

VERMONT SUPERIOR COURT, CIVIL DIVISION, WASHINGTON UNIT

Kingsbury Companies, LLC v. Winton Goodrich et al.

Kingsbury · No. 22-CV-03928 · Decided December 22, 2025

SUMMARY

The Vermont Superior Court denied Kingsbury Companies, LLC’s motion for a writ of attachment securing a claimed \$31,400 debt for septic-system and leach-field work. The court found that the defendants’ evidence concerning Japanese knotweed allegedly introduced by Kingsbury created a reasonable likelihood that Kingsbury had not fully performed its contractual obligations, defeating the required likelihood of recovery.

CASE DETAILS

COURT	Vermont Superior Court, Civil Division, Washington Unit
WRITING FOR THE COURT	Timothy B. Tomasi
JURISDICTION	Vermont Superior Court, Civil Division, Washington Unit
DECIDED	December 22, 2025
DOCKET	22-CV-03928
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Plaintiff moved under Vermont Rule of Civil Procedure 4.1 for a prejudgment writ of attachment encumbering defendants' real property in the amount of \$31,400. After an evidentiary hearing and supplemental briefing, the court denied the motion.
STANDARD OF REVIEW	Under Vermont Rule of Civil Procedure 4.1(b)(2), the court determines from affidavits and hearing evidence whether there is a reasonable likelihood that the plaintiff will recover a judgment, including interest and costs, at least equal to the requested attachment amount, subject to available insurance, bonds, or other security.
PRECEDENTIAL VALUE	Unknown; Vermont Superior Court order

TOPICS

- civil procedure
- remedies
- breach of contract
- implied covenant of good faith
- damages

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Kingsbury established a reasonable likelihood of recovering a judgment sufficient to support a prejudgment writ of attachment under Vermont Rule of Civil Procedure 4.1.
2. Whether the evidence of allegedly deficient contractual performance and the resulting Japanese knotweed infestation defeated Kingsbury's showing of a reasonable likelihood of recovery.
3. Whether the court needed to decide whether defendants' counterclaim could be offset against Kingsbury's claim when determining the attachment amount.

HOLDINGS

1. Kingsbury did not establish a reasonable likelihood that it would recover a judgment in an amount sufficient to support the requested attachment, so the motion for a writ of attachment was denied.
2. Evidence that the plaintