

STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Case No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF THE
ESTATE OF DECEDENT [KENNETH] H.
BLAISDELL, JR.,
Plaintiff,

v.

TRINI BRASSARD, COURTNEY BRASSARD,
BRIAN FALZO, DANIEL BRASSARD, AND
BRASSARD SUGARWORKS AND MAPLE
SUPPLY, LLC,
Defendants.

TRINI BRASSARD'S MEMORANDUM IN OPPOSITION TO
PLAINTIFF'S MOTION FOR EX PARTE ATTACHMENT

Defendant, Trini Brassard ("Ms. Brassard"), by and through her attorneys, Brannen & Loftus, PLLC, hereby submits this memorandum in opposition to *Plaintiff's Motion for Ex Parte Attachment*, dated July 24, 2024 (hereinafter, "Plaintiff's Motion"). This objection is specifically focused on Plaintiff's request issuance of a writ of attachment on an *ex parte* basis, but, in anticipation that the Court will set the matter for hearing in the ordinary course of the Court's business, Ms. Brassard intends to file a more detailed objection, supported by affidavits and other documentary evidence, as necessary and appropriate, within the 14-day period prescribed by V.R.C.P. 7(b)(4) (*i.e.*, by no later than Wednesday, August 7, 2024 – fourteen (14) days from July 24, 2024), unless otherwise ordered by the Court.¹

¹ Counsel for Plaintiff and Ms. Brassard discussed a potential resolution of the issue raised in Plaintiff's Motion on mutually agreeable terms, but it was impossible to fully resolve the matter before close of business today, because (for reasons discussed further herein) any such resolution would have necessitated the assent of Ms. Brassard's husband, Jeff Brassard, who is not a party to the action and is not represented by any of the attorneys in this case.

Plaintiff's Motion should be denied, because (1) Plaintiff has failed to meet the standard established by V.R.C.P. Rule 4.1(b)(3) to obtain an *ex parte* writ of attachment; (2) given Plaintiff's failure to meet the applicable standard, Ms. Brassard has a constitutional right to a hearing on the merits of the motion before any writ of attachment against her real property may be issued; and (3) the Court lacks the power, in any event, to issue a writ of attachment as to the real property identified by Plaintiff's Motion, inasmuch as title to the property is held by Ms. Brassard, together with her husband, Jeff Brassard, who is not a party to this action, as tenants-by-the-entirety. In further support of her objection to Plaintiff's Motion, Ms. Brassard states as follows:

1. To obtain a writ of attachment on an *ex parte* basis, Plaintiff is required to show not only that he has a "reasonable likelihood" of succeeding on the merits of his claims, V.R.C.P. Rule 4.1(b)(3), but also that "there is immediate danger shown by specific facts that [Ms. Brassard] will damage, destroy, or sell to a bona fide purchaser attachable property, leaving insufficient...assets to satisfy the judgment." *Id.*
2. Leaving aside the question of whether Plaintiff can meet the standard of proving a reasonable likelihood of success on the merits of his claims (which, Ms. Brassard maintains, he cannot show and, on the basis of the materials submitted in support of Plaintiff's Motion, certainly has not shown), Plaintiff has not even articulated any argument, much less offered "specific facts" to show to why there is an "immediate danger" that Ms. Brassard will damage, destroy, or otherwise sell her real property, thereby leaving insufficient assets to satisfy any prospective judgment against her.
3. Ms. Brassard has no intention of conveying or encumbering the property identified in Plaintiff's Motion and, as stated above, intends to file (by not later than Wednesday,

August 7, 2024) a substantive objection, addressing the issue of the likelihood that Plaintiff will obtain a judgment against her.

4. Inasmuch as Plaintiff has failed to meet the standard for issuance of an *ex parte* writ of attachment, Ms. Brassard has a constitutional right under the Due Process Clause of the Fourteenth Amendment to a hearing before the Court can issue a writ of attachment against her real property. *See Filter Equipment Co. v. International Business Machines Corp.*, 142 Vt. 499, 501 (1983); *see also Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972).
5. Finally, but perhaps most importantly, the Court lacks the ability to issue the writ of attachment Plaintiff seeks, because the real property identified in “Exhibit A” to Plaintiff’s Proposed *Writ of Attachment for Trini Brassard’s Real Estate*, filed July 24, 2024, is co-owned by Ms. Brassard and her husband, Jeff Brassard, a non-party to this action, as tenants-by-the-entirety.
6. Plaintiff, as Executor of the Estate of Kenneth H. Blaisdell, Jr. (“the Estate”), has brought claims against Ms. Brassard, individually, for monies he claims she owes to the Estate. Ms. Brassard’s husband, Jeff Brassard, who is not a party to this action, co-owns with Ms. Brassard as tenants-by-the-entirety the property as to which the Estate seeks a writ of attachment. As such, this Court has no authority to issue a writ of attachment as to Ms. Brassard’s individual interests in the real property identified in “Exhibit A” to Plaintiff’s proposed writ. *See RBS Citizens, N.A. v. Ouhrabka*, 2011 VT 86, ¶ 11, 190 Vt. 251, 30 A.3d 1266 (“[T]he estate of the wife and the husband’s interest in her tenancy by the entirety...is protected from the husband’s sole creditors.”) (*quoting Rose v. Morrell*, 128 Vt. 110, 112 (1969); *see also Bellows Falls Trust Co. v. Gibbs*, 148 Vt. 633, 633

(1987) (mem.) (holding that “[n]either spouse has a share [of tenancy by entirety property] which can be disposed of or encumbered without the joinder of the other spouse”); *Lowell v. Lowell*, 138 Vt. 514, 515-16 (1980) (holding that property held by husband and wife in tenancy by entirety cannot be reached by husband’s creditors absent fraud); *Town of Corinth v. Emery*, 63 Vt. 505, 508 (1891) (holding that property held by husband and wife in tenancy by entirety is exempt from attachment or execution for the sole debts of husband)).

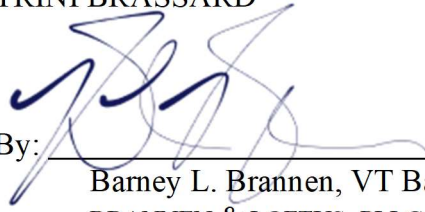
WHEREFORE, Ms. Brassard respectfully requests the Court enter orders:

- A. Denying *Plaintiff’s Motion for Ex Parte Attachment*, dated July 24, 2024;
- B. Scheduling a hearing on Plaintiff’s request for an attachment, pursuant to V.R.C.P. 4.1, after allowing Ms. Brassard sufficient time to respond, substantively to Plaintiff’s request; and
- C. Granting such other relief as is deemed fair and just.

DATED at Hanover, New Hampshire this 26th day of July, 2024

Respectfully submitted,

TRINI BRASSARD

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