FILED: 3/17/2025 12:14 PM
Vermont Superior Court
Orange Unit
23-CV-02848

STATE OF VERMONT

SUPERIOR COURT — CIVIL DIVISION
Orange Unit — 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 RULE 37 MOTION TO COMPEL DEFENDANT TRINI BRASSARD RESPONSES TO WRITTEN DISCOVERY

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. 37, hereby MOVES this Honorable Court for an ORDER to COMPEL Defendant Trini Brassard to respond to certain discovery requests as set forth herein. In support of this motion, Plaintiff submits the within Memorandum of Law, and further hereby states as follows.

Introduction

This action was filed on 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 ("Defendant") between July 18, 2013 and April 21, 2021, while she was serving as an agent under a Durable Power of Attorney for Decedent Kenneth H. Blaisdell, Jr. ("Decedent"). These claims also pertain to the improper use of Estate funds and assets following the death of Decedent Kenneth H. Blaisdell, Jr., from April 21, 2021 to the present.

Plaintiff has sought formal discovery through interrogatories, requests to produce, depositions (with *duces tecum* noticed). Defendant responded to these discovery requests identifying documents by Bates label reference in her responses to specific discovery requests. However, Defendant has refused to produce these documents. Plaintiff now seeks the Court's intervention to compel the production of these documents.

Procedural Background

On September 29, 2023, Plaintiff served Defendant Trini Brassard with written discovery requests. *See* Plaintiff's First Set of Interrogatories and Requests to Produce to Defendant Trini Brassard, attached hereto as **Exhibit A**. After more than a year of delay, and persistent pressure from the undersigned counsel, Defendant finally responded to these requests on December 31, 2024[1]. *See* Defendant Trini Brassard's Responses to Plaintiff's First Set of Interrogatories and Requests to Produce, attached hereto as **Exhibit B**.

Defendant's responses include the identification of responsive documents including the Bates label references for these documents. However, Defendant withheld production of these identified documents for the following stated reason, "we have Bates Numbered and are prepared to produce bank statements and check images for Ms. Brassard's checking and savings accounts…if we can come to an agreement on the terms of a mutually-agreeable confidentiality order to be filed with and approved by the Court." **Exhibit B**[2].

[1] The production of these documents was fourteen months late, and was achieved after two discovery conferences, several emails, one Rule 26(h) letter, and one request to seek court intervention. These events were outlines in the pending motion *Plaintiff's Motion to Compel Courtney Brassard and Daniel Brassard* filed February 14, 2025.
[2] Defendant responded to Interrogatory Nos. 2, 5, 12 and responded to Request to Produce Nos. 7 and 8 with this statement.

Defendant provided a proposed *Confidentiality Agreement,* to which Plaintiff agreed upon on March 5, 2025. Plaintiff confirmed assent to this agreement with one change, and Plaintiff added all of Defendant's proposed changes to the agreement. Plaintiff did this following recent filings from Defendant's son, Defendant Daniel Brassard, who objected to discovery requests based on a similar argument. Defendant has not, however, produced the identified documents, claiming now that too much time has passed. *See* March 10, 2025 Email String between B. Brannen and E. Willhite, attached hereto as **Exhibit C**.

Plaintiff has attempted to reach an agreement with Defendant on this issue, but has been unable to do so. Plaintiff offered a conference, but Defendant failed to respond to this request. Plaintiff planned to depose Defendant on March 11, 2025, but cancelled the deposition when an agreement related to the production of these documents was not reached. *See* **Exhibit C**. The stonewalling by Defendant over the production of these documents is now prohibiting the forward movement of critical discovery in this case.

Plaintiff also seeks the production of tax returns, which Defendant has denied entirely. **Exhibit B**. Defendant's response to Plaintiff's Request to Produce number 7 objects to the production of these records entirely and unequivocally. Plaintiff believes that this objection is improper, but has been unable to reach any agreement with Defendant to either obtain the documents or reach compromise.

Therefore, Plaintiff is seeking the court's intervention to compel Defendant to produce the identified documents[3]. Plaintiff is significantly prejudiced by further delays.

[3] Plaintiff agrees that the production of these documents falls within the terms of the *Confidentiality Agreement* sent back to Defendant on March 5, 2025.

Memorandum of Law

Under both Vermont statutory and common law, a party is entitled to discovery through any means outlined in the Rules on any subject that "is relevant to any party's claim." V.R.C.P. 26(b)(1). Further, a party is entitled to a discovery conference after meeting the threshold professional courtesies. V.R.C.P. 26(h).

Specifically, parties are entitled to obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." V.R.C.P. 26(b)(1).

1. Documents Identified in Discovery Requests

Plaintiff seeks copies of documents identified by Defendant in her discovery responses. **Exhibit B**. The claims against Defendant include conversion, embezzlement, fraud, and breach of fiduciary duty. *See generally* Complaint. Plaintiff has established that Defendant used her late father's checking account to pay her personal credit card. *See* Affidavit of John Durkee attached to Motion for Writ of Attachment, dated June 31, 2023. "On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost." V.R.C.P. 26(b)(2)(A).

Defendant Trini Brassard has responded to Plaintiff's discovery with specific documents identified by Bates label references. Therefore, Defendant has these items in her possession and by her own admission, the documents are responsive. Plaintiff agreed to all terms requested by

Defendant to protect the information contained in these documents, but Defendant continues to deny production. Plaintiff finds this unreasonable, and seeks an order compelling the production of these documents.

2. <u>Discovery Requests for Tax and Income Records</u>

Due to the nature of Defendants' actions during the time period that Defendant Trini Brassard served as Agent for the Decedent, it is imperative that Plaintiff be able to track all sources of income received by each Defendant during this same time period. As such, Plaintiff has asked for tax returns from all Defendants, including all supporting documents that relate to each annual return. Plaintiff is entitled to these documents, as they directly relate to how the Defendants were able to make certain purchases during the relevant time.

The production of tax returns is standard where issues relating to finances are relevant. *See State of Vt. Environmental Bd. v Chickering*, 155 Vt 308, 318 (1990) ("[D]efendant argues that tax returns themselves—the federal 1040 forms—are sensitive, personal documents that can be easily recopied to the detriment of his privacy. Defendant argues that V.R.C.P. 34(a) allows a litigant "to inspect and copy," but not to "photocopy." The argument is without merit."); *Comstock v Blue Star Services, LLC*, 2017 WL 435768 (U.S. Dist. VT 2017) (motion to compel granted for income tax returns).

WHEREFORE, for all the foregoing reasons, and pursuant to V.R.C.P. 26 Plaintiff hereby respectfully MOVES this Honorable Court for the following relief:

A. COMPEL Defendant Trini Brassard to produce the identified documents;
B. COMPEL Defendant Trini Brassard to produce her income tax records;
C. AWARD Plaintiff all costs and attorneys' fees associated with this motion per Rule 37(a)(4), and

D. ALL such other relief as this Court deems just and appropriate.

DATED at Woodstock, Vermont, this 17TH day of March, 2025.

PRIMMER PIPER EGGLESTON & CRAMER PC

By: *<u>/s/ Elizabeth W. Willhite</u>*

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