Matter of Richmond
2017 NY Slip Op 31498(U)
July 14, 2017
Surrogate's Court, New York County
Docket Number: 2015-1319
Judge: Rita M. Mella

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

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Probate Proceeding, Estate of

STANLEY RICHMOND,

Deceased.

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DECISION
File No.: 2015-1319

M E L L A, S.:

In determining these competing motions for summary determination, the court considered the following submissions:

Document	Date Filed
1. Petitioner's Notice of Motion	January 12, 2017
2. Affirmation of Richard Bryan, Esq., in Support of petitioner's motion	January 12, 2017
3. Objectant's Amended Notice of Motion	January 17, 2017
4. Affirmation of Michael J. Collesano, Esq., in Support of objectant's motion	January 17, 2017
5. Affirmation of Richard Bryan, Esq., in Opposition to objectant's motion	February 23, 2017
6. Affirmation of Michael J. Collesano, Esq., in Opposition to petitioner's motion	February 24, 2017
7. Reply affirmation of Michael J. Collesano, Esq.	March 2, 2017

Competing motions for summary determination have been filed in a proceeding to probate a December 1, 2014 instrument in the estate of Stanley Richmond, who died on March 26, 2015. Petitioner — preliminary executor Mari Dimano, who had begun to work for decedent in April 2011 and became his primary care-giver — has moved for summary dismissal of all objections. By contrast, objectant — decedent's nephew Alan Fisher — has moved for only partial summary determination. Fisher seeks denial of probate and dismissal of the petition solely on the ground that the December 1, 2014 instrument was not executed in conformity with the requirements of EPTL 3-2.1. Specifically, objectant contends that decedent neither declared to each of the attesting witnesses that the instrument he signed was his will (*see* EPTL 3-2.1 [a]

[3]), nor asked each of them to attest to his signature (*see* EPTL 3-2.1 [a] [4]).

Background

Decedent died at age 81, survived by four nieces and nephews, leaving an estate of less than $500,000. According to Dimano's application for preliminary letters, the estate was composed of a cooperative apartment valued at $400,000 and a $15,000 savings account.

On April 8, 2015, Dimano petitioned for probate of the December 1, 2014 instrument, which contains four dispositive provisions: (1) the balance of decedent's checking account (according to Dimano's application for preliminary letters, there was none) is bequeathed to Fisher; (2) the balance of decedent's savings account is bequeathed: 50% to Dimano, 40% to Fisher, and 10% to another caretaker, Antonia "Exposito" [sic]; (3) decedent's co-operative apartment is bequeathed to Dimano; and (4) the residuary is bequeathed to Dimano.

On May 13, 2015, Fisher objected to probate of the December 1, 2014 instrument, alleging: (1) decedent lacked testamentary capacity; (2) the instrument was the product of duress and/or undue influence practiced upon decedent by Dimano, who was in a confidential relationship with decedent, or by some other person or persons; (3) the instrument was the product of fraud practiced upon decedent by Dimano or some other person or persons; (4) the instrument was not duly executed; and (5) decedent had revoked the instrument.[1]

Also on May 13, 2015, Fisher cross-petitioned for probate of a May 30, 2007 instrument. The sole dispositive provision under that instrument is a bequest of the residuary to Fisher.

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[1] In his objections, Fisher also alleges that Dimano is unfit to serve as fiduciary because, inter alia, "she converted assets of the decedent, during his lifetime, to her own use, while she was the decedent's caregiver." A nominated executor's lack of fitness to serve, however, is not a basis for denial of probate.

Undisputed Facts:

Certain facts are undisputed. At the time the December 1, 2014 instrument was executed, decedent was ill and frail. Decedent suffered from, among other things, congestive heart failure and severe depression. Decedent needed assistance with activities of daily living, including: ambulating, taking medications, eating, dressing, and bathing. Dimano was the person in charge of his aides, his doctor's appointments, and his medications.

As a former New York City public high school teacher and union member, decedent was entitled to have the law firm of Feldman, Kramer & Monaco, P.C., draft a will for him at no cost to him. How decedent obtained a copy of the questionnaire which Feldman, Kramer & Monaco, P.C., furnishes to union members is unclear. Deborah Gallin, the attorney at Feldman, Kramer & Monaco, P.C., under whose supervision the December 1, 2014 instrument was drafted, testified at her deposition: "Most times [the questionnaire] actually gets mailed to them. A lot of them — I mean these days I guess some of them do download, but they get it mailed probably once a year, a package." Gallin testified at her deposition regarding her firm's records of various telephone calls with decedent. For example, on October 23, 2014, Alan Borack, another lawyer at Feldman, Kramer & Monaco, P.C., "explained will process to member." On October 28, 2014, "member is willing to pay an attorney to help him complete the will questionnaire." Decedent was informed that he could work with a lawyer over the telephone for free and was given the name of Candice Dellacona, another lawyer at Feldman, Kramer & Monaco, P.C. , but decedent said he would rather pay to meet with an attorney. On October 30, 2014, decedent called Feldman, Kramer & Monaco, P.C., with questions, "and then Candice Dellacona spoke with him after that," and decedent informed her that he wanted to use a lawyer with a full-time office in

Manhattan. Evidently, however, decedent did not do so. On November 3, 2014, decedent called Feldman, Kramer & Monaco, P.C., to request its mailing address.

A completed questionnaire was sent to Feldman, Kramer & Monaco, P.C., received by that firm on November 6, 2014, and reviewed by a paralegal. On November 10, 2014, Gallin called decedent. When asked at her deposition how she ascertains the identity of the natural objects of a testator's bounty, Gallin responded, "Only those that I speak to on the phone or especially a situation like this where it's not just relatives, it was a friend involved, I would have wanted to check on that." But she also testified: "We don't do a full will consult like you would do with a private client." On November 12, 2014, Gallin reviewed the instrument which had been drafted for decedent, and Feldman, Kramer & Monaco, P.C., mailed it to decedent.

On December 1, 2014, Dimano accompanied decedent to the office of Don B. Panush, the attorney who supervised the execution of the instrument, and she attended the actual ceremony.

Although Panush testified at his deposition that he had no recollection of the execution ceremony, he did testify as to his practice of supervising the execution of instruments prepared by Feldman, Kramer & Monaco, P.C. Panush would have two individuals execute their wills simultaneously, with each testator acting as attesting witness for the other, and with Panush's secretary, Evelyn Linares-Vargas, acting as an attesting witness for each. Consistent with Panush's practice, on December 1, 2014, Madeline Samuel executed her testamentary instrument at the same time that decedent executed his, and Samuel attested to decedent's execution of his instrument. However, in the case of the execution of Samuel's testamentary instrument, decedent did not act as an attesting witness. Instead, Dimano did.

Instant Motions

The Court of Appeals has explained: "It is well established that 'the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact'" which would require resolution at trial (*Stonehill Capital Mgt., LLC v Bank of the West*, 28 NY3d 439, 448 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The facts must be viewed "in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). Indeed, the non-moving party must be accorded "the benefit of every reasonable inference" (*Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]). Although more than a "shadowy semblance of an issue" is required to defeat a motion for summary determination (*S.J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 340 [1974], quoting *Hanrog Distr. Corp. v Hanioti*, 10 Misc 2d 659, 660 [Sup Ct, New York County 1945]), summary determination is a "drastic remedy," which "should not be granted where there is any doubt as to the existence" of a "material and triable issue of fact" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1967]).

Testamentary Capacity

Samuel and Linares-Vargas, the attesting witnesses to the execution of decedent's December 1, 2014 instrument, each executed a contemporaneous affidavit which reads: "Said Testator(rix), was, at the time of so executing the said Will, . . . of sound mind . . . and was suffering from no . . . mental impairment which would affect his/her capacity to make a valid Will." The affidavit is prima facie evidence of decedent's testamentary capacity (*see Matter of*

West, 147 AD3d 592 [1st Dept 2017]).

The deposition testimony of each of the attesting witnesses, however, undermines the reliability of such affidavit. Samuel testified that she did not speak with decedent except to say, "Hello," and that, "He didn't say anything." When asked, with reference to the decedent, "How do you know he was of sound mind?" Samuel replied, "I don't know." Further, Samuel testified, "I guess I would say I have no evaluation of his mental faculties." Linares-Vargas testified as to her practice of acting as an attesting witness, as follows:

> "Q. Can you ask a person questions?
> "A. No.
> "Q. You can't as a witness speak to —
> "A. We never have. I never have.
> "Q. Did anyone ever tell you you could?
> "A. No."

