

DESPINA ALICE CHRISTAKOS and
HELEN ALEXANDRA
CHRISTAKOS,

Plaintiffs,

vs.

ANTHONY A. BOYADJIS, ESQ.,

Defendant.

ANTHONY A. BOYADJIS, ESQ.,

Plaintiff,

vs.

AMERICAN ALTERNATIVE
INSURANCE CORPORATION,

Defendant.

SUPREME COURT OF NEW JERSEY
DOCKET NO.

APPELLATE DIVISION
DOCKET NO. AM-1107-23

LAW DIVISION
DOCKET NO. MRS-L-59-20
MRS-L-731-21

SAT BELOW:

Hon. Francis J. Vernoia, P.J.A.D.
Hon. Kay Walcott-Henderson, J.A.D.
Hon. Louis S. Sceusi, J.S.C. (Ret. T/A On
Recall)

Date submitted: January 9, 2025

**BRIEF ON BEHALF OF PLAINTIFFS-RESPONDENTS, DESPINA ALICE
CHRISTAKOS AND HELEN ALEXANDRA CHRISTAKOS**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF JUDGMENTS, ORDERS, RULINGS AND DECISIONS BEING APPEALED	ii
TABLE OF AUTHORITIES	iii
INDEX OF APPENDIX	iv
PRELIMINARY STATEMENT	1
FACTUAL AND PROCEDURAL BACKGROUND	4
A. Peter and Nicholas.....	4
B. Boyadjis’ Retention.....	4
C. Boyadjis’ Meeting & The 20023 Wills.....	5
D. The 2018 Wills	6
E. Boyadjis’ Malpractice.....	8
F. Guardianship Proceedings.....	9
G. Probate Litigation	10
H. Respondents’ Damages.....	12
I. Declaratory Judgment.....	13
J. Appellant’s Failed Summary Judgment Motion.....	13
K. Appellante Division’s Review of the Denial of Summary Judgment	13
STANDARDS.....	14
ARGUMENT	
LEAVE SHOULD BE GRANTED BECAUSE, ABSENT REVERSAL, HELEN IS LEFT WITHOUT LEGAL RECOURSE FOR HER DAMAGES SUFFERED AS A RESULT OF BOYADJIS’ MALPRACTICE AND THE APPELLATE DIVISION’S ERRONEOUS RULING	15
CONCLUSION	19

**TABLE OF JUDGMENTS, ORDERS
AND RULINGS BEING APPEALED**

<u>Document name</u>	<u>Date</u>	<u>Appendix Page Number or Transcript Number</u>
Opinion of Appellate Division	December 5, 2024	Pa327
Order Denying Reconsideration	December 30, 2024	Pa357

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>Brill v. Guardian Life Ins. Co.</i> , 142 N.J. 520 (1995).....	14
<i>Brundage v. Estate of Caramio</i> , 195 N.J. 575 (2008).....	14
<i>Christakos v. Boyadjis</i> , No. A-, 2024 WL 4982746 (App. Div. December 5, 2024).....	Passim
<i>Judson v. Peoples Bank & Trust Co. of Westfield</i> , 17 N.J. 67 (1954).....	14
<i>Saldana v. DiMedio</i> , 275 N.J. Super. 488 (App. Div. 1994).....	2, 15
<i>Sokolay v. Edlin</i> , 65 N.J. Super. 112 (App. Div. 1961).....	15

INDEX OF APPENDIX

	<u>Page</u>
Last Will and Testament of Peter Christakos	Pa001
Anthony Boyadjis Notes November 20, 2017	Pa004
Death Certifiante of Nicholas Christakos	Pa005
Last Will and Testament of Nicholas Christakos	Pa006
Consent Order January 18, 2023	Pa011
Deposition Transcritp of Helen Alexandra Christakos	Pa019
Deposition Transcritp of Despina Alice Christakos	Pa068
Deposition Transcritp of Anthony A. Boyadjis dated October 10, 2019	Pa090
Deposition Transcritp of Anthony A. Boyadjis dated June 3, 2022	Pa115
Certification of Yuliya Dementyeve, M.D.	Pa140
Certification of Shahreen Hossain, M.D.....	Pa149
Deposition Transcritp of Indira Pitamber	Pa155
Letter of Jay J. Rice dated May 16, 2023	Pa158
Order & Opinion Denying Summary Judgment June 30, 2023	Pa246
Order & Opinion Denying Summary Judgment May 24, 2023	Pa259
Letter of James C. Mescall dated August 23, 2023	Pa270
Expert Report of Ronald L. Davison dated September 22, 2022	Pa291

Amended Order Consolidating Cases July 28, 2021	Pa312
Billing Records of Anthony Boyadjis	Pa314
Certification of Bruce Glatter	Pa317
Order & Opinion Denying Reconsideration October 24, 2023	Pa320
Order Granting Leave to Appeal December 11, 2023	Pa326
Opinion of Appellate Division December 5, 2024	Pa327
Order Denying Reconsideration December 30, 2024	Pa357

PRELIMINARY STATEMENT

Plaintiffs, Helen Christakos (“Helen”) and Despina Christakos (“Alice”) filed a lawsuit against Defendant-Appellant, Anthony Boyadjis (“Boyadjis”) for, among other claims, legal malpractice arising out of the representation of their family members, Peter and Nicholas Christakos (“Peter” & “Nicholas”). Boyadjis filed summary judgment on the basis that he owed no duty to Helen and Alice as they were not his clients. The Trial Court, in denying the summary judgment motion and reconsideration in a reasoned opinion, relied on the Supreme Court case of Petrillo v. Bachenberg, and its progeny, holding that Boyadjis was aware of the beneficial interests of both Plaintiffs and that Boyadjis’ notes and testimony confirmed that he knew both Helen and Alice were intended beneficiaries of Peter and Nicholas’s estates.

The Appellate Division, ignoring the standard for interlocutory review, which requires the “possibility of some grave damage or injustice”, granted the leave to appeal. Its ruling coming twelve (12) months later, denied the motion as to Alice, but granted it as to Helen, claiming that the brothers had no intention of leaving anything to Helen, despite direct evidence to the contrary. Leave to appeal here is necessary to prevent irreparable injury to movant, the result of which is a trial to come where disputed facts cannot be introduced and key claims for legal malpractice cannot be asserted by Helen. Specifically, the

Appellate Division ignored material facts in the record and the black letter law for summary judgment, that “if there is the slightest doubt as to the existence of a material issue of fact, the motion should be denied,” *see Saldana v. DiMedio*, 275 N.J. Super. 488, 494 (App. Div. 1994) (emphasis added), concluding that Helen was not an intended beneficiary of Peter and Nicholas’s 2018 wills.

Although the Appellate Division found that Boyadjis owed a duty to beneficiaries of the 2018 wills (like Alice), the December 5, 2024 Opinion reversing the Trial Court’s interlocutory order and the Court’s subsequent December 30, 2024 Order denying reconsideration were based on the erroneous conclusion that Helen was not an intended beneficiary of the 2018 wills. This conclusion ignored two critical facts: that Boyadjis *admitted* that he knew Helen was an intended beneficiary of the 2018 wills and that Nicholas’s 2018 will was void for a lack of mental competence. The result of these errors was dismissal of Helen’s malpractice claims.

Specifically, in its Opinion, *see Christakos v. Boyadjis*, No. A-1107-23, 2024 WL 4982746, at *1 (App. Div. December 5, 2024) (Pa327), as to Helen’s status, the Appellate Division incorrectly stated:

“The record is bereft of evidence that like Despina, Helen was an intended beneficiary in decedents’ 2018 wills.” *Id.* at *9.

“What is undisputed is that irrespective of Peter’s and Nicholas’s motivations for changing their wills in 2018, they did not intend to appoint Helen as the executor of their estates and they did not intend that she receive any portion of their estates as a beneficiary.” *Id.*

“To the contrary, and as noted, Peter and Nicholas had made clear they did not want their nieces or nephews to share in their estates and therefore it was not foreseeable that any purported errors by defendant would harm Helen.” *Id.*

These conclusions reached by the Appellate Division were made despite ample evidence that Peter and Nicholas *did* intend to include Helen as a beneficiary of their estates. In fact, the Court *did* rule that Helen was an intended beneficiary of the 2003 wills. Even if that evidence was not in the record, at best, these facts are material facts in dispute that render summary judgment entirely improper.

