TO BE SUBMITTED BY:
ANDREW D. HIMMEL, ESQ.

Supreme Court of the State of New York
Appellate Division: Second Department

In the Matter of
JOHN KOEGEL AS EXECUTOR OF THE ESTATE OF
WILLIAM F. KOEGEL, A/K/A
WILLIAM FISHER KOEGEL,

Deceased,

Appellate Division Docket No. 2019-03605

PURSUANT TO SCPA 1421.

JOHN B. KOEGEL,

Petitioner-Respondent,

-against-

IRENE LAWRENCE KOEGEL,

Respondent-Appellant.

BRIEF FOR RESPONDENT-APPELLANT

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PRELIMINARY STATEMENT

Respondent-Appellant Irene Lawrence Koegel ("Respondent-Appellant") hereby submits her brief appealing the February 5, 2019 decision and order of Hon. Brandon R. Sall, Surrogate - Westchester County (the "2019 Surrogate's Order"), granting the motion of petitioner-respondent John Koegel, as Executor of the Estate of William F. Koegel a/k/a William Fisher Koegel ("Petitioner-Respondent") to invalidate Respondent-Appellant's notice to elect her statutory spousal share pursuant to New York Estates Powers and Trusts Law ("EPTL") §5-1.1-A. and granting Petitioner-Respondent's motion for summary judgment.

QUESTION PRESENTED

Whether a certificate of acknowledgment accompanying a nuptial agreement which is defective due to noncompliance with New York Domestic Relations Law §236(B)(3) can be cured.

Answer of the Court Below: The Surrogate's Court, adhering to the February 7, 2018 decision and order of this Court, held that defective acknowledgments may be cured through the use of subsequent extrinsic evidence.

STATEMENT OF THE CASE

On February 7, 2018, this Court issued a decision and order addressing the very question Respondent-Appellant now raises on appeal from the 2019 Surrogate's Order, namely, whether or not a defective certificate of acknowledgment can be cured. Matter of Koegel, 160 A.D.3d 11, 70 N.Y.S.2d 540 (2nd Dep't 2018) (the "2018 Second Department Order"). This Court in the 2018 Second Department Order held that materially defective certificates of acknowledgment accompanying a prenuptial agreement could be cured, and that the affidavits of the notaries public effected such a cure.

Due to the unusual procedural history of this matter, as further discussed herein, Respondent-Appellant is constrained to proceed with this appeal, to preserve Respondent-Appellant's right to request review of this question by the New York Court of Appeals.

Respondent-Appellant and the decedent William F. Koegel ("Decedent") were married on August 4, 1984, and remained married for more than 29 years, until the death of Decedent on February 3, 2014. See Petition to Set Aside Spousal Election ("Petition"), ¶¶ 2, 8. Record on Appeal (hereinafter referred to as "ROA"), p. 23, 24. Just a few days prior to their marriage, on or about July 30, 1984, Respondent-Appellant and Decedent executed a prenuptial agreement (the "Prenuptial Agreement"). ROA, p. 55-56. The

Prenuptial Agreement consisted of two pages. The first page contained the signatures of Respondent-Appellant and the Decedent. The second page purported to be a certificate of acknowledgment of both signatures, each signed by different notaries public. Id.

The language of the acknowledgment relating to the signature of Decedent stated as follows:

> On this 26 day of July, 1984, before me personally appeared William F. Koegel, one of the signers and sealers of the foregoing instrument, and acknowledge the same to be his free act and deed.

The language of the acknowledgment relating to the signature of Respondent-Appellant stated as follows:

> On this 30th day of July, 1984, before me personally appeared Irene N. Lawrence, one of the signers and sealers of the foregoing instrument, and acknowledge the same to be her free act and deed.

ROA, p. 50

Decedent left a Last Will and Testament dated December 18, 2008 (the "Will") which was admitted to probate by Decree of the Surrogate's Court, Westchester County, on March 21, 2014. Letters Testamentary were issued to Petitioner on March 21, 2014. ROA, pp. 36-50.

Thereafter, Respondent-Appellant served a Notice of Election on Petitioner-Respondent pursuant to EPTL §5-1.1-A, and filed same with the Surrogate's Court on August 21, 2014. ROA, pp. 51-53.

On information and belief, on his death the estate of Decedent was, and continues to be, worth in excess of $5,000,000 (Five

Million Dollars). See affidavit of Irene Lawrence Koegel in support of motion to dismiss petition, sworn to on February 7, 2015 ("Irene Lawrence Koegel Affidavit"), ¶7 (ROA, p. 179); Answer and Objections of Respondent-Appellant ("Answer"), ¶17 thereto (ROA, p. 62-63).

In the Will, Decedent left Respondent-Appellant, his wife of 29 years, the following:

(a) a used car worth about $10,000. Will, Paragraph THIRD (A) (ROA, p. 38); Answer, ¶17(v)(a) (ROA, p. 63); Irene Lawrence Koegel Affidavit, ¶8 (ROA, p. 179).

(b) a life estate in a condominium in Somers, New York, for which Respondent-Appellant was responsible for paying all carrying charges, and which, upon Respondent-Appellant's passing or Respondent-Appellant moving out of the condo, must be sold, with none of the proceeds going to Respondent-Appellant, and instead all of such proceeds going to Decedent's issue. Will, Paragraph FOURTH (B)(ROA, p. 39); Answer, ¶17(v)(b)(ROA, p. 63) and Irene Lawrence Koegel Affidavit, ¶8 (ROA, p. 179).

(c) a 50% ownership of a condominium apartment in Florida worth approximately $275,000, with Respondent-Appellant responsible for paying the $86,000 remaining mortgage thereon. Will, Paragraph FOURTH (A)(ROA, p. 38); Answer, ¶17(v)(c)(ROA, p. 63) and Irene Lawrence Koegel Affidavit, ¶8 (ROA, p. 179).

Decedent designated Respondent-Appellant as the beneficiary of an annuity, an IRA and a pooled income fund which, cumulatively, pays Respondent-Appellant approximately $3,700.00 per month. The monthly payments on the Somers and Florida condominiums,

concerning which the Will made no provisions for Respondent-Appellant, were approximately $6,400.00 per month. Irene Lawrence Koegel Affidavit, §§9-10 (ROA, p. 179).

On or about December 10, 2014, Petitioner-Respondent commenced this proceeding pursuant to §1421 of the New York Surrogate's Court Procedure Act ("SCPA") to set aside Respondent-Appellant's spousal election pursuant to EPTL §§5-1.1-A. ROA, pp. 23-58.

Thereafter, Respondent-Appellant moved pursuant to New York Civil Practice Law and Rules ("CPLR") 3211(a)(1) and New York Domestic Relations Law ("DRL") §236(B)(3) to dismiss the Petition, and for judgment declaring the Prenuptial Agreement invalid, entitling Respondent-Appellant to her spousal elective share pursuant to EPTL §5-1.1-A, on the grounds that the acknowledgment of the signatures accompanying the Prenuptial Agreement was defective under the rule of *Galetta v. Galetta*, 21 N.Y.3d 186, 969 N.Y.S.2d 826 (2013) because the acknowledgment omitted language expressly stating that the notary public knew the signor or ascertained through some form of proof that the signor was the person described.

In his answering papers, Petitioner-Respondent submitted affidavits from two notaries, William E. Donovan and Curtis H. Jacobson, who notarized the Prenuptial Agreement signatures respectively of the Decedent and the Respondent-Appellant. These

affidavits stated *inter alia* that the signatories did not have to provide the notaries with identification because the signatories to the Prenuptial Agreement were known to the notaries. ROA, 192-94.

