

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 OBJECTION TO
PLAINTIFF'S MOTION FOR WRIT OF ATTACHMENT

NOW COMES Defendant, Trini Brassard ("Ms. Brassard"), by and through her attorneys, Brannen & Loftus, PLLC, and hereby files this objection to *Plaintiff's Motion for Writ of Attachment* (hereinafter, "*Plaintiff's Motion*"), filed June 30, 2023. Concurrent with the filing of this objection, Ms. Brassard has also filed *Trini Brassard's Answer and Affirmative Defenses* and *Trini Brassard's Counterclaim for Allowance of Claims*, requesting that this Court order Plaintiff to allow Ms. Brassard's claims against Decedent's estate ("the Estate") for the personal care and management services that she provided to Decedent from the time of his stroke in July 2013 until the time of his death. Plaintiff's request for an attachment should be denied because the testimony and exhibits that Ms. Brassard will submit at the hearing on *Plaintiff's Motion* will establish that Decedent, notwithstanding his stroke in July 2013, was competent during the final years of his life, that he consented to and directed and/or ratified the transactions Plaintiff alleges were improper, and that Ms. Brassard's claims against the Estate for compensation for her

services, which claims exceed the value of the claims of the Estate against Ms. Brassard, should be allowed. Moreover, such evidence will clearly demonstrate that Plaintiff has failed to show a reasonable likelihood that the Estate will recover judgment in this matter, and so has failed to meet the standard for prejudgment attachment under V.R.C.P. Rule 4.1. In further support of her objection, Ms. Brassard states as follows:

1. Plaintiff claims that the facts alleged in the Estate's complaint, motion for writ of attachment, and affidavit, all filed on June 30, 2023, prove "the elements...for breach of fiduciary duty...civil embezzlement...[and] conversion[,]" *Plaintiff's Motion* at pg. 5-6, and establish a "strong likelihood of success on Plaintiff's claims warranting the issuance of a writ of attachment." *Id.* at pg. 7.
2. As an initial matter, the complaint, motion, and accompanying affidavit, exaggerate the severity of Decedent's stroke and mischaracterize Ms. Brassard's prior statements regarding his capacity.
3. Plaintiff asserts that "[Decedent] suffered a massive stroke, and according to his daughter, Trini Brassard, he was unable to care for himself afterwards." *Affidavit of John Durkee*, dated June 30, 2023, at ¶ 3.
4. It is true that Ms. Brassard, in an affidavit submitted to the Orange Probate Division on August 26, 2021, stated that Decedent "suffered a stroke in July 2013 and from then until his death required care[,]" *Exhibit C, Affidavit of John Durkee*, at ¶ 1, but Decedent's stroke was not a "massive stroke" and, while he did require care and assistance, it did not render him incapacitated or otherwise incapable of actively participating in the managing of his own affairs.

5. Further, all transactions entered into by Ms. Brassard on Decedent's behalf during his lifetime were pursuant to the terms of the General Power of Attorney and according to Decedent's wishes, and the actions undertaken by Ms. Brassard were consented to, ratified, and/or at Decedent's express direction.
6. Plaintiff alleges that Ms. Brassard violated her "general duty to 'act in good faith and in the interest of the principal'" *Plaintiff's Motion*, at pg. 5, when she engaged in the various transactions alleged in Plaintiff's complaint and motion. Plaintiff further alleges that such transactions were barred by the General Power of Attorney because they were not "expressly authorized by the instrument[.]" *Plaintiff's Motion*, at pg. 5, and that such transactions violated her duty to "refrain from self dealing[.]" *Id.*
7. The General Power of Attorney, executed by Decedent on July 18, 2013, granted Ms. Brassard the power "[t]o execute or perform every act, power, duty, right, or obligation whatsoever that I now have, or may hereafter acquire...in connection with, arising from, or relating to any person, item transaction, thing, business property, real or personal, tangible or intangible, or matter whatsoever[.]" *Exhibit D, Affidavit of John Durkee*, dated June 30, 2023, at ¶ 1, to "lease...any part of any real or personal property whatsoever...or any interest therein..." *Id.* at ¶ 5, and "[t]o conduct, engage in, and transact any and all lawful business of whatever nature or kind for me in my behalf, and in my name." *Id.* at ¶ 6.
8. Decedent appointed Ms. Brassard to act as his agent under the General Power of Attorney to help him manage his farming business and personal affairs, pursuant to which Ms. Brassard had the authority, particularly where she acted under Decedent's express

direction and/or in accordance with his prior practice, course of dealing, and expressed wishes, to enter into the transactions that Plaintiff alleges were improper.