In essence, although the Court had evidence that Helen *was* an intended beneficiary of both the 2003 and 2018 wills, the Court disregarded these facts and made an improper factual and legal finding, resulting in a no duty owed by Boyadjis to Helen. Had the Appellate Division correctly considered these disputed facts as part of its opinion, the Trial Court’s order would have been affirmed as to *both* Alice and Helen.

Interlocutory review is thus necessitated here to prevent irreparable injury to Helen, *see R. 2:2-2(a)* (interlocutory review granted “when necessary to prevent irreparable injury”), and to correct the Appellate Division’s incorrect factual and legal determination. Additionally, the issue of an attorney’s duty to a non-client, is of significant importance to the citizens of New Jersey, to protect them from the negligence of attorneys and harm that may result.

FACTUAL AND PROCEDURAL BACKGROUND

A. Peter and Nicholas.

Peter and Nicholas Christakos were brothers who never married and had no children. Pa020, Pa021. Alice is the sister-in-law of Peter and Nicholas, and Helen is their niece (and Alice's daughter). Pa020, Pa069. On January 17, 2003, both Nicholas and Peter executed a Last Will and Testament ("Peter's 2003 Will" and "Nicholas's 20023 Will") which left their entire estate to each other if either predeceased the other, the residual to their brothers Constantine and James (Helen's father) or their issue per stirpes, including Helen. Pa001. In July 2017, Peter called Helen and expressed concern about Nicholas's well-being and that wanted someone to explain to him whether his 2003 Will left his estate to Nicholas to make sure that Nicholas would be protected if Peter died first. Pa027, Pa028.

B. Boyadjis' Retention.

Thereafter, Alice recommended to Helen that she contact Boyadjis to review Peter's 2003 Will. Pa080, Pa081. Helen contacted Boyadjis by email in July 2017 on behalf of her uncles to see if Boyadjis had estate experience and could assist them in understanding the contents of the 2003 Wills and explained to Boyadjis that Peter and Nicholas were not married and had no children. Pa023, Pa029, Pa030, Pa049, Pa050. Helen also told Boyadjis that Nicholas was ninety-six (96) years old, hard of hearing, suffering from dementia and that she did not think he was competent to

execute a Will. Pa031, Pa046. For example, his condition was worsening as he often thought she was her mother, Alice. Pa031, Pa032, Pa033. In her email to Boyadjis, Helen mentioned Peter and Nicholas's neighbors because Peter expressed concern to her that if he died first, he would have to pay the neighbors off to take care of Nicholas. Pa034, Pa035. In response, Boyadjis told Helen that he had estate planning experience and could help. Pa095.

C. Boyadjis' Meeting & The 2003 Wills.

On July 25, 2017, Boyadjis met with Peter and Nicholas at their home, speaking mostly with Peter¹. Pa056, Pa092, Pa108. After allegedly reviewing Peter's 2003 Will, Boyadjis admittedly misinterpreted the Will incorrectly concluding that the 2003 Wills did not leave all of the estate to each living brother respectively, when in fact the Wills did². Pa099, Pa100, Pa107. Based on his mistake, Boyadjis convinced the brothers to execute new Wills even though the 2003 Wills provided exactly what the brothers wanted³. Pa122, Pa123, Pa125, Pa126, Pa138, Pa139.

¹Boyadjis never provided a written retainer agreement to either Nicholas or Peter.

²Boyadjis also admits he never corrected this error nor advised Peter and Nicholas of this error before their deaths.

³Boyadjis has no time records to reflect that he actually read the 2003 Wills.

D. The 2018 Wills.

Boyadjis' deposition testimony and his notes of his meetings with Peter and Nicholas (Pa004) confirm that Helen was an intended beneficiary of the 2018 Wills. Specifically, Boyadjis, in reviewing his notes testified as follows:

A: So as best as I can recall, this bottom part where it says charities or St. George or Alice or Helen or Adrian Kruz is me just writing down is he going to tell me this now. You know, am I taking notes on what he's going to tell me or am I helping him narrow the universe with what he wants to do with his estate.

Q: Over towards the right, it says Alice Christakos with a dollar sign and a line and below that, it says Helen Christakos with a dollar sign and a line. How did it come to be that Alice and Helen's name with dollar signs are included on P-57.

A: Best of my recollection, it's probably the same idea, that he was mulling enough to say, okay, I can do that.

Pa104, Pa105. Peter's intention to include both Despina and Alice as beneficiaries of the 2018 wills was again discussed during his second meeting with the brothers.