The court below denied Respondent-Appellant's motion to dismiss the petition to set aside the spousal election by decision and order dated June 23, 2015. ROA, pp. 197-202. The court below did not directly address the question left open by *Galetta*, namely, whether defective acknowledgments could be cured, but instead held that because the question was left open by *Galetta*, the facts pled by petitioner could arguably fit within a "recognized legal theory." ROA, pp. 201-02.

On appeal, this Court in the 2018 Second Department Order addressed the question left unanswered by *Galetta* and held that defective acknowledgments accompanying a prenuptial agreement could be cured, and that the affidavits of the notaries public effected such a cure. *Matter of Koegel*, 160 A.D.3d 11, 70 N.Y.S.2d 540 (2nd Dep't 2018). This Court issued the 2018 Second Department Order on February 7, 2018. On February 12, 2018, Respondent-Appellant moved before this Court for leave to appeal to the Court of Appeals. ROA, pp. 373-381.

By decision and order dated April 26, 2018, this Court denied the motion of Respondent-Appellant for leave to appeal to the Court of Appeals. ROA, p. 382.

On May 30, 2018, Respondent-Appellant moved directly before the New York Court of Appeals for leave to appeal the 2018 Second Department Order to the Court of Appeals. ROA, pp. 383-386. On September 13, 2018, the Court of Appeals dismissed the motion of Respondent-Appellant for leave to appeal "upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution." *In re: Koegel*, 32 N.Y.3d 948, 84 N.Y.S.3d 429 (2018).

On or about October 2, 2018, Petitioner-Respondent moved before the Surrogate's Court for summary judgment. ROA, pp. 17-18. Following submission of all papers in connection with that motion (ROA, pp. 17-427), the Surrogate's Court issued the 2019 Surrogate's Order, finding that the Prenuptial Agreement was valid and enforceable, and thereby invalidating Respondent-Appellant's notice of election to take her statutory spousal share. ROA, pp. 7-17. Having previously dismissed the second affirmative defense alleging unfairness (ROA, pp. 348-357), the court below in the 2019 Surrogate's Order granted Petitioner-Respondent's motion for summary judgment. Id.

On March 14, 2019, Respondent-Appellant filed a Notice of Appeal with respect to the 2019 Surrogate's Order. ROA, pp. 1-6. On April 8, 2019, Petitioner-Respondent moved before this Court for an order seeking, in effect, summary affirmance of the 2019 Surrogate's Order for the reasons stated in the 2018 Second

Department Order, or, alternatively for an expedited briefing and determination without oral argument. In her answering papers, Respondent-Appellant consented to the relief sought by Petitioner-Respondent in his motion for an order affirming the 2019 Surrogate's Order for the reasons stated in the 2018 Second Department Order.

By decision and order dated June 17, 2019, this Court denied the motion of Petitioner-Respondent in its entirety.

ARGUMENT

A. The 2018 Second Department Order Addressed The Question Raised on the Current Appeal

Respondent-Appellant recognizes that the question presented by this appeal to this Court is the same question already addressed and ruled on by this Court in the 2018 Second Department Order, namely, whether or not a certificate of acknowledgment accompanying a nuptial agreement which is defective due to noncompliance with New York Domestic Relations Law §236(B)(3) can be cured.

As noted herein, this Court in the 2018 Second Department Order held that the defective acknowledgment could be cured, and was cured, by the affidavits of the notaries public. *Matter of Koegel*, 160 A.D.3d 11, 70 N.Y.S.2d 540 (2nd Dep't 2018). Respondent-Appellant believed that the 2018 Second Department Order was a final order appealable to the Court of Appeals, because

the only path open to the Surrogate's Court following the 2018 Second Department Order was the ministerial one of applying this Court's ruling in subsequent lower court proceedings, which would inevitably lead to the grant of summary judgment in favor of Petitioner-Respondent. Respondent-Appellant so argued to the Court of Appeals in her motion for leave to appeal to that Court, contending that no questions "of fact or law [were] . . . open for consideration and decision by the original tribunal . . ." Arthur Karger, *The Powers of the New York Court of Appeals* §4:10 at 73 (West rev 3d ed 2005], citing *New York State Electric Corporation v. Public Service Commission of New York*, 260 N.Y.32 (1932).