Moreover, deposition testimony of individuals who knew decedent calls into question decedent's testamentary capacity.

For example, Arthur Michaels, a longtime friend of decedent's, testified as to decedent:

> "Q. In October of 2014 his mind wasn't right, was it?
> "A. No."

And:

> "Q. And sometimes he knew what was going on but sometimes he really truly didn't —
> "A. Yes.
> "Q. — right?
> "A. Right.

And also:

> "Q. In October of 2014 there were times when he really didn't know what was going on?
> "A. There were times, yes.

Antonia Esposito, who worked for decedent as a care-giver for eight years and is named as a beneficiary of a modest bequest under the propounded instrument, testified at a deposition through an interpreter, against her own interest. A transcript of her testimony reads:

> "Q. Tell me some of the things he did when he was confused.
> "A. He would want to give you his things from his house, take this, take this with you, take this with you.
> "Q. Like what?
> "A. For example, he give you a lot of toys and he would give you — he would give it to you, sheets, things from the kitchen, so whatever. Then when he would go look for a pie, he would be like where's my pie.
> "Q. A pie like a —
> "A. The stove, the pans.
> "Q. So he would give you a pan as a gift?
> "A. Yes, and then later, a week later he would be looking for it and he will be like where is my pan, and then I would say hey, don't you remember that you gave it to me."

Fisher testified at his deposition: "I know my uncle, I know my uncle from when he was 40, 50, 60, so like I said before, . . . I saw obvious, obvious personality changes and then forgetfulness." And: "I'm telling you that there's no doubt that my uncle had memory impairment." And: "His memory was impaired long before 2014." For example:

> "I mean his memory, I would be — there were times when I would call him, and I remember this specifically, I would call him and say Stan, we're going to meet on Saturday at 12 o'clock and we're going to go to lunch. . . . And when I would arrive, he had no recollection of the conversation, which didn't matter in terms of us doing the lunch, we would still do the lunch but we would just be late for it, but he had no recollection of the conversation."[2]

Eliza Hurwitz, a volunteer with Project Dorot, who visited decedent for one hour, weekly, "to teach him stuff on the computer and also just talk to him and kind of hang out, spend

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[2] Evidence which could be excluded at trial pursuant to CPLR 4519 may be considered to defeat a motion for summary determination (*see Philips v Joseph Kantor & Co.*, 31 NY2d 307 [1972]).

time with him," testified at her deposition:

> "Q. So there's nothing unusual about someone else using his bank online and there would be no way to know who was online, right?
> "A. Yes, I guess so.
> "Q. And that could be completely innocent, but somebody else is just helping the man pay his bills —
> "A. Yes.
> "Q. — because he couldn't do it himself?
> "A. Uh-huh.
> "Q. Stanley really wasn't in any shape to do that kind of thing in 2014, was he?
> "A. I don't think so."

The deposition testimony of Samuel and Linares-Vargas — along with that of Michaels, Esposito, Fisher, and Hurwitz — in addition to Panush's deviation from his standard practice of having each testator witness the other's will and, instead, having Dimano, rather than decedent, attest to the execution of Samuel's will — all create a genuine question as to whether decedent had testamentary capacity on December 1, 2014. Accordingly, to the extent petitioner seeks dismissal of the objection as to lack of testamentary capacity, petitioner's motion is denied.

Due Execution

The attestation clause of the December 1, 2014 instrument and the supervision of the execution ceremony by an attorney create a presumption of due execution (*see Matter of Halpern*, 76 AD3d 429, 431 [1st Dept 2010], *affd* 16 NY3d 777 [2011]). The contemporaneous affidavit of attesting witnesses reads:

> "Said Testator(rix), at the time of making such subscription, declared the instrument to be his/her Last Will and Testament.
> "Each of the undersigned thereupon signed his/her name as a witness at the end of said Will, at the request of said Testator(rix)."

However, the deposition testimony of Panush, the attorney who supervised the execution

of the December 1, 2014 instrument, and of each of the attesting witnesses raises a question of whether, in fact, decedent declared the December 1, 2014 instrument to be his will (*see* EPTL 3-2.1 [a] [3]) and asked the attesting witnesses to "sign their names and affix their residence addresses at the end of the will" (EPTL 3-2.1 [a] [4]).

When questioned at his deposition about the routine he follows when supervising an execution ceremony, Panush testified, as follows:

> "Q. Do you ever ask the witness to read the witness clause in your office"
> "A. No.
> "Q. Do you read the witness clause aloud?
> "A. No, I just tell them you're signing here as a witness and this attestation clause is a clause that you'll be signing also. . . . I don't use the word 'attestation clause,' but I indicate to them you also need to sign the next page, and once both witnesses sign, I'll be notarizing and signing and that means that I'm witnessing the execution of the will by everybody.
> "Q. Thank you.
> So this signing ceremony, what occurs?
> "A. What?
> "Q. What do you do when the witness actually signs it, if anything? Do you simply ask the witness to sign it?
> "A. Yes.
> "Q. Do you simply ask the testator to sign?
> "A. Yes.
> "Q. Anything else?
> "A. No, I just explain this will shows — I always have the testator sign across the first page and then date. Whichever pen I have in front of me, I have the witness — I have the testator sign here. Then I tell the witnesses to sign.
> "Sometimes the witness says should I put in my address. I say no problem, make it faster, just tell me what your address is and I'll put it in.
> "My secretary signs. I always put in her address, but before my secretary signs, this page is filled out, the first witness would sign there and then my secretary signs here on the second page and signs on the third page, and then I sign as the notary and put in the expiration date of my seal."

Linares-Vargas testified at her deposition:

> "Q. . . . When you're sitting in the room, does [Panush] just have everybody sign the document or does he say anything?

"A. He introduces the, you know, the two witnesses to each other and he lets them know they're going to be each other's witnesses and then he has them sign.

"Q. And that's it?

"A. Uh-huh."

The Court of Appeals has explained:

"The reason for requiring publication is twofold: first, to furnish proof that the testator is under no misapprehension, whether by malicious contrivance or otherwise, as to the nature or identity of the instrument, and second, to impress upon the witnesses the fact that, since the document is a will, they are expected 'to remember what occurred at its execution and be ready to vouch for its validity in court.' "

Matter of Pulvermacher, 305 NY 378, 383 (1953) (citation omitted).

The Court of Appeals has also stated:

"The legislative intent was that a declaration should be made by the testator, either in words, or by signs, to the witnesses of his understanding of the nature of the instrument and a publication of a will requires that the testator declare, in some comprehensible way, that the instrument was signed by him. It must appear that, as between the testator and the witnesses, there was some meeting of the minds upon the understanding that the instrument was the testator's will; that it had been subscribed by him and that the attestation of the latter was desired to the will so subscribed."

Matter of Turell, 166 NY 330, 337 (1901) (citation omitted).

Here, the deposition testimony of the supervising attorney and the attesting witnesses creates a genuine issue as to whether "there was a meeting of the minds," between decedent and the attesting witnesses. There being an issue of fact raised by the inconsistency between the contemporaneous affidavit of the attesting witnesses, on the one hand, and the deposition testimony of the supervising attorney and attesting witnesses, on the other hand, petitioner's motion — to the extent petitioner seeks dismissal of the objection as to due execution — is denied. By the same token, objectant's motion for summary denial of probate and dismissal of

the petition based on lack of due execution also is denied.

Undue Influence and Confidential Relationship

The relationship between a hired care-giver and a receiver of care is not among the relationships classified as confidential as a matter of law (*see Matter of Mallin*, 2016 NY Slip Op 32032 [U] [Sup Ct, Nassau County]; 2B NY PJI2d 7:56 at 894 [2017]). As this court has explained, in *Matter of Katz* (15 Misc 3d 1104 [A] [Sur Ct, New York County 2007] [citations omitted]):

> "If a testator relied exclusively upon a legatee's knowledge and judgment in the conduct of his financial affairs, or was dependent upon and subject to the legatee's control, the relationship between testator and legatee may be deemed one of trust and confidence (*see* PJI2d 7:56.1 [2006]). The combination of a confidential relationship plus evidence of its exploitation, such as: the legatee's assumption of an active role in obtaining execution of the will, testator's failure to obtain independent advice, testator's mental and emotional condition, and the magnitude of the bequest, permits an inference of undue influence, which obligates proponent to explain the bequest."