Q: Did he ever mention Helen's name in any context other than what you just recited?

A: Yes, there was obviously some discussion of Helen in the November meeting about her being a potential beneficiary.

Pa114. Specifically, Boyadjis testified that during that conversation Peter told him he "may want to give something to Helen and [] may want to give something to

Alice...” Pa109.

Q: But by November 20th, 2017, you’re having a conversation with Peter where he says I may want to give something to Helen and I may want to give something to Alice correct?

A: That’s right.

Pa109. Despina’s testimony confirmed the above.

Q: Did Peter ever express to you that he felt that none of his family members cared enough about him that he should bequeath them in his Will?

A: He has more – there was more certain people that he felt didn’t care for him, but I was not included because I talked to him all the time. And Helen he came to Helen for legal help, so it wasn’t Helen. But there were other cousins who lived nearby and never took the trouble to look in on him. So he resented that. He felt they should take more interest in him and his brother.

Q: And what specifically did he tell you in that regard?

A: That they didn’t care about his, how his, you know he was suffering and how his life was going or Nicholas’s life and they were on their own and they couldn’t depend on the younger kids to help them even though they lived close by.

Pa087, Pa088. However, Helen was *not* included in the list of those undependable relatives as she helped the brothers with their legal affairs and in fact it was Helen that Peter reached out to help locate local counsel⁴. Pa087.

⁴Helen was given the power of attorney from Peter in 2001.

E. Boyadjis' Malpractice.

During discovery, Respondents retained an expert who opined that Boyadjis committed essentially four breaches of his duty to Respondents. First, Boyadjis failed to obtain a signed retainer. Pa291. Second, Boyadjis misinterpreted Peter's 2003 Will, which in part, included Peter's intention to leave his entire estate to Nicholas. Pa294. This prompted Peter to execute a 2018 Will which incorrectly left his residuary 1/3 to each Alice, the brothers' neighbors and the Greek Orthodox Church as opposed to Nicholas. Pa308. Had Boyadjis properly interpreted the 2003 Wills and advised Peter and Nicholas as to their correct contents, the 2018 Wills would not have been needed and it is probable that Peter would not have signed his 2018 Will⁵. Pa308.

Third, Boyadjis was also negligent in preparing Peter's 2018 Will as it did not express Peter's intention for his entire estate to go to Nicholas. Pa308.

Fourth, Boyadjis was also negligent in preparing Nicholas's 2018 Will as not only did the 2018 Will not express Nicholas's intention for his entire estate to go to Peter, but Boyadjis did not take appropriate steps to create a record that Nicholas had the requisite capacity to sign the Will. Pa308. Because of Nicholas's lack of

⁵Appellant named himself as executor in both 2018 Wills.

mental competence, the 2018 Will was voided and the 2003 Will was the proper Will to probate.

F. Guardianship Proceedings.

Part of Helen's damages and Boyadjis' malpractice stems from the guardianship proceedings for Nicholas. Specifically, due to Nicholas's declining cognitive health, on March 28, 2018, Yuliya Dementyeva M.D. examined Nicholas and signed a certification in support of guardianship for him, authoring a report where she found Nicholas to "demonstrate[] moderate to severe cognitive impairment" where "[h]e could not give [her] any factual information on a financial standing of the family or his own medical issues and degree of impairment." Pa146.

Despite knowledge that there was an ongoing guardianship proceeding for Nicholas, and that it was Nicholas's intent to leave his estate to Peter, because Boyadjis thought he was "coherent and lucid," on April 7, 2018, Nicholas executed a Will drafted by Boyadjis leaving his personal property to Peter, remainder to be split 1/3 between Alice, neighbors Maria Cruz and her husband, and the Greek Orthodox Church, naming Boyadjis as executor. Pa006. One of the witnesses to Nicholas's 2018 Will, Indira Pitamber spent twelve (12) hours at Nicholas's house on that day and observed Nicholas in a state where he lacked the capacity to understand his signing of the Will. Pa154.

On April 10, 2018, three (3) days after signing the 2018 Will, Shahreen Hossain M.D. examined Nicholas and signed a certification in support of guardianship for him, authoring a report where, in addition to agreeing with the conclusions of Dr. Dementyeva, found Nicholas “incapable of managing his financial affairs and securing appropriate help to secure his financial and physical well-being and protect himself from[sic] potential exploitation...” Pa150. Boyadjis wanted to be guardian of Nicholas.