Despite this, the Court of Appeals denied permission to appeal the 2018 Second Department Order, on the grounds that the 2018 Second Department Order was not a final order within the meaning of the New York Constitution. *In re: Koegel*, 32 N.Y.3d 948, 84 N.Y.S.3d 429 (2018).

Thereafter, Petitioner-Respondent moved for summary judgment before the court below. ROA, pp. 17-18. The Surrogate's Court, following the only path open to it, adhered to the 2018 Second Department Order and held that the defective certificate of acknowledgment was cured through the extrinsic evidence of the affidavits of the notaries public. ROA, pp. 7-16. The Surrogate's Court stated, in relevant part:

> *The court need not address Irene's argument that the Court of Appeals' bright line test set forth in Matisoff v. Dobi, 90 NY 2d 127 (1997), should apply here. The Appellate Division [in the 2018 Second Department Order] rejected Irene's reliance on Matisoff. The appellate court held that the affidavits of Donovan and Jacobsen showed that the petition may be meritorious in spite of the documentary evidence (the prenuptial agreement).*
>
> ROA, p. 13.

Following the 2019 Surrogate's Order, Respondent-Appellant on March 18, 2019, filed its notice of appeal, acknowledging therein this Court's prior 2018 Second Department Order and indicating that her intent in filing the notice to appeal was, *inter alia*, to go through the appellate procedure to ensure her ability to request review by the Court of Appeals of the question of whether or not defective acknowledgments could be cured. ROA, pp. 1-6.

In his April 2019 motion for summary affirmance, Petitioner-Respondent argued that the only question presented by the 2019 appeal to this Court was the same question already reviewed and ruled upon by this Court in the 2018 Second Department Order. Respondent-Appellant agreed with this contention, and therefore consented to Petitioner-Respondent's motion for summary affirmance. This Court nonetheless denied the motion of

Respondent-Appellant for summary affirmance in its entirety, by its decision and order on motion dated June 17, 2019.[1]

At this juncture, with this Court having denied the consented-to motion for summary affirmance, Respondent-Appellant is constrained to proceed with this appeal, so that - assuming this Court does not deviate from the 2018 Second Department Order - Respondent-Appellant may then apply for leave to appeal to the Court of Appeals. Any such application, at that point, will be with respect to a final order.

[1] In his motion for summary affirmance, Petitioner-Respondent contended that Respondent-Appellant could have and should have appealed the 2019 Surrogate's Order directly to the Court of Appeals, based on the argument that pursuant to CPLR 5602(a)(1)(ii), the 2018 Second Department Order was a nonfinal order which "necessarily affects" the 2019 Surrogate's Order. Petitioner-Respondent raises a fair point, but his position is by no means conclusively correct. The Court of Appeals, in a case addressing CPLR 5501, has commented that "[o]ur opinions have rarely discussed the meaning of the expression 'necessarily affects' . . . We have never attempted . . . a generally applicable definition . . . and our decisions in this area may not all be consistent . . . " *Oakes v. Patel*, 20 N.Y.3d 633, 965 N.Y.S.2d 752 (2013). If this Court accepted Petitioner-Respondent's argument that the availability of a direct CPLR 5602(a)(1)(ii) appeal from the 2019 Surrogate's order to the Court of Appeals merited the grant of summary affirmance, this Court would have granted Petitioner-Respondent's motion (consented to by Respondent-Appellant) for such summary affirmance.

