FIELDS

Richard Fields

Subscribed and sworn to before me this
20th day of October, 2008

/s/ VIVIAN CHING YING CHEUNG
Vivian Ching Ying Cheung, Notary Public
Queens County, New York

VIVIAN CHING YING CHEUNG
Notary Public, State of New York
Reg. No. 01CH6131099
Qualified In Queens County
Commission Expires July 25, 2021

Exhibit A

PAGE 3: SYDNEY said he could not read even with a magnifying glass.

PAGE 6: A doctor's note confirms that Sydney was blind two months after the date the Will was signed.

PAGE 7: Diana's perjury

PAGE 8: Curtin's perjury

PAGE 9: No Will was read aloud in front of witnesses.

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EXHIBIT 8

Appellate Division of the New York State
Supreme Court
In Manhattan

New York County
Index No. 2016-111

In the Matter of
The Last Will and Testament of

SYDNEY H. FIELDS,
Deceased.

CIVIL APPEAL

Please take notice that the Notice of Appeal related to this case is being sent to the Appellate Division of the New York State Supreme Court in Manhattan.

Please get your answering papers and any cross-motion with supporting papers ready for your response regarding this case.

Attn:

Novick and Associates PC
Attorneys at Law
202 East Main Street
Huntington, New York 11743

Appellant Richard Fields Pro Se
/s/ RICHARD FIELDS May 9, 2018

Appellate Division of the New York State
Supreme Court
In Manhattan

New York County
Index No. 2016-111

In the Matter of
The Last Will and Testament of
SYDNEY H. FIELDS,
Deceased.

CIVIL APPEAL

Appeal From:

Surrogate Court, New York County Judge: Rita Mella
Date Notice of Appeal Filed: April 24, 2018

Name of Appellant:

Richard J Fields Pro Se
2830 Pitkin Avenue
Brooklyn, NY 11208

Appeal prepared by

Pia Fields
3011 Parsons Blvd Apt 6N
Flushing New York 11354
Email: piachan016@yahoo.com
Telephone 929-233-2239

Petitioners-Respondent Palmeri Family

Diana, Olga, Victor, Cynthia Palmeri &
Ana Garzon Yepez are represented by

Attorney 1

Novick & Associates PC

Attorneys at Law

202 East Main Street

Huntington, New York 11743

Attorney 2

Jules Martin Haas, Esq.

845 Third Ave, Suite 1400

New York NY 10022

Attorney-Drafter

Edward R. Curtin

220 West 71 Street

New York NY 10023

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State of: New York

County of: Nassau

The forgoing document was acknowledged
before me 9 day of May, 2018

/s/ KAM WAH HUNG

Kam Wah Hung, Notary Public

My Commission Expires April 17, 2021

KAM WAH HUNG

Notary Public, State of New York

Reg. No. 01HU6357312

Qualified in Nassau County

Commission Expires 04/17/2021

Fields, Richard

x /s/ RICHARD FIELDS

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EXHIBIT 9

NOTE OF ISSUE
APPELLATE DIVISION-FIRST DEPARTMENT
(Pursuant to Rule 600.11)

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION-FIRST DEPARTMENT

New York County
Index No. 2016-111

RICHARD J FIELDS
PLAINTIFF/PETITIONER

v.

Diana Palmieri
DEFENDANT/RESPONDENT

NOTE OF ISSUE

1. The date the Notice of Appeal was served.
24th, April 2018
2. The date the Record on Appeal was filed.
24th, April 2018
3. The nature of the appeal or cause.
Estate Case
4. The Court and County in which the action
was commenced.
New York County Surrogate's Court
5. The index (or indictment) number.
2016-111

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6. The date Judgment or Order was entered,
name of the Justice who made the decision.
26th March 2018 by Judge, Rita Mella
7. The term for which noticed.
Oct/2018
8. The names, addresses and telephone numbers
of the attorneys for all the parties.
 1. Novick & Associates PC
202 East Main St. by Albert V Messina
Huntington New York 11743
 2. Jules Martin Haas, Esq
845 Third Ave, Suite 1400
New York, N.Y. 10022

Original and one copy to be filed
with proof of service.

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File No: 2016-111

In the Matter of the Last Will and Testament of
SYDNEY H. FIELDS
Deceased.

TO: Novick & Associates, PC
Attention Albert V. Messina JR
202 East Main Street
Huntington, New York 11743

Mr. Messina or people who may concern:

This package includes Brief and Appendix relate to Richard Fields' appeal (case# 2016-111). filed in APPELLATE DIVISION—FIRST DEPARTMENT. We notice that a mail sent to you in the above address was returned for the reason of unable to forward. If Mr. Albert V. Messina is not long work in Novick & Associates, PC as the counsel of Diana Palmeri please notify New York Supreme Court Appellate Division—First Department. Thank you for your attention.

Date New York, New York
5th, July, 2018

/s/ RICHARD J FIELDS
Richard J Fields
2830 Pitkin Avenue
Brooklyn, New York 11208

Surrogate's Court, New York county
Index No: 2016-111

NEW YORK SUPREME COURT
Appellate Division-First Department

In The Matter of
The Last Will and Testament of
SYDNEY H. FIELDS,
Deceased

BRIEF FOR OBJECTANT-APPELLANT

Richard J. Fields Pro Se
Objectant-Appellant
Against
Palmeri Family
Petitioners-Respondents

2830 Pitkin Avenue
Brooklyn, NY 11208

Appeal prepared
by Pia Fields
3011 Parsons Blvd Apt 6N
Flushing New York 11354
Email: piachan1016@yahoo.com
Telephone 929-233-2239

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EXHIBIT 10

[LETTERHEAD OF NOVICK & ASSOCIATES, P.C.]

July 31, 2018

Via Federal Express

Surrogate's Court, New York County
31 Chambers Street
New York, New York 10007
Attn: Probate Department

Re: Estate of Sydney H. Fields
File No.: 2016-111

Dear Sir/Madam:

Enclosed please find the following documents in connection with the above referenced matter:

1. Notice of Entry of Probate Decree; and
2. ***Original*** Affidavit of Service.

Kindly acknowledge receipt of the same by stamping the enclosed copy of this letter and returning it to me in the envelope provided.

If you have any questions, please do not hesitate to contact me. Thank you for your time and attention to this matter.

Very truly yours,

/s/ KELLY GARONE
Kelly Garone
Paralegal

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Encls.

cc: Richard Alan Chen, Esq.
Edward Curtin, Esq.
Jules Martin Haas, Esq.
Lisa Barbieri, Esq.
Dianna Palmeri

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

File No.: 2016-111

Probate Proceeding,
Will of
SYDNEY H. FIELDS,
Deceased.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of a Decree of Probate of the Honorable Rita Mella, entered in the office of the clerk of the within named Court on July 20, 2018.

Dated: Huntington, New York
July 31, 2018

[ILLEGIBLE]

Novick & Associates P.C.
By: Albert V. Messina Jr., Esq.
Trial Counsel for Petitioner, Diana Palmeri
202 East Main Street, Suite 208
Huntington, New York 11743
(631) 547-0300

TO:

Richard Alan Chen, Esq.
Attorney for Objectant, Richard Fields
41-60 Main Street, Suite 203
Flushing, New York 11355
(718) 886-8181

Attorney General of the State of New York
Lisa Barbieri, Esq.
Assistant Attorney General
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8396

Edward Curtin, Esq.
Counsel for Petitioner, Diana Palmeri
220 West 71st Street, Suite 31
New York, New York 10023
(212) 686-6744

Jules Martin Haas, Esq.
Co-Counsel for Petitioner, Diana Palmeri
845 Third Avenue, Suite 1400
New York, New York 10022
(212) 355-2575

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

File No.: 2016-111

Probate Proceeding, Will of
SYDNEY H. FIELDS,
Deceased.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On July 31, 2018, deponent served a **Notice of Entry of Decree of Probate** upon:

Richard Alan Chen, Esq.
Attorney for Objectant, Richard Fields
41-60 Main Street, Suite 203
Flushing, New York 11355
(718) 866-8181

Jules Martin Haas, Esq.
Co-Counsel for Petitioner, Dianna Palmeri
845 Third Avenue, Suite 1400
New York, New York 10022
(212) 355-2575

Edward Curtin, Esq.
Co-Counsel for Petitioner, Dianna Palmeri
220 West 71st Street, Suite 31
New York, New York 10023
(212) 686-6744

Attorney General of the State of New York
Lisa Barbieri, Esq.
Assistant Attorney General
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8396

by depositing a true copy thereof in a postpaid,
wrapper in an official depository under the exclu-
sive care and custody of the United States Postal
Service within the County of Suffolk and State of
New York.

/s/ KELLY GARONE
Kelly Garone

Sworn to before me this
31st day of July, 2018

ALBERT V. MESSINA, JR.
Notary Public

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ALBERT V. MESSINA, JR.
Notary Public, State of New York
No. 02ME6178564
Qualified in Suffolk County
Commission Expires Deember 03, 2019

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EXHIBIT 11

At a Surrogate's Court held in and for the
County of New York at 31 Chambers Street,
New York, New York, on the 28th day of
July, 2018

Date: July 20, 2018
File No.: 2016-111

P R E S E N T:

HON. RITA MELLA

Probate Proceeding,
Will of

SYDNEY H. FIELDS,

Deceased.

DECREE OF PROBATE

A Petition for Probate having been filed by Diana Palmeri ("Petitioner") dated December 17, 2015 seeking a Decree admitting the Last Will and Testament of Sydney H. Fields dated October 6, 2014 to probate and the issuance of letters testamentary to Petitioner; and

a Citation having been issued in connection with such Petition, and jurisdiction having been obtained over the necessary parties to said proceeding; and

an application having been filed by Diana Palmeri dated June 6, 2016 seeking the issuance of preliminary letters testamentary to Petitioner; and

Preliminary letters testamentary having been issued to Diana Palmeri on June 22, 2016; and

Petitioner having appeared by her attorneys, Edward R. Curtin, Esq., co-counsel Jules Martin Haas, Esq., and trial counsel Albert V. Messina Jr. Esq., of Novick & Associates, P.C., and

Richard Fields, having initially appeared by his counsel Dehai Zhang, Esq., and later by Richard Alan Chen, Esq., and

Objections to Probate with Jury Demand dated February 24, 2016 having been filed by Richard Fields, alleging that the October 6, 2014 Will was not duly executed, that Sydney H. Fields did not possess the requisite testamentary capacity to execute the Will, that Sydney Fields did not know or understand the contents of the Will and that the Will was the product of fraud, duress and undue influence, and

the parties by their respective counsel having engaged in SCPA § 1404 examinations and CPLR Article 31 discovery; and

Petitioner having filed a motion for summary judgment pursuant to CPLR § 3212 dated November 28, 2017 seeking dismissal of the Objections to Probate filed by Richard Fields; and

Petitioner having filed an affirmation in support of motion for summary judgment of Jules Martin Haas, Esq. dated November 28, 2017, including deposition transcripts and other documents annexed thereto as exhibits, the affirmation of Edward R. Curtin, Esq., dated November 27, 2017, the affidavit of Diana Palmeri, sworn to on November 28, 2017, the affidavit of Adrienne Lawler sworn to on

September 14, 2016, that affidavit of Arthur Fishelman sworn to on June 12, 2017, the affidavit of Stuart Michael sworn to on September 14, 2016, the affidavit of Irving Rothbart sworn to on September 14, 2016, the affidavit of William McAllister sworn to on September 30, 2016, the affidavit of Gloria Madero sworn to on July 12, 2017 and a memorandum of law in support of motion of Albert V. Messina Jr. dated November 28, 2017; and

Objectant Richard Fields having submitted an affirmation with legal citations in opposition to motion for summary judgment of Richard Alan Chen, Esq., dated January 22, 2018, with exhibits annexed thereto, and an affidavit from Richard Fields sworn to on January 22, 2018; and

Petitioner having submitted a reply affirmation of Jules Martin Haas, Esq., dated February 23, 2018, with exhibits annexed thereto; and

the allegations of the parties having been heard, and oral argument of the motion for summary judgment having been heard before the Court on March 20, 2018, and upon all the pleadings and proceedings heretofore filed and had herein, and after due deliberation the Court having granted granting Petitioner's motion for summary judgment and dismissing the objections to probate on March 20, 2018, and the Court having rendered its written decision dated March 26, 2018;

NOW, upon motion of Novick & Associates, P.C., as attorneys for Petitioner, it is hereby

ORDERED, ADJUDGED and DECREED, that the written instrument dated October 6, 2014 offered for

probate as the Last Will and Testament of Sydney H. Fields herein be and the same is hereby admitted to probate; and it is further

ORDERED, ADJUDGED and DECREED that letters testamentary shall issue to Diana Palmeri upon qualification and without the posting of a bond; and it is further

ORDERED, ADJUDGED and DECREED that preliminary letters testamentary dated July 19, 2016 are hereby revoked, and it is further

ORDERED, ADJUDGED and DECREED that a judgment in favor of Petitioner for costs and disbursements has been denied in the courts exercise of discretion.

[ILLEGIBLE]
SURROGATE

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EXHIBIT 12

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No.2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the affirmation of Albert V. Messina Jr., Esq., dated August 1, 2018, with exhibits annexed thereto, and upon all the papers and proceedings heretofore had herein, the undersigned will move this court located at 27 Madison Avenue, New York, NY 10010 on Monday, August 27, 2018 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order

- (1) dismissing the appeal, or alternatively
- (2) striking certain portions of the appendix and Appellant's brief, and
- (3) adjourning the instant appeal to the November 2018 Term,
- (4) together with such other and further relief as may be just, proper, and equitable.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 2214(b), opposing papers, answering affidavits and notices of cross-motion with supporting papers, if any, must be served upon the undersigned no less than seven (7) days before the return date of this motion.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 5528, CPLR § 2215, 22 NYCRR § 600.5 and 22 NYCRR § 600.10, because Appellant's appendix omitted numerous documents relied upon by Respondent in support of the motion for summary judgment, it included numerous documents not submitted to the court below in connection with the motion, the Appellant's brief contained new facts and legal theories based upon those improperly submitted new records, the Appellant failed to serve notice of appeal on all necessary parties and failed to serve his appendix and brief on all necessary parties, this appeal cannot proceed with the appendix and Appellant's brief in their current form. Accordingly, Respondent will not be submitting her Respondent's brief on August 8, 2018 to allow for the Court to consider Respondent's application and direct appropriate relief.

Dated: August 3, 2018
Huntington, New York

/s/ ALBERT V. MESSINA JR.
Albert V. Messina Jr.
Counsel for Petitioner-Respondent
Novick & Associates, P.C.
202 East Main Street, Suite 208
Huntington, New York 11743
(631) 547-0300

To:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

Attorney General of the State of New York
Respondent-Respondent
Lisa Barbieri, Esq.
Assistant Attorney General
Charities Bureau
120 Broadway
New York, New York 10271
(212) 416-8396

**SUMMARY STATEMENT ON APPLICATION
FOR EXPEDITED SERVICE
AND/OR INTERIM RELIEF
(SUBMITTED BY MOVING PARTY)**

Date August 8, 2018

Title of Matter
Estate of Sydney H. Fields

Index/Indic#
File No. 2016-111

Appeal by Objectant from order of Surrogate's Court
County of New York entered on March 26, 2108

Name of Judge
Rita Mella

Notice of Appeal filed on
April 24, 2018

If from administrative determination, state
agency

Nature of action or proceeding
Contested Probate Proceeding

Provisions of order appealed from
Granting Petitioner's motion for summary
judgment dismissing the objections to probate of
the Law Will and Testament of Sydney H. Fields
dated October 6, 2014.

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If applying for stay, state reasons why requested Appendix omitted necessary documents relied upon by the lower court and the parties in connection with the motion for summary judgment, appendix improperly included new documents not submitted below, failure to settle transcript, other procedural deficiencies.

Has any undertaking been posted?

No.

If yes, state amount and type

Has application be made to court below for this relief

No.

If yes, state Disposition

Has there been any prior application herein in this Court

No.

If yes, state dates and nature

Has adversary been advised of this application?

Yes.

Does he/she consent

No.

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Attorneys for Movant

Name Jules M. Haas, Esq.
Address 805 Third Avenue, 12th Floor
 New York, NY 10022
Tel No. (212) 355-2575
Appearing by Jules M. Haas, Esq.
 attorney.haas845@gmail.com

Attorneys for Opposition

Richard Fields, Appellant Pro Se
2830 Pitkin Avenue,
Brooklyn NY 11208
(718) 235-0900
Appeal prepared by Pia Fields
3011 Parsons Blvd. Apt. 6N
Brooklyn, NY 11208
(929) 233-2239
piachan1016@yahoo.com

New York State Attorney General*
*see attached

(Do not write below this line)

Disposition

Justice Date

Motion date Opposition Reply

EXPEDITE PHONE ATTORNEYS DECISION BY

ALL PAPERS TO BE SERVED PERSONALLY

Court Attorney

Attorneys for Respondent

Attorney General of the State of New York
Lisa Barbieri, Esq.

Assistant Attorney General

Charities Bureau

28 Liberty Street

New York, New York 10005-1400

Phone: (212) 416-8396

Fax: (212) 416-8393

Lisa.Barbieri@ag.ny.gov

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No. 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

AFFIRMATION

Albert V. Messina Jr., an attorney duly admitted to practice law in the State of New York, hereby affirms the following on penalty of perjury:

1. I am an associate attorney with Novick & Associates, P.C. Together with Jules M. Haas, Esq., and Edward R. Curtin, Esq., we represent Petitioner-Respondent Diana Palmeri (“Respondent”) in the above referenced appeal. This affirmation is submitted in support of Respondent’s motion (1) to dismiss the appeal, or alternatively (2) strike certain portions of the appendix and Appellant’s brief and (3) adjourn the matter to the November 2018 Term.
2. The Appellant Richard J. Fields (“Appellant”) (a) did not include necessary papers in the appendix that were presented to the court below on the motion for summary judgment, (b) injected new documents into the record that

were never presented to the court below on the motion for summary judgment, (c) did not appeal from the final decree of the court below, (d) did not appeal from an order, judgment or decree with a proper notice of entry, (e) did not settle the transcript of proceedings, (f) did not subpoena the papers constituting the record on appeal from the Surrogate's Court clerk and (g) did not serve all necessary parties with a notice of appeal or with the Appellant's brief and appendix. While we recognize Appellant's right to proceed *pro se* in this appeal, he has not been excused from following the proper statutory procedures to ensure that Respondent has a fair opportunity to litigate this appeal on the merits based upon the record that the parties created before the New York County Surrogate's Court.

3. As will be shown below, this appeal cannot proceed based upon the appendix and brief submitted by the Appellant. The Appellant's appendix omitted numerous documents relied upon by Respondent in support of the motion for summary judgment and he included numerous documents that were not submitted to the court below in connection with the motion. The Appellant's brief contained new facts and legal theories based upon those improperly submitted new records.
4. Further examples of this improper conduct will be explained below. It is unfair and impractical to expect Respondent to reproduce a proper

record. This is not a matter of the omission of a few pages from an appendix which could be cured by a respondent's appendix. The entire record, consisting of hundreds of omitted necessary pages, would have to be reproduced to accurately reflect the proceedings below and to enable the parties to argue this appeal based upon the facts and legal arguments presented to the court below. This appeal cannot proceed based upon the documents submitted and it must be dismissed. If Respondent's motion to dismiss the appeal is denied, it is, therefore, necessary to adjourn this appeal to the November, 2018 Term.

- A. Respondent's Motion to Dismiss the Appeal**
5. This appeal concerns a written decision and order from the New York County Surrogate's Court (Melia, Surrogate) dated March 26, 2018. (A copy of the order is annexed hereto as **Exhibit A**). Aside from the fact that the appendix and brief are improperly constructed and unworkable, which will be more fully explained below, this appeal suffers from several fatal procedural defects that calls for the dismissal of the appeal.
6. Appellant's Notice of Appeal dated April 24, 2018 states that the appeal is from a "Judgment of the Surrogate's Court, New York County, dated March 26, 2018". (A copy of the notice of appeal is annexed hereto as **Exhibit B**). At

the time that the Appellant filed his notice of appeal on April 24, 2018, no final judgment had been entered by the New York County Surrogate's Court. According to his notice of appeal, Appellant is appealing from the March 26, 2016 order only and not the transcript of proceedings.