G. Probate Litigation.

Peter died on April 11, 2018. Da41. Following his death, Boyadjis was in communication with Respondents on at least six (6) occasions in April 2018. Pa315, Pa316. Respondents were compelled to and required to file a caveat to Peter’s 2018 Will as that Will did not leave 100% to Nicholas, and Boyadjis told them he would not take action to reform Peter’s 2018 Will. Despite the fact that Alice would be a beneficiary under the 2018 Will, Respondents filed a caveat to ensure that Nicholas was a 100% beneficiary. Pa299. The State of New Jersey also brought an action to appoint Helen as Nicholas’s legal guardian and block Boyadjis from becoming Nicholas’s guardian. As part of that action, social worker Bruce Glatter submitted a certification wherein he stated he had “concerns about the appropriateness of Mr. Boyadjis’ appointment, primarily because he had prepared a Will naming himself as executor, and a Power of Attorney making himself Nicholas’ POA, and had Nicholas

sign these documents in early April 2018, despite the fact that Nicholas had been suffering from dementia for several months.” Pa317, Pa318.

Nicholas died on October 2, 2018 before the guardianship proceeding was decided. Pa005. Thereafter, probate litigation continued regarding Nicholas’s 2018 Will, which, was not only contrary to Nicholas’s intent to leave his estate to his brother and their issue pursuant to the 2003 Will, rather than a 1/3 split, but was executed when he did not have the capacity to understand the ramifications of the 2018 Will. Pa308, Pa309. After the conclusion of the underlying probate litigation, the parties entered into a consent order on or about January 18, 2023, resulting in a settlement of the probate matters wherein the estates paid out hundreds of thousands of dollars, but preserved the right to assert claims against Boyadjis. Pa012.

The consent order made clear that the terms of the order were “stipulated, consented to, and agreed” by all parties. Pa013. The order set forth that the consent order was as a result of the parties’ desire to “amicably settle all remaining issues.” Pa014. This was the first time Respondents were permitted to assert claims on behalf of the estates as Boyadjis, was removed as executor and unable to block the estates claims.

Specifically, the estate’s claims, and Helen and Alice’s individual claims against Boyadjis were expressly preserved for this litigation as part of the settlement. Pa012. The trial court’s order stated “All of Decedent Peter Christakos’s and

Decedent Nicholas Christakos's claims or causes of action against Boyadjis are hereby fully and irrevocably assigned and transferred to Helen, including, but not limited to, Helen's unfettered right to assert claims against Boyadjis on her behalf, Alice's behalf, and/or Decedents' behalves, which claims are specifically preserved." Pa014. Only after the Probate Court approved the settlement and removed Boyadjis as Executor, could Helen as substitute Administrator C.T.A. move to amend the Complaint to include the estates as a party. By motion dated March 1, 2023, Respondents moved to substitute Helen, individually and as Administrator C.T.A. as a party Plaintiff, and removing Alice as a party. The Trial Court below, on June 30, 2023, denied the application without prejudice. Pa247.

H. Respondents' Damages.

Thereafter, Respondents filed the within lawsuit for legal malpractice against Boyadjis as a result of the damages to Alice including diminution of the estate, Boyadjis' executor fees, the \$200,000.00 paid to the neighbors and church, and damages to Helen including out of pocket litigation costs including attorney's fees for probate, guardianship of approximately \$429,467.57 as well as ongoing attorney's fees which at present are approximately \$145,071.74. Pa047, Pa048, Pa053, Pa055, Pa056, Pa058, Pa060, Pa061, Pa066, Pa067, Pa079, Pa084, Pa158.

I. Declaratory Judgment Action.

Boyadjis filed a declaratory judgment action against his carrier for coverage as the carrier denied coverage due to Boyadjis' misrepresentations. More specifically, it is alleged that Boyadjis' made material misrepresentations in his professional liability policy renewal application when he represented to the carrier that there were no legal malpractice claims pending or anticipated, when he had knowledge of Respondents and the estates' allegations. Boyadjis' motion for summary judgment was denied and the matter is now listed for trial.