B. The Certificate of Acknowledgment was Defective

In *Galetta v. Galetta*, 21 N.Y.3d 186, 969 N.Y.S.2d 826 (2013) the Court of Appeals held that a certificate of acknowledgment attached to the parties' prenuptial agreement was defective where the acknowledgment omitted language expressly stating that the notary public knew the signor or ascertained through some form of proof that the signor was the person described. The court viewed such language as a "core component" of a valid acknowledgment, the absence of which rendered the prenuptial agreement defective. 969 N.Y.S.2d at 831.

In reaching its holding, the Court of Appeals focused on the language of DRL §236 (B) (3), which governs prenuptial agreements. That section provides:

> An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed the parties and acknowledged or proven in the manner required to entitle a deed to be recorded.

Galetta then surveyed the relevant provisions of the Real Property Law to discern the requisites of a proper acknowledgment. Reading together §§291, 292, 303 and 306 of the Real Property Law, the Court of Appeals identified the requirements of a proper acknowledgment as consisting of (i) the party signing the document orally acknowledging to the notary public that he or she in fact signed the document; (ii) the notary taking the acknowledgment only where he or she knows or has satisfactory evidence that the

person making it is the person described in and who executed the instrument; and (iii) the notary or other officer including express language in the acknowledgment stating "all the matters required to be done, known, or proved . . ." 969 N.Y.S.2d at 829-30.

Galetta next focused on the language of the two acknowledgments relating to the signatures of the husband and wife. The language of the acknowledgment relating to the wife's signature (who was the non-monied spouse) was acceptable to the Galetta court. That language in substance tracked the language typically contained in boilerplate acknowledgments:

> [B]efore me came (name of signer) to me known and known to me to be the person described in and who executed the foregoing instrument and duly acknowledged to me that s/he executed the same.

Galetta stated that the crucial language *"to me known and known to me to be the person described in the document"* satisfied the substance of the requirement that the official include express language in the acknowledgment that he or she knew or had ascertained that the signer was the person described in the document. 969 N.Y.S.2d at 830.

Galetta then turned its attention to the language of the acknowledgment relating to the husband's signature. That language stated as follows:

> On the 8 [sic] day of July, 1997, before me came Gary Galetta described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

969 N.Y.S.2d at 830.

The *Galetta* court observed that the "to me known and known to me" phrase was "inexplicably omitted." This omission rendered the certificate of acknowledgment defective, because the acknowledgment lacked the required language expressly stating that the notary public knew the husband or had ascertained through some form of proof that he was the person described in the prenuptial agreement. The Court of Appeals stated: "New York courts have long held that an acknowledgment that fails to include a certification to this effect is defective . . ." 969 N.Y.S.2d at 830.

The certificate of acknowledgment signed by both Decedent and Respondent-Appellant suffers from the same omission of the required language. The certificate of acknowledgment relating to the Decedent's and Respondent-Appellant's signatures read respectively as follows:

> On this 26 day of July, 1984, before me personally appeared William F. Koegel, one of the signers and sealers of the foregoing instrument, and acknowledge the same to be his free act and deed.
>
> On this 30th day of July, 1984, before me personally appeared Irene N. Lawrence, one of the signers and sealers of the foregoing instrument, and acknowledge the same to be her free act and deed.

ROA, p. 50.

Like the defective acknowledgment in *Galetta*, neither acknowledgment in the Prenuptial Agreement contains the required language expressly stating that the notaries public knew the signatories or had ascertained through some form of proof that the signatories were the persons described in the prenuptial agreement.

C. A Bright-Line Test is Appropriate for Defective Acknowledgment Cases

Galetta stated that because the proof of cure offered by the husband was insufficient, "we need not definitively resolve the question of whether a cure is possible." 969 N.Y.S.2d at 833. (Emphasis added.) This case more directly presents the question left open by *Galetta*: Can defective acknowledgments accompanying nuptial agreements be cured at a later date?[2] As set forth below, the *Galetta* rationale argues in favor of a bright line test requiring the inclusion of the statutorily mandated language and precluding post-execution cure.