9. Further, even if this Court finds that the transactions entered into with members of the Decedent's family were instances of "self-dealing," the Vermont Supreme Court has held that "a principal may consent to an intrafamilial transaction benefiting a self-dealing agent...if the principal is competent and possessed the requisite knowledge regarding the transaction prior to its occurrence." *Estate of Kuhling v. Glaze*, 208 Vt. 273, 285 (2018). See also, *Lamson v. Lamson*, 204 Vt. 490, 499-500 (2017) (Court found no breach of fiduciary duty when son distributed trust assets for his personal benefit because the mother/grantor consented to the son's conduct when she "actively participated in every step of [the] series of transactions[.]"')
10. Despite requiring assistance with his personal care and in maintaining his business operations, the evidence will show that Decedent was, aside from occasional bouts of confusion and short-term memory loss, fully competent during the time that Ms. Brassard was acting as his agent and was fully informed and cognizant of the transactions prior to, during, and after their consummation.
11. The Estate has presented no evidence (and will be unable to present evidence) to demonstrate that Decedent was incompetent, that he failed to consent to and/or ratify the transactions, or that he was otherwise incapable of understanding, directing, consenting to, and/or ratifying the transactions that Plaintiff alleges were improper. Ms. Brassard, by contrast, will submit evidence at the hearing to demonstrate that Decedent was competent and active in the management of his daily affairs until the end of his life and that he expressly consented to and/or ratified the allegedly improper transactions.

12. The General Power of Attorney makes it clear that Ms. Brassard was authorized to “conduct, engage in, and transact any and all lawful business” on behalf of Decedent, including those transactions detailed in *Plaintiff’s Motion*, Ms. Brassard will testify at the hearing on *Plaintiff’s Motion* that all transactions, including those that benefited Ms. Brassard and the other named defendants, were conducted at the express direction of Decedent and/or in accordance with his prior practice, course of dealing, and expressed wishes, and such evidence will demonstrate that Plaintiff’s claims of breach of fiduciary duty, civil embezzlement, and conversion are groundless (or that, in any case, Plaintiff cannot meet his burden of proving that he is likely to prevail on those claims).
13. V.R.C.P. Rule 4.1(b)(2) states, in relevant part, “an order of approval may be issued only upon...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 able to satisfy the judgment.”
14. At the hearing on *Plaintiff’s Motion*, Ms. Brassard will establish that Plaintiff has failed to show a reasonable likelihood that he will recover judgment in this matter, and *Plaintiff’s Motion* should be denied accordingly.
15. As a final note, the evidence will also show that Ms. Brassard and Decedent had an understanding that she would be compensated for her services upon Decedent’s death, due to the lack of liquid assets available during his lifetime “to pay for [Decedent’s] care and to continue the agricultural operations and commercial gravel operations.” *Exhibit C, Affidavit of John Durkee*, at ¶ 2.

16. Accordingly, this Court should find it more likely than not that Ms. Brassard will be entitled to the recovery she seeks from the Estate in her *Counterclaim* for compensation for the care and management services that she provided to Decedent during the final years of his life – which claims total approximately \$850,000 (well in excess of the damages that Plaintiff claims he is seeking against Ms. Brassard) – and, for that reason as well, deny Plaintiff's request for a writ of attachment.

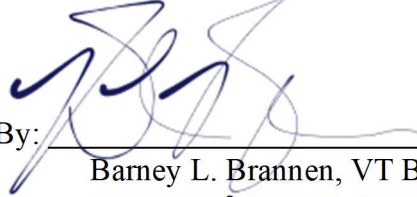
WHEREFORE, Trini Brassard respectfully requests that this Court:

- A. Schedule an evidentiary hearing on *Plaintiff's Motion for Writ of Attachment* – Ms. Brassard requests a full day for the presentation of evidence – and, following such hearing;
- B. Deny *Plaintiff's Motion for Writ of Attachment*, filed June 30, 2023; and
- C. Grant such further relief it deems just and fair under the circumstances.

DATED at Hanover, New Hampshire this 29th day of August, 2023.

Respectfully submitted,

TRINI BRASSARD

By: 

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