J. Appellant's Failed Summary Judgment Motion.

Following discovery, Boyadjis filed a motion for summary judgment arguing he owed no duty of care to Alice or Helen as beneficiaries, which was denied by the Court. Pa246-Pa258. Appellant's motion for reconsideration was also denied. Pa320-Pa325.

K. Appellate Division's Review of the Denial of Summary Judgment.

Following the Court's denial, Boyadjis filed a motion for leave to appeal the Court's orders which was granted by the Court on or about December 11, 2023. Pa326. On December 5, 2024, in an Opinion, the Appellate Division reversed the Trial Court's interlocutory order and granted summary judgment to Boyadjis dismissing the legal malpractice claims of Helen based on the incorrect and erroneous conclusion that there were no material facts in dispute. *Christakos, supra*,

2024 WL 4982746, at *3. Based on the erroneous ruling, Plaintiffs-Respondents filed a motion for reconsideration citing to the incorrect factual determination which was denied by the Court on December 30, 2024. Pa357.

This application for leave to appeal followed.

STANDARDS

This Court grants leave to appeal from an interlocutory order of the Appellate Division “when necessary to prevent irreparable injury.” *R. 2:2-2(a)*; *see also Brundage v. Estate of Caramio*, 195 N.J. 575, 599 (2008) (“irreparable injury” standard is “similar” to “interest of justice” standard).

As for the standard that was relied upon by the Appellate Division, summary judgment is intended to provide a prompt disposition of actions which involve no factual dispute or legal issues, and that are ripe for adjudication as a matter of law. *See Judson v. Peoples Bank & Trust Co. of Westfield*, 17 N.J. 67, 74 (1954). When deciding a motion for summary judgment, a trial court should evaluate evidentiary materials as required by *R. 4:37-2(b)* relative to the burden on the moving party should the matter proceed to trial. *Brill v. Guardian Life Ins. Co.*, 142 N.J. 520, 539-540 (1995). Where factual and or legal issues exist, summary judgment is not appropriate. Most importantly for present purposes, all favorable inferences are to be given to the opponent of the motion. *Id.* The moving party has the burden of showing that no factual disputes or legal issues exist with regard to

their claims or defenses and to exclude all reasonable doubt as to the existence of any genuine issue of fact. *Sokolay v. Edlin*, 65 N.J. Super. 112, 120 (App. Div. 1961). In the context of whether summary judgment is appropriate, our courts have ruled that “if there is the slightest doubt as to the existence of a material issue of fact, the motion should be denied.” *Saldana, supra*, 275 N.J. Super. at 494 (emphasis added).

ARGUMENT

LEAVE SHOULD BE GRANTED BECAUSE, ABSENT REVERSAL, HELEN IS LEFT WITHOUT LEGAL RECOURSE FOR HER DAMAGES SUFFERED AS A RESULT OF BOYADJIS’ MALPRACTICE AND THE APPELLATE DIVISION’S ERRONEOUS RULING

In reversing the trial court’s denial of Boyadjis’ summary judgment motion against Helen, the Appellate Division committed material factual and legal errors. In its opinion, the Court disregarded the summary judgment standard, ignoring the evidence in the record that demonstrated a disputed factual issue as to Helen’s status as an intended beneficiary of the 2018 wills. Instead, the Court reached the incorrect factual conclusion that Helen was not an intended beneficiary under either of the brothers’ 2018 wills. Specifically, the Court found that “Peter was adamant that his nieces and nephews should not inherit anything” and that he “expressed a strong desire to disinherit his nephews and nieces...” *Christakos, supra*, 2024 WL 4982746, at *3. Based on these statements, the Court incorrectly concluded that “the *undisputed* evidence established that in 2018 neither Peter nor Nicholas wanted their nieces and nephews to share in their estates.” *Id.* at *9.

(emphasis added). This led the Court to the conclusion that “even if defendant had not erred, Helen would not have been a beneficiary of either Peter or Nicholas’s estates.” *Id.*

First, regarding the 2018 wills of Peter and Nicholas, Boyadjis’ initial task as explained to him by Helen, was to review the 2003 wills to determine if any changes were needed. Had Boyadjis done so and confirmed to Peter and Nicholas that the 2003 wills did in fact leave the corpus of the estate to each other, there was no need for and would have never been any 2018 wills. The 2003 wills left upon the passing of both Peter and Nicholas, assets to two brothers, James and Constantine. As Helen was the daughter of James, she was an intended beneficiary of the wills. Helen was also the 4th alternate executor. The 2003 wills, however left out as beneficiary a third brother, Eugene, and Eugene’s children, Elizabeth Christakos (Elizabeth) and John Christakos (John). It was Elizabeth and John, and **not** Helen, that Peter and Nicholas wanted to disinherit.