Galetta highlighted the importance of strict adherence to statutory requisites in the area of nuptial agreements, and found that even in the absence of fraud, duress and inequity surrounding

[2] For the purposes of this appeal, Respondent-Appellant assumes that the affidavits of the notaries submitted by Petitioner-Respondent in proceedings below would otherwise constitute a cure of the defective acknowledgment, if the law allowed for the introduction of subsequent extrinsic evidence. Respondent-Appellant's position, similar to the dissenters' opinion in *Galetta v. Galetta*, 96 A.D.3d 1565, 1568, 947 N.Y.S.2d 260 (4th Dep't. 2012), is that defective acknowledgments may not be subsequently cured through such extrinsic evidence.

the execution of the prenuptial agreement, the defective acknowledgment invalidated the prenuptial agreement. While *Galetta* involved a defective acknowledgment, as opposed to the absence of an acknowledgment altogether, the policy considerations supporting a bright-line test precluding the availability of post-execution cure are equally applicable in both classes of cases.

Galetta recognized that "[i]t is undisputed that the signatures on the document are authentic and there is no claim that the agreement was procured through fraud or duress." 969 N.Y.S.2d at 827-28. Further, *Galetta* found that the parties believed that their signatures were being duly acknowledged, and that the omission of the required language was likely the result of a typographical error. 969 N.Y.S.2d at 832-33.

Perhaps most notable, the acknowledgment accompanying the signature of the wife (the party challenging the prenuptial agreement) contained all of the statutorily required language; only the acknowledgment accompanying the signature of the husband omitted the requisite language. *Galetta*, 969 N.Y.S.2d at 830.

Despite all of these factors, the Court of Appeals in *Galetta* refused to discard the textual requirements of an acknowledgment and instead strictly enforced the legislative command as set forth in DRL §236(B)(3) and in the related three provisions of the Real Property Law.

The *Galetta* holding is consistent with the Court of Appeals decision in *Matisoff v. Dobi*, 90 N.Y.2d 127, 659 N.Y.S.2d 209 (1997), where the Court of Appeals stated that DRL §236 (B) (3) "recognizes *no exception* to the requirement of formal acknowledgment." 659 N.Y.S.2d at 211. (Emphasis added.) The defendant in *Matisoff* argued that literal compliance with the statutory requirement of acknowledgment was not required so long as the purpose of that requirement was satisfied. The defendant further argued that literal compliance with the acknowledgment formalities would be required only where fraud, duress or mistake was alleged with regard to a nuptial agreement. The defendant also sought application of a "totality of the circumstances" rule which would take into account the parties' "intent and behavior during the marriage."

The Court of Appeals in *Matisoff* rejected defendant's arguments, holding that the legislative history and related statutory provisions "establish that the Legislature did not mean for the formality of acknowledgment to be expendable." 659 N.Y.S.2d at 213. The *Matisoff* court further observed:

> True, arguments can be made in support of the subjective standard espoused by the Appellate Division. Most notably, a flexible rule would allow courts to examine all of the circumstances and overlook the absence of acknowledgment where that result most comports with the parties' intent and behavior during the marriage. Such facts may well be present here - where it was plaintiff who originally insisted upon the postnuptial agreement, maintained a financial existence independent of

> defendant, and admitted signing the document. "It is not novel in the law, however, to find a harsh result where statute or public interest requires strict and full compliance with certain formalities before rights may be predicated." *Matter of Warren* 16 AD2d at 507, *supra*.

Id.

In rejecting the adaptation of a "flexible" rule, *Matisoff* stated that a bright-line rule in every case

> is easy to apply and places couples and their legal advisors on clear notice of the prerequisites to a valid nuptial agreement. Consequently, spouses or prospective spouses will not need to speculate as to whether the enforceability of their agreements will be supported by their original motivation or subsequent economic relationship during the marriage. Certainly, consistent and predictable enforcement is desirable with regard to such important marital agreements.

