

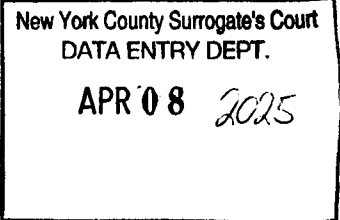
SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Probate Proceeding, Will of

KUOMING WU,

Deceased.

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



DECISION and ORDER

File No.: 2021-1855

The following papers were considered by the court (CPLR 2219[a]) in determining this motion to preclude the filing of objections:

Papers

Numbered

Notice of Motion, Memorandum of Law, and Affirmation
of David S. Shor., Esq., dated November 14, 2024

1, 2, 3

In this probate proceeding in the estate of Kuoming Wu, the proponent, Eric Chou (Movant or Proponent), moves for an order precluding Kuo-Ying Wu (Respondent) from filing probate objections and admitting to probate a lost will, dated April 9, 2019 (SCPA 1407). Respondent did not file opposition to the motion but, prior to its January 21, 2025 return date, he attempted to file objections to probate. His filing was rejected, however, because his objections were not verified and not accompanied by an affidavit of service and a filing fee.

Decedent died on March 1, 2021, survived by four siblings, three of whom consented in writing to the propounded instrument's admission to probate. Citation thus issued only to Respondent, the fourth sibling, who is not a beneficiary under the instrument. On January 1, 2023, one week before the January 9, 2023, return date of the citation and following the directions in the Notice to Cited Parties that accompanied the probate citation, Respondent sent an email communication to the court. A letter dated December 28, 2022, addressed to the Surrogate and signed by Respondent, was attached to that email. In his letter, Respondent

indicates that he wished to object to the probate of the propounded instrument. Two days later, the court responded by email, giving Respondent specific instructions on how to file verified objections. After Respondent failed to file objections or request pre-objection discovery (SCPA 1404), Proponent filed the instant motion. As stated previously, after he was served with the motion papers, Respondent attempted to file objections but, for good reasons, the court rebuffed his efforts.

The court has considered the delay occasioned by Respondent's failure to seek discovery or file objections. The court, however, has an independent responsibility to ensure the validity of every instrument admitted to probate (see SCPA 1408), and in furtherance of that responsibility, the court has discretion to extend the time to request SCPA 1404 discovery or to file objections (*Matter of Rizzi*, 60 AD3d 953 [2d Dept 2009]; *Matter of Orlowski*, 281 AD2d 422 [2d Dept 2001]; *Matter of Kryk*, 15 Misc 3d 1133 [A][Sur Ct, Monroe County 2007]). Here, upon receiving correspondence indicating that a cited party seeks to object to probate, the court typically issues a scheduling order with deadlines for pre-objection discovery and the filing of objections. In this case, however, no such order issued, leaving Respondent without a timeline for pursuing his discovery or objections, if any.

Under these circumstances and in light of Respondent Kuo-Ying Wu's recent failed attempt to file objections, the motion to preclude is denied and the balance of Movant's requested relief, i.e., admission of the propounded instrument to probate as a lost will, is denied as premature.

Accordingly, the court hereby orders and directs that:

- (1) Kuo-Ying Wu shall notice or demand any and all pre-objection discovery pursuant to 1404 on or before May 9, 2025;

- (2) All pre-objection probate discovery and disclosure shall conclude no later than July 11, 2025; and
- (3) Kuo-Ying Wu shall file with the court and serve on the other appearing parties including Proponent's counsel, verified objections to probate, if any, no later than July 31, 2025; and
- (4) If Kuo-Ying Wu files verified objections, Proponent shall, if applicable, promptly provide a proposed citation to the court for issuance pursuant to SCPA 1411, and then effect service on all interested parties, also to be made in accordance with SCPA 1411; and
- (5) There shall be no extensions of these deadlines without prior court approval. Agreements, if any, as to extended deadlines shall include the parties' written consent as to all relevant future deadlines and shall be provided in advance of any deadlines sought to be extended (and may involve consultation with the court as to suitable revised dates). Such stipulations should include or be accompanied by a brief statement as to the reasons for the extended deadlines or change in scheduling. Please further note that any correspondence with the court, including emails, must be copied on the other appearing parties; ex-parte communications may be disregarded and not read; and
- (6) The failure of any party to comply with the terms of this Order may result in sanctions, including without limitation, waiver, preclusion, or dismissal of claim or counterclaim, or the issuance of a default judgment or decree.

The Clerk of the Court shall email this decision, which constitutes an order of the court, to counsel for Movant and to Respondent at the email addresses listed at the foot of the order.

Dated: April 8, 2025

TO:

David A. Shor., Esq.
Counsel for Movant
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SURROGATE

Kuo-Ying Wu
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