7. The March 26, 2018 order states that “[t]his decision, together with the transcript of the March 20, 2018 proceedings, constitutes the order of the court. *Settle probate decree.*” (Exhibit A at p. A-10) (emphasis added). It is well settled that [n]o appeal lies from a decision directing settlement of judgment.” *Weiser LLP v. Coopersmith*, A.D.3d 465, 469, 902 N.Y.S.2d 74, 78 (1st Dep’t 2010). See CPLR § 5512(a); *Rodriquez v. Chapman-Perry*, 63 A.D.3d 645, 646 (1st Dep’t 2009) (“Since the record does not contain the settled order that the motion court directed to implement its decision to dismiss the complaint as to respondents, the issues regarding the finding that respondents are entitled to summary judgment are not properly before this Court. No appeal lies from a decision.”) (citations omitted). Appellant improperly appealed from the order that directed the settlement¹ of the probate decree and he improperly appealed from the March 26, 2018 order alone, not from the two (2) documents that the Surrogate’s Court

¹ Notice of settlement of a probate decree was served by this office on April 10, 2018.

stated “constitutes the order of the court”. Accordingly, this appeal must be dismissed. CPLR § 5512(a).

8. On July 20, 2018, the New York County Surrogate’s Court issued the final decree in this matter. (A copy of the Decree is annexed hereto as **Exhibit C**). It is well settled that any right of appeal from an interlocutory order terminates with the entry of a final judgment. *Matter of Aho*, 39 N.Y.2d 241, 248 (1976). *See Zheng v. City of N.Y.*, 92 A.D.3d 412, 413 (1st Dep’t 2012) (“This Court is now obliged to dismiss plaintiffs’ appeal since well-established precedent mandates that, once a final judgment is entered, the right to directly appeal from an interlocutory order terminates.”). Therefore, Appellant’s right to prosecute this appeal terminated with the entry of the July 20, 2018 Decree. (A copy of the notice of entry of the July 20, 2018 Decree is annexed hereto as **Exhibit D**). Accordingly, this appeal must be dismissed.
9. CPLR § 5513(a) states that an “appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.” Even if the appeal from the March 26, 2018 order was permitted, it was not taken

from an order from which notice of entry was served. Notably absent from the Table of Contents to Appellant's appendix is a notice of entry from any order, judgment or decree from the New York County Surrogate's Court. (A copy of the table of contents is annexed hereto as **Exhibit E**). Appellant did not serve Respondent's counsel with notice of entry of the March 26, 2018 decision and order, the procedural prerequisite to filing an appeal. CPLR § 5513(a).

10. Even if the appeal from the March 26, 2018 order is considered, it is incomplete because the order states that the written "decision, together with the transcript of the March 20, 2018 proceedings, constitutes the order of the court. Settle probate decree." (Exhibit A at p. A-10). Appellant has not appealed from the documents 'constituting the order of the court', nor has he appealed from the final decree. Therefore, the appeal must be dismissed.

1. *Appellant Failed to Comply with CPLR § 5525*

11. The appendix contains a transcript dated March 20, 2018 of the oral argument of the summary judgment motion. (A copy of the transcript is annexed hereto as **Exhibit F**). As noted above, notice of entry of the March 26, 2018 order was not served. In addition, Appellant failed to settle the transcript pursuant to CPLR § 5525.

12. Since a stenographic record of “of the March 20, 2018 proceedings” was made in this case (Exhibit A at p.A10), CPLR § 5525(a) requires the Appellant within fifteen days after receiving the transcript from the court reporter “or from any other source” to “make any proposed amendments and serve them and a copy of the transcript upon the respondent.” CPLR § 5525(c)(3) required Appellant to “serve on respondent together with a copy of the transcript and the proposed amendments, a notice of settlement containing a specific reference to subdivision (c) or this rule. . . .”
13. Appellant has not settled the transcript pursuant to CPLR § 5525. Appellant relied upon the transcript in his brief. (A copy of the Appellant’s Brief as annexed hereto as **Exhibit G**, at p.9, 15, 19, 20, 26, 51, 54, 55). The parties here did not stipulate to certify the transcript. A notice of settlement of the transcript is not contained in the Table of Contents. (Exhibit E). Thus, Respondent has been deprived of her right to proceed on a corrected settled transcript of proceedings.

2. Appellant Failed to Comply with CPLR 5531

14. Several alternate bases exist to support dismissal of the appeal. In the instant appeal, it appears that appellant Richard Fields elected to proceed on the appendix method. The cover of the submitted record, contained in the Court

file, does not indicate if the document is a Full Record or Appendix. Appellant did not submit a statement pursuant to CPLR § 5531. However, the pages of the submitted records are labeled “A__”. *See* CPLR § 5529(b). Furthermore, the record submitted to the court below has not been reproduced *in toto*. Therefore, Appellant has elected to proceed on the appendix method.

15. The requisite statement pursuant to CPLR § 5531 has not been “prefixed to the papers constituting the record on appeal” and is otherwise absent from the Appellant’s appendix. To the extent that Appellant’s pre-argument statement could be considered a CPLR § 5531 statement, it omits subsections 4, 6 and 7 of the statute. Had this information been included, the Court clerk would have recognized that no notice of entry of the March 28, 2018 Order has been served, the transcript of proceedings had not been settled and that the final decree has not been entered at the time Appellant filed his brief and appendix.

3. Appellant Failed to Comply with CPLR § 5528 and 22 NYCRR 600.5

16. Pursuant to CPLR § 5528(a)(5), when an appellant proceeds on the appendix method, the appendix shall consist of “such parts of the record on appeal as are necessary to consider the questions involved, including those parts the appellant reasonably assumes will be

relied upon by the respondent.” Appellant failed to assemble a proper appendix as he omitted many of the records that Respondent relied upon in support of her motion for summary judgment and which were discussed by the court below.

17. Pursuant to 22 NYCRR § 600.5(a)(1), “[i]f the appeal is prosecuted by the appendix system pursuant to CPLR 5528(a)(5), appellant shall subpoena, from the clerk of the court from which the appeal is taken, the papers constituting the record on appeal as set forth in CPLR 5526 and cause them to be filed with the clerk of this court within 30 days after settlement of the transcript of proceedings or statement in lieu of a transcript. At the time the subpoena is served, the appellant shall deliver to the clerk two copies of the statement required by CPLR 5531.” Appellant has not issued a subpoena, nor has he delivered the statement.
- 18 Appellant has utterly failed to comply with these statutes. He has:
 - (1) failed to include portions of the record submitted to the Surrogate’s Court that are going to be relied upon by Respondent, *i.e.*, the affidavits, affirmations and exhibits submitted in support of the motion for summary judgment (to be discussed more fully below);

- (2) failed to subpoena the papers constituting the record on appeal pursuant to CPLR § 5526 from the Clerk of the Surrogate's Court (*see also* 22 NYCRR 600.5(1)(3));
(3) failed to settle the transcript of the proceedings or statement in lieu of transcript; and
(4) failed to deliver a CPLR § 5531 statement.
- a. *Portions of the appendix must be stricken*
19. The parties to this proceeding submitted a record to the New York County Surrogate's Court in connection with Respondent's November 28, 2017 motion for summary judgment. Respondent's motion papers consisted of a notice of motion, a memorandum of law and an affirmation from Jules M. Haas, Esq., with numerous exhibits annexed thereto, including the pleadings, witness affidavits, deposition transcript excerpts and other relevant records. For the sake of brevity, annexed hereto as **Exhibit H** is the exhibit list annexed to the Affirmation of Jules M. Haas, Esq., dated November 28, 2017 submitted in support of the motion for summary judgment.
20. Appellant, who was represented by Richard Alan Chen, Esq., also submitted an attorney's affirmation dated January 22, 2018 (erroneously dated January 22, 2017) in opposition to the motion with exhibits annexed thereto

consisting of the Appellant's affidavit, deposition transcript excerpts and other documents. The exhibit list submitted by Mr. Chen is annexed hereto as **Exhibit I**. Respondent submitted the reply affirmation of Jules M. Haas, Esq., dated February 23, 2018 in further support of the motion for summary judgment. The exhibit list annexed to the reply affirmation is annexed hereto as **Exhibit J**. The documents submitted by the parties to the Surrogate's Court constitutes the entire record in this matter.

21. However, when the Table of Contents to Appellant's appendix (Exhibit E) is compared with the documents submitted to the Surrogate's Court, it is apparent that (1) numerous necessary documents that were submitted to the lower court below were not included in the appendix and (2) new documents that were never submitted to the court below are now included in the appendix. "It is settled that this Court is bound by the record on appeal." *Mars v. Venture Realty Grp.*, 248 A.D.2d 101, 102 (1st Dep't 1998) (citing *Block v. Nelson*, 71 A.D.2d 509, 511 (1st Dep't 1979)). "As stated by the Appellate Division, Second Department, appellate review is limited to the record made at *nisi prius* and, absent matters which may be judicially noticed, new facts may not be injected at the appellate level." *Id.* (quoting *Broida v. Bancroft*, 103 A.D.2d 88, 93 (2d Dep't 1984)).

22. A glaring example of documents that were not submitted to the court below in connection with the motion for summary judgment but have been injected into the appendix are the documents concerning the Attorney General of the State of New York. The Attorney General sought to file objections to probate, but those objections were rejected by the Surrogate's Court and were never prosecuted. The Attorney General was served with the motion for summary judgment (a copy of the Notice of Motion is annexed hereto as **Exhibit K**) but did not participate in the motion. None of the exhibits submitted by the parties in connection with the motion for summary judgment included any of the rejected objections to probate by the Attorney General. (Exhibits H, I and J). These documents were not considered by the lower court.
23. The foregoing was but one example of documents that Appellant has improperly injected into the record for the first time on appeal. The following tables contain a list of documents, with page references, that are contained in the appendix that were never submitted to the court below. Some of the listed documents are not even reflected in the Appellant's Table of Contents (Exhibit E):

206a

Page Number(s)	Document	Note
A-11-14	Objection to Probate by the Attorney General of the State of New York dated June 3, 2016	These objections were rejected by the Surrogate's Court. The attorney general's office was served with the November 28, 2018 motion for summary judgment.
A-15-27	Letter, Order and Decision concerning a proceeding for grandparent visitation in the New Jersey Superior Court.	

A-29-34	Handwritten autobiographies of Sydney Fields and Teresa Fields	
A-35, A-37, A-38-42	Photographs	Other photographs were submitted as Exhibit Y to the November 28, 2017 Haas Affirmation.
A-51-58	Notice of Motion for Summary Judgment dated April 19, 2016 and Affirmation in Support	This motion and subsequent cross-motion were withdrawn and no decision or order was issued in connection with these motions.
A-71-77	Correspondence with the Internal Revenue Service and IRS forms (not listed in the Table of Contents (Exhibit E)).	
A-84-90	New York City Criminal Court records (not listed in the Table of Contents (Exhibit E)).	Other records from the New York City Criminal Court were submitted to the Court below as Exhibit V to the November 28, 2017 Hass Affirmation.
A-97-101	Affirmation of Edward R. Curtin, Esq., dated April 19, 2016	This motion and subsequent cross-motion were withdrawn and no decision or order was issued in connection with these motions.
A-102-06	Notice of Discovery and Inspection dated April 5, 2016	
A-107-120	Affirmation of Richard Alan Chen, Esq., dated May 25, 2016, in support of cross motion and in opposition to motion for summary judgment.	This motion and subsequent cross-motion were withdrawn and no decision or order was issued in connection with these motions.

A-129	Letter from Sydney Fields to Jeffrey Kern	
A-130-36	Affirmation of Edward R. Curtin, Esq. in support of issuance of preliminary letters testamentary dated June 17, 2016 with affidavit of service.	
A-158	Notice of Appearance of New York State Attorney General dated April 12, 2016	
A-183-85	Subpoena Duces Tecum on Dr. Janet Searle dated June 5, 2017	
A-191-92	Subpoena Ad Testificandum for Jeffrey A. Kern, dated February 21, 2017	
A-193, A-193B	Letter from Vanguard to Richard Alan Chen, Esq., dated March 17, 2017	
A-194	Letter from Richard Alan Chen, Esq. to Albert V. Messina Jr., Esq., dated March 24, 2017 (erroneously dated March 24, 2016)	
A-201-07	Transcript of purported conversation between Sydney Fields and Jeffrey Kern dated October 3, 2014	
A-208-216	Transcript of purported conversation between Sydney Fields, Anita and Jeffrey Kern dated November 7, 2014	

A-217-28	Transcript of purported conversation between Sydney Fields, Andrew Venne and Jeffrey Kern dated November 20, 2014	
A-229-237	Transcript of purported conversation between Sydney Fields and Jeffrey Kern dated March 26, 2015	
A-238-48	Transcript of purported conversation between Jeffrey Kern and Diana Palmeri dated April 22, 2015	
A-273, A-277, A-278, A-309-11, A-314-19, A-321-45, A-353-56, A-362, A-365-66, A-373, A-381-87. (These pages correspond to transcript pages 16, 47, 48, 87-89, 92-97, 99-123, 131-34, 140, 143-44, 151, 159-65)	Deposition transcript excerpts of Edward R. Curtin dated February 1, 2017	Excerpts of Mr. Curtin's transcript were submitted to the Surrogate's Court (Exhibit H, I and J), however Appellant submitted additional excerpts on appeal that were not submitted to the court below.
A-393, A-398 (These pages correspond to transcript pages 16 and 55)	Deposition transcript excerpts of Jill Curtin dated November 14, 2016	Excerpts of Ms. Curtin's transcript were submitted to the Surrogate's Court (Exhibit H and I), however Appellant submitted additional excerpts on appeal that were not submitted to the court below.
A-416-31 (These pages correspond to transcript pages 26-30, 94-102, 108-09)	Deposition transcript excerpts of Diana Palmeri dated November 15, 2016	Excerpts of Ms. Palmeri's transcript were submitted by Appellant to the Surrogate's Court (Exhibit I), however Appellant submitted additional excerpts on appeal that were not submitted to the court below.

A-436-37 (These pages correspond to transcript pages 30, 51)	Deposition transcript excerpts of Pia Fields dated June 14, 2017	Excerpts from Ms. Field's transcript were submitted to the Surrogate's Court (Exhibit H), however Appellant submitted additional excerpts on appeal that were not submitted to the court below.
A-438-41	Petitioner's Exhibit 3 to the deposition of Pia Fields dated June 14, 2017	
A-442-44	Letter from Jules M. Haas, Esq. to Jay C. Laubscher, Esq., dated March 17, 2017	
A-445-558	Several letters from Richard Fields to Edward R. Curtin, Esq.	
A-456-58	Letter from Richard Alan Chen, Esq. to Jay C. Laubscher, Esq., dated March 28, 2017, with statement from Richard Fields	
A-601	Appellant's affidavit for appeal	This document was not included in the appendix served upon petitioner's counsel.

None of the pages of the appendix listed in the above table were submitted to the Surrogate's Court in connection with the November 28, 2017 motion for summary judgment. (Exhibits H, I and J). *See Ray v. Ray*, 34 A.D.2d 517, 517 (1st Dep't 1970) ("The appeal was brought on for argument on the basis of a properly certified record on appeal and extrinsic facts may not be considered, nor may facts other than those established by affidavit, documents or records recited in the order appealed from."). Appellant is impermissibly attempting to relitigate the motion for summary judgment on this appeal based upon documents that were not before the lower court and are dehors the record.

b. Appellant failed to include necessary documents

24. Not only has Appellant improperly injected new matters into the record for the first time on appeal, he has also omitted crucial documents from the Appendix. In this appeal, it is reasonable to conclude that Respondent would rely upon the documents and exhibits she submitted to the Surrogate's Court. *See CPLR § 5528(a)(5); Reiss v. Reiss*, 280 A.D.2d 315, 215 (1st Dep't 2001) ("Plaintiffs appendix does not contain all of the relevant and necessary portions of the record, thus rendering a determination on the merits impracticable. Accordingly, the appeal is dismissed.").

25. Incredibly, Appellant has not included his objections to probate in the appendix. Another example of a glaring omission is the absence of the affirmation of Jules M. Haas, Esq., dated November 28, 2017, submitted in support of Respondent's motion for summary judgment and several exhibits annexed thereto. Mr. Hass' affirmation submitted numerous documents, incorporated witness affidavits and presented Respondent's arguments in support of the motion for summary judgment. Appellant omitted over 440 pages of these records that are necessary and relevant to the prosecution of this appeal from this affirmation alone. In addition, Appellant has omitted portions of the deposition transcripts from the attorney-drafter, attesting witnesses, parties and non-parties. He has omitted witness affidavits. He omitted a portion of his own attorneys' affirmation in opposition to the motion for summary judgment. He has omitted documents that the Surrogate's Court relied upon in its decision and order. (Exhibits A and F).
26. The following exhibits that were annexed to the affirmation of Jules M. Haas, Esq. dated November 28, 2017 (Exhibit H hereto) that were excluded from the appendix are as follows:

Exhibit A, Exhibit C, Exhibit C-1, Exhibit C-2, Exhibit C-3, Exhibit C-4, Exhibit C-5, Exhibit E (deposition excerpts omitted), Exhibit F (deposition excerpts omitted),

Exhibit I, Exhibit K, Exhibit M, Exhibit N, Exhibit O (with the exception of A-128), Exhibit P, Exhibit Q (with the exception of A-186-90), Exhibit R, Exhibit S, Exhibit V (with the exception of A-78-83, 91-96), Exhibit Y (with the exception of A-69-70), Exhibit Z, Exhibit AA, Exhibit BB, Exhibit CC, Exhibit DD, Exhibit EE and Exhibit FF.

The following documents that were annexed to the reply affirmation of Jules M. Haas, Esq. dated February 23, 2018 (Exhibit J hereto) that were not included in the appendix are as follows:

Exhibit A, Exhibit B, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit I, Exhibit M, Exhibit P, Exhibit Q, Exhibit R, Exhibit T

These documents will be relied upon by Respondent in response to a properly constructed appendix and appellant's brief.

- 4. Appellant Failed to Serve All Necessary Parties to the Appeal*
27. The cover to the appendix reveals that the parties that have appeared before the court below have not been served with the appeal. The notice of motion for summary judgment shows that the Attorney General of the State of New York was served with the motion. (Exhibit K). Appellant included the Attorney General's

notice of appearance in the appendix, even though it was not submitted to the court below in connection with the summary judgment motion. (A copy of the notice of appearance is annexed hereto as **Exhibit L**). The Attorney General was served with the notice of entry of the July 20, 2018 Decree. (Exhibit D). The Notice of Appeal (Exhibit A), the cover to the appendix (annexed hereto as **Exhibit M**) and the appellant's brief (Exhibit G) show that the Attorney General, a party to these proceedings, has not been served with the notice of appeal or with the Appellant's brief and appendix. Therefore, this appeal cannot proceed without the proper parties and it must be dismissed.

28. In sum, Appellant has shirked the proper procedure for prosecuting this appeal. Consequently, Respondent cannot proceed on (1) an incomplete record, (2) an uncertified record, (3) a record that does not comply with Court rules or the CPLR, (4) an uncorrected transcript that has not been settled, (5) on an appeal from an interlocutory order to which notice of entry has not been served or (6) from an appeal from a final decree. In addition, the appendix excludes critical documents from the record which were relied upon by Respondent and the lower court and it improperly injects new documents and records that were not submitted to nor considered by the lower court. The appellant's brief improperly makes new arguments and relies upon new matter dehors the record on appeal

as well as other procedural and formatting errors that violate the CPLR and Court rules. He has not noticed all parties to this appeal, nor has he served all parties with his appendix and brief. For these reasons, the instant appeal must be dismissed.