659 N.Y.S.2d at 214.

As noted above, these policy considerations are as applicable to cases involving defective acknowledgments as they are to cases involving an absence of acknowledgments. In both categories, the importance of uniformity, as well as consistent and predictable enforcement, apply. Insisting on compliance with statutory requisites would reduce if not eliminate speculation "as to . . . the enforceability of [nuptial] agreements . . ."

Conversely, by allowing the availability of cure with respect to defective acknowledgments accompanying nuptial agreements, courts would inject a level of unpredictability and uncertainty into an area that the Court of Appeals has identified as imposing

"more onerous requirements . . ." *Matisoff*, 659 N.Y.S.2d at 213. The detailed and carefully balanced legislative framework would face dilution by a procession of case law involving fact patterns competing to qualify as post-execution cures. As a matter of statewide public policy, courts should not allow the strict statutory framework to be subject to a wide variety of fact-based determinations as to whether post-execution cures can resurrect an otherwise defective acknowledgment.

The appellate divisions have applied a "bright line" rule when addressing the question of whether defective acknowledgments can be cured. See e.g. *Filkins v. Filkins*, 303 A.D.2d 934, 757 N.Y.S.2d 655 (4th Dep't. 2003)(unacknowledged prenuptial agreement cannot be cured after commencement of divorce action); *Shoeman, Marsh & Updike v. Dobi*, 264 A.D.2d 572, 694 N.Y.S.2d 650 (1st Dep't. 1999)(parties to divorce action cannot obtain retroactive validation of postnuptial agreement); *Anonymous v. Anonymous*, 253 A.D.2d 696, 677 N.Y.S.2d 573 (1st Dep't. 1998)(defective acknowledgment cannot be cured at a later point in time).

The Fourth Department dissenters in *Galetta* stated their position that defects in acknowledgments cannot be cured. See, *Galetta v. Galetta*, 96 A.D.3d 1565, 1568, 947 N.Y.S.2d 260 (4th

Dep't. 2012)("[W]e write to note our disagreement with the majority that a defect in an acknowledgment may be cured").

CONCLUSION

For the reasons set forth herein, it is respectfully requested that the 2019 Surrogate's Order granting the motion of Petitioner Respondent to invalidate Respondent-Appellant's notice to elect her statutory spousal share pursuant to New York Estates Powers and Trusts Law ("EPTL") §5-1.1-A. and granting Petitioner-Respondent's motion for summary judgment be reversed.

Dated: New York, New York
September 10, 2019

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PRINTING SPECIFICATIONS STATEMENT PURSUANT TO 22 NYCRR § 1250.8[j]

The foregoing brief was prepared on a computer. A mono spaced typeface was used as follows:

Name of Typeface: Courier

Point Size: 12

Line Spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules, regulations, etc. is 4,199.

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Supreme Court of the State of New York
Appellate Division:Second Department

In the Matter of
JOHN KOEGEL AS EXECUTOR OF THE ESTATE OF
WILLIAM F. KOEGEL, A/K/A
WILLIAM FISHER KOEGEL,

Deceased,

PURSUANT TO SCPA 1421.

JOHN B. KOEGEL,

Petitioner-Respondent,

-against-

IRENE LAWRENCE KOEGEL,

Respondent-Appellant.

STATEMENT PURSUANT TO CPLR 5531

1. Surrogate's Court, Westchester County, File No. 2014-452/A.

2. The full names of the original parties are the same; there has been no change.

3. Action commenced in Surrogate's Court, Westchester County.

4. Action was commenced by the filing of a Notice of Petition and Petition.

5. Nature of action: Domestic Relations.

6. This appeal is from the Decision and Order of the Hon. Brandon R. Sall, dated February 5, 2019.

7. Appeal is on the Record (reproduced) method.