As to the 2018 wills, it is Plaintiffs’ position that Nicholas never had the mental capacity to execute such a will. If that conclusion is reached at trial, then Nicholas’s assets would have been passed pursuant to the 2003 wills to Helen. Assuming that Peter and Nicholas did have the testamentary capacity and wanted Boyadjis to draft new wills in 2018, then multiple statements and admissions existed

to conclude that Helen *was* an intended beneficiary; and that Boyadjis was well aware of that fact.

Boyadjis' deposition testimony and his notes of his meetings with Peter and Nicholas (Pa004) confirm this. Boyadjis, in reviewing his notes testified that in his conversations, Alice and Helen were both included as potential beneficiaries. Pa104, Pa105. Peter's intention to include both Helen and Alice as beneficiaries of the 2018 wills was again discussed during his second meeting with the brothers where he testified "there was obviously some discussion of Helen in the November meeting about her being a potential beneficiary." Pa114. Specifically, Boyadjis testified that during that conversation Peter told him he "may want to give something to Helen and [] may want to give something to Alice..." Pa109. Alice's testimony confirmed these conversations where it was set forth that Helen was not part of the family members that did not take interest in the brothers and thus, were to be disinherited. Pa087, Pa088. Specifically, Helen was *not* included in the list of those undependable relatives as she helped the brothers with their legal affairs and in fact it was Helen that Peter reached out to help locate local counsel⁶. Pa087.

The Court's conclusion regarding the 2018 wills was contradicted by the multiple statements in the record that Helen *was* an intended beneficiary of the brothers' estates and was not one of the nieces and nephews that the brothers

⁶Helen was given the power of attorney from Peter in 2001.

intended to disinherit. Thus, despite this evidence in the record, which, at worst renders Helen's status, a disputed fact, the Court made the incorrect factual determination that it was undisputed that Helen was not an intended beneficiary.⁷ This conclusion made during interlocutory review, deprived Plaintiffs of a full trial with all disputed facts. If the jury reaches an incorrect conclusion based on these facts, Boyadjis has a right to petition the Appellate Division after trial.

Second, regarding the 2003 wills, the Court's decision is further perplexing where the Court *did find* that Helen was clearly a potential beneficiary under the brothers' 2003 wills which, due to the malpractice of Defendant-Appellant, were interpreted incorrectly:

[i]n the 2003 wills Helen was designated as a fourth alternative executor and *was otherwise a potential beneficiary* as the child of James Christakos, who was one of Peter's and Nicholas's three older brothers.

Christakos, supra, 2024 WL 4982746, at *1. Even though the Court correctly identified Helen as a potential beneficiary under the 2003 wills, the Court reached a strikingly opposite conclusion related to the duty owed to Helen as a potential beneficiary, finding:

any incorrect advice defendant may have given about the 2003 wills was given to Peter, not Helen, and there is no evidence that Helen relied on it in such a manner to support a legal malpractice claim by her, as a nonclient, against defendant under the Petrillo standard.

⁷Defendant-Appellant's claim that Peter and Nicholas did not want any nieces and nephews to inherit, we contend, is self-serving and false.

Id. at *8. In essence, the Court reached the opposite conclusion for Helen, as it did for Alice, finding that although she *was* an intended beneficiary under the 2003 wills, no duty was owed to her by Boyadjis to interpret that will correctly. Such a conclusion further evidences the clear errors in the Court's reasoning where the Court found that although Alice was owed a duty as an intended beneficiary of the 2018 will, somehow Helen, as an intended beneficiary of the 2003, was not.

In these circumstances, allowing the Appellate Division's decision to stand—a decision that will irreparably harm the movant, cannot stand where it is based on the Court's disregard of these disputed facts and an incorrect legal determination. Thus, reversal of part of the Court's ruling is proper.

CONCLUSION

Respondents' motion for leave to appeal should be granted, and the decision below reversed, in part.

Respectfully submitted,

Jay J. Rice

JAY J. RICE

Dated: January 9, 2025