

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 A DISCOVERY CONFERENCE**

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.26(f), hereby MOVES this Honorable Court to schedule a DISCOVERY CONFERENCE. 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 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.

The case is nearing the end of its current court-approved discovery schedule, and Plaintiff has sought formal discovery through interrogatories, request to produce, and depositions. Defendants have failed to respond to these discovery requests. Plaintiff now seeks the Court's intervention to address these discovery issues, obtain a new discovery schedule, and move this matter forward.

Procedural Background

On September 29, 2023, Plaintiff served Defendants Trini Brassard, Courtney Brassard, and Dan 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**; Plaintiff's First Set of Interrogatories and Requests to Produce to Defendant Courtney Brassard, attached hereto as **Exhibit B**; and Plaintiff's First Set of Interrogatories and Requests to Produce to Defendant Daniel Brassard, attached hereto as **Exhibit C**. To date, none of these Defendants have served Plaintiff with their responses; leaving all of these responses outstanding for more than eight months.

Plaintiff has been more than generous with Defendants, granting extensions and discussing possible routes to settle these claims¹. On February 8, 2024, Plaintiff emailed Defendants inquiring about these responses. *See* February 8, 2024 email from E. Willhite to Parties, attached hereto as **Exhibit D**. Defendant Trini Brassard's counsel responded, but did not provide any discovery responses. The substance of the communication centered around

¹ The parties have attended multiple all-day mediation sessions with Mediator Greg Eaton in an effort to settle these claims prior to the initiation of this lawsuit, as part of the related probate action before the Orange Probate Division, *in re: Estate of Kenneth H. Blaisdell, Jr.* Docket No.: 21-PR-04895.

settlement, and will not be shared herein. Plaintiff reached out to the parties again on March 25, 2024. *See* March 25, 2024 email from E. Willhite to Parties, attached hereto as **Exhibit E**. Defendant Trini Brassard's counsel responded agreeing to confer about discovery, but indicated that Ms. Brassard wished to confer with Defendant Courtney Brassard's counsel before the conference. *See* March 26, 2024 email from B. Brannen to E. Willhite with March 25, 2024 email from Steadman to E. Willhite, attached hereto as **Exhibit F**. Defendant Courtney Brassard's counsel responded claiming the discovery responses were being finalized. *Id.* On April 3, 2024, having received nothing, the undersigned counsel emailed the parties again in an effort to streamline the conversation, and provided a bullet point list of discovery items requested by Plaintiff. *See* April 3, 2024 email from E. Willhite to Parties, attached hereto as **Exhibit G**. Within this same email, the undersigned counsel requested dates for the deposition of Trini Brassard and Courtney Brassard. Defendants ignored this request.

After months of delay and Plaintiff's extreme patience on these matters, Plaintiff sent a formal Rule 26 letter to the Parties. *See* April 14, 2024 Letter from R. Windish to Parties, attached hereto as **Exhibit H**. Defendants did not respond to this letter. Defendants have delayed, refused, and simply avoided responding to Plaintiff's requests for discovery. As such, Plaintiffs are unable to advance their claims, and are now forced to seek an amendment to the discovery schedule.

Even so, Plaintiff sought to work collaboratively to amend the discovery schedule by emailing the Defendants a proposed ADR Stipulation on May 10, 2024. *See* May 10, 2024 email from E. Willhite to Parties with proposed ADR Stipulation, attached hereto as **Exhibit I**. The undersigned counsel explained in this May 10 email that the need to amend the discovery schedule was due to Defendants' delay in responding to discovery. Counsel further stated that

Plaintiff has been cooperative and patient due to a multitude of reasons, but so informed Defendants that this would end shortly. *Id.* Counsel suggested that the parties confer, but once again the parties declined or simply did not respond.

Included in the May 10 email, was Plaintiff's second request for dates to depose Courtney Brassard and Trini Brassard. *Id.* Plaintiff added Dan Brassard as a requested deponent in this May 10 email. *Id.* The undersigned counsel ended this communication by stating formal notices of deposition "would be served once the parties confirmed availability". *Id.* As with the discovery requests though, Defendants never responded. As such, Plaintiff was left with no other choice but to notice depositions at dates and times that were convenient to Plaintiff. *See* June 7, 2024 email from M. Snell to Parties with attachments, attached hereto as **Exhibit J**. At present, Dan Brassard has confirmed he is available on August 8. Plaintiff continues to wait for responses from the other parties, except Trini Brassard's counsel indicated he is not available August 9.

After receiving no response related to these issues except as noted above, Plaintiff sent a final request to confer on June 18, 2024. However, only Dan Brassard responded. *See* Email between E. Willhite and Parties dated June 18, 2024, attached hereto as **Exhibit K**.

Additionally, Defendants have consistently claimed that the discovery sought by Plaintiff is duplicative and includes items Plaintiff already has in its possession. In response, Plaintiff voluntarily produced the documents in its possession. Plaintiff made this production on April 12, 2024. This production included 377 documents totaling more 3,911 pages, all of which support Plaintiff's claims that Defendant Trini Brassard used her authority as agent to transfer property, equipment, income, and other monies to either herself or the other Defendants. However, Plaintiff seeks discovery into banking accounts, tax returns, and other personal financial records

for all Defendants. This discovery is relevant to these claims as these records will track the funds that were taken; the farm income that was diverted; the equipment sales that were converted; and/or the gravel and sand income that was diverted from the Estate. Plaintiff is entitled to this information, and seeks the court's intervention to move this process along, and extend the discovery schedule because of these delays by Defendants.