The test is thus two-pronged. The combination of first, a confidential relationship, and second, evidence of its exploitation permits an inference of undue influence.

Dimano concedes that her relationship with decedent was, in the words of her counsel, one of "trust, confidence and dependence," but she denies that she exerted a "controlling influence" over decedent. Relying on a lack of reference to any form of dementia in any of decedent's medical records, Dimano concludes that decedent "was in full command of his cognitive abilities" and "suffered from no cognitive impairment whatsoever." On this issue, however, Dimano has failed to make a showing of entitlement to judgment as a matter of law. There is some evidence in the record that decedent was mentally compromised.

Moreover, the degree to which Dimano assumed "an active role in obtaining execution"

of the December 1, 2014 instrument is unclear. It is undisputed that a questionnaire furnished by Feldman, Kramer & Monaco, P.C., was completed and mailed back to the firm, that decedent was physically unable to access his mailbox or to send a piece of mail, and that Dimano was present during the execution ceremony. Hurwitz, the volunteer who visited with decedent, testified at her deposition that, in 2014, decedent's vision was impaired, specifically, that in looking at magazines, "He would have trouble reading the prices and he would ask me for the descriptions, but he could always see the objects clearly." In addition, Hurwitz testified that decedent had difficulty writing. There is a question, therefore, as to who completed the questionnaire and whether the answers on the questionnaire reflected decedent's intent.

In addition, there is a question as to whether decedent had the benefit of "independent advice." Deborah Gallin, the attorney from Feldman, Kramer & Monaco, P.C., who supervised the drafting of the December 1, 2014 instrument, testified, as follows, about her practice regarding the drafting of a document based on a completed questionnaire: "[T]he attorney who's going to do the will signing would then check that this is what the person wanted." For his part, Panush testified, with respect to individuals who would come to his office with an instrument received in the mail from Feldman, Kramer & Monaco: "So they're aware of the fact that I did not prepare the will and they're only there to have me assist them in the execution of the will." And: "[I]f they say I have some questions to ask you, I tell them well, maybe I can answer them for you, you understand I'm not your attorney, any serious questions you need to contact Feldman, Kramer & Monaco." Thus, neither the lawyer under whose supervision the December 1, 2014 instrument was drafted, nor the lawyer who supervised its execution can confirm that the December 1, 2014 instrument reflected decedent's intent.

Whether Dimano was in a confidential relationship with the decedent, as a matter of fact, and whether, if so, she exploited such relationship are matters to be determined at trial.

Petitioner makes a prima facie case that the December 1, 2014 instrument is a "natural will," by pointing to evidence that Dimano had been the decedent's primary care-giver. Petitioner also points to testimony of decedent's friend Michaels, to demonstrate that, by December 1, 2014, Fisher was no longer the sole or even primary object of decedent's bounty. Michaels testified at his deposition, with respect to decedent:

> "Q. Did he speak to you about his nephew Alan Fisher in the years 2012, 2013?
> "A. Yes.
> "Q. And did Stanley Richmond speak to you about his nephew Alan Fisher in positive terms or in negative terms?
> "A. Negative.
> "Q. And can you explain to us what Stanley told you about Alan?
> "A. He was very upset with Alan. He never came — he came to visit him once or twice, and he said I can't believe my nephew would not visit me, and he lived in the area, the nephew lived in the area that Stanley lived in, and he said to me it's disgusting, I can't believe it. . . .
> "Then he said I decided to leave Maria [sic] all my property, all my valuables, she deserves it and my nephew does not deserve it.
> * * * * *
> . . . [J]ust his nephew didn't care for him one way or the other, didn't call him, nothing.
> "Q. And specifically, again, was this in the year 2014?
> "A. Almost every time I spoke to him he'd bring it up."

Such testimony, however, is hearsay and, accordingly, cannot be considered in support of a motion for summary determination (*see Zuckerman v New York*, 49 NY2d 557, 562 [1980]; *Sumitomo Mitsui Banking Corp. v Credit Suisse*, 89 AD3d 561, 564 [1st Dept 2011]).