B. Portions of Appellant's Brief and Appendix Must be Stricken

29. In the event that the Court deems it possible to proceed without an appeal from the final decree, upon an appendix that does not include Respondent's papers and also contains new documents that were not submitted to the court below, the improper contents of the appendix must be stricken.
30. It is respectfully requested that the Court strike those portions of the appendix referred to in Paragraph 23, *supra*, for the reasons set forth above.
31. In addition, portions of the Appellant's brief raises new factual and legal arguments based upon the new improper documents. It also injects new unsupported facts with no citation to any record. These portions of the Appellant's brief must also be stricken. *See Block*, 71 A.D.2d at 511 ("Matter contained in the briefs, not properly presented by the record, is not to be considered by this court.").
32. An appellant seeking reversal or modification of a lower court's order or judgment may not

inject new facts or new legal arguments based upon those new facts into the record on appeal. *Ray*, 34 A.D.2d at 517. By way of example, the first two paragraphs on page 8 of the Appellant's brief discusses a June 3, 2016 "letter" from Assistant Attorney General Lisa Barbieri. (Exhibit G at p.8). However, this "letter" was not presented by any party to the Surrogate's Court in connection with the summary judgment motion. (See the exhibit lists to the motion for summary judgment, Exhibits H, I and J hereto). In addition to the fact that this document was not submitted to the Surrogate's Court for consideration on the motion for summary judgment, the "letter" is actually the Attorney General's objections to probate, containing mere allegations, which were rejected by the Surrogate's Court. No motion to accept these objections was ever filed and they were never prosecuted. The Attorney General was served with the motion for summary judgment. (Exhibit K). The Attorney General did not participate in the motion for summary judgment.

33. Since the Attorney General's objections to probate were never submitted to the court below, it is improper to inject this document into the appendix on appeal. *Block*, 71 A.D.2d at 511. Therefore, the Court should strike the following from page 8 of the Appellant's brief:

For that reason, the State Attorney General severely admonished the petitioner for fraud. Assistant Attorney General Lisa

Barbieri said in her letter on June 3, 2016: “The testator was not competent to make a will.” The will “was procured by duress and undue influence.” It “was caused or procured by actual or constructive fraud practice . . .” (Page A11-A13)

The State Attorney General’s opinions are supported by the evidence we discovered.

34. The foregoing was but one example of the improper arguments contained in the Appellant’s brief. Appellant’s improper references are pervasive and extensive. The following portions of the Appellant’s brief must be stricken on the basis that it refers to new facts not presented to the lower court or raises new legal arguments based upon those new facts (*see* Paragraph 23, *supra*):
 - Page 8: First full paragraph starting with “For that reason” to the first sentence of the second full paragraph ending with “evidence we discovered.”
 - Page 9: Second full paragraph, second sentence starting with “Their counsel made” ending with “as their weapon” as the transcript referred to was not settled pursuant to CPLR § 5525.

- Page 9: Last full paragraph starting with “The State Attorney General” ending with “the key person.”
- Page 10: First full paragraph, fifth sentence starting with “We can see”, ending at the bottom of the page with “(Page A203 Line 2-Line 17)”.
- Page 11: First full paragraph, starting with “Edward R. Curtin” ending with “his perjury easily.”
- Page 14: In the quoted testimony, starting with middle of the first sentence of the last question “table about that” to “(Page A397, line 4-line A398-line 8).”
- Page 15: First full paragraph starting with “The petitioner’s counselors “to the end of the third full paragraph, ending with “(Page A594 Line 1 to Line 3)” pursuant to CPLR § 5525.
- Pages 16-17: Last full paragraph starting with “In his April” to the end of the section on page 17, ending with “(Page A54 Paragraph Third).

- Pages 19-20: Last full paragraph starting with “The Court seems” to the end of the first pull paragraph on page 20, ending with “(Page A600 Line 1-6)” pursuant to CPLR § 5525.
- Page 26: First full paragraph starting with “If they really” ending with “(Page A590-Page A591)” pursuant to CPLR § 5525.
- Page 26: Second numbered section, starting with “2. The hard copy” to “3.5 million dollars.”
- Page 30: Second full paragraph, starting with “That instrument did” ending with “Sydney actually said.”
- Page 30: Last full paragraph, starting with “On the last” ending with “(Page A165)”.
- Page 31: First two full paragraphs, starting with “The instrument they” ending with “to verify things.”
- Page 31: Third full paragraph, references to A-353 and A-354.

- Page 32: First three full paragraphs, starting with “Regarding another important” ending with “analyze the Will.”.
- Page 33: First four paragraphs, starting with “In Edward R. Curtin’s” ending with “son was sick.”
- Pages 35-36: First full paragraph, second sentence starting with “The telephone records” to the first full paragraph on page 36, ending with “(Page A203 Line 24-Page A204 line 22).”
- Pages 36-37: Fifth full paragraph starting with “In her deposition” to the first full paragraph on page 37 after the enumerated paragraphs, ending after the second sentence with “to the charity.”
- Page 36: Second full paragraph after the enumerated paragraph, second sentence starting with “In this case” ending with “previous two Wills.”
- Page 38: First full paragraph starting with “In Sydney’s autobiography” to the second sentence of the same para-

graph ending with “(Page A 15-A 28).

- Pages 38-39: Second full paragraph starting with “The loving feeling” ending on page 39 with “(Page A435-PA411)”, except that page A-435 was presented to the court below.
- Pages 39-40: First full paragraph starting with “Sydney’s background made” to the fourth full paragraph on page 40 ending with “gave Richard nothing.”
- Page 40: Last full paragraph, second sentence starting with “Compared to how” and ending with “(Page A35-Page A37)”.
- Pages 40-41: Last full paragraph, middle of the third sentence starting with “just to prevent” to the first full paragraph on page 41, ending with “(Page A 15-Page A34).
- Page 41: Second full paragraph, fifth sentence starting with “Actually such a” ending with “(Page A15-Page A34)”.

- Page 42: First full paragraph starting with “Richard did not” ending with “Of psychiatric hospitals.”
- Page 42: Second full paragraph starting with “A serious and” ending with “ten years later?”
- Pages 42-43: Fourth full paragraph starting with “The big difference” to the last paragraph on page 43 ending with “any legal base.”
- Page 44: First full paragraph, second sentence starting with “He did not” ending with “some one’s affirmation.”
- Page 44: Third full paragraph, second sentence starting with “They are the” ending with “(Page A335 Line 15 to Page A336 Line 1”).
- Page 44: First enumerated paragraph starting with “Sydney had no reason” to the second enumerated paragraph ending with “the Palmeri family.”
- Page 44: Third enumerated paragraph, second sentence starting

with “This shows that” ending with “all these years.”

- Page 45: First full paragraph starting with “We said the” and ending with “Page A334 Line 1”.
- Page 45: Third full paragraph starting with “We all know” ending with “by our court.”
- Page 46: Deposition transcript starting with “A: Nov. 10th, 2015” ending with “(Page A415 Line 10-Page A416 Line 18)”. However, Page A-415 was submitted to the court below, and Respondent is not requesting that the reference to that page be stricken.
- Page 47: First full paragraph, second sentence starting with “The telephone records” ending with “(Page A429 Lines 15-25).
- Page 50: First full paragraph starting with “In his earliest” to the end of the second full paragraph, ending with “was legally blind.”

- Page 51: Fourth enumerated paragraph starting with “Diana Palmeri said” ending with “Line 5”).
- Page 52: Second full paragraph, third sentence starting with “Not only that” ending with “the testator’s voice.”
- Page 52: Third full paragraph starting with “Mr. Kern provided” ending with “he ‘sworn to’?”.
- Page 53: First full paragraph, second sentence starting with “the Objectant-counsel did” ending with “(Page A194)”.
- Pages 56-57: Second full paragraph after the enumerated paragraphs, second sentence starting with “After being deposed” ending on page 57 with “(Page A443 last paragraph to A444)”.
- Pages 57-58: Fourth full paragraph starting with “Two days before” to the end of the section on page 58 ending with “in this way.”
- Pages 59-60: Last full paragraph on page 59, fourth sentence starting

with “It was for” to the end of the section on page 60, ending with “the Surrogate’s Court.”

- Page 62: First full paragraph, second sentence starting with “The appellant hopes” to the final paragraph ending with Attorney General of NYS.”

These references to the portions of the record correspond with the new documents that were improperly injected into the appendix (*see Paragraph 23, supra*). They recited new facts and new arguments based upon the new materials that were not presented to the Surrogate’s Court in connection with the motion for summary judgment or were simply argued with no reference to the record whatsoever. These portions of the Appellant’s Brief must be stricken. *Block*, 71 A.D.2d at 511; *Ray*, 34 A.D.2d at 517. *See also Matter of Maura B. v. Giovanni P.*, 111 A.D.3d 443, 444 (1st Dep’t 2013) (“Motion by attorney for the child to strike petitioner’s reply brief is granted to the extent of striking references to matters dehors the record.”); *McGlone v. Port Auth. of N.Y. & N.J.*, 90 A.D.3d 479, 480 (1st Dep’t 2011) (striking “portions of respondents’ brief referring to matters dehors the record.”).

35. It cannot be overlooked that Appellant appears to be represented by Pia Fields, who is not an

attorney. (Exhibit G at p.63-64). While the preparation of the Appellant's brief by Pia Fields is of no moment, the attempt by Pia Fields to represent Appellant is the improper practice of law by a non-attorney. In fact, the Appellant stated in his brief that “[i]n case I am not available please allow Pia Fields to handle the case for me.” (Exhibit G at p.63). She is not a proper party entitled to notice of this appeal or any related motion. This improper conduct cannot be condoned.

C. Respondent respectfully requests that this matter be set for the November, 2018 Term

36. This appeal cannot proceed with the appendix and Appellant's brief in their current form. If the motion to dismiss is not granted, it is necessary to adjourn the term of this Appeal to the November, 2018 Term to permit sufficient time to allow for the submission of this motion, the decision therefrom and the completion of any procedures that may be directed by this Court. Accordingly, Respondent will not be submitting her Respondent's brief on August 8, 2018 to allow for the Court to consider Respondent's application and direct appropriate relief.

WHEREFORE, it is respectfully requested that the Court enter an Order (1) dismissing the appeal in its entirety, or alternatively (2) striking certain portions of the appendix and Appellant's brief and to adjourning this appeal to the November 2018 Term and (3) granting such other and further relief as the Court deems just, fair and equitable.

Dated: August 3, 2018
Huntington, New York

/s/ ALBERT V. MESSINA JR.
Albert V. Messina Jr.

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Motion for case 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Decease

**Respondent for Affirmation in opposition
to Interim stay dated on Aug. 16, 2018**

I am the appellant from the case 2016-111. The Surrogate admitted the Third Will of Sydney Fields into Probate on the day of July 20th, 2018 (Exhibit B) without notifying me. Respondent, Diana Palmeri, the proponent of the Third Will was appointed Executor. If I knew, I would have responded much earlier. I requested a stay (Exhibit A1) on Aug 17th to stop Ms. Parlmeri from disposing the assets of the estate until this Court makes a final determination of the validity of the "Third Will". I was denied by one of the judges in this court. (Exhibit A) Now I am to responding to the affirmation made by Jules Martin Haas. (Exhibit B1). He successfully convinced the judge to reject the stay by attacking me for harassing the testator, my father, Sydney H. Fields.

I want to stress to this Court a few things: First-ly; The Court below committed reversible error in

permitting the probate of the "Third Will" after a motion for Summary judgment. Certainly the evidence Objectants to the Will produced for the Court below were sufficient to create enough doubt as to the veracity of the purported Will, to make it inappropriate to give a directed verdict in favor of the proponents. The Court below was able to convince herself that the purported "Third Will" represents the "natural evolution of testator's dispositional intent" and banging the round peg into the square hole ignored all of Objectants' evidence to the contrary. Secondly; if this Court permits the Executor to dispose of the estate assets then it will be impossible for me to chase after the parties who received these assets if the final outcome entitles Objectant to receive any of them. Lastly, the Court will make a final ruling on this case in early November. If this Court upholds this purported "Third Will", the legatees will not suffer any irreparable harm having to wait a few more months for their share in the "booty".

I am living on SSI due to a mental disability since 1993. I borrowed \$100,000 legal fee for this case and lost within an hour in the Court below. I have no choice but to appeal, acting Pro Se, with the assistance of my ex-wife. I did not know that she has no right talk to the judge. On Aug 17, I did not expect that Respondent's attorney, Jules Haas, would attack me by bringing up the history of my harassment of my father, the testator. He provided a distorted picture of my actions to the judge, and implied that that was the reason why I was disinherited. I did not know how to give the background

and surrounding circumstances that may explain my behavior. I do not deny what I have done when I was crazy (It could tell something wrong from my expression on the pictures) but it is very difficult for me to admit my mental disability in front of the judges. I hope all the other judges consider my difficulty. Mr. Haas knew my situation. In his letter to the court dated March 27, 2017 he mentioned that the "Objectant testified that he is a diagnosed paranoid schizophrenic." "I wish to stress that the purpose of this application for an emergency conference is to obtain Court intervention. . . ." (Exhibit K1 Page 2) However for successfully attacking me they never mentioned my situation in the court below. They used the same strategy and they win in this court as well.

As a matter of fact my father still left a bequest to me after those events. My father tried to be the backbone of his family because his father died one day before he was born and he knew how sad children were without fathers. For a few time he told me that he worked hard for me and he wanted to bring his family up to the middle class. When he sent me to a psychiatric hospital in 1991 our relationship became worse. My mother who was also crazy told me that he was supposed send me to a law school not a mental hospital. I have received psychiatric treatment by court order since 2009. They sent me to hospitals involuntarily once in a while even today. There are three members who were mental disabled in Sydney Fields' family and the member's relationship was destroyed because of that. (Exhibit G) My father knew my situation

and he actually did not really blame me. From 1995-1996 after those “vicious campaign of terror” (in Haas’ words) happened my father still gave me an inheritance in the Will of 1997 (Exhibit H & 97 Will page 480). Since 1997 I did not contact him and offend him anymore. 1997, refusing to end the relationship with me he lost the right to visit the children of my half-brother who was because of my craziness. Fields’ family lost contacts since 1998 and it needs help. However, Palmeris’ use that as an excuse to take away 9.9 million dollars from this pitiful family. They did it by commit perjury and forgery.

1. They claimed that the testator could read the Will by using a magnify glass. (Exhibit F) However Vanguard’s phone transcript proved that Sydney H. Fields once told his broker “with the magnifying glass I can read large print, but I can’t read anything that’s on papers.” The conversation occurred on 1st, Oct, five days before the Will signed. (Exhibit E Page 197). Doctor Janet Serie’s medical record also reflected that Sydney’s vision was very poor on Oct 6th. In September, 2014 Sydney’s one eye was blind and the other eye was legal blind and in December 5th, 2014 his both eyes were blind. (Exhibit E1 page 190). The judge in the Court below ignored the testator’s statement and the medical records. She believed affirmations those six people made, one petitioner, two witnesses, and three lawyers. They said Sydney was only legally blind and even blind people have the right to make a Will.

2. The Court below stated in her decision that ". . .[W]hen the execution was supervised by an attorney and when there is a contemporaneous affidavit of the attesting witnesses reciting the facts of due execution, as is the case here, a presumption of proper execution arises. Here, the facts that the attesting witnesses could not confirm whether decedent had his magnifying glass that day (the attorney-drafter and one of the witnesses testified that he did) and could not provide a description of the aide who accompanied decedent to the will execution, but who appears to have stayed in a separate waiting area, were insufficient to rebut the presumption under the circumstances presented." (The attorney-drafter admitted that the Will was never read out loud in front of the witnesses. (Exhibit F1 Page 286 & K2) The Court did not follow "Advanced age is of itself no disqualification to the making of a will, but in such a case the court will more closely scrutinize the circumstances surrounding the preparation and execution of the paper." Matter of Hubert 26 Misc. 461 57 N.Y. Supp. 648 Affd. 48 App Div. 91, 62 N.Y. Supp. 932 98 quoted in Annotated Consolidated Laws of New York 1917. Also see Matter of MacCready 82 Misc 2d 531, 369 N.Y.S. 2d 325 (1975) with reference to execution for the blind where valid execution was found where the will was read aloud to the testator in the presence of the witnesses, and the testator then declared that which was read to be his will, and made his cross-mark and also "If the Testator is blind or cannot read, the will should be read to

him in the presence of the witness" Weir v. Fitzgerald 2 Brad. 42.

3. Instead of the "natural evolution of testator's dispositional intent" the purported Third Will is a radical departure. My father's third wife's Will did not leave her nieces and nephews as much as the purported "Third Will" for the 9.9 million dollars estate. The court below did not request any support document from them and only recognized the affirmations an Attorney-drafter made. (Exhibit K2)

4. There are forgery in the Will document. The Third Will contains all the bequests on a single page. Our handwriting expert confirmed that the initial on that page with the distributions was not the testator's. The testator always need a X to indicated him where to sign and that forgery initial was handled well without an "x" next to it. (Exhibit I,3) The whole will can be changed by just initialing and substituting the key page without touching the signature in the last page. Since the witnesses did not know the contents of the Will, the handwriting experts opinion must be weighed. However, the Court below seems to have missed this point, stating that "there is no requirement that a testator initial the pages of a will for it to be valid instead, all that is required in this regard is that it have been signed at the end thereof"

5. The 2014 Will documents paper were invalid itself. The Will said the testator was "she" instead of "he". (Exhibit I,1) The witnesses' affidavit for the Will had its date crossed out and was changed from

2006 to 2014. According to the law, an affidavit must be all typed or in all handwritten, but mixing the two means there was an alteration and should not be consider valid. (Exhibit I,2) This issue was ignored by the court below as well.

6. They have no valid document to support the 2014 will. They only have attorney drafter's testimony. His statement after Teresa died "Mr. Sydney had come to embrace (Palmeri) as his own family". (Exhibit K2 Page 2 line 12-15). The only document they presented was a piece of a paper that was purported to be written instructions for the revision of the prior will made by Testator and provided the Attorney-Drafter of the Will. However this document does not look like it was written by a 95 year old blind man but looks like it was made by computer (Exhibit I). My father's signature on the Will shows that he could not sign in a straight line. (Exhibit I,1) However this note they present purporting to be instructions on how to revise the Will was written with a strong stroke, in a straight line and the lettering appears to identical. That note mentioned nothing about the 2014 Will. The Attorney-drafter Curtin testimony is the sole backup to this note to the following concerning the purported note. There is no video or phone tape as back up but only relies on Attorney drafter's credibility.

7. As a matter of a fact Curtin's credibility is questionable. In his first affirmation he mentions how competent Sydney was he did not mention Sydney's vision status at all (Exhibit K2). He only conceded this fact when the problem was brought

up by the appellant. He refused to admit the appellant's mental disability when characterizing Appellant's harassment of his father. Further, He testified that a maid took my father to his office the day of the execution of the will, but none of the witnesses or the Attorney could describe her race, or age. (The petitioner also refused to provide the information.) It is possible that it was Diana Palmeri who took the testator to the office that day, because she once admitted that the first time she met Attorney Curtin was on the day the Will was signed. She denied it later because she had to pretend that she had nothing to do with the will and it was all Sydney's decision. Judge in the below court agreed that not remember anything about the maid is acceptable.

8. Beside Curtin's affirmation, there were six people who made affirmations to support the Proponent of the Will. Those people were not close to the testator and it is impossible for them to know what was in Sydney's mind. In regards as to why Sydney gave the Palmeri family that kind of money those affirmations are useless. If Sydney loves them so much and decided to give them all his assets, he should at least show his affection in some way and at some time. Even with one piece strong evidence they do not need those affirmations. They not only created paper they also tried hard to reject records that bother them, including paper provided by them or those that have been tiled in the court. (Exhibit K2, Page 10 to Page 14).

