

STATE OF VERMONT

VERMONT SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No.

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 WRIT OF ATTACHMENT

NOW COMES Plaintiff JOHN DURKEE, EXECUTOR OF THE ESTATE OF
DECEDENT KENNETH H. BLAISDELL, JR., and pursuant to V.R.C.P. 4.1, hereby MOVES
this Honorable Court for an Order approving the attachment of certain real property owned by
Defendants in Randolph, Vermont as set forth in the proposed Writ of Attachment submitted of
even date herewith. In support of this Motion, Plaintiff submits the accompanying Affidavit of
John Durkee; the within Memorandum of Law; the proposed Order Approving Writ of
Attachment and Writ of Attachment, all submitted of even date herewith; and further hereby
states as follows.

Introduction

In July, 2013, Defendant Trini Brassard was granted authority under a Durable Power of
Attorney to serve as Agent for Plaintiff's Decedent, Kenneth Blaisdell, Jr.. Defendant Trini
Brassard used this power to transfer to herself and other Defendants certain assets owned by
Decedent. Real estate as well as personal property has been converted by these Defendants, and

as set forth in the Complaint filed of even date herewith, Plaintiff is entitled to compensation for these losses.

Through the instant motion, Plaintiff seeks an attachment of certain assets which have been unlawfully transferred to certain Defendants as set forth below.

Factual Background

Kenneth H. Blaisdell, Jr. (“Decedent”) was a farmer from Randolph, Vermont, from a farming family with deep roots in Orange County. Decedent planned for his Estate and named three children and four grandchildren as heirs in his Last Will and Testament executed on December 16, 2008 (“Will”). *See* Affidavit of John Durkee (“Durkee Aff.”) at ¶ 2. The Will nominates the Decedent’s son, Thad Blaisdell, as Executor. *Id.* Prior to his death, the Decedent suffered a massive stroke, after which he was unable to care for himself. *See* Durkee Aff. at ¶ 3.

A few days after his stroke, Defendant Trini Brassard and Plaintiff’s Decedent, Kenneth Blaisdell, Jr. executed a Durable Power of Attorney (“POA”) wherein the Decedent granted specific authority to Defendant Trini Brassard to serve as his agent under the terms of the POA. *See* Durkee Aff. at ¶ 4. The POA did not expressly authorize Defendant Trini Brassard to make gifts or to compensate herself. *Id.*

On April 27, 2014, Defendant Trini Brassard purchased a 2013 Commodore Astro mobile home using the Decedent’s funds. *See* Durkee Aff. at ¶ 5. The mobile home was titled to the Decedent and Defendant Courtney Brassard, even though Defendant Courtney Brassard did not pay for any portion of the purchase or transportation of the same. *Id.* When the Decedent died, Plaintiff informed Defendants that this mobile home would be considered property of the Estate. *Id.* at ¶ 6. However, Defendant Courtney Brassard sold this mobile home on January 6, 2023. *Id.* The purchase price listed on the property transfer tax return is \$46,000. *Id.*

On May 29, 2015, Defendant Trini Brassard initiated a wire transfer from the Decedent's personal savings account to *Premium Title Service FBO Buyer Trini Brassard* in the amount of \$32,117.29. *See Durkee Aff* at ¶ 7. This wire transfer was used to purchase a second home for Defendant Trini Brassard and her husband, Jeff Brassard in Pittsburgh, New Hampshire. *Id.*

On August 12, 2015, using funds from her father's personal checking account, Defendant Trini Brassard purchased a Polaris Razor ATV from Champlain Valley Equipment with her husband Jeff Brassard. *See Durkee Aff.* at ¶ 8. Defendant Trini Brassard signed Decedent's check number 5253 totaling \$10,000 made payable to Champlain Valley Equipment on August 15, 2015. *Id.* Defendant Trini Brassard listed herself and her husband Jeff Brassard as the owners of this item. *Id.* The item was delivered to Defendant Trini Brassard at 1434 Halls Stream Road in Pittsburg, New Hampshire. *Id.*

On November 2, 2015, Defendant Trini Brassard executed a lease on behalf of her father between her father and her son, Defendant Daniel Brassard. *See Durkee Aff* at ¶ 9. Before her son could take possession of these lands, Defendant Trini Brassard evicted a paying tenant. *Id.* The total lost rental income to date is \$2,400 per year, for a total of eight years, which equals \$19,200.

On November 28, 2015, Defendant Trini Brassard executed a lease on behalf of her father between her father and Defendant Brassard Sugarworks, a Vermont Corporation owned by her son, Defendant Daniel Brassard. *See Durkee Aff.* at ¶ 10. The terms of this lease are \$0 rent for 20 years. *Id.*

On April 20, 2016, Defendant Trini Brassard wrote a check for \$10,000, to herself out of Decedent's personal checking account. *See Durkee Aff.* at ¶ 11.

On October 10, 2017, Defendant Trini Brassard sold a New Holland SkidSteer owned by her father to John Benson for \$5,000. *See Durkee Aff.* at ¶ 12. The proceeds were not received by Decedent, but were instead distributed by Defendant Trini Brassard to herself and her brother Thad Blasidell. *Id.* Thad Blasidell acknowledges receipt of \$2,500 from this sale. Defendant Trini Brassard is believed to have kept the remaining \$2,500.