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). In this instance, the discovery requests are for records which pertain to the claims in that it is believed that they will show how Defendant Trini Brassard conveyed funds, land, farm income, equipment, and other assets belonging to the Decedent or Estate to the Defendants. Plaintiff does not have these records, nor does it have access to these records, since they are not Estate assets or former assets of the Decedent.

A. Discovery Requests for Financial Accounts

Plaintiff seeks information about the personal banking accounts belonging to these Defendants. This request is limited by time, and only requests banking or financial statements of

personal and business accounts from July 18, 2013 to the present. This request includes copies of deposited checks, because it is believed that Defendant Trini Brassard collected payments owed to the Decedent and deposited these funds into accounts belonging to her or the other defendants. These records are only kept by banking institutions for a set number of years, and further delay will make collection of these checks impossible. Further, given Defendants' collective refusal to comply, to date, Plaintiff is now asking for a release from the defendants so that Plaintiff may obtain these records directly from each financial institution. Plaintiff therefore will need each defendant to identify these accounts (as previously requested in the discovery requests), and execute releases for these records.

B. Discovery Request related to Real Estate Transactions

Plaintiff has requested information about all real estate transactions made by these defendants from July 18, 2013 to present. This is limited in time, but includes property that is owned by Defendants, not the Decedent/Estate. Plaintiff believes Defendant Trini Brassard used the Decedent's funds to purchase property for herself. Plaintiff has produced evidence already of this fraudulent conveyance. *See*, Affidavit of John Durkee Exhibit G, filed June 30, 2023. Plaintiff is entitled to all records related to the Defendants' purchase of real estate during the relevant time period. While certain records are available through town land records, Plaintiff believes that the Defendants have used the Decedent/Estate's funds to purchase/improve lands that are outside of Orange County Vermont. Plaintiff is entitled to this information, and should not bear the cost of a nationwide asset search when the defendants have this information readily available to them.

C. Discovery Requests for Conversion of Farm Income

Plaintiff has asked for a list of farm customers, and copies of various farm operation documents (invoices, customer checks, and customer communications). Defendants claim that these documents are already in Plaintiff's possession. However, Plaintiff is missing many categories including, but not limited to, invoicing for hay, customer checks for hay, and customer communications. Plaintiff believes that the Defendants sold the Decedent/Estate's hay and kept the income from these sales. One of the Decedent/Estate's largest hay customers was Eustis Cable. This customer consistently bought hay from the Decedent every year, however in 2021 following the death of Decedent, Eustis Cable hay income drops off substantially while other customers hay purchases are nonexistent. Plaintiff believes that income was received and retained by one or more of the Defendants. Therefore, Plaintiff has requested information and records related to farm operations. Plaintiff intends to issue third-party subpoenas if Defendants delay any further, but believes it is inappropriate for the Estate to bear these costs given that Defendants have that information readily available to them.

Further, it has been established that Defendant Courtney Brassard and Brian Falzo received a parcel of land from the Decedent without any consideration in a transaction that Defendant Trini Brassard engineered while serving as the Decedent's agent under his POA. This parcel of land includes a gravel pit, which generates annual income. Plaintiff has requested records of all gravel sales, since the parcel and its gravel continue to belong to the Estate notwithstanding the defendants contention that the current title is valid. Plaintiff has records from W.B. Rogers, the operator of the pit, but believes these defendants have sold gravel/sand to unknown third-parties as well. Plaintiff is entitled to these records.

D. Discovery Requests for Transfer of Equipment and Personal Property

Plaintiff has proof that Defendant Trini Brassard bought and sold equipment and personal property with the Decedent's funds or that belonged to the Decedent. Plaintiff has requested information about the ownership of other pieces of equipment, such as a Eustis Cable truck that is currently used by Defendant Trini Brassard's business. Upon information and belief, this truck was purchased in a barter transaction using hay from the Decedent's farm, and Plaintiff is entitled to discover how this truck became the defendant's property. Further, there are other items such as a "Razor" ATV, sugaring equipment, and tools which Plaintiff believes belong to the Estate. As such, Plaintiff has requested that the defendants produce documents showing how these items were purchased, records which Plaintiff is entitled to obtain.

Finally, Defendant Courtney Brassard received a \$48,000 piece of personal property through another transaction engineered by Defendant Trini Brassard. These facts have already been established, and show that Defendants used the Decedent's funds to purchase a mobile home trailer which they then titled to both the Decedent and Defendant Courtney Brassard. Upon the death of the Decedent, title passed to Defendant Courtney Brassard, and she sold this mobile home for a profit. Plaintiff has requested all records that relate to the use, upkeep, maintenance, and sale of this item.

E. Discovery Requests for Tax and Income Records

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 period.

WHEREFORE, for all the foregoing reasons, and pursuant to V.R.C.P. 26 Plaintiff hereby respectfully MOVES this Honorable Court to schedule a Discovery Conference, and further requests all such other relief as this Court deems just and appropriate, including but not limited to costs and attorneys' fees.

DATED at Woodstock, Vermont, this 27TH day of June, 2024.

PRIMMER PIPER EGGLESTON & CRAMER PC

By: /s/ Richard J. Windish
Richard J. Windish, Esq.
Elizabeth A. Willhite, Esq.
43 Lincoln Corners Way, Suite 205
Woodstock, Vermont 05091
rwindish@primmer.com | 802-457-8128
ewillhite@primmer.com | 802-371-5202
***Attorneys for John Durkee, Executor of the Estate
of Kenneth H. Blaisdell, Jr.***