The fact that the last Will is a radical departure from prior testamentary schemes, consider the following: From the first Will to the last Will, Palmeris' inheritance increased from 50,000 dollars to 9.9 million dollars. The Fields family's share decreased from 6.5 million dollars to nothing. The charity's share decreased from 4.5 million dollars to \$1,500. That is why the Attorney General filed objections to probate dated 3rd, June,2016. (Exhibit D) It is inappropriate to allow them to have a decree of probate before the appeal is over. I hope judges seriously consider our arguments and give this case a fair judgment.

We are now asking this Court to stay the Executor of the Last Will and Testament of Sydney Fields, appointed in the Court below, from disposing of any of the assets of the estate prior to a final decision by this Court of the Appeal from the Court below, and to any further relief this Court may deem appropriate.

Thank you for your attention

Your truly Richard Fields

/s/ RICHARD FIELDS

State of: New York

County of: Nassau

The forgoing document was acknowledged
before me 21 day of August, 2018

/s/ KAM WAH HUNG

Kam Wah Hung, Notary Public

My Commission Expires April 7, 2021

237a

KAM WAH HUNG
Notary Public, State of New York
Reg. No. 01HU6357312
Qualified in Nassau County
Commission Expires 04/17/2021

EXHIBIT LIST

EXHIBIT A: Summary Statement on Application for Expedited Service and/or Interim Relief

A1: Filing for a stay by Richard Fields

EXHIBIT B: Decree of probate in the Surrogate's Court

B1: Affirmation in opposition to an interim stay.

EXHIBIT C: Decision and order by Rita Mella in the Surrogate's Court

EXHIBIT D: NY State Attorney General's objections to probate regarding Case #2016-111

EXHIBIT E: Pages of Vanguard's phone transcripts about the testator's vision.

E1: Medical record about the testator's vision (Sep to Dec 2014)

EXHIBIT F: Page of deposition transcript of Curtin said Sydney can read.

F1: Page of deposition transcript of Curtin said no reading out loud in Will execution.

EXHIBIT G: Sydney's brief autobiography.

EXHIBIT H: Richard Fields' harassing pictures he sent to his father.

H1: Page of court papers against Richard Fields from 1995-1996.

H2: 1997 Will of Sydney Fields (included Richard as a beneficiary).

EXHIBIT I: Noted that back up 2014 Will. (well done but with only name and number)

I1: Last Will of Sydney Fields dated Oct 6, 2014. (signature)

I2: Witness affidavit for the 2014 Will (with alterations).

I3: Handwriting expert's report about the forgery initial.

EXHIBIT J: Brief of the Appeal for Case #2016-111 from Richard Fields.

EXHIBIT K: Jules Martin Haas, Esq. letter to the court dated March 27, 2017

K1: Notice of Motion by Albert V. Messina, Esq. dated August 3, 2018.

K2: Curtin's affirmation date April 19, 2016

EXHIBIT L: Richard's response to the motion on August 3, 2018.

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Case #2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS

Deceased.

**Respond to Affirmation on the
3rd of Aug., 2018**

This is the response to the affirmation of Albert V. Messina Jr., Esq., dated August 1, 2018. They said our response to that “cannot be less than seven days before the return date of this motion.” We received their affirmation on the 8th of July and we met the deadline they set.

This response was prepared by my son’s mother Pia Fields who once was appointed as a trustee for Lewis Fields by the testator Sydney H. Fields. I might be involuntarily sent to a hospital at any time right now. After the hearing and before the Surrogate’s Court decision was made I wrote down an affirmation saying that when I was not available Pia would take care of my case. I cannot concentrate myself on this court case and I have no money to pay legal fees. I am Pro Se in this appeal and believe I can get help from a person who is not

attorney. My ex-wife was married to me for more than twenty years and we are still like family members. My getting help from her is not against the law. The petitioner attacked us for that because she would simply win the case if Pia did not interfere. All the issues in this case were decided upon by her and discussed with me. I corrected her spelling and grammar mistakes.

Pia Fields is sixty seven years old and still works in full-time. She can have nine months to prepare this appeal of the case. Yet written in her second language, she finished the all of the documents and printed them in two books within a month. Now due to the order they made she finished this response in four days. (I received it on 6th of August and forwarded it to her on the night of 7th of August.)

I noticed that the respondent was unable to submit her respondent's brief on August 8, 2018 and they asked for an adjournment of this appeal to November, 2018. They had time for the decree granting probate dated July 20, after they received our brief and appendix for the appeal and they did not have time to prepare their response brief. They had three lawyers working for two years on this case and they cannot be prepared for the hearing in October, 2018? They cannot make it because it is easy to make up a story but not easy to make up a fact. They told enough lies: we received no document related to the decree granting probate and we got no notification from the Surrogate's Court either. They are liquidating the assets of the estate. I hope our judge will ignore their excuses

and keep that hearing date and consider they failed to submit their brief in time.

In general the affirmation of the 5th of August ignored our major arguments. They did not mention Sydney Fields' vision problem at all. If our argument was fallacious they should have fought back immediately. They were unable to prove why the testator Sydney H. Fields loved those nieces and nephew more then he loved his wife, their aunt. All their attorneys did is play games, disqualify people, dismiss documents, and questioned our procedures for filing the appeal.

People who work in the clerk's offices of both courts are professional. They refused to send out or accept anything that did not meet their requirements and standards. We hand-delivered the appeal document to their Movant Attorney Jules Martin Haas in his Third Ave. office. Their other attorney Albert V. Messina Jr. emailed that to all the related parties on the same date of the 24th of April. They had no way to say that they did not know about the appeal. We reprinted the brief and Appendix based on the instructions of the clerk of the Supreme Court until they met the requirements. As long as the appeal was accepted the case is in the court. Attacking the procedure to dismiss the appeal is their strategy. We have only a few days to finish this response and it is unnecessary to discuss the filing procedure. We are going to discuss their attacking regarding omitted necessary documents and injected new documents.

The clerks in the Supreme Court told us that not all the documents but all the motions must be

included in the appendix. It must be able to show how the respondent thought. Since there are hundreds of documents we omitted all the exhibits in our own motion and focused on introducing theirs. We did not put depositions related to our own. We kept all the exhibits in their first motion in which they presented pictures, court papers, and Sydney's handwritten paper accusing the appellant of harassing his father. We also kept their last motions even though they had two attorneys who wrote the same thing. In the appendix out of 600 pages at least 400 pages reflect the petitioner's opinion. Still they felt unsatisfied and wanted to dismiss it.

They complained that the papers related to the criminal court and IRS were omitted in the appendix. The appendix did mention that Sydney once brought Richard to the criminal court (under Kenneth's pressure). Sydney felt upset about his tax returns being released because of Richard's request through forgery. However, he did not really hate Richard during that period. After all those things happened, he still put Richard in his Will. The money left to Richard was seven times more than the \$5,000 that he left to Diana whom he knew for more than twenty years. That was the difference between blood and water in his mind. No matter how Diana attacked Richard as a criminal, she could not go anywhere because Richard lost his mind at that time.

Besides that if important things were omitted like the petitioner's claim in the appendix, why didn't they simply attach them in their affirmation?

They said "it is unfair and impractical to expect Respondent to reproduce a proper record." Because it needed "hundreds of omitted necessary pages to argue that this appeal is based upon the facts." If that is the case, they have no basis to claim the estate at all. They don't need hundreds of papers, all they need is a letter written by Sydney saying how much he loved them or a video record explaining the distribution of the Will. They don't have that. They have difficulties to give the facts because they can never prove why they deserve Sydney's love and money. (A few hundred copies of the festival greeting cards were sent by Teresa and were hardly signed by Sydney.) Sydney leaving them all his assets is not a fact. The fact is that they tried to take advantage of a family that has three mentally disabled members.

To get the assets of the estate they have to rely on perjury in the Attorney-drafter's affirmations. First of all he attested that Sydney embraced the Palmaris as his own family members. He then had to attest that Sydney was the only one who handed a note to him. That note had only names and numbers. For that reason he has to attest that the note did relate to the distribution of a Will. He had to point out that the numbers were connected to Sydney's entire assets. He then attested that there were telephone conversations switching the 5% back from Diana and Victor

Saying it correctly, the petitioners need hundreds of papers to make affirmations and filed them in the court. They felt unhappy because the appendix did not include the half dozen affirma-

tions she accumulated from unrelated people. The appendix does not have all the papers to attack Richard again and again like they wanted. Those are the documents they claim are omitted.

Let us discuss about the new injected documents. Any document as long as it is transferred and recognized by the other party before the deadline can be used in the trial court. We didn't get a chance for a trial and the decision was made within one hour. The court then refused to accept our documents because the case was being appealed. The documents accumulated in the discovery period were accepted by the trial court and are supposed to be allowed to be used in the appeal. It is ridiculous that they used the issue of whether or not they were filed in that court as the basis to reject our documents including the documents they are using. Documents they rejected include:

1. Letters, orders, and decisions concerning a proceeding for grandparent visitation in the New Jersey Superior Court and handwritten autobiographies of Sydney Fields. Those actually are court papers provided by the petitioner. They rejected the documents now because those documents prove Sydney's affection towards his family and they show why the Fields family fell apart.

2. Subpoena Duces Tecum for Dr. Janet Searle was ordered by the petitioner and forwarded to the objectant. It confirms that Sydney's vision problem was serious. An ophthalmological record proves Sydney H. Fields was totally blind in both eyes two months after he signed the Will. They didn't like to recognize this.

3. Edward Curtin's affirmation of April 19, 2016 stated Sydney's health situation and did not mention anything about his vision problem. The four provisions he made in the Will he executed did not consider Sydney's vision problem. It proves that the process was unduly executed and it hurt Curtin's credibility. They wanted to hide the fact and they rejected his affirmation.

4. They even rejected the transcript of the deposition related to Edward, Jill Curtin, and Diana Palmeri. Something we quoted such as Curtin's affirmation about the Will signing is exactly same as what they quoted. Curtin's answer shows that he committed perjury. That was why they had to deny it. Actually the deposition was recorded by the same person and the transcription was provided by the same place. How come when the petitioner used it the record was valid and when we used the record, it was invalid? The documents filed in the court or not are the standard the petitioner used to mislead the Supreme Court. Again, their logic reflects their poor credibility.

5. They reject all the telephone transcripts provided by Vanguard because it told something different from what they said. They filed affirmations by whomever in the court and made them valid. They meanwhile dismissed the phone records with the testator's speech and made them invalid.

6. They even rejected the letters Richard wrote to Curtin. Those letters once made them panic and they even asked for hearing from the court. They

rejected those letters because they prove they knew Richard's mental state but did not mention them in their motions. It hurt their credibility and they didn't like that.

In general the documents they considered were injected actually are things that they tried to omit. The documents they did not like the most was the Attorney General's letter about this case. They said that was already rejected by the Court. Even though the letter was rejected by the court, it should be filed somewhere as a document. The appendix can include all the court papers. That the letter from the Attorney General was rejected does not mean that their opinion was wrong. However, in the petitioner's mind the Surrogate's Court means everything.

Basing on their logic they already are ignoring the appeal and the Supreme Court because Judge Rita Mella already adjudicated their case. As a matter of fact after the appeal process in the Supreme Court they made a decree granting probate in the Surrogate's Court and had Judge Hon. Rita Mella admit it to probate. They said they had no time to prepare the respondent's brief and they had time to celebrate their victory. They appropriated 9.9 million dollars without a bond deposit at this time. We hope the judges in the Supreme Court show them the power of the law: give no adjournment to this appeal and consider that they are failing to submit their respondent's brief.

Dated: August 11, 2018

248a

Yours Truly,

Richard J. Fields

To: Albert V. Messina Jr.

249a

Dear Judge in the Supreme Court:

The above response reflects my opinions about the petitioners affirmation dated August 3, 2018. I hope the judge seriously considers their perjury and their fallacious logic regarding this case. Thank you for your attention.

Yours Truly,

Richard J. Fields

[GMAIL LOGO]

Jules Haas <attorney.haas845@gmail.com>

For case 2016-111

Sun, Aug 12, 2018 at 10:21 PM

Pia Fields <piachan1016@yahoo.com>

To: Jules Haas <attorney.haas845@gmail.com>

Mr. Haas: Thanks for your respond and instruction. That motion is for let you know what we are concern. Tomorrow I will hand delivery a motion with Richard's affidavit and the copy of the Court's decree of probate to you. The Supreme Court needs you to be there when they start the process. I hope you can co-operate and set up the time asap. if you meet the appointment you at least can get legal fee from the petitioner. If you ignore us you will get trouble for we never receive your document relate to the decree of probate. I believe you know the difference. It is not worth for some fee to do thing over the limit. If they have strong back up material and that is a good will Curtin can just take care of the case and do not need to spend big money on you. They need some one function as their gun. I sent our respond regarding to your Aug, 5 affirmation in a certified mail to Albert Messian on Saturday. Attach it in this email and will give you a affidavit page tomorrow.

251a

Tomorrow 4:30 Pm. I will be in your office 805 third Ave.

Thank you for your attention.

[Quoted text hidden]

**[Attached Document Respond.docx
26K]**

252a

EXHIBIT 13

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Case 2016-111
08/10/18

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the affirmation of Richard Fields dated August 10, 2018 is an order to the Petitioner-Respondent Diana Palmeri. She need be stopped decree from using the granting probate of the Will of Sydney H. Fields. Their actions seriously violated the law for the reasons below:

1. They decree granting probate after knowing that the appeal was accepted by the NYS Supreme Court-Appellate Division: First Department.
2. They did not notify the Appellant Richard Fields of the action they took.
3. The Judge and Court did not send their decision to the Appellant. The Appellant

noticed it from a record room 10 days after the decision made.

The Appellant has strong evidences to prove that the Respondent Diana Palmeri and her attorney committed perjury. Sydney Fields could not read typed words when the Will was signed and the Will execution they provided was not at all for a blind man.

We therefore request that the Appellate Division First Department stopping the petitioner from liquidating the 9.9 million dollar assets from the husband of their aunt who predeceased him. Sydney never even gave all his assets even to his wife Teresa Fields. Even their aunt did not leave each of those nieces and nephew as what the probated Will did. They presented no evidence to prove that Sydney embraced them like family members and they just have the Attorney-drafter making affirmations. At this moment the way they act like is to steal and run. People who assisting her will be hold the responsible as well. We are ready to see you anytime this week. If get no respond about that, we will wait for you in Friday, 17th Aug, 9AM in the Supreme Court. We set the time in case you are not co-operate. This is the final motion.

Your sincerely Richard J Fields
/s/ RICHARD J FIELDS

CC: Albert V. Messina JR
Jules Martin Haas
Clark of Surrogate's Court
David Lawrence III (NYS Attorney General)

The foregoing document was acknowledged
before me this 10th day of August 2018
/s/ LANETTE BARNES
Notary Public

LANETTE BARNES
Notary Public, State of New York
No. 04BA6349837
Qualified in Bronx County
Commission Expires Oct. 3 [ILLEGIBLE]

256a

EXHIBIT 14

**SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF
(SUBMITTED BY MOVING PARTY)**

Date August 15, 2018

Title of Matter Estate of Sydney H. Fields Index/Indict # 2016-111
 Probate Proceedings, Will of Sydney H. Fields, Decedent
 Richard O'Field, order of Supreme County, New York
 Appeal by Richard Fields, from decree of Surrogate's Court
 Notice of Appeal filed on April 24, 2018

Name of Judge Rita Mollen

If from, administrative determination, state agency _____

Nature of action or proceeding Requiring a stay for a decree of Probate

Provisions of order Judgment appealed from Surrogate's Court of New York County

This application by Appellant respondent is for a stay to stop the probate of the Will of Sydney H. Fields

If applying for a stay, state reason why requested The Will was submitted to probate and the assets of the estate can be totally liquidated. The case is being appealed to the Appellate Court, they committed perjury saying that the testator who was blind in the court

Has any undertaking been posted Not now If "yes", state amount and type could rea were
They required post 5 million dollar bond. Now they took that back and without notifying us.

Has application been made to court below for this relief No If "yes", state Disposition _____
 Has there been any prior application herein in this court No If "yes", state dates and nature _____

Has adversary been advised of this application Yes Does he/she consent Yes N/A at 8/15/18

Attorney for Movant		Attorney for Opposition	
Name <u>R. L. P. J. Fink, Pro Se</u>	<u>Tiles in Haas</u>		
Address <u>2830, Pitkin Avenue</u>	<u>805, Third Ave 12th Floor</u>		
Apartment # <u>210</u>	<u>New York 10022</u>		
Br. <u>NY</u> , NY <u>11208-3220</u>	<u>1212-3552575</u>		
Tel. No. <u>1-718-235-0110</u>			
Appearing by _____			
(Do not write below this line)			
DISPOSITION			
<u>Application for a stay is denied.</u>			
<u>8/17/18</u>		<u>8-17-18</u>	
Motion Date	Opposition	Justice	Date
EXPEDITE	PHONE ATTORNEYS	Reply	DECISION BY
<u>ALL PAPERS TO BE SERVED PERSONALLY.</u>			
Court Attorney <u>EG</u>			
Revised 02/01			

259a

EXHIBIT 15

[Print in black ink all areas in bold letters. This summons must be served with a complaint.]

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

SUMMONS

Richard Fields
[your name(s)] Plaintiff(s),
- against -

Diana Palmeir
[name(s) of party being sued] Defendant(s).

Index Number
101305-18

Date Index Number Purchased
9/4, 2018

To the Person(s) Named as Defendant(s) above:

PLEASE TAKE NOTICE THAT YOU ARE SUMMONED to answer the complaint of the plaintiff(s) herein and to serve a copy of your answer on the plaintiff(s) at the address indicated below within 20 days after service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be entered against you by default for the relief demanded in the complaint.

Dated: 9/8/1 9/4, 2018
[date of summons]

Richard Fields
[sign your name]
Richard Fields
[print your name]

2830 Pitkin Avenue Br. K17
[your address(es), telephone number(s)]

Defendant(s) Diana Palmeir 80 Forest Ave Plaintiff(s) NY 11208
[paramus, NJ 07652] 1-718-235-
Attornv: Jules M. Haas 0900
805 Third Ave 12 Floor
N.Y. 10022 9

[address(es) of party being sued]

Venue: Plaintiff(s) designate(s) New York County as the place of trial. The basis of this designation is:

[check box that applies]

- Plaintiff(s') residence in New York County
- Defendant's(s') residence in New York County
- Other [See CPLR Article 5]: _____

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

Index No. 101305-18

Richard J. Fields

Plaintiff,

Against

Diana Palmeri

Defendant

Complaint

To THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

The complaint of the plaintiff, Richard Fields, respectfully shows and alleges as follows

1. The plaintiff herein, Richard Fields, is supported by the SSI program due to a mental disability. He resides at 2830 Pitkin Avenue Brooklyn, NY 11208. (A facility for psychiatric patients funded by the government.)
2. The defendant herein, Diana Palmeri, resides at 80 Forest Avenue Paramus, NJ 07652.
3. Diana Palmeri is the niece of Teresa Fields, my father, Sydney Fields' pre-deceased third wife. In 2016 Diana Palmeri filed

Sydney Fields' purported third Will in the New York County Surrogate's Court in Manhattan. She is the executor and one of the beneficiaries under this purported Will. Her family members are also the sole beneficiaries under this purported Third Will. The decision of the Surrogate's Court to probate the Third Will is currently being appealed.

