

STATE OF VERMONT

VERMONT SUPERIOR COURT  
Orange Unit

CIVIL DIVISION  
Docket No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF THE )  
ESTATE OF DECEDENT 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 LEAVE TO AMEND COMPLAINT**

NOW COMES Plaintiff, JOHN DURKEE, EXECUTOR OF THE ESTATE OF  
DECEDENT KENNETH H. BLAISDELL, JR., by and through his attorneys, PRIMMER PIPER  
EGGLESTON & CRAMER PC, and hereby MOVES this Honorable Court for LEAVE TO  
AMEND the Complaint to add four additional counts to conform with the evidence adduced in  
discovery. In support of this Motion, Plaintiff submits the within Memorandum of Law and  
further hereby states as follows.

**Introduction**

This legal action seeks to restore the assets of the Estate of Kenneth H. Blaisdell, which  
were wrongfully depleted, used, and diverted by Defendants. The crux of this case is based on  
the actions of Defendant Trini Brassard taken under the General Power of Attorney ("POA") that  
Decedent Kenneth Blaisdell granted her. Plaintiff seeks to amend his Complaint to conform to  
the evidence adduced in discovery, which shows that Decedent did not have capacity to execute  
the POA. Discovery in this matter is ongoing, and Plaintiff only recently received Defendants'

responses to Discovery Requests propounded in 2023<sup>1</sup>. Depositions are scheduled in the next few months. Plaintiff has disclosed an expert witness, but Defendants have not deposed this witness. Under the circumstances, amendment of the Complaint is justified and will not prejudice Defendants.

### **Factual and Procedural Background**

Plaintiff, as Executor of the Estate of Kenneth H. Blaisdell, Jr. (“Decedent”), commenced this legal action pursuant to 14 V.S.A. § 1401. This legal action seeks to restore the assets of the Estate of Kenneth H. Blaisdell, which were dilapidated, used, and diverted by Defendants.

On June 30, 2021, Plaintiff filed his Complaint in this matter alleging the following claims (i) breach of fiduciary duty against Defendant Trini Brassard; (ii) conversion against Defendants Trini Brassard, Courtney Brassard, Daniel Brassard, Brian Falzo, and Brassard Sugarworks and Maple Supply, LLC; (iii) trespass to chattels against Defendants Trini Brassard, Daniel Brassard, and Brassard Sugarworks and Maple Supply, LLC; (iv) embezzlement against Defendants Trini Brassard, Courtney Brassard, Daniel Brassard; (v) fraud against Defendant Trini Brassard; and (vi) trespass to land against Defendants Trini Brassard, Courtney Brassard, Daniel Brassard, Brian Falzo, and Brassard Sugarworks and Maple Supply, LLC.

The gravamen of Plaintiff’s claims arises from the unlawful use of the POA Decedent granted to Defendant Trini Brassard on July 18, 2013, after suffering a massive stroke. Defendant Trini Brassard was deposed on September 26, 2024, and testified that she was aware of Decedent’s estate plans. However, after this massive stroke she took Decedent to a different estate planning attorney for the sole purpose of obtaining a POA that gave her full authority over

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<sup>1</sup> Plaintiff continues to seek additional discovery responses and documents some certain Defendants though. Presently, the parties are exchanging communications per Rule 26, but Plaintiff may need to seek court intervention.

Decedent's financial assets. Once this POA was in place, banking, land, and personal property records show that she used her powers under the POA to divert Decedent's assets and monies to her and her children. Further, her actions as POA were contrary to Decedent's desires as expressed in his 2008 Will. Based on Decedent's medical records, there is no doubt that Defendant Trini Brassard was told by multiple medical providers that Decedent was mentally deficient, could not manage his estate, and did not understand that she her actions could undermine his wishes as to the distribution of his assets upon death.

During Defendant Trini Brassard's deposition, she testified times that the Decedent "wanted" certain business practices to continue or property to be transferred or funds to be paid. Defendant's defense of her self-dealing appears to rest, in part, on her claim that the Decedent was cognitively intact and able to make decisions about his financial estate. Plaintiff retained an expert, Dr. Eric Mart, a forensic psychologist, to obtain an opinion about the Decedent's cognition. This report was disclosed to all parties on June 11, 2025, and Dr. Mart's expert report along with Defendant Trini Brassard's deposition testimony form the factual basis for the motion to amend and these additional claims.

Throughout the POA period, Defendant Trini Brassard engaged in a complex pattern of self-dealing, co-mingling of assets, and conflicts of interest. *See* Amended Complaint at ¶ 20. She took many actions that greatly exceeded the authority granted to her by the POA, and violated her fiduciary duties as an agent. *Id.* at ¶ 21. Defendant Trini Brassard gifted away assets, compensated herself, and engaged in various other acts of self-dealing. These actions ultimately harmed the Estate, and the Beneficiaries of the Estate. *Id.* at 22. These actions are detailed in the complaint. *Id.* at ¶¶ 22-92.

As a result, Plaintiff seeks leave to amend the Complaint to add the four following counts: lack of capacity, undue influence and duress, constructive fraud, and unjust enrichment.

### **Memorandum of Law**

#### **I. The Court Should Grant Leave To Amend The Complaint Because There Is No Prejudice To The Defendants.**

Motions to amend are freely granted. *See* V.R.C. P. 15(a). The Vermont Supreme Court has explained that:

In considering motions under Rule 15(a), trial courts must be mindful of the Vermont tradition of liberally allowing amendments to pleadings where there is no prejudice to the other party. The principal reasons underlying the liberal amendment policy are (1) to provide maximum opportunity for each claim to be decided on its merits rather than on a procedural technicality, (2) to give notice of the nature of the claim or defense, and (3) to enable a party to assert matters that were overlooked or unknown to him at an earlier stage in the process.

*Colby v. Umbrella, Inc.*, 2008 VT 20, ¶ 4, 184 Vt. 1 (quotations and citations omitted).

Additionally, “[w]hen there is no prejudice to the objecting party, and when the proposed amendment is not obviously frivolous nor made as a dilatory maneuver in bad faith, it is an abuse of discretion to deny the motion.” *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 43, 200 Vt. 125 (quoting *Bevins v. King*, 143 Vt. 252, 254-55 (1983)).

Plaintiff’s motion is based on newly discovered evidence that Decedent lacked the capacity to grant the POA and thus, there is no undue delay. Further, all these counts are equitable claims that were foreseeable based on the current allegations of the Complaint. Notably, there is no prejudice to Defendants. *See Deakyne v. Commissioner of Lewes*, 416 F.2d 290, 300 (3d Cir.1969) (“Prejudice under the rule means undue difficulty in prosecuting a lawsuit as a result of a change of tactics or theories on the part of the other party.”); *see First Nat. Bank of Bos. v. Silberdick*, 146 Vt. 209, 211 (1985). Defendants were aware that the POA was signed a couple of days after Decedent’s stroke, and thus the new claims advanced were

foreseeable. In addition, the motion is brought to raise matters not previously known or overlooked at earlier stages of the proceeding. *See Bevins v. King*, 143 Vt. 252, 255 (1983) (citation omitted). Finally, this case is still in the discovery stage; depositions of fact witnesses and expert witnesses continue, document productions are incomplete, and the parties have not participated in mediation<sup>2</sup>.

## **II. The Court Should Grant Leave To Amend The Complaint Because The Amendments Are Not Futile.**

### **A. Plaintiff Has Alleged Sufficient Facts To Establish A Prima Facie Case That Decedent Lacked Capacity To Execute The Power Of Attorney After His Stroke.**

Based on the recent report of Plaintiff's expert, Dr. Mart, Plaintiff has established that Decedent lacked capacity to execute the power of attorney ("POA"). Thus, the POA was void, and all transactions accomplished by Defendant Trini Brassard under the POA should be set aside.

A durable power of attorney allows a person, the principal, to designate another as his or her attorney-in-fact to act on the principal's behalf as provided in the document, even if the principal becomes mentally incompetent. See 14 V.S.A. § 4002(5). For the principal to create the agency relationship in the first instance, the principal must have the mental capacity to contract. 3 Am.Jur.2d Agency § 12 ("A person who is not in a mental condition to contract and conduct his business is not in a condition to appoint an agent for that purpose.").

The Vermont Supreme Court has not yet decided which test of legal capacity to apply to POA. It appears, however, that to execute a valid power of attorney, the principal must possess

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<sup>2</sup> Prior to the initiation of this civil action, all parties (except Brian Falzo) participated in multiple mediation sessions in person on 2/14/23; 4/4/23; 5/1/23; and 6/14/23. Plaintiff participated in phone sessions with the same mediator and selected beneficiaries of the Estate on 3/10/23; 3/29/23; 4/17/23; and 6/8/25. The Estate paid for these sessions and has incurred more than \$6,000 in mediator fees. The Defendants have asked Plaintiff to attempt a final mediation session with a new mediator, and that session will be in the fall if the parties can agree on scheduling and costs.