Objectant, however, has offered evidence to create a genuine dispute as to whether Dimano had motive, opportunity, and actually exercised undue influence upon decedent (*see Matter of Walther*, 6 NY2d 49, 55 [1959]). Dimano's circumstances — Dimano testified at her

deposition that, in 2014, she supported herself, her son, and her sick father on the $40,000 which decedent paid to her and the $15,000 which she received from another person for whom she worked — presented the motivation. Decedent's condition — he was moribund and dependent on Dimano — presented the opportunity.

Objectant testified at his deposition that, for decades before decedent had home health care, objectant had been the only person who had looked after decedent's health:

> "A. . . . I was very much aware of Stanley's condition and visited Stanley at every health facility over the many years when he was in health facilities. This goes back to the eighties when he had the heart condition, when he had the depression.
>
> "He also had electric convulsive therapy treatment, which was like a last resort. He had it in like 2006 or so, which was brutal, and I visited him even then. It was so hard.
>
> "And every facility that he was at, Bellevue, Beth Israel, and for so many years I was the only one, there was no one else that was taking care of my uncle or helping him. There was no one else, it was just me . . . ."

Even after decedent had home health care, objectant visited him weekly. Yet, Esposito testified at her deposition that she had heard Dimano tell decedent that Fisher "doesn't do anything for him." Such testimony, as to the actual exercise of undue influence, albeit hearsay, nevertheless was corroborated, at least by implication, by Dimano's own deposition testimony (*see Bishop v Maurer*, 106 AD3d 622, 622 [1st Dept 2013] ["hearsay evidence may be considered when submitted in opposition to a summary judgment motion, so long as it is not the only proof submitted"]; *Matter of Wu*, NYLJ, Jan. 13, 2012, at 22, col 4 [Sur Ct, New York County]). Dimano testified with respect to decedent:

> "Q. He couldn't take care of himself, could he?
> "A. It wasn't my responsibility. It was his nephew's responsibility to take

care of his uncle"

Moreover, Michaels testified at his deposition that, if Dimano were to quit working for decedent, decedent would "go into a city nursing home or whatever," and that decedent was "afraid" of such scenario.

There being a genuine dispute as to material facts, the motion — to the extent petitioner seeks dismissal of the objection as to undue influence — is denied.

Fraud and Duress

Objectant has neither pleaded fraud with the requisite particularity (*see* CPLR 3016 [b]) nor articulated any element of duress (*see Cangro v Marangos*, 61 AD3d 430 [1st Dept 2009]; *Matter of Berdow*, NYLJ, Jan. 3, 2017, at 22, col 3 [Sur Ct, New York County]; *Matter of Hughes*, NYLJ, Sept. 22, 2014, at 22, col 3). There being no material issue of fact, objections as to fraud and duress are dismissed.

Revocation

The objection as to revocation similarly has no cognizable basis. Objectant seems to rely on the testimony of Esposito to the effect that decedent expressed an intent to revoke the December 1, 2014 instrument and to create a new instrument in keeping with the prior, May 30, 2007, instrument. Esposito testified, with respect to decedent:

> "A. . . . When he was very ill, he would stand up like this and he say he was going to change the will for Alan. Honest, truth to my heart he said it to me.
> "Q. That he wanted to change his will to give the apartment to Alan?
> "A. And she knows that and she knows that.
> "Q. When did he say that?
> "A. When he was very ill. When he was seriously ill.
> "Q. In the hospital?
> "A. But I think he had no time because he was already very, very sick. Honestly, he said that to me."

Such testimony, however, does not raise a material issue of fact. Accordingly, the objection as to revocation is dismissed.

Conclusion

Petitioner's motion for summary dismissal of the objections is granted with respect to objections as to fraud, duress, and revocation, and denied with respect to objections as to testamentary capacity, due execution, and undue influence. Objectant's motion for summary denial of the probate petition, on the basis that the December 1, 2014 instrument offered for probate was not duly executed, is denied.

This decision constitutes the order of the court.

Clerk to notify.

Dated: July 14, 2017

S U R R O G A T E