4. There are many suspicious elements in this purported Third Will, which I challenged during the court proceedings in that court.
5. The Third Will is a radical departure from the previous extant Wills executed by my father. From the first Will to the third Will the share of the Palmeri family increased from \$75,000 to 9.9 million dollars, and the Fields family's share deceased from 6.5 million dollars to nothing. The share of the estate left to various charities decreased from 3.5-5.0 million dollars to \$1,500. (Compare three Wills in Exhibit A). For that reason the Attorney General of New York State believed something was wrong in this purported third Will and attempted to intervene. (Exhibit B)
6. As a matter of fact the defendant mislead the judge by committing perjury. At this time there is a decree of probate that allows them to distribute the money from

the estate without a bonded deposit.
(Exhibit C)

7. The manner of execution of the Third Will raises many questions as to its authenticity. The Will was signed on Oct 6th 2014 when the testator Sydney Fields was 96 years old. However, five days before the signing ceremony Sydney spoke with his broker from Vanguard and claimed that with a magnifying glass he could only read large print but not the typed words on paper. Vanguard's telephone recording system recorded his conversation. (Exhibit D) According to medical records: Sydney's one eye was totally blind and one eye was legally blind in Sept. 2014. Two months later both his eyes were considered fully blind. (Exhibit D1). However, Diana Palmeri, the attorney-drafter Curtin, and his wife attested that my father could read documents by using a magnifying glass. (Exhibit E) Being misled the judge in the court below determined my father's vision based on what the attesting witnesses said "there was a magnifying glass." (Exhibit C1 Page 4)
8. The attorney drafter Curtin admits that he never read the Will out loud in front of the witnesses. (Exhibit E1) That means the process he provided was not duly executed for people who could not read. The judge in the court below made a decision

without reviewing the procedures and simply said a “blind person may make a Will” (Exhibit C1 page 5). Matter of Hubert 26 Misc. 461 57 N.Y. Supp. 648 Affd. 48 App Div. 91, 62 N.Y. Supp. 932 98 quoted in Annotated Consolidated Laws of New York 1917. Also see Matter of MacCready 82 Misc. 2d 531, 369 N.Y.S. 2d 325 (1975) with reference to execution for the blind where valid execution was found where the Will was read aloud to the testator in the presence of the witnesses, and the testator then declared that which was read to be his Will, and made his cross-mark and also “If the Testator is blind or cannot read, the will should be read to him in the presence of the witness” Weir v. Fitzgerald 2 Brad. 42.

9. The Will that the witnesses signed said the testator was “she” not “him.” (Exhibit A last page of 2014 Will) It could mean that they were not there when the Will was signed. The date of a typed affidavit for that Will was altered with a pen, and changed from 2006 to 2014. (Exhibit A 2014 Will affidavit page) By law a notary public would not accept a typed document that was altered with a pen. The judge in the court below did not think the errors are an issue.
10. My handwriting expert Mr. Curt Baggett confirmed that the initial on a page was a

forgery. (Exhibit F) That page contained the entire terms of distribution and substituting it can alter the whole Will. Since the witnesses did not know the content of the Will and therefore nobody could confirm that the purported Third Will that was offered for probate was the same one that my father signed. The judge in the court below ignored our argument about the forgery for the reason that: "There is no requirement that a testator initial the pages of a Will for it to be valid." (Exhibit C1 Page 6).

11. After my father signed the Will he took it home with him where it was "discovered" after his death by Diana Palmeri. The attorney did not keep a copy.
12. The paper they presented to back up the Will was not complete and also raises the suspicion of forgery. It did not mention the Will draft at all but had only names and numbers. (Exhibit G) It had no date, no signature, and no stamp. Only the attorney drafter attested that the instrument was presented to him by my father and related to the distribution of his assets. Besides that, the names on that note were written identically with a strong stroke and in a straight line. As a 96 year old blind man, my father could not even sign his name in the same way and on the same line. (Samples in Exhibits F

& G) That note looked more like it was made by copying and pasting on a computer. The judge in the court below ignored my argument because “the attorney-drafter testified that. . . .” (Exhibit C1)

13. A few days before the Will was signed, Sydney Fields arranged a fund transfer from his wife’s accounts back to his individual account and Diana Palmeri did not know about this until a broker mentioned it 1.5 years later. It is obvious that my father was trying to assert control over his money, and did not trust those to whom the purported third Will left this money. (Exhibit D) The judge in the court below ignored the action that my father took but only accepted that attorney’s testimony.
14. All the important issues related to the Will are based on attorney Curtin’s affirmation but Curtin’s credibility is questionable. They said it was a maid who brought my father to the office that day. However, none of witnesses could identify any physical characteristics of this maid, neither her race nor her apparent age. They refused to provide the contact information for the maid as well.

He hid the vision problem Sydney had in his earlier affirmation. (Exhibit I Pages 1 & 2) They noticed my mentally disability

(Exhibit J) but chose to ignore it. They told the judge that harassing my father is the reason why I could not get the inheritance.

As a matter of fact my father knew my mental status (you can tell from my expression in those pictures I sent to him). After receiving the harassing pictures and filing orders of protection in 1995 and 1996 (Exhibit H) my father still left me money in the 1997 Will (Exhibit A Will of 1997). I did not bother and upset my father since then. It is weird that in 2006, nine years later, he got mad at me and left his family members almost nothing. It was because someone unduly influenced him. How Diana Palmeri unduly influenced the judge is how they unduly influenced my father in those years. My father was 90 years old and lost his vision day by day. He was under duress in that kind of situation and he had to listen to the people he relied on. He had to make some execution to accuses his owe family when he allowed his wife to control more of his assets. However, it does not mean the defendant can use the words my father said twelve years ago to attack me today. (Exhibit K Page 2, last paragraph) Beside that it was my mother's lawyer who convinced me to go against my father. He kept the money and gave me nothing eventually. That is how a lawyer made

attesting and cheating me then. People did the same thing as well today. Therefore I need evidence about what my father actually said in 2014 not just a lawyer's attestation. Time could wash away many unhappy things particularly between a father and son whose blood is thicker than water. My father might try to give money to his own family when he had the portion back from his deceased wife. My father loved us very much. He would not leave his children nothing. (Exhibit K)

15. Diana Palmeri believed the Fields family members did not deserve the inheritance because we did not contact each other for 20 years. However, why the Palmeri family is deserving is unexplained, because they also had little contact with my father. As a matter of a fact my father hardly saw those petitioners in the last two decades as well. (They live in Hawaii, Ecuador, Argentina, and North Carolina). Those who live in New Jersey only met my father a few times a year on holidays. My father never spent an overnight in their homes. They did not and could not explain WHY my father loved them more than he loved his wife (their aunt). Under the second Will of 2009, even their aunt would get 50% of my father's assets if he predeceased her (Exhibit A, 2006 Will) but under the alleged Third Will her nephews

and nieces get 100% of these assets. Also their aunt did not give even her assets to each of those nieces and nephews as the purported Third Will provides. They cannot prove that my father embraced them like family members but only had an attorney say so through attestation. (Exhibit I Page 2) The court below did not question the unsupported change in the probated Will and allowed the defendant to step on a person who was a mental disability.

At this moment there is a decree of probate that does not require the defendant to post a bond. They will take away all of my father's 9.9 million dollars and leave me on SSI.

THEREFORE, the plaintiff demands an order directing the defendant, Diana Palmieri, as Executor of the Last Will and Testament of Sydney Fields, not to distribute the estate of Sydney Fields until the appeal ends in the Appellate Division First Department. Thank you for your attention.

Dated: September 5, 2018

Richard Fields

Signature _____
2830 Pitkin Avenue Brooklyn, NY 11208

[After writing your complaint, notarize and attach this verification to confirm that it is true]

VERIFICATION

STATE OF NEW YORK

COUNTY OF QUEENS ss:

Richard J. Fields, being duly sworn, deposes and says:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

RICHARD FIELDS
[sign your name in front of a Notary]

RICHARD FIELDS
[print your name, address and phone no.]

Sworn to before me this
4 day of September, 2018
/s/ KAM WAH HUNG
Notary Public

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KAM WAH HUNG
Notary Public, State of New York
Reg. No. 01HU6357312
Qualified in Nassau County
Commission Expires 04/17/2021

Index

Exhibit A: Wills of 1997 and 2006 and 2014

Exhibit B. Attorney General's Letter of Objection

Exhibit C. Surrogate's Court Decree of Probate

Exhibit C1. Surrogate's Court Decision and Order

Exhibit D. Page of Vanguard's Telephone Transcripts recorded that Sydney cannot read.

Exhibit D1. Doctor's notes about Sydney's vision

Exhibit E. Pages of Deposition related to the defendant and the Attorney-drafter's perjury.

Exhibit E1. Attorney-drafter did not read the Will out loud in front of the witness.

Exhibit F. Handwriting expert's letter about the initial forgery.

Exhibit G. Testator's "handwritten notes" for the probated Will.

Exhibit H. Harassing pictures and documents related to the court order.

Exhibit I. Attorney-drafter's affirmation of April, 2016

Exhibit J. Attorney for the defendant's letters and complaint about the plaintiff's mental status.

Exhibit K. Testator's brief biography. It shows his affection to his family.

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EXHIBIT 16

At I.A.S. Part _____ of the Supreme Court of the State of New York held in and for the County of New York at the Courthouse, thereof, 60 Centre Street, New York, N.Y., on the _____ day of _____, 200____

PRESENT: HON. _____
Justice of the Supreme Court

Richard Fields _____
[fill in name(s)] Plaintiff(s)

- against -
Diana Palmeri - executor
[fill in name(s)] Defendant(s)

Upon reading and filing the affidavit(s) of Richard Fields
[your name(s)] sworn to on Aug 3rd 2008

Index Number

101305-18

ORDER TO SHOW CAUSE
WITH T.R.O.
IN CIVIL ACTION

[date Affidavit in Support notarized] and upon the exhibits attached to the affidavit.
[Identify Exhibits below. List additional exhibits on a separate page.]
Exhibit A - See the list of exhibit

FILED
AND FEE PAID
SEP 04 2018
COUNTY CLERK'S OFFICE
NEW YORK

Let the party or attorney in opposition show cause at I.A.S. Part _____, Room _____
of this Court, to be held at the Courthouse, 60 Centre Street, New York, N.Y., on the _____ day of
_____, 200____, at _____ o'clock in the _____ noon or as soon as such party or
attorney may be heard why an order should not be made, providing the following relief:
[briefly describe what you are asking the Court to do] Prevent Diana Palmeri
from using any of the assets of the Estate of

EX PARTE MOTION OFFICE

APPROVED
FOR THE PAYMENT
OF MOTION FEE
ONLY

Sydney H. Fields

for the reasons that [briefly describe the reasons why you should be granted what you are requesting] Diana Palmer is the niece of Sydney Fields' third wife who predeceased him. Five members of their family distribute all Sydney Fields 9.9 million dollars asset and wife Fields family nothing. Christy's share was decrease from 5 million dollars to \$1,500 meanwhile.

Pending the hearing of this motion it is

ORDERED that: [describe what you are asking the court to stay]

Defendant with the case in Surrogate's Court by committing perjury. They know using the assets without bond deposit. I ask the Court to stay when this case is in appeal processing.

BC Sufficient cause appearing therefore, let personal service of a copy of this order, the affidavit in support and all other papers upon which this order is granted, upon all parties to this action or their attorneys, who have appeared in this action, on or before the _____ day of 200____ be deemed good and sufficient. An affidavit or other proof of service shall be presented to this Court on the return date directed in the second paragraph of this order.

ENTER

J. S. C.

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

Richard Fields

Index Number

101305-18

[fill in name(s)] Plaintiff(s)/Petitioner(s)

- against -

Diana Palmeri

AFFIDAVIT
IN SUPPORT

[fill in name(s)] Defendant(s)/Respondent(s)

STATE OF NEW YORK
COUNTY OF New York ss:

Richard Fields

[your name], being duly

sworn, deposes and says:

1. I am the plaintiff / petitioner / defendant / respondent [circle one] in this matter. I make this affidavit in support of this motion for an order [Describe what you are asking the Court to do. This relief must also be stated in the Notice of Motion or Order to Show Cause.]

We want the Court to issue an order preventing the defendants using any of the assets of the Estate of Sydeney H. Fields

2. I believe the Court should grant this motion because [Explain why you should be granted what you are requesting. Explain any Exhibits (documents) you submit. Add more pages if needed.]

1. Compared with the previous Wills, defendant's share increase from 75,000 \$ to nine millions dollars without sufficient back up material but solo basing on attorney's affirmation

2. Defendant and her lawyer committed perjury saying that the testator could read. However, testator claimed that he could not read typed paper words in the paper. His conversation was record by bank's system / phone

3. There is

See the attach 'complaint'

The one instrument that back up the will was also involved forgery. A ninety six years old blind could not write so identical and straight. That instrument didn't mention anything about the will. It had only names and number. They have their attorney-drafter attest that numbers means distribution of Sydney's entire asset. He also attest that Sydney embrace Palmeri like his family members. However a few days before the will signed, Sydney Fields arranged fund transferring from his wife's account to his individual account. As a agent he did that legally without let Palmeri know. That means in his mind his money is not all theirs. The Palmeri believed they deserved the money because Fields family didn't contact each other for twenty years due to member's mental disability.

3. A prior application has not/has [circle one] been made for the relief now requested.
 [If you made this application before in this or any other court, describe where, when, the result and why you are making it again. Attach copies of previous decisions.]

This stay ~~not~~ is requested in Appellate Division. It need six weeks to wait @ the decision make. I hope can stop them as soon as possible. The bond was almost five million dollars. I am supporting by SSI program due to mental disability and my ex-wife help me

WHEREFORE, I respectfully request that this motion be granted, and that I have such other and further relief as may be just and proper.

Richard Fields
 the appeal

Sworn to before me on the
 31st day of August, 2008
Nurullah Nazerali
 Notary Public, State of New York
 #0145495
 Qualified in New York County
 Term Expires September 7, 2014

Notary Public

NURULLAH NAZERALI
 Notary Public, State of New York
 #0145495
 Qualified in New York County
 Term Expires September 7, 2014

[sign your name in front of a Notary]

Richard Fields

[print your name]

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EXHIBIT 17

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No.: 2016-111

Probate Proceeding,
Will of
SYDNEY H. FIELDS,
Deceased.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of an Order of the Appellate Division of the Supreme Court, First Judicial Department entered in the office of the clerk of the within named Court on September 25, 2018.

Dated: Huntington, New York
September 25, 2018

/s/ ALBERT V. MESSINA JR.
Novick & Associates, P.C.
By: Albert V. Messina Jr., Esq.
Attorneys for Respondent Diana Palmeri
202 East Main Street, Suite 208
Huntington, New York 11743
(631) 547-0300

TO:

Richard Fields
Objectant/Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

New York State Attorney General
Division of Appeals & Opinions
Respondent
28 Liberty Street
New York, New York 10005-1400

Edward Curtin, Esq.
Counsel for Respondent
220 West 71st Street, Suite 31
New York, New York 10023

Jules Martin Haas, Esq.
Co-Counsel for Respondent
805 Third Avenue, 12th Floor
New York, New York 10022

Surrogate's Court

M-3860

M-4076

File No. 2016-111

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on September 25, 2018.

PRESENT:

Hon. David Friedman, Justice Presiding,
Barbara R. Kapnick
Marcy L. Kahn
Ellen Gesmer
Cynthia S. Kern, Justices.

Probate Proceeding, Will of
Sydney H. Fields,
Deceased.

An appeal having been taken by objectant-appellant Richard J. Fields from an order of the Surrogates Court, New York County, entered on or about March 26, 2018, and said appeal having been perfected,

And appellant Richard J. Fields having moved to reverse the probate decree, and to stay petitioner from liquidating the estate assets (M-4076),

And petitioner-respondent having cross-moved to dismiss the aforesaid appeal or, in the alternative, to strike certain portions of the appellants appendix and brief, to adjourn the appeal to the November 2018 Term, and for other relief (M-3860),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the cross motion by petitioner is granted and the appeal is dismissed (M-3860). The motion by appellant to reverse the probate decree and stay petitioner from liquidating the estate assets is denied (M-4076).

ENTERED: September 25, 2018

/s/ ILLEGIBLE
CLERK

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No. 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

Albert V. Messina Jr., being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On September 25, 2018, deponent served a **Notice of Entry** upon:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208
FedEx Tracking: No.7733 2012 5376

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005
FedEx Tracking No.7733 2008 2612

by depositing a true copy thereof with Federal
Express Overnight Delivery.

/s/ ALBERT V. MESSINA JR.
Albert V. Messina Jr.

Sworn to before me this
25th day of September, 2018

/s/ JAKYUNG CHOI
Notary Public

JAKYUNG CHOI
Notary Public, State of New York
No. 02CH6218756
Qualified in Nassau County
Commission Expires March 8, 2022

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EXHIBIT 18

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Index No. 2016-111

RICHARD FIELDS (PLAINTIFF)

AGAINST

DIANA PALMERI (RESPONDENT)

**Notice Of Motion For A Poor Person To
Request To Reopen The Case Of**

PLEASE TAKE NOTICE that upon the annexed affidavit of Richard Fields sworn to the 20th day of October 2018, the Undersigned will move this Court at a term there of to be held at the Appellate Division Courthouse locate at 25th street and Madison Avenue, New York, N.Y., 10010, on the 13th day of November, 2018 at 10:00 am, for an order to vacate the judgment dismissing the case of index #2016-111

Dated: 25th Oct/2018

/s/ RICHARD FIELDS
Richard Fields
2830 Pitkin Avenue
Brooklyn, NY 11208

To: Jules M. Haas (Respondent's attorney)
805 Third Ave 12 floor
NEW YORK, NY 10022

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

Case #101305-18

RICHARD FIELDS, Plaintiff

—Against—

DIANA PALMERI, Defendant

**Cross motion
16th Oct, 2018 Motion**

I, Richard Fields, request that this court to reverse the probate decree issued by the Surrogate's Court and stay Diana Palmeri from liquidating the assets of the estate of Sydney Fields. Diana Palmeri has no blood relationship with Sydney. Her aunt was Sydney's third wife who predeceased him and they were New Yorkers before they died. Diana had an unduly Will execution from the lawyer Edward Curtin who practices in New York City. His affirmations made the Palmeris' inheritance increase from \$50,000 to 9.9 million dollars and made the charity's share decrease from 3.5 million dollars to \$1,500. For that reason the NY State Attorney General believed the Will was involved with a felony. They probated the Will in the Surrogate's Court of the County of New York. Now they claim that the New York State Supreme Court has no jurisdiction over Diana Palmeri because she

lives in New Jersey. In their opinion criminals from outside of the state can commit whatever crimes they want to commit and the courts in New York have no right to prosecute them. They are not honest people and tell lies by making affirmations. Below are the games they play to dismiss my case and obtain the probate decree in the court below:

1. Two months after the Will was signed on the 6th of Oct, 2014, a doctor confirmed that both Sydney's eyes were blind but not just legally blind. On the 1st of Oct, Sydney claimed that he could not read typed words on paper and with a magnifying glass he could only read large print. However, Diana Plameri's three lawyers and one of their wives insisted that Sydney read the Will with a magnifying glass and for that reason the executor did not read the Will out loud in front of the witnesses. Their perjury made the judge consider that the Will execution was duly and ignored my father's a statement that was recorded by Vanguard's telephone recording system.
2. Diana does not have valid documents to explain why Sydney gave those nieces all his money and assets but in the previous Wills he only allowed their aunt, his wife, to control 50% of his estate (in case he predeceases her). The documents Diana presented were either outdated, invalid, incomplete and/or were involved with forgery. Her witnesses did not know the content of the Will and they could not

prove that the Will they probated is the same Will that Sydney signed. She could have changed the whole Will by forging an initial on the distribution page. The note they used to support the 2014 Will did not have a word related to the Will. It has no date and no signature but only has names and numbers. A number “40” next to Diana Palmeri’s name could mean 40 thousand dollars, 40 pennies, or 40 apples but not 40%. That is why she needed Curtin to testify that the note was given by Sydney; the numbers should tie up with the % and indicate the distribution of all Sydney’s assets. Curtin also had testified that the final % in the Will was switched from 5% from Diana to Victor, who was also basing his claims on his discussions with Sydney on the telephone. Again they did not record any related conversation.