On August 16, 2019, Defendant Trini Brassard sold a 1999 Timber Jack Skidder owned by her father to Copses Farm for \$37,500. *See Durkee Aff.* at ¶ 13. The proceeds were not received by Decedent, but were instead distributed by Defendant Trini Brassard to herself and her brother Thad Blasidell. *Id.* Thad Blasidell acknowledges receipt of \$17,500 from this sale. *Id.* Defendant Trini Brassard is believed to have kept the remaining \$20,000. *Id.*

On March 10, 2020, Defendant Trini Brassard transferred a parcel of land owned by the Decedent to Defendant Courtney Brassard and Defendant Brian Falzo. *See Durkee Aff.* at ¶ 14. The Property Transfer Tax Return notes the grand list value of this parcel was \$183,400, but the transfer to these Defendants was without consideration. *Id.* After this property was quitclaimed, Defendants Courtney Brassard and Brian Falzo borrowed money from Bar Harbor Bank and Trust to build a home on this land, the total amount of the mortgage is \$300,000. *Id.* at ¶ 15.

When this parcel was transferred, it came with a gravel pit that was earning sizable annual income, and Defendant Courtney Brassard has collected gravel income. *See Durkee Aff.* at ¶ 16. The total amount of gravel extracted to date is valued at over \$50,000. *Id.*

In 2021, Defendant Trini Brassard converted timber harvest income from Plaintiff by directing the forester and logger to pay her directly for extracted logs. *Durkee Aff.* at ¶ 17. Defendant Brassard received checks totaling \$36,759. *Id.* Trini Brassard received one of these checks after Decedent died. *Id.*

Memorandum of Law

In Vermont, real estate may be attached and held to satisfy any judgment for damages and costs which the plaintiff may recover. V.R.C.P. 4.1(a). A court may issue a writ of attachment upon: (1) a showing of good cause; and (2) a finding by the court that “there is a reasonable likelihood that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the amount of the attachment over and above any liability insurance, bond, or other security shown by the defendant to be available to satisfy the judgment.” V.R.C.P. 4.1(b)(2). The motion shall be supported by an affidavit that sets forth “specific facts sufficient to warrant the required findings and shall be upon the affiant’s own knowledge, information, or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true.” V.R.C.P. 4.1(i).

An agent’s authority to act under a Durable Power of Attorney is governed by statute in Vermont, and includes a general duty to “act in good faith and in the interest of the principal.” 14 V.S.A. § 3505(a)(1). An agent may not compensate herself or make gifts or loans of a principal’s property to others unless expressly authorized by the instrument. 14 V.S.A. § 3504(d-f). An agent must also “refrain from self-dealing,” which the statute defines as “any transaction, including transfer of property of a principal to an agent, that directly or indirectly benefits the agent or the immediate family of the agent, regardless of whether the agent has provided consideration for the transaction.” 14 V.S.A. §§ 3501(11), 3505(a)(2).

As set forth in the Complaint and the accompanying Affidavit of John Durkee, Plaintiff can establish that Defendant Trini Brassard exceeded her authority by making the aforementioned gifts and unauthorized transfers. Plaintiff can also establish all of the elements of a claim for breach of fiduciary duty, along with the other claims. Specifically, Defendant

Trini Brassard agreed to serve as an agent for the Decedent but instead paid her own debts, gave sizable gifts to her children, took farm crops for her own personal use, and permitted her children to do the same.

Additionally, Plaintiff has proven all the elements of civil embezzlement as outlined by statute. 14 V.S.A. § 1553 provides that, “if a person embezzles or converts any of the property of a decedent before the appointment of the executor or administrator, the person shall be liable to the executor or administrator of the estate for double the value of the property embezzled or converted.” *Id.* As set forth in the Complaint and the accompanying Affidavit of John Durkee, Plaintiff can establish that Defendant Trini Brassard embezzled logging income; and that Defendant Courtney Brassard embezzled gravel income from the Decedent.

Plaintiff has also proven all the elements of conversion. Conversion exists “either in the appropriation of the property to the party’s own use and beneficial enjoyment, or in its destruction, or in exercising dominion over it in exclusion or defiance of the owner, or in withholding possession from the owner under a claim of title inconsistent with his title.” *Economou v. Carpenter*, 124 Vt. 451, 453-54 (1965). As set forth in the Complaint and the accompanying Affidavit of John Durkee, Plaintiff can establish that Defendants Trini Brassard, Courtney Brassard, Brian Falzo, Daniel Brassard, and Brassard Sugarworks have appropriated property of Decedent for their own use and personal enjoyment.

There also is a strong likelihood that Plaintiff’s judgment against Defendants will exceed the amount of the requested attachment. Defendants owe \$650,000.00 with interest, costs and fees accruing. According to Town appraisals, attached hereto and of which the Court can take

judicial notice¹, the gross value of the real estate equals just under \$900,000; however, Plaintiff will demonstrate that said real estate is leveraged. *See Durkee Aff.* at ¶ 15. Accordingly, an attachment is necessary to protect Plaintiffs' interests. Plaintiff is unaware of any liability insurance, bond, or other security held by Defendants that would be available to satisfy any judgment.

Based on the facts and law set forth herein, the Court should find a strong likelihood of success on Plaintiff's claims warranting the issuance of a writ of attachment.

WHEREFORE, for all the foregoing reasons and pursuant to V.R.C.P. 4.1, Plaintiff hereby MOVES this Honorable Court for an ORDER attaching certain real estate owned by Defendants 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 30TH day of June, 2023.

PRIMMER PIPER EGGLESTON & CRAMER

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¹ Pursuant to V.R.E. 201, a court may take judicial notice of any fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."