contractual capacity. *See, e.g., Queen v. Belcher*, 888 So. 2d 472, 477 (Ala. 2003) (explaining that contractual capacity and not testamentary capacity is required). In Vermont, contractual capacity is present if one is capable of knowing the consequences of his contract. *See Foot v. Tewksbury*, 2 Vt. 97, 100 (1829) (“But when we find a man so destitute of capacity, as not to know the consequences of his contracts, and makes such as he would not make, if he did know the consequences, his contracts are ranked with those of the insane, the idiot and the lunatic; and treated as of no binding force.”); *see also In re Thames*, 544 S.E.2d 854, 856–57 (S.C. Ct. App. 2001) (contractual capacity involves the person’s ability to understand, at the time the contract is executed, the nature of the contract and its effect”). Here, Decedent did not understand the consequences of his actions. His cognitive deficits included general disorientation, impaired memory, and a lack of insight into his condition. After his stroke, he had severe deficits in recalling general information, deficits in memory, and auditory processing. Because Decedent was unable to understand that Defendant Trini Brassard would have access to all his financial accounts, he lacked capacity to execute the POA. *See Reinhardt v. Cowl*, No. 1065202005, 2005 WL 8134456, at \*4 (N.Y. Sup. Ct. July 07, 2005) (“Given her impaired long and short term memory, her apparent lack of judgement and intellect, and her affect, it is this opinion that Ms. Reinhardt could not have had the requisite capacity to execute a valid power of attorney on March 17, 2005, and accordingly, it is the court's opinion that the powers of attorney signed on that day are void.”); *Blair v. Carlisle*, 681 So. 2d 233, 234 (Ala. Civ. App. 1996) (power of attorney was invalid after court found principal to be incapable of managing her affairs); *In re Mary “J”*, 290 A.d.2d 847, 850, 736 N.Y.S.2d 542 (3rd Dep’t 2002) (A power of attorney executed by an incapacitated person is *void ab initio*.); *Matter of Estate of Perry*, 1998 SD 85, 582 N.W.2d 29 (S.D. 1998) (A wife was incompetent, of unsound mind, and unable to transact

her own financial affairs at time she executed her first power of attorney and continuously thereafter, and thus, all three powers of attorney executed by the wife were invalid).

To the extent that testamentary capacity is required, Decedent lacked such capacity based on the conclusion of the medical report. *See Landmark Tr. (USA), Inc. v. Goodhue*, 172 Vt. 515, 519 (2001) (citing *In re Estate of Burt*, 122 Vt. 260, 263 (1961)) (In Vermont, the test for testamentary capacity is “whether the testator had sufficient mind and memory at the time of making the will to remember who were the natural objects of his bounty, recall to mind his property, and dispose of it understandingly according to some plan formed in his mind.”)

Because Decedent lacked capacity to execute the POA, the actions taken under it must be set aside.

**B. Plaintiff Has Alleged Sufficient Facts To Establish A Prima Facie Case Of Undue Influence by Defendant Trini Brassard.**

The POA was also invalid because Defendant Trini Brassard exerted undue influence over Decedent to execute the POA. Undue influence is the “unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with his welfare.” RESTATEMENT (SECOND) OF CONTRACTS § 177 (1981). Undue influence occurs “when a testator’s free will is destroyed and, as a result, the testator does something contrary to his ‘true’ desires.” *In re Estate of Rotax*, 139 Vt. 390, 392 (1981). “Any species of coercion, whether physical, mental, or moral, which subverts the sound judgment and genuine desire of the individual, is enough to constitute undue influence.” *In re Everett’s Will*, 105 Vt. 291, 315 (1933). Undue influence may be shown by circumstances which have a legitimate tendency to prove that it was used.” *In re Burt’s Est.*, 122 Vt. 260, 265 (1961) (citation omitted). Undue influence is typically applied in estate matters, but the doctrine can also be used to set aside

contracts. *See D'Onofrio v. Mother of God with Eternal Life*, 60 Misc. 3d 910, 919, 79 N.Y.S.3d 902, 909 (N.Y. Sup. Ct. 2018) (citing cases).

Here, there is evidence that Defendant Trini Brassard used her relationship of trust and confidence with her father, Decedent, to unduly influence him into providing a POA with full access to his accounts. Defendant Trini Brassard knew about Decedent's cognitive impairment and deficiencies as she received the medical records and was present at the hospital with Decedent in July of 2013. She knew that Decedent had an estate plan done by a specific attorney, but brought him to a new attorney for the purpose of drafting a POA that gave her full access to his financials. Defendant Trini Brassard then used this authority to use, transfer, and gift Decedent's assets and monies to herself and the other Defendants.