3. Besides the note, all important issues related to the Will were solely based on Curtin’s testimony, such as: Sydney considered the Palmeris to be like his family members; Sydney indicated to use his words in 2006 to support the 2014 Will and made sure his children and grandchildren got nothing; Sydney still blamed me even though I did not bother him for 20 years; Sydney could read the Will by using a magnifying glass. Again a 9.9 million dollars estate was based on someone’s **affirmations without documentation**.

4. Diana's and Curtin's credibility are questionable. In his earliest affirmation Curtin claimed that Sydney was in perfect situation to make a Will before signing the Will. To hide Sydney's vision problem he chose not to mention it. They did notice my mental problems and even asked the court to stop me. However, they knew the only way to get the estate is by attacking me for harassing my father and they knew the law rarely punished mental patients. To meet their goals they purposely did not mention my situation and made the court simply accept their accusations. Diana said she deserved my father's money and assets because the Fields family did not contact each other for twenty years. As a matter of fact there were three mentally disabled members in the Fields family and that messed up their relationship all those years. Diana took advantage from such a sad situation. I am living on SSI and still receiving medical treatment today. It is not fair to let the government support me and allow them to take my father's money and assets by committing perjury. The court should stay her from liquidating Sydney's estate before a decision is made.

Thank You.

291a

Yours Truly,

/s/ RICHARD FIELDS
Richard Fields
2830 Pitkin Avenue
Brooklyn, NY 11208

CC: Jules M. Haas
805 Third Ave 12 Floor
New York N.Y. 10022

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To Whom It May Concern:

Please review the cross-motion above and order a stay that does not allow Diana Palmeri to liquidate the assets of the estate of Sydney H. Fields.

Thank You.

Yours Truly,

Richard Fields
/s/ RICHARD FIELDS

Subscribed and sworn to before me this
20th day of October 2018
/s/ VIVIAN CHING YING CHEUNG
Ching Ying Vivian Cheung, Notary Public
Queens County, New York

VIVIAN CHING YING CHEUNG
Notary Public, State of New York
Reg. No. 01CH6131099
Qualified in Queens County
Commission Expires July 25, 2021

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EXHIBIT 19

Surrogate's Court
M-5489
File No. 2016-111

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on December 27, 2018.

Present – Hon. David Friedman, Justice Presiding,
Barbara R. Kapnick
Marcy L. Kahn
Ellen Gesmer
Cynthia S. Kern, Justices.

Probate Proceeding, Will of
Sydney H. Fields,
Deceased.

Richard Fields,
Objectant-Appellant,
—against—
Diana Palmeri,
Respondent-Respondent.

An appeal having been taken by objectant-appellant Richard J. Fields from an order of the Surrogate's Court, New York County, entered on or about March 26, 2018,

And an order of this Court having been entered on September 25, 2018 (M-3860/M-4076), granting petitioner's cross motion to dismiss the appeal (M-3860) and denying objectant-appellant's motion to reverse the decree and to stay the petitioner from liquidating the estate assets (M-4076),

And objectant-appellant having moved to restore the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED:

/s/ [ILLEGIBLE]
CLERK

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EXHIBIT 20

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No.: 2016-111

Probate Proceeding,
Will of
SYDNEY H. FIELDS,
Deceased.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true and correct copy of an Order of the Appellate Division of the Supreme Court, First Judicial Department entered in the office of the clerk of the within named Court on December 27, 2018.

Dated: Huntington, New York
January 2, 2019

/s/ ALBERT V. MESSINA JR.
Novick & Associates, P.C.
By: Albert V. Messina Jr., Esq.
Co-Counsel for Respondent Diana Palmeri
202 East Main Street, Suite 208
Huntington, New York 11743
(631) 547-0300

298a

TO:

Richard Fields
Objectant/Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

New York State Attorney General
Division of Appeals & Opinions
Respondent
28 Liberty Street
New York, New York 10005-1400

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

File No. 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

Albert V. Messina Jr., being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On January 2, 2019, deponent served a **Notice of Entry of an Order dated December 27, 2018** upon:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208
FedEx Tracking: No. 7740 9126 5145

300a

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005
FedEx Tracking No. 7740 9131 2166

by depositing a true copy thereof with Federal
Express Overnight Delivery.

/s/ ALBERT V. MESSINA JR.
Albert V. Messina Jr.

Sworn to before me this
2nd day of January, 2019

/s/ CYNTHIA J. MEEHAN
Notary Public

CYNTHIA J. MEEHAN
Notary Public, State of New York
No. 4978575
Qualified in Suffolk County
Commission Expires March 4, 2019

301a

EXHIBIT 21

302a

New York Supreme Court
Appellate Division-first Department

Index No. 2016-111

Notice of Appeal

Estate of Sydney H. Fields

Please take notice that Richard Fields hereby appeals to the New York State Court of Appeals the decisions of the Appellate Division First Department of the Supreme Court of the State of New York (M-3860/M-4076) regarding the judgment of the Surrogate's Court (M-5489) of the County of New York and State of New York dated January 21, 2019, New York. Filed January 22, 2019.

Yours Truly, Richard Fields

/s/ RICHARD FIELDS
Signature

(Print Name)
(Address)
2830 Pitkin Avenue
Brooklyn, NY 11208
(Telephone Number)
718-235-0900

To: Jules Martin Haas, Esq.
805 Third Ave 12th Floor
New York, NY 10022

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Subscribed and sworn to before me this
22nd day of January 2019

/s/ VIVIAN CHING YING CHEUNG
Ching Ying Vivian, Notary Public
Queens County, New York

VIVIAN CHING YING CHEUNG
Notary Public, State of New York
Reg. No. 01CH6131099
Qualified in Queens County
Commission Expires July 25, 2021

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EXHIBIT 22

[SEAL]

[LETTERHEAD OF STATE OF NEW YORK
COURT OF APPEALS]

January 28, 2019

Richard Fields
2830 Pitkin Avenue
Brooklyn, NY 11208

Re: Matter of Will of Fields (Fields v Palmeri)
Mo. No. 2019-125

Dear Mr. Fields:

I acknowledge receipt of your preliminary appeal statement and notice of motion in the above matter. Your motion will be submitted to the Court on the return date of February 11, 2019.

Material required by the Court's Rules was not located among your papers. Accordingly, you must provide a statement indicating when and by what method the September 25, 2018 Appellate Division order was served with written notice of entry. If the order was never served, please so state.

The Court of Appeals, on its own motion, will consider its subject matter jurisdiction with respect to whether the orders appealed from finally determine the proceeding within the meaning of the Constitution and whether any basis exists for the appeal taken as of right (CPLR 5601).

You and your adversary are invited to submit comments in writing on the issue of subject matter jurisdiction with proof of service on each other

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party. Such comments must be served and filed by the February 11, 2019 return date of the motion for leave to appeal.

Very truly yours,

/s/ JOHN P. ASIELLO
John P. Asiello

RMM:mg

cc: Jules Martin Haas, Esq.

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EXHIBIT 23

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE
J.S.C.
Index Number : 101305/2018
FIELDS, RICHARD
vs
PALMERI, DIANA
Sequence Number : 002
DISMISS COMPLAINT

PART 12

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/or
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

Defendant's motion to dismiss
the complaint is granted, as
this court has no appellate
authority over Surrogate's Court.
Plaintiff's remedy is an
appeal to the Appellate Division.

MOTION CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASONS:

Dated: 1/30/19

1. CHECK ONE: _____ CASE DISPOSED NON-FINAL DISPOSITION
 2. CHECK AS APPROPRIATE: _____ MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
 3. CHECK IF APPROPRIATE: _____ SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE


BARBARA JAFFE, J.S.C.

SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

Case # 2016-111
08/10/18

PROBATE PROCEEDING, WILL OF
SYDNEY H FIELDS
Deceased.

NOTICE OF MOTION

PLEASE TAKE NOTICE that the affirmation of Richard Fields dated August 10, 2018 is an order to the Petitioner-Respondent Diana Palmeri. She need be stopped decree from using the granting probate of the Will of Sydney H. Fields. Their actions seriously violated the law for the reasons below:

1. They decree granting probate after knowing that the appeal was accepted by the NYS Supreme Court-Appellate Division: First Department.
2. They did not notify the Appellant Richard Fields of the action they took.
3. The Judge and Court did not send their decision to the Appellant. The Appellant noticed it from a record room 10 days after the decision made.

The Appellant has strong evidences to prove that the Respondent Diana Palmeri and her attorney committed perjury. Sydney Fields could not read typed words when the Will was signed and the Will execution they provided was not at all for a blind man.

We therefore request that the Appellate Division First Department stopping the petitioner from liquidating the 9.9 million dollar assets from the husband of their aunt who predeceased him. Sydney never even gave all his assets even to his wife Teresa Fields. Even their aunt did not leave each of those nieces and nephew as what the probated Will did. They presented no evidence to prove that Sydney embraced them like family members and they just have the Attorney-drafter making affirmations. At this moment the way they act like is to steal and run. People who assisting her will be hold the responsible as well. We are ready to see you anytime this week. If get no respond about that, we will wait for you in Friday, 17th, Aug, 9am in the Supreme Court.

Your sincerely Richard J Fields

/s/ RICHARD J FIELDS

CC: Albert V. Messina JR
Jules Martin Haas
Clark of Surrogate's Court
David Lawrence III (NYS Attorney General)

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The foregoing document was acknowledged
before me this 10th day of August, 2018

/s/ LANETTE BARNES
Notary Public

LANETTE BARNES
Notary Public, State of New York
No. 04BA6349837
Qualified in Bronx County
Commission Expires October 31, 2020

At a Surrogate's Court held in and for the County of New York at 31 Chambers Street, New York, New York, on the 20th day of July, 2018

Date: July 20, 2018
File No.: 2016-111

P R E S E N T :

HON. RITA MELLA

Probate Proceeding,
Will of

SYDNEY H. FIELDS,
Deceased.

DECREE OF PROBATE

A Petition for Probate having been filed by Diana Palmeri ("Petitioner") dated December 17, 2015 seeking a Decree admitting the Last Will and Testament of Sydney H. Fields dated October 6, 2014 to probate and the issuance of letters testamentary to Petitioner; and

a Citation having been issued in connection with such Petition, and jurisdiction having been obtained over the necessary parties to said proceeding; and

an application having been filed by Diana Palmeri dated June 6, 2016 seeking the issuance of preliminary letters testamentary to Petitioner; and

Preliminary letters testamentary having been issued to Diana Palmeri on June 28, 2016; and

Petitioner having appeared by her attorneys, Edward R. Curtin, Esq., co-counsel Jules Martin Haas, Esq., and trial counsel Albert V. Messina Jr. Esq., of Novick & Associates, P.C., and

Richard Fields, having initially appeared by his counsel Dehai Zhang, Esq., and later by Richard Alan Chen, Esq., and

Objections to Probate with Jury Demand dated February 24, 2016, having been filed by Richard Fields, alleging that the October 6, 2014 Will was not duly executed, that Sydney H. Fields did not possess the requisite testamentary capacity to execute the Will, that Sydney H. Fields did not know or understand the contents of the Will and that the Will was the product of fraud, duress and undue influence, and

the parties by their respective counsel having engaged in SCPA § 1404 examinations and CPLR Article 31 discovery; and

Petitioner having filed a motion for summary judgment pursuant to CPLR § 3212 dated November 28, 2017 seeking dismissal of the Objections to Probate filed by Richard Fields; and

Petitioner having filed an affirmation in support of motion for summary judgment of Jules Martin Haas, Esq. dated November 28, 2017, including deposition transcripts and other documents annexed thereto as exhibits, the affirmation of Edward R. Curtin, Esq., dated November 27, 2017, the affidavit of Diana Palmeri, sworn to on November 28, 2017, the affidavit of Adrienne Lawler sworn to on

September 14, 2016, that affidavit of Arthur Fishelman sworn to on June 12, 2017, the affidavit of Stuart Michael sworn to on September 14, 2016, the affidavit of Irving Rothbart sworn to on September 14, 2016, the affidavit of William McAllister sworn to on September 30, 2016, the affidavit of Gloria Madero sworn to on July 12, 2017 and a memorandum of law in support of motion of Albert V. Messina Jr. dated November 28, 2017; and

Objectant Richard Fields having submitted an affirmation with legal citations in opposition to motion for summary judgment of Richard Alan Chen, Esq., dated January 22, 2018, with exhibits annexed thereto, and an affidavit from Richard Fields sworn to on January 22, 2018; and

Petitioner having submitted a reply affirmation of Jules Martin Haas, Esq., dated February 23, 2018, with exhibits annexed thereto; and

the allegations of the parties having been heard, and oral argument of the motion for summary judgment having been heard before the Court on March 20, 2018, and upon all the pleadings and proceedings heretofore filed and had herein, and after due deliberation the Court having granted granting Petitioner's motion for summary judgment and dismissing the objections to probate on March 20, 2018, and the Court having rendered its written decision dated March 26, 2018;

NOW, upon motion of Novick & Associates, P.C., as attorneys for Petitioner, it is hereby

ORDERED, ADJUDGED and DECREED, that the written instrument dated October 6, 2014 offered for

probate as the Last Will and Testament of Sydney H. Fields herein be and the same is hereby admitted to probate; and it is further

ORDERED, ADJUDGED and DECREED that letters testamentary shall issue to Diana Palmeri upon qualification and without the posting of a bond; and it is further

ORDERED, ADJUDGED and DECREED that preliminary letters testamentary dated July 19, 2016 are hereby revoked, and it is further

ORDERED, ADJUDGED and DECREED that a judgment in favor of Petitioner for costs and disbursements has been denied in the Court's exercise of discretion.

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Richard Fields
2830 Pitkin Ave #210
Brooklyn, NY 11201

To: Novick & Associates,
Albert V. Messina
202 East Main Street
Huntington, New York 11734

Dear Mr. Messina:

We did not attach the decree of probate with the motion we sent on sat, Aug, 11 because we know you have the copy. For preventing you use that as an excuse to ignore our motion, we send a copy to you today. The Supreme Court need all of us meet there when they process the motion. Please set up a date as soon as possible and notify us within this week.

We received no document when you decree granting probate for the case # 2016-111. It was illegal and can be considered committing crime for that reason. You once returned our mail and rejected our appeal because we work on Pro Se. We hope you not play the same game this time. Meet the appointment in the court room you will get paid from your client. Ignoring us you will get the responsibility for what you did. We believe you understand the consequence. If that is a good will and they have strong material to back it up as a attorney Curtin can take care of it easily. They pay big money for two lawyers and use you as guns. It is not worth for small some money to give up you bottom line. Take care.

cc. copy to Jules M Haas

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[SEAL]

[LETTERHEAD STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL]

July 26, 2018

Richard Fields
2830 Pitkin Avenue, # 210
Brooklyn, NY 11201

Re: *Estate of Sydney Fields*, No. 2016-111

Dear Mr. Fields:

The Office of the Attorney General's appeals division represents the state respondent(s) in this action. Please direct future decisions, orders, or related correspondence, as well as service of all papers, to:

Division of Appeals & Opinions
Office of the Attorney General
28 Liberty Street
New York, NY 10005-1400
212-416-8020
nyoag.nycpdf@ag.ny.gov

Thank you.

Respectfully yours,

/s/ DAVID LAWRENCE III
David Lawrence III
Assistant Solicitor General

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EXHIBIT 24

[LETTERHEAD NOVICK & ASSOCIATES, P.C.]

February 7, 2019

Via Federal Express

State of New York Court of Appeals
20 Eagle Street
Albany, New York 12207-1095
Attention: Clerk's Office, Motion Support

Re: Matter of Will Fields (Fields v. Palmeri)
Surrogate's Court's Court File No.: 2016-111
App. Div. Docket Nos. M-3860/M-4076
Mo. No. 2019-125
Return Date: February 11, 2019

To the Court:

Enclosed herein for filing is the following:

- Affirmation of Jules Martin Haas, Esq., in Opposition to Motion to Leave to Appeal to the Court of Appeals (One (1) Original plus Six (6) copies); and
- Original Affidavit of Service.

Thank you for your time and attention to this matter

Very truly yours

/s/ KELLY GARONE
Kelly Garone
Paralegal

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cc: Richard Fields (*via FedEx overnight delivery*)
2830 Pitkin Avenue
Brooklyn, New York 11208

Attorney General of the State of New York
(*via FedEx overnight delivery*)
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005

NEW YORK STATE COURT OF APPEALS

Sur. Ct. File No: 2016-111

App.Div. Motion Nos.
Nos. M-3860/M-4076

Court of Appeals
Mo.No.2019-125

PROBATE PROCEEDING, WILL OF

SYDNEY H. FIELDS,
Deceased.

**AFFIRMATION IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL
TO THE COURT OF APPEALS**

JULES MARTIN HAAS, an attorney duly admitted to practice law in the State of New York, hereby affirms the following under penalty of perjury:

1. I am co-counsel for Petitioner-Respondent Diana Palmeri (“Diana” or “Respondent”) together with Novick & Associates, P.C. and Edward R. Curtin, Esq. in the above referenced appeal. This affirmation is submitted in opposition to Objectant-Appellant Richard J. Fields’ (“Richard”) Motion For Leave To Appeal to this Court the Order of the Appellate Division, First Department dated September 25, 2018 (the “September 25, 2018 Order”) (**Exhibit A**) in which the Appellate Division unanimously: (i) denied Richard’s motion to reverse the

Probate Decree dated July 20, 2018 and Stay Diana from liquidating the estate assets (M-4076); and (ii) granted Diana's cross-motion to dismiss Richard's appeal (M-3860).

2. This affirmation is based upon my personal knowledge of the proceedings in this matter and the information and papers previously submitted to the Courts in connection therewith.

3. This Court should deny Richard leave to appeal since the time to perfect such an appeal has passed.¹ Notice of Entry of the September 25, 2018 Order, along with a copy of said Order, was served on Richard by Federal Express Overnight Delivery on September 25, 2018 and forwarded to the Appellate Division for filing (**Exhibit B**). Pursuant to CPLR § 5513, 5601 and 5602, Richard was required to perfect his appeal to this Court on or before October 26, 2018. Richard's application to this Court for leave to appeal is dated January 22, 2019 which is almost three months past the allowable period to file his request.

¹ Richard may not pursue an appeal to this Court pursuant to CPLR § 5601 as no statutory predicate under that statute exists in this case, i.e., there is no dissent from two justices of the Appellate Division, there is no construction of the New York or United States Constitution or an order from the Appellate division granting a new trial or hearing or a non-final determination from the Appellate Division. Therefore, Richard is constrained to seek leave to appeal by permission pursuant to CPLR § 5602. As will be discussed herein, none of the requirements of 22 NYCRR 500.22 have been satisfied.

4. Additionally, Richard's application is defective for failure to adhere to the Court of Appeals Rules of Practice set forth in 22 NYCRR § 500. These rules require that a movant seeking leave to appeal must include pursuant to 22 NYCRR § 500.22(b):

- (2) A statement of the procedural history of the case, including a showing of the timeliness of the motion.
 - (i) If no prior motion for leave to appeal to the Court of Appeals was filed at the Appellate Division, movant's papers to this Court shall demonstrate timeliness by stating the date movant was served (see CPLR 2103[b]) with the order or judgment sought to be appealed from, with notice of entry.

Also, 22 NYCRR §500.22(b)(4) requires:

A concise statement of the questions presented for review and why the questions presented merit review by this Court, such as that the issues are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division. Movant shall identify the particular portions of the record where the questions sought to be reviewed are raised and preserved.

5. Richard has not satisfied the threshold requirements to grant leave to appeal to this Court.

There is no novel issue alleged, nor is there an allegation of a conflict among the Departments or with prior decisions of this Court. The controversy involving Diana and Richard relates entirely and solely to a Will Contest that was extensively litigated in the Surrogate's Court, New York County.

6. Richard's application to this Court is a stark reflection of the substantive and procedural deficiencies which resulted in the unanimous dismissal of his appeal by the Appellate Division. The appeal below emanated from Richard's Objections to the probate of the Will of his father Sydney Fields ("Sydney" or the "Decedent").

