

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF)
THE ESTATE OF KENNETH H.)
BLAISDELL, JR.,)
Plaintiff,)
v.)
TRINI BRASSARD, COURTNEY)
BRASSARD, BRIAN FALZO, DANIEL)
BRASSARD, AND BRASSARD)
SUGARWORKS AND MAPLE)
SUPPLY, LLC,)
Defendants.)

PLAINTIFF'S MOTION FOR *EX PARTE* ATTACHMENT

NOW COMES Plaintiff John Durkee, Executor of the ESTATE OF KENNETH H. BLAISDELL, JR., ("Estate"), by and through counsel, PRIMMER PIPER EGGLESTON & CRAMER PC, and pursuant to V.R.C.P 4.1, hereby MOVES this Honorable Court for an *ex parte* ATTACHMENT of all property owned by Defendant Trini Brassard as set forth in the proposed Writ of Attachment submitted of even date herewith. In support of this motion, Plaintiff relies upon the Affidavit of John Durkee filed June 30, 2023; the within Memorandum of Law, the proposed Order approving the *ex parte* Writ of Attachment and *ex parte* Writ of Attachment, all submitted of even date herewith; and further hereby states as follows.

Introduction

This action was initiated June 30, 2023 and arises out of Plaintiff's claims that Defendants owe the Estate of Kenneth H. Blaisdell, Jr. monetary damages for fraudulent transactions initiated by Defendant Trini Brassard while serving as an agent under a Durable Power of Attorney for Decedent Kenneth H. Blaisdell, Jr. ("Decedent") between July 18, 2013

and April 21, 2021. These claims also pertain to the improper use of Estate funds and assets following the death of Decedent Kenneth H. Blaisdell, Jr. between April 10, 2021 and the present day. Plaintiff filed its *Writ of Attachment* on June 30, 2023, of even date with the Complaint. The Court scheduled a hearing on the *Writ of Attachment* for August 17, 2023. Defendants and Plaintiff filed the *Assented to Motion to Continue Hearing Re: Motion for Writ of Attachment* two days before this hearing, on August 15, 2023. On this same day, the parties filed the *Stipulation*, which states (in relevant part) that no defendant “will sell, lease, mortgage, or otherwise encumber or dispose of any property listed on Exhibit A of the Writ of Attachment.” See Stipulation of Parties dated August 15, 2023, attached hereto as **Exhibit A**. Defendant Trini Brassard has violated this agreement, as such Plaintiff seeks an *ex parte* Writ of Attachment.

Procedural Background

Defendant Trini Brassard has violated the agreement laid out in the *Stipulation* filed August 15, 2023, by encumbering her property located at 2305 VT Route 14 North, (East) Randolph, Vermont recorded at Book 152, Page 121 with a loan (line of credit) from Farm Credit East, ACA on February 26, 2024. See, Mortgage Deed Recorded at Book 226 Page 600-614 of the Randolph Town Records, attached hereto as **Exhibit B**. This is the same parcel included in Plaintiff’s *Writ of Attachment*. See, Plaintiff’s *Writ of Attachment* **Exhibit A**, filed June 30, 2023. This is the same parcel included in the *Stipulation of Parties* wherein Plaintiff agreed to waive its right to an attachment hearing in exchange for the defendants promise to not encumber the real estate listed in Plaintiff’s *Writ of Attachment*. See, *Stipulation of Parties* filed August 15, 2023. As such, the Plaintiff asks for an *ex parte* Order granting an *ex parte* attachment for real estate owned by Defendant Trini Brassard.

Memorandum of Law

Under Vermont Rule of Civil Procedure 4.1, a party is entitled to an attachment to hold known assets in order to satisfy any judgment for damages and costs which may be recovered. V.R.C.P. 4.1(a). An order approving a Writ of Attachment may be issued *ex parte* “upon motion and findings by the court (a) that there is a reasonable likelihood that the plaintiff will recover judgment, including interests and costs, ..., and (b) that either (i) there is a clear danger shown by specific facts that the defendant if notified in advance of the attachment will remove from the state or conceal attachable property, leaving insufficient attachable property or other assets to satisfy the judgement; or (ii) there is immediate danger shown by specific facts that the defendant will damage, destroy, or sell to bona fide purchaser attachable property.” V.R.C.P. 4.1(b)(1) and 4.1(b)(3).