As a result, Plaintiff's claim for undue influence is factually sufficient.

**C. Plaintiff Has Alleged Sufficient Facts To Establish A Prima Facie Case Of Constructive Fraud Against Defendant Trini Brassard.**

Constructive fraud may arise in cases where "where a party in a position of superior knowledge or influence intentionally gains an unfair advantage at the expense of another person." *Hardwick-Morrison Co. v. Albertsson*, 158 Vt. 145, 150 (1992). Where a misrepresentation does not rise to the level of deceit or actual fraud, or where a party is "in a position of superior knowledge" and "gains an unfair advantage" at another's expense, a cause of action for constructive fraud may be appropriate. *Id.* at 150 (citations omitted); *see also Cyr v. Cote*, 396 A.2d 1013, 1019 (Me. 1979) ("[U]ndue influence is a species of constructive fraud."); *McMeens v. Pease*, 878 S.W.2d 185, 189 (Tex. App. 1994) (undue influence is a species of fraud and may be exercised by influence of the strong over the weak).

Here, there is no doubt that Defendant Trini Brassard was in a position of trust and confidence with Decedent as his daughter. She had a moral duty to care for him and had a



relationship of trust and confidence. Following his stroke in July 2013, Decedent lived with Defendant Trini Brassard, allowing her to influence him. Defendant Trini Brassard was also in a position of superior knowledge because of Decedent's mental impairment. She had knowledge of Decedent's cognitive disabilities as she received the medical records, took him to medical appointments, and cared for him. Decedent was physically dependent on her for his care. She used that knowledge to access his financials and then took actions contrary to the POA, actions that benefit herself and her family to the detriment of Decedent and his Estate. She also disposed of Decedent's assets and monies contrary to Decedent's 2008 Will. Although Defendant Trini Brassard knew about Decedent's estate plans, she used the authority in the POA to subvert Decedent's testamentary intent for her benefit.

Under the circumstances, Plaintiff has established a *prima facie* case of constructive fraud against Defendant Trini Brassard. See *Chester v. Weingarten*, No. 2751005, 2011 WL 10980781, at \*11 (Vt.Super. Oct. 24, 2011) (denying summary judgment based on similar facts).

**D. Plaintiff Has Alleged Sufficient Facts To Establish A Claim For Unjust Enrichment.**

Unjust enrichment exists when a party improves their own position at the expense of someone else. "In other words, the inquiry is whether, in light of the totality of circumstances, it is against equity and good conscience to allow defendant to retain what is sought to be recovered. Thus, whether there is unjust enrichment may not be determined from a limited inquiry confined to an isolated transaction. It must be a realistic determination based on a broad view of the human setting involved." *Legault v. Legault*, 142 Vt. 525, 531 (1983) (quotations and citations omitted). The remedy for unjust enrichment is to return the assets wrongfully in the possession of the defendants. Equitable remedies for unjust enrichment include the imposition of a constructive trust. *Weed v. Weed*, 2008 VT 121, ¶ 16, 185 Vt. 83 (mem.) ("We review

equitable remedies, like the creation of a constructive trust, for a trial court's abuse of discretion."); *see also R.B. Ventures, Ltd. v. Shane*, 112 F.3d 54, 60 (2d Cir. 1997) ("claims for unjust enrichment or quantum meruit do not hinge on the existence of an agreement, oral or otherwise.") (citing *Grappo v. Alitalia Linee Aeree Italiane, S.p.A.*, 56 F.3d 427, 433 (2d Cir.1995)).

Here, Defendant Trini Brassard made gifts, transferred property, entered into gratuitous contracts on behalf of Decedent, and compensated herself all in violation of the POA. Defendant Trini Brassard's actions conflict with the disposition of Decedent's assets under his 2008 Will. Defendants were unjustly enriched by Defendant Trini Brassard's actions at the expense of the Estate and the beneficiaries. Thus, it would be unjust for the Defendants to retain the assets improperly gifted, transferred, or diverted to them in any way.

WHEREFORE, for all the foregoing reasons and pursuant to V.R.C.P. 15, Plaintiff respectfully MOVES this Court for LEAVE TO AMEND the Complaint, and to permit Plaintiff to file the Second Amended Complaint in the form attached hereto as Exhibit 1; and all such other relief this Honorable Court deems just and appropriate under the circumstances.

DATED at Woodstock, Vermont this 15<sup>TH</sup> day of July 2025.

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