7. Diana was the named executor and proponent of the Last Will and Testament of Sydney Fields dated October 6, 2014 (**Exhibit C**) (the "Will"). Sydney died on November 10, 2015. Richard is a surviving son of the Decedent. Sydney made no provision for Richard in the Will and, in fact, specifically disinherited Richard with the following provision in Article FIFTH(b) of the Will:

Because my son Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to court for harassment of me and my wife, Teresa I deliberately make no provision for him in this Will and it is my intention that he receive no part of my estate.

8. The Will was offered for probate by Diana in the Surrogate's Court, New York City. Richard filed Objections to the probate of the Will. Surro-

gate Mella in a Decision/Order dated March 26, 2018, dismissed Richard's Objections in full and granted probate to the Will (**Exhibit D**). The Decree of Probate was entered on July 20, 2018 (Notice of entry of the probate decree dated July 31, 2018 is annexed hereto as **Exhibit E**). Notably, no notice of appeal from the final Decree has been served and the time to appeal has expired.

9. Richard was represented by an attorney, Richard Alan Chen, Esq., throughout the Surrogate's Court proceedings which encompassed thousands of pages of document discovery and extensive deposition testimony. In addition, the Attorney General for the State of New York filed a notice of appearance. The Attorney General did not participate in the probate proceeding or in the subsequent appeal.²

10. The overriding facts of the Surrogate's Court case showed that Richard had virtually no contact with the Decedent during the decades leading up to the execution of the Will. The Decedent specifically disinherited Richard pursuant to language contained in Article FIFTH(b), set forth above.

11. This Will provision referred to Richard's vicious campaign of terror that he engaged in

² One of the documents injected into the record, and again injected in Richard's papers before this Court, is entitled "Objections to Probate" from the Attorney General. These objections were rejected by the Surrogate's Court, they were not litigated or included in the underlying summary judgment motion and the Attorney General did not participate in the proceedings below.

against the Decedent and his wife which was intended to frighten and intimidate the Decedent in an attempt to cause the Decedent to designate Richard as a beneficiary of the estate. Richard sent the Decedent photographs with Richard holding guns and explosives and other weapons along with threatening letters. A copy of some of these items is annexed to Richard's submission to this Court. The Decedent refused to knuckle under to such acts and he had Richard arrested, resulting in a restraining order.

12. Richard then filed a *pro se* appeal with the Appellate Division, First Department, which was not only substantively baseless it was somewhat incomprehensible. It failed to include substantive portions of the Record below while inserting documents and alleged factual matters and assertions not presented to the Surrogate.

13. Diana filed a motion with the Appellate Division to have Richard's appeal dismissed.

14. Richard also made an application to the Appellate Division to obtain a Stay to prevent Diana, as Executor of the Decedent's estate, from distributing estate assets pending the determination of the appeal. In furtherance of such application, Richard sought an interim Stay from the Appellate Division. After review and oral argument, the Appellate Division denied Richard's request for an interim Stay. (A copy of the August 17, 2018 Order denying Richard's application for an interim stay is annexed hereto as **Exhibit F**).

15. Diana's cross-motion to dismiss Richard's appeal was granted by the Appellate Division and was based upon numerous procedural defects as follows:

- (a) Richard did not include necessary papers in the appendix that were presented to the court below on the motion for summary judgment, omitting over 440 pages from the record, including, for example, Respondents' moving papers and his Objections to Probate, a necessary pleading;
- (b) Richard injected new documents (over 230 pages) into the record that were never presented to the court below on the motion for summary judgment;
- (c) Richard did not appeal from the final decree of the court below, which was entered after he filed his appeal;
- (d) Richard did not appeal from an order, judgment or decree after notice of entry was served;
- (e) Richard did not settle the transcript of proceedings and ignored other rules of procedure;
- (f) Richard did not subpoena the papers constituting the record on appeal from the Surrogate's Court clerk; and
- (g) Richard did not serve all necessary parties with a notice of appeal or with the Appellant's brief and appendix. There is no evi-

dence that the Attorney General office was served with the notice of appeal or with the appendix and brief. (A copy of the affirmation submitted in support of the motion to dismiss, without exhibits, is annexed here-to as **Exhibit G**).

16. Based upon the above, Richard's appeal and request for a Stay was dismissed. (*See Exhibit F*).

17 Richard's application to this Court is not only procedurally defective, it does not even attempt to identify any grounds upon which this Court might grant discretionary relief. 22 NYCRR 500.22(b). The rules of this Court require that a party present to this Court a question of law that is sufficiently important for review. Richard does not provide a scintilla of justification for a permissive approval. Instead, he sets forth a rambling litany of unfounded complaints regarding the Will ranging from perjury to forgery and stealing.³

18. While Richard's personal views regarding the outcome his case may reflect his own feelings, there is no presentation of any novel or important issue arising from any of the decisions and Orders of the Courts below. In light of the provisions in the Will which directly disinherits Richard based upon his terrorizing his father and step mother, along with the attorney draftsperson's supervision of the execution of the Will, the decision and Decree of the

³ Richard also failed to serve papers and notice this motion pursuant to 22 NYCRR 500.22(a).

Surrogate and the Appellate Division Orders are clearly garden variety on their face. Richard has provided no basis to disturb the September 25, 2018 decision of the Appellate Division and no basis for granting leave to appeal to this Court.

19. Richard's application to this Court should be denied. It is procedurally defective. There are no novel or public policy matters to be reviewed or decided. Richard's course of causing unfounded and protracted litigation during Sydney's lifetime and now to his beneficiaries since 2015 must come to an end. It is respectfully submitted that this Court deny Richard's application so that Sidney's affairs can rest peacefully hereafter.

Dated: New York, New York
February 6, 2019

/s/ JULES MARTIN HAAS
Jules Martin Haas

NEW YORK STATE COURT OF APPEALS

Surrogate's Court File No.: 2016-111

Appellate Division
First Department Appeal
Nos. M-3860/M-4076

MO. NO. 2019-125

PROBATE PROCEEDING, WILL OF

SYDNEY H. FIELDS,
Deceased.

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

**AFFIRMATION IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL
TO THE COURT OF APPEALS**

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On February 7, 2019, deponent served two (2) copies each of the **Affirmation of Jules Martin**

**Haas, Esq., in Opposition to Motion to Leave
to Appeal to the Court of Appeals upon:**

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208
FedEx Tracking: No. 774413776245

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005
FedEx Tracking No. 774413869290

by depositing a true copy thereof with Federal
Express Overnight Delivery.

/s/ KELLY GARONE
Kelly Garone

Sworn to before me this
7th day of February, 2019

/s/ ALBERT J. MESSINA JR.
Notary Public

ALBERT J. MESSINA JR.
Notary Public, State of New York
Registration No. 02ME6178564
Qualified in Suffolk County
Commission Expires December 3, 2019

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EXHIBIT 25

State of New York
Court of Appeals

***Decided and Entered on the
second day of April, 2019***

Present,

Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2019-125

In the Matter of Will of Sydney H. Fields,
Deceased.

Richard Fields,

Appellant,

v.

Diana Palmeri,

Respondent.

Appellant having appealed and moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal, insofar as taken from the September 2018 Appellate Division order, is dismissed, without costs, as untimely (*see CPLR 5513[a]*); and it is further

ORDERED, that the appeal, insofar as taken from the December 2018 Appellate Division order, is dis-

missed, without costs, upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; and it is further

ORDERED, that the motion, insofar as it seeks leave to appeal from the September 2018 Appellate Division order, is dismissed as untimely (*see CPLR 5513[b]*); and it is further

ORDERED, that the motion, insofar as it seeks leave to appeal from the December 2018 Appellate Division order, is dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution.

/s/ JOHN P. ASIELLO
John P. Asiello
Clerk of the Court

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EXHIBIT 26

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

File No.: 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

NOTICE OF ENTRY

PLEASE TAKE NOTICE, that the Decision by Hon. Janet DiFiore, dated April 2, 2019, of which the within is a true copy, has been entered in the office of the Clerk of the Court, State of New York, Court of Appeals, on the 2nd day of April, 2019.

Dated: April 4, 2019
Huntington, New York

Yours,

/s/ ALBERT V. MESSINA JR.
Novick & Associates
By: Albert V. Messina Jr., Esq.
Attorneys for Diana Palmeri
202 East Main Street
Huntington, New York 11743
(631) 547-0300

337a

To:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

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

File No.: 2016-111

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

STATE OF NEW YORK)
 ss:
COUNTY OF SUFFOLK)

NOTICE OF ENTRY

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On April 4, 2019, deponent served a **Notice of Entry of the Decision by Hon. Janet DiFiore, dated April 2, 2019** upon:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

by depositing a true copy thereof in a postpaid, wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the County of Suffolk and State of New York.

/s/ KELLY GARONE
Kelly Garone

Sworn to before me this
4th day of April, 2019

/s/ ALBERT V. MESSINA JR.
Notary Public

ALBERT V. MESSINA JR.
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02ME6178564
Qualified in Suffolk County
Commission Expires December 3, 2019

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EXHIBIT 27

COURT OF APPEALS NEW YORK STATE

In the matter of the Probate Proceeding, Will of
Sydney H. Fields (deceased)

Motion for reargue the case (no. 2016-111)
because it was rejected by the New York State
Supreme Appellate Division First Department (M-
3860/ M076). As well as in Court of Appeals New
York State

Name of Appellant:

Richard J. Fields (Pro Se)
2830 Pitkin Avenue
Brooklyn, NY 11208

Petitioners-Respondents

Diana, Olga, Victor, Cynthia Palmeri
& Ana Garzon Yepez represented by
Jules M Haas, 805 Third Ave 12 Floor
New York 10022

I, Richard Fields present you a motion here
for rearguing the case related to Sydney Fields'
estate (number 2016-111). That will was filed
by Diana Palmari, a niece of Sydney's third
wife (she predeceased him). Palmari's five fam-
ily members share all Sydney's \$9 million
assets and left the Fields' family nothing.
Without any explanation they turned a 4 mil-
lion dollar charity in the previous will to
1,500\$. For that reason the Attorney General
of NY State considered it was involved with a

felony (Exhibit B). Being misled, Judge Mella only spent less than an hour to hear and dismiss such a case. After that all the Supreme Courts of New York refused to review our appeals at all. This should not be the way you treat a mentally ill and poor person who lives on SSI. Below are the arguments related to the case:

Five days before the Will was signed Sydney Fields made a statement (recorded by Vanguard) saying that he could not read typed words on paper even with a magnifying glass. A doctor's note proved later that he was blind in both of his eyes. (Exhibit C1 & C2 page 2 line 12-19) Diana Palmeri, her three lawyers, insisted that Sydney could read documents with a magnifying glass. (Exhibit D) Judge Mella totally ignored Sydney's statement recorded by the phone system and said: *"Here, the fact that the attesting witnesses could not confirm whether decedent had his magnifying glass that day (the attorney-drafter and one of the witness testified that he has)." (Exhibit A line 14 last par)* She determined if Sydney could read or not simply basing on if there was a magnifying glass.

The witness that Mella mentioned actually is the attorney-drafter's wife, Jill Curtain. She brought up the subject of the magnifying glass but avoided to confirm that she saw Sydney read the will with it. Below are her answers in her deposition: "I have a memory of magnifying glass. It's a black rectangle with a handle, but I am not sure if that was Mr. Field. I believe he might be you know." Before the

deposition was end, my lawyer asked again: "Did you see Mr. Fields read with or without the magnifying glass?" Jill Curtin answered: "I have this little memory of him with the magnifying glass, but. . ." Regarding that, Edward Curtin used looked instead read most of the time. He said "He was there with a magnifying glass. We looked at every page. Whether he – I wasn't inside his mind to know whether he actually read every single word" (Exhibit E page 1-3)

Mella also said: "*That fact that decedent had some visual impairment, even to the point of 'legal' blindness as objectant argues, does not change this conclusion because blind persons may make wills.*" (Exhibit A, page 5, line 4 par 2). Sydney claimed that he could not read and Edward Curtin admitted that he never read the will out loud in front of the witnesses. (Exhibit E)

) Yet the Will execution was considered duly by judge Mella. (Matter of Hubert 26 Misc. 461 57 N.Y. Supp. 648 Affd. 48 App Div. 91, 62 N.Y. Supp. 932 98 quoted in Annotated Consolidated Laws of New York 1917. Also see Matter of MacCready 82 Misc. 2d 531, 369 N.Y.S. 2d 325 (1975). In that case the Will was valid only because it was read out loud in front of both of the witnesses and the testator who then signed.

Being convinced by the petitioner's lawyers Mella did not pay attention to a forged initial that made on the paper with the % of distributions. When no witness could confirm the content of the will, putting down an initial and substituting a page can easily change the whole will. Mella "sim-

ply ignored our handwriting expert's opinion about the forged initial (Exhibit F) and said: "*Even if the court were to consider this letter an affidavit of an expert, there is no requirement that a testator initial the pages of a will for it to be valid.*" (Exhibit A page 6 line 4 par 2) That means she will not consider the consequences even though she knew that there is a forged initial involving crime.

With five affidavits provided by friends Diana Palmeri still could not explain why Sydney Fields loved them so and gave them all his 9 million dollars in assets, double of what he gave their aunt, his third wife. (Exhibit K) They have no any tape record to prove Sydney's intention, to record Sydney indication and conversation. The only so call "dispositive terms of the proposed instrument" had no date and mentioned nothing about the will. According to Curtin said that the instrument was provided by decedent orally (Exhibit G page 2-3) without tape record. Mella mentioned and accepted that paper without reviewing and considering our argument (Exhibit A, page 5, line 6) That instrument was written with strong strokes, in a straight line, and in an identical way. It did not look like it was written by a 96 year old blind man but looked like paste in computer Sydney's signature on the will showing he could hardly control his pen. (Exhibit G)

Mella simply believed Edward Curtin's attesting and said similar things like him (Exhibit H1, page 2 line 14): "*that is a natural will benefiting members of the family of decedent's spouse, with whom*

decedent was close and whom he considered his family." (Exhibit A page 3, line 9, par 2)

However, according to Diana's deposition Sydney's connections with those beneficiaries were not close at all because they live far from NY State. Even Diana herself never met one of the beneficiaries, her cousin Ana Garzon Yepez. She did not know the address of his brother Victor Palmeri Jr. who lives in Hawaii. She only was sure Sydney met Victor when he was in high school. Her sister Cynthia came to NJ every two years because her child has autism. Sydney met those who live in NJ on holidays, a few times a year and met the others once a few years or less. Within 40 years Sydney never have took a trip together with any of them and never spent overnight in their home in NJ. (Exhibit I) However the will shows: Sydney gave all his assets, 9 million dollars to those people who had no blood relationship with him and even did not have any appreciation.

As a matter of fact, Vanguard's tape showing Sydney did not treat Diana like a family member. Five days before signing the Will Sydney tried to arrange a huge fund transfer. Could not read documents he still refused to get help from Diana Sydney was very afraid to let Edward Curtin know his asset as well. (Exhibit C3) After the will was signed he got exemption from the bank and limited Diana's power when he had her sign checks. (Exhibit C4, page 2, line 6-line 10) The USB that Vanguard provided reflected Sydney's intentions and recorded actions he took. It shows things were totally different from what Diana and her lawyers

introduced. Palmeri has no back up document for that will. When they made up affirmations they desperately dismissed the USB with Sydney's voice. It is luck that they had Judge Mella recognized those affirmation that made by an attesting attorney. She totally ignored our arguments backed up by Vanguard's USB as well.

Curtin's credibility is questionable. In the NYS Attorney General's objection, besides attacking the Palmeri family it also attacked "other persons acting independently or in concert or in private with Diana" (Exhibit B page 2 last two lines). As a matter of fact, Sydney felt worried or even looked panicky when his broker from Vanguard, Jeffrey Kern, suggested to him to get help from Curtin (Exhibit C3).

Curtin did not mention Sydney's vision problem in the affirmation he wrote in April 2014. (Exhibit H1 page 2 line 7) They once requested the court to stop me when I sent mail to them like crazy (Exhibit H2 page 2 last par). They knew about my mental problem but never mentioned it when they attacked me for harassing my father. They dismissed both the affirmation and the letter two years later because we used those to question his credibility.

In 1994-1996 my father filed for an order of protection and had me arrested but he still left me some money in his 1997 will because he knew I was mentally ill. (Exhibits K1&K2) He left nothing to my half-brother Kenneth who forced him to end the relationship with me. Blood is thicker than water and the relations between fathers and sons can be

improved easily. Curtin copied the words that my father said in 2006 (Exhibit H1 Page 2 last par) to support the will in 2014. Again he quoted those words without documentation but used an affirmation only. (Exhibit H3)

They tried to tell lies to hide things without any consistency. Regarding the first time Diana met Curtin, Diana changed it from the will signed to the will reading day in her deposition. However, Curtin said there was no will reading at all. (Exhibit D pages 1-3)

Curtin said it was an aide who accompanied Sydney to the law office when the will was signed. However, both the witnesses and Curtin could not mention the aide's age, gender, or skin color. They were unable to provide the way to contact the aide as well. From Vanguard's phone records we can tell that one of the beneficiaries, Diana's cousin, Ana Garzon Yepez, answered the phones all the time and marked down the appointments for Sydney. She accompanied Sydney to the law office a few days before but not the day when the will was signed. Diana said she herself maybe was in New York City that day but did not know Sydney was signing a Will as well. If Sydney treated them like family members why didn't he let them know his intentions and have them go to sign the will with him? How can he not even care about any appreciation from the beneficiaries when he gave out all his 9 million dollars?

Judge Mella ignored our argument and covered things in the way Palmeris need. She said "*The beneficiaries had no direct involvement in the*

preparation or execution of the Will.” (Exhibit A, page 3 line 17) “Description of the aide who accompanied decedent to the will execution, but who appears to have stayed in a spate waiting area, were insufficient to rebut the presumption under the circumstances presented.” (Exhibit A Page 5 par 1)

In 1991 my father took me to a psychiatric hospital. My mother told me that he was supposed to send me to law school instead. That comment was powerful enough to destroy my relationship with my father. My mother was also mentally ill who always cried in front of me when I was three years old. She divorced my father and had only 80\$/week in child support and no alimony when my father was already a multimillionaire. My father's assets mixed with my mother's tears. She walked for one hundred blocks in the winter when she put food on a table to feed me like feeding a cat. Every half hour she cursed and attacked my father and drove me crazy. When I lost my mind in 1994 (could tell from pictures in exhibit K1) I sent out harassing pictures to my father and sent letters to threaten my half-brother Kenneth.

Kenneth's mother lived in a psychiatric hospital all her life, since Kenneth was two years old. His relationship with my father was not close because he lived in school when he was very young. After being threatened Kenneth forced my father to end the relationship with me. Knowing that I was sick my father refused to do it. For that reason he was not allowed to visit Kenneth's children. After they had me arrested I did not bother them anymore. Kenneth thought ending contact with my father

can keep his family safe and did not know my father was rich until they read that will to him. As a Jew my father cared about his family very much. We can see it from his filing a court case for visitation with his grandchildren. (Exhibit J last page) He refused to abandon me, a sick son. Just things were out of his control and the Palmeri family took advantage of the situation.

To support that will, Mella mentioned that I never saw my father for the last 19 years of my life. (Exhibit A page 1 last par) I did not see him because I did not want to bother him when I was sick. In my opinion, our family did not contact each other for many years and didn't mean that the Palmeri family deserved all my father's 9 million dollars. The will execution process was unduly! Curtin did not read it out loud in front of the witnesses when Vanguard's tape record proved Sydney could not read documents. Curtin and Diana Palmeri committed perjury and said he could read with a magnifying glass. Mella ignores the fact and supports those people who took advantage from a family that has three psychiatric patients. Your guys simply defend Mella and no one in the Supreme Court is willing to review our appeals. By American law, psychiatric patients should be helped and not be punished.

I am living on SSI now and receiving psychiatric treatment under court order since 2009. Pia Fields, my son's mother, is paying the legal fees for this

case. She composed the motions before I read, corrected and presented them since I acted Pro Se. She involved herself so much because a tragedy happened 100 years ago: 1918, in a flu that killed 26 million people all over the world, my grandmother was watching my grandfather's dead body being moved out as she gave birth to my father. A doctor, Groginsky, risked his life to help my family and signed both the death and birth certificates. Picturing the sad scenery and admiring the brave doctor Pia stepped in to help me 30 years ago when I desperately needed her.

She suffered a lot due to the mental illness I have. She met my father every week around two years before and after our son Lewis was born. She noticed that my father was very excited when seeing Lewis. To avoid being sent to a psychiatric hospital I ran away from them. If I did not do that Lewis might have maintained a good relationship with my father. My father told us that he worked very hard to make the family middle class. His father died early and he considered he was the backbone of the family. With that sad background it was impossible that he gave out all his assets to those people when he did not need to care about his wife's feelings anymore. Pia did not expect that she has to protect the family's assets as well. She felt sick that when the assets my father accumulated all his life were stolen in our courtrooms nobody gave a damn. We both feel sorry for Kenneth and that is why we keep appealing.

We will continue to appeal this case until we were thrown out entirely. Pia then will send my

family's story to the presses in Mainland China. The Chinese will like to know how things are run in the courtrooms when the Americans talk about justice. She was the author of a book "Why Life Events are Predestined and How Our Universe Originated. (whydestiny.com). In last few years she has published 1,000 articles on websites.

Pia also told me that if we win the case we should set up a fund to memorialize doctor Groginsky and my father. She will use the fund to promote her ideas about building retirement homes. She said compared with her proposal our case is insignificant and for the \$100,000 legal fee she paid I will allow her to mention her proposal here. She ties up the two things together to bet its destiny. If we lose she will shut her mouth and hope God Blesses America.

Proposal about setting up retirement homes.

The debt of the US government is over 22 billion dollars as of today and its social security fund will dry in 2034. America could not, as Donald Trump expects, be great again when the debt continued to increase like that. Over 50% of our expenses relate to social security, Medicare, Medicaid and welfare for the low income class. Building up retirement homes can help us reduce those mandatory expenses. The proposal is introduced below:

When people sign up the agreement the government will offer them is an apartment in the retirement center and to cover the rent with part of their social security payment. A unit that build up with \$50,000 can rent for 700\$/ monthly. The rent will be deducted from the social security of the tenants

who signed the agreement. In 30 years a \$50,000 investment will save \$240,000 social security for the government. In this way government will no longer be a welfare distributor but a big landlord who invests the social security fund for our people and our country.

People would like to move into the centers because they are lively places with home care, companies and a lot of entertainments. In that kind of facility in New York people have to pay over \$10,000 monthly for just a half room. Retirement center cost is lower and the return value is high for the reason as below:

1. The centers are not in the city. However it has center transports get to the city frequently that makes people feel they live in the city.

2. People do not simply receive service there. They take care of the older members (see what the person needs when hearing a bell ring) when they get old someone will keep an eye on them. Government no longer needs to provide home care jobs to people and provide home care service to the same people some years later.

3. Members are being taken cared by professional health clerks. It will encourage people doing exercise instead of taking medicine. On that way we can prevent medicate and Medicare fund being overcharged by unnecessary health checkups.

4. People have entertainment and companies there. They can sing, dance, cook, play poker, watch TV and attend different classes. People can

work in the center farm to produce organic vegetables, fruit and meat in exchange for free meals. People can cook their own food or eat in the center. People can register with friends or family members who are over 50 years old. They will have privacy anytime because they will have their own apartment.

On the whole, the management effort will make land in the suburb that has the function of land in the city. In that way we get our profit margin.

The philosophy is letting people have time to entertain themselves and communicate with each other. We will make people believe: A successful life means spending the least material and obtaining the most joys. It is not worth it to struggle, to sacrifice the leisure time for a high paying job and then making big consumption. We are not through with the market's adjustment but through government arrange people's lives. We are not for seeking profit and ignore people's benefits such as what happened in our medical field today. It makes our government and people bankrupt when somebody in the medical field is getting rich today. The retirement centers persuade people to get their basic material needs and compensates with spiritual entertainments. We have reasons to convince rich business companies to limit their profits as well.

It sounds like we are promoting socialism. It is because the population in this world is too crowded compared with the material it has. When greedy people are accumulating their fortune it is not easy to maintain 7.5 trillion people's basic needs. Our governments are unable to continue distributing

welfare due to the increasing debt. Developing countries are being threatened by refugees. Conflicts between the poor and the rich cannot be eliminated by giving out welfare to the poor anymore. We cannot rely on the market to automatically adjust to bring in jobs and material for the 7.5 trillion people in this world. Abandon capitalist philosophy: using spiritual entertainment to substitute material seeking is the best way we should do. Let people have basic material needs and enrich life is the functions that those retirement centers will play. It can build up centers for people who are young and need financial help, let them live and work there. Hope this model can help the refugees survive in their own countries.

We can end the capitalist system by changing people's life goal from chasing material to chase spiritual entertainment. (Can be either reading The Bible or playing poker). People in the retirement centers do not have a lot of material but have healthy organic food and enriched life. Things they get are basically the same and at some point that is socialism. The idea should work because we are approaching it in a totally different way:

1. This system is not run by hatefully poor people or corrupt leaders in a dictatorial way, like most communist countries are.
2. It does not need capitalist government to distribute welfare any more. Because it makes people help each other and encourage the government to make profit. The government exists as a big landlord when it has huge social secu-

rity fund invests in real estate field in long run.

It will change the society but not by using weapon, causing bleeding or through street riots. We are approaching it by changing the new generations' valuate standard. When our young generations start to use the least material to obtain the most enjoyment but not seeking for and high paying job, high consumptions and high profit the whole world can be changed.

Retirement centers help people retire in their fifties. That means it creates 20 to 30% jobs for the society. People from the same country, graduate in the same college, or people have the same religion can set up their owe center. They will get funds from the government and pay rent with their social security later. Hopefully we can have funds from businesses such as Amazon, Facebook, Microsoft and Warren Buffett. In this way we can fulfill the socialist system through a practical and peaceful way.

Richard Fields
/s/ RICHARD FIELDS

April 20, 2019

STATE OF NEW YORK)

) ss:

COUNTY OF QUEENS)

Sworn before me on this 20th day of April 2019

/s/ HONG WU JIANG
Notary Public

HONG WU JIANG
Notary Public, State of New York
No. 01HO6189625
Qualified in Kings County
Certificate Filed in Queens County
Commission Expires June 30, 2020

To: New York Supreme Court
Appellate Division—First Department

To: Jules Martin Haas
805 Third Ave 12th Floor
New York NY 10022

To: Lisa Barbieri
Assistant Attorney General

Index for exhibits

- A. Judge Mella and the other court's decisions.
- B. NYS Attorney General's objection opinion about this case
- C. Documents provided by Vanguard and Eye doctor
 - C1 Sydney said he could not read typed words even with magnifying glass
 - C2. Doctor's note confirm Sydney's both eye were blind
 - C3. Sydney refused to get help from Diana and Curtin when made fund transfer
 - C4. Sydney limited Diana's power on signing checks.

- D. Palmeri and her lawyers' perjury about Sydney's vision.
- E. Deposition of Edward Curtin and his wife Jill Curtin
- F. Handwriting expert's letter about the initial.
- G. The instrument with the dispositive term.
- H. Documents related to Curtin's credibility
- I. Diana's deposition disclosed Sydney hardly meet those beneficiaries.
- J. Document reflecting relationship of the Fields Family
- K. Pictures, Order of Protection, and wills.

358a

Your court decision was lost in mail

To whom it may concern:

I know to reopen a case I have to attach your rejected decision. I lost your mail since I was sent to a psychiatric hospital against my will. Over there I called and found out my case was already being rejected on April 2. In order to meet the deadline to reopen the case I have no time to request and wait for the court decision. Hope you do not consider this is an uncompleted filing.

The attached is the doctor's note. Please consider my situation. Thank you!

Yours Truly,

/s/ RICHARD FIELDS
Richard Fields

359a

EXHIBIT 28

360a

[LETTERHEAD OF NOVICK & ASSOCIATES, P.C.]

May 9, 2019

Via Federal Express

State of New York Court of Appeals
20 Eagle Street
Albany, New York 12207-1095
Attention: Clerk's Office, Motion Support

Re: Matter of Will Fields
(Fields v. Palmeri)
Surrogate's Court's Court
File No.: 2016-111
App. Div. Docket Nos. M-3860/M-4076
Court of Appeals Motion No. 2019-435
Return Date: May 13, 2019

To the Court:

Enclosed herein for filing is the following:

- Affirmation of Jules Martin Haas, Esq, in Opposition to Motion to Leave to Appeal to the Court of Appeals (One (1) Original plus Six (6) copies) ; and
- Original Affidavit of Service.

Thank you for your time and attention to this matter

Very truly yours,

/s/ KELLY GARONE
Kelly Garone
Paralegal

cc: Richard Fields (*via FedEx overnight delivery*)
2830 Pitkin Avenue
Brooklyn, New York 11208

Attorney General of the State of New York
(*via FedEx overnight delivery*)
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005

NEW YORK STATE: COURT OF APPEALS

Surrogate's Court
File No: 2016-111

Appellate Division
First Department Appeal
Nos. M-3860/M-4076

Court of Appeals Motion
No. 2019-435

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS,
Deceased.

**AFFIRMATION IN OPPOSITION TO
MOTION FOR LEAVE TO APPEAL
TO THE COURT OF APPEALS**

JULES MARTIN HAAS, an attorney duly admitted to practice law in the State of New York, hereby affirms the following under penalty of perjury:

1. I am co-counsel for Petitioner-Respondent Diana Palmeri ("Diana" or "Respondent") together with Novick & Associates, P.C. and Edward R. Curtin, Esq. in the above referenced appeal. This affirmation is submitted in opposition to Objectant-Appellant Richard J. Fields' ("Richard") motion to reargue his Motion For Leave To Appeal to this Court the Order of the Appellate Division, First

Department dated September 25, 2018 (the “September 25, 2018 Order”) (**Exhibit A**) in which the Appellate Division unanimously: (i) denied Richard’s motion to reverse the Probate Decree dated July 20, 2018 and Stay Diana from liquidating the estate assets (M-4076); and (ii) granted Diana’s cross-motion to dismiss Richard’s appeal (M-3860). Despite the procedural defects of his motion, the Court has directed Petitioner-Respondent to file her opposition on or before May 13, 2019.

2. This affirmation is based upon my personal knowledge of the proceedings in this matter and the information and papers previously submitted to the Courts in connection therewith.

3. This Court should deny Richard’s motion to reargue. Richard’s application for leave to appeal to this Court was denied in a Decision/Order of this Court dated April 2, 2019, Mo.No. 2019-125. (the “Court of Appeals Order”) (**Exhibit B**). A Notice of Entry of the Court of Appeals Order was served on Richard on April 4, 2019 (**Exhibit C**).

4. Richard does not specify any “ground upon which reargument is sought and the points claimed to have been overlooked or misapprehended by the Court, with proper reference to the particular portions of the record and to the authorities relied upon.” 22 NYCRR § 500.24(c); CPLR § 2221(d).

5. Richard’s submission is yet another rehash of his distorted view of the substantive matters in

this case. His assertions have been rejected by each and every forum to which they were presented.

6. Annexed hereto as (**Exhibit D**) for the Court's reference is a copy of my "Affirmation In Opposition To Motion For Leave To Appeal To the Court of Appeals" dated February 6, 2019, with exhibits annexed thereto. The statements therein are incorporated herein by reference. In brief, Richard's father, Sydney Fields, specifically disinherited Richard in his Will due to the stated reasons in the Will that "Richard Fields hired a lawyer to sue me for money and because I had to have him arrested and brought to Court for harassment of me and my wife, Teresa"

7. As noted above, Richard does not provide in his request for reargument any reference or consideration of the grounds for dismissal set forth in the Court of Appeals Order. The grounds were that his appeal was untimely and lacked procedural merit. (Exhibit B). Specifically, the appeal of the September 2018 Appellate Division order was dismissed as untimely and the appeal from the December, 2018 Appellate Division order was dismissed as the order did not finally determine the proceeding within the meaning of the Constitution. (Id). Therefore, Richard's burden of proof was to show precisely what this Court misapprehended or overlooked when considering the untimely appeals and its lack of jurisdiction to hear appeals of non-final determinations. 22 NYCRR § 500.24(c); CPLR § 2221(d).

8. It is undisputed that Richard has not filed a notice of appeal from the entry of the July 20, 2018 Probate Decree which finally determined the Surrogate's Court proceeding, or that the time within which to file such a notice expired on August 31, 2018. A copy of the affidavit of service of the notice of entry of the July 20, 2018 Decree is annexed as Exhibit E to my February 6, 2019 Affirmation (which is annexed as Exhibit D to this affirmation). Therefore, the Court was correct to determine that it does not have jurisdiction to adjudicate the appeal from the non-final December, 2018 Appellate Division Order.

9. It is also undisputed that Richard did not seek leave to appeal from the entry of the September, 2018 Appellate Division Order on or before October 26, 2018 and that his January 22, 2019 application for leave to appeal is untimely. A copy of the affidavit of service of the notice of entry of the September 25, 2018 Appellate Division Order is annexed as Exhibit B to my February 6, 2019 Affirmation (which is annexed as Exhibit D to this affirmation). Therefore, the Court was correct to determine that the appeal taken from the September 2018 Appellate Division order was untimely.

10. Richard has not provided any basis to disturb this Court's April 2, 2019 Order.

11. Instead, Richard recounts his personal views and commentary regarding the events and proceedings in the Surrogate's Court, where he was represented by counsel. He threatens to continue to

appeal this matter despite the frivolous nature of such actions. He goes on to provide baseless threats concerning reporting this case to the press in China and his ideas about using his father's estate to establish retirement homes. The constant threat of baseless litigation is preventing the orderly administration of this Estate. Richard and his former wife Pia Fields should be cautioned against continuing with such frivolous conduct.

12. In view of the above, there is simply no basis upon which the reargument of the dismissal of Richard's appeal to this Court can be allowed.

13. It is respectfully requested that Richard's application for reargument be denied in its entirety.

Dated: New York, New York
May 8, 2019

/s/ JULES MARTIN HAAS
Jules Martin Haas

NEW YORK STATE COURT OF APPEALS

Surrogate's Court File No.: 2016-111

Appellate Division
First Department Appeal
Nos. M-3860/M-4076

Court of Appeals Motion
No.: 2019-435

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

STATE OF NEW YORK)
ss:
COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On May 9, 2019, deponent served **two (2)** copies each of the **Affirmation of Jules Martin Haas, Esq., in Opposition to Motion to Leave to Appeal to the Court of Appeals** upon:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208
FedEx Tracking No. 775178121329

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005
FedEx Tracking No. 775178167478

by depositing a true copy thereof with Federal
Express Overnight Delivery.

/s/ KELLY GARONE
Kelly Garone

Sworn to before me this
9th day of March, 2019

/s/ ALBERT V. MESSINA JR.
Notary Public

ALBERT V. MESSINA JR.
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02ME6178564
Qualified in Suffolk County
Commission Expires December 3, 2019

369a

EXHIBIT 29

State of New York
Court of Appeals

*Decided and Entered on the
twenty-seventh day of June, 2019*

Present,

Hon. Janet DiFiore, *Chief Judge, presiding.*

Mo. No. 2019-435

In the Matter of Will of Sydney H. Fields,
Deceased.

Richard Fields,

Appellant,

v.

Diana Palmeri,

Respondent.

Appellant having moved for reargument in the
above cause;

Upon the papers filed and due deliberation, it is
ORDERED, that the motion is denied.

/s/ JOHN P. ASIELLO
John P. Asiello
Clerk of the Court

371a

EXHIBIT 30

[LETTERHEAD OF NOVICK & ASSOCIATES, P.C.]

July 1, 2019

Via Certified Mail, Return Receipt Requested

Surrogate's Court, New York County
31 Chambers Street
New York, New York 10007
Attn: Probate Department

Re: Estate of Sydney H. Fields
File No.: 2016-111

Dear Sir/Madam:

Enclosed for filing, please find the following documents in connection with the above referenced matter:

1. Notice of Entry of the Decision by Hon. Janet DiFiore, dated June 27, 2019: and
2. ***Original*** Affidavit of Service.

Kindly acknowledge receipt of the same by stamping the enclosed copy of this letter and returning it to me in the envelope provided.

Thank you for your time and attention to this matter.

Very Truly yours,

/s/ KELLY GARONE
Kelly Garone
Paralegal

373a

Encls.

cc: Richard Fields
Diana Palmeri

Certified Article Number

9414 7266 9904 2148 1748 91

Sender's Record

[LETTERHEAD OF NOVICK & ASSOCIATES, P.C.]

Received July 8, 2019

July 1, 2019

Via Certified Mail, Return Receipt Requested

Surrogate's Court, New York County
31 Chambers Street
New York, New York 10007
Attn: Probate Department

Re: Estate of Sydney H. Fields
File No.: 2016-111

Dear Sir/Madam:

Enclosed for filing, please find the following documents in connection with the above referenced matter:

1. Notice of Entry of the Decision by Hon. Janet DiFiore, dated June 27, 2019: and
2. ***Original*** Affidavit of Service.

Kindly acknowledge receipt of the same by stamping the enclosed copy of this letter and returning it to me in the envelope provided.

Thank you for your time and attention to this matter.

Very Truly yours,

/s/ KELLY GARONE
Kelly Garone
Paralegal

375a

Encls.

cc: Richard Fields
Diana Palmeri

NEW YORK STATE COURT OF APPEALS

Surrogate's Court File No.: 2016-111

Appellate Division
First Department Appeal
Nos. M-3860/M-4076

Court of Appeals Motion
No.: 2019-435

PROBATE PROCEEDING, WILL OF

Sydney H. FIELDS

Deceased.

PLEASE TAKE NOTICE, that the Decision by Hon. Janet DiFiore, dated June 27, 2019, of which the within is a true copy, has been entered in the office of the Clerk of the Court, State of New York, Court of Appeals, on the 27th day June, 2019.

Dated: July 1, 2019
Huntington, New York

Yours,

/s/ ALBERT V. MESSINA JR.
Novick & Associates
By: Albert V. Messina Jr., Esq.
Attorneys for Diana Palmeri
202 East Main Street
Huntington, New York 11743
(631) 547-0300

TO:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005

NEW YORK STATE COURT OF APPEALS

Surrogate's Court File No.: 2016-111

Appellate Division
First Department Appeal
Nos. M-3860/M-4076

Court of Appeals Motion
No.: 2019-435

PROBATE PROCEEDING, WILL OF
SYDNEY H. FIELDS
Deceased.

STATE OF NEW YORK)
ss:
COUNTY OF SUFFOLK)

AFFIDAVIT OF SERVICE

Kelly Garone, being duly sworn deposes and says: deponent is not a party to the action, is over the age of 18 years of age, and is employed at Novick & Associates, P.C., 202 East Main Street, Suite 208, Huntington, New York 11743.

On July 1, 2019, deponent an **Notice of Entry of the Decision of Hon. Janet DiFiore dated June 27, 2019** upon:

Richard J. Fields
Objectant-Appellant Pro Se
2830 Pitkin Avenue
Brooklyn, New York 11208

Attorney General of the State of New York
Division of Appeals and Opinions
Respondent
28 Liberty Street
New York, New York 10005

by depositing a true copy thereof in a postpaid,
wrapper in an official depository under the exclu-
sive care and custody of the United States Postal
Service within the County of Suffolk and State of
New York.

/s/ KELLY GARONE
Kelly Garone

Sworn to before me this
1st day of July, 2019

/s/ ALBERT V. MESSINA JR.
Notary Public

ALBERT V. MESSINA JR.
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02ME6178564
Qualified in Suffolk County
Commission Expires December 3, 2019