I. Plaintiff has established a reasonable likelihood of success on the merits

- a. Plaintiff relied on the representations set forth in the Stipulation, that Defendant Trini Brassard would not encumber property.

In the first instance, it is notable that Defendants Trini Brassard, despite representing to the Plaintiff and this Court, that she would not encumber assets, has now done so. Although the Stipulation was not filed as a Court Order, it carries significantly more weight than a verbal agreement or mere handshake. Plaintiff gave up a substantial right to proceed with its motion for writ of attachment, in exchange for Defendant’s agreement to refrain from encumbering the property. In February, a mere six months after signing the Stipulation, Ms. Brassard did just that. For that reason alone, this Court should grant an *ex parte* attachment.

- b. Plaintiff can show a reasonable likelihood of success on the merits.

“The plaintiff bears the burden of demonstrating a ‘reasonable likelihood’ that he or she will win at trial.” *Ruggieri-Lam v Oliver Block, LLC*, 120 F.Supp. 3d 400, 405 (D. Vt. 2015) quoting *Wellford v. Eissmann*, 2010 WL 2259084 (Vt. Super. Ct. Mar. 9, 2010). “The finding of a reasonable likelihood of success on the merits is ‘intended to be a realistic conclusion by the court on the basis of affidavits and other evidence presented ... as to the actual probability of recovery by the plaintiff.’” *Wellford* quoting, V.R.C.P. 4.1 Reporter’s Notes 1973 Amendment. Plaintiff acknowledges this is a substantial burden of proof, but believes the affidavit and land records submitted both on June 30, 2023 and herein surpass this burden.

Unlike the *Wellford* litigants where an *ex parte* attachment was ordered and later removed, the claims herein are not subject to any recent changes in Vermont law, and continue to be judged by the standards listed in the court’s December 23, 2023 *Entry Regarding Motion to Dismiss Defendant Trini Brassard’s 1st Amended Counterclaim for Allowance of Claims*. As such, this court has already determined many essential elements of Plaintiff’s claims. The court has determined that the statutory authority applicable in the instant matter is the Uniform Uniform Durable Power of Attorney Act. *See* Order Regarding Motion filed December 6, 2023, citing 14 V.S.A. § 3504(d) (repealed July 1, 2023). Therefore, Defendant Trini Brassard is not entitled to compensation for her services performed as the Decedent’s agent. Plaintiff has provided ample evidence showing defendant Trini Brassard did in fact compensate herself with the Decedent’s assets.

c. *Defendant Trini Brassard Paid Herself Using her POA powers*

On June 30, 2023, Plaintiff filed its *Motion for Writ of Attachment* with an *Affidavit of John Durkee* including several exhibits. *See, Affidavit of John Durkee* filed June 30, 2023. This affidavit sets forth of many instances wherein Defendant Trini Brassard compensated herself.

The *Affidavit* proves Trini Brassard transferred \$32,117.29 from the Decedent's savings account to premium title service a/c for the benefit of buyer/Trini Brassard. *Id.* at ¶ 7 (Exhibit G). The *Affidavit* proves that Trini Brassard used \$10,000 from the Decedent's checking account to purchase a Polaris Razor ATV on August 12, 2015. *Id.* at ¶ 8 (Exhibit H). The *Affidavit* proves that Trini Brassard wrote herself a check from the Decedent's personal checking account for \$10,000. *Id.*, at ¶ 11 (Exhibit L). The *Affidavit* proves Trini Brassard sold equipment owned by the Decedent and kept \$22,500 for herself. *Id.* at ¶12-13 (Exhibit M and N). The *Affidavit* proves Trini Brassard sold timber from the Decedent's lands after he died and kept the income totaling \$36,759.49 (Exhibit R). Based on the *Affidavit* and its associated exhibits, Defendant Trini Brassard owes the Estate \$111,376.78 for the improper compensation she paid to herself.

d. *Defendant Brassard gifted assets in breach of her fiduciary duty as agent*

Applying the Uniform Durable Power of Attorney Act to other undisputed actions of Defendant Trini Brassard makes clear that Defendant Trini Brassard owes additional monies to the Estate. For instance, any gift that Defendant Trini Brassard gave on behalf of the Decedent was a breach of her fiduciary duty, because the Power of Attorney ("POA") did not confer upon the agent the authority to make gifts. As such, Defendant Trini Brassard breached her duty as agent, and the Estate is entitled to damages for these each such specific breach. The court has already ruled on the issue of breach, and Plaintiff has provided ample evidence of actual damages in the *Affidavit of John Durkee*.

For example, the *Affidavit* and exhibits show that Defendant Trini Brassard used funds from the Decedent's personal bank account to buy a 2014 Astro mobile home, and upon Decedent's death the trailer was sold by Courtney Brassard on January 12, 2023 for \$46,000.

Defendant Trini Brassard essentially gifted \$46,000 to her daughter through these transactions. *Affidavit* at ¶ 5 – 6 (Exhibit E and F).

Additionally, the *Affidavit* proves that Trini Brassard transferred a piece of real property owned by the Decedent that was valued at \$183,400 to Courtney Brassard and Brian Falzo, and thereafter Courtney Brassard received substantial income from gravel operations on this same parcel totaling approximately \$54,000 as of 2023. *Id.* at ¶14-16 (Exhibits O – Q). Defendant Trini Brassard’s gift to her daughter and Mr. Falzo is equivalent to \$237,400.

While the standard for an *ex parte* attachment is strict, the Vermont District Court recently noted “it is worth noting that the Second Circuit has also cautioned courts in New York from acting as if they have ‘completely unfettered discretion’ over orders of attachment.” *Troy Boiler Works, Inc. v Long Falls Paperboard, LLC*, 2021 WL 8694355 (D. Vt. 2021) quoting, *Capital Ventures Int’l v Republic of Argentina*, 443 F.3d 214, 220 (2d Cir. 2006). “Thus, though a court ‘has discretion to the extent that these determination require weighing of evidence and also in balancing competing considerations[,]’ where ‘a statutory ground for attachment exists and both need and likelihood of success are established, its discretion does not permit denial of the remedy for some other reason’...” *Id.* This court has already ruled on the statutory authority applicable to claims related to Defendant Trini Brassard’s actions as agent for Decedent, and the *Affidavit* filed with exhibits establishes the necessary burden of proof for an attachment under Rule 4.1.

Plaintiff further argues that the need for this attachment was present on June 30, 2023, when it was initially sought, but that need has substantially increased since Defendant Trini Brassard breached the parties’ agreement as memorialized in the *Stipulation* dated August 15, 2023. Therefore, Plaintiff has met the first prong required under Rule 4.1 in order to obtain an *ex*

parte Writ of Attachment, namely that there is a reasonable likelihood that plaintiff will recover judgment.

II. Defendant Brassard's actions establish a clear danger requiring *ex parte* action.

Since Plaintiff has met the initial burden, an *ex parte* attachment may be issued if “(i) there is a clear danger shown by specific facts that the defendant if notified in advance of the attachment will remove from the state or conceal attachable property, leaving insufficient attachable property or other assets to satisfy the judgment; or (ii) there is immediate danger shown by specific facts that the defendant will damage, destroy, or sell to a bona fide purchaser attachable property, leaving insufficient attachable property or other assets to satisfy the judgment.” V.R.C.P 4.1(b)(3). Plaintiff has provided evidence that Defendant Trini Brassard has already encumbered her identified assets after knowing Plaintiff sought an attachment, and after signing an agreement that she would not do the same. See **Exhibit A**.

A review of the loan that Defendant Trini Brassard entered into with Farm Credit East shows that Defendant Trini Brassard already encumbered her parcel at 2305 VT Route 14 with a loan violating the parties' agreement filed with this Court, but the loan is a line of credit with a maximum amount secured of \$650,000.00. *Id.* Therefore, Plaintiff is entitled to this attachment *ex parte* to ensure that Defendant Trini Brassard does not draw down on this line of credit while the parties are waiting for a hearing. Any delay in relief could result in substantial harm to Plaintiff and its ability to recover damages.

WHEREFORE, for all the foregoing reasons and pursuant to V.R.C.P. 4.1, Plaintiff hereby MOVES this Honorable Court for an *ex parte* ORDER attaching certain real estate owned by Defendant Trini Brassard as set forth in the proposed Order Approving Writ of Attachment and proposed Writ of Attachment, both of which are submitted of even date herewith. Plaintiff

further requests all such other relief as this Honorable Court deems just and appropriate under the circumstances.

DATED at Woodstock, Vermont, this 24th day of July, 2024.

PRIMMER PIPER EGGLESTON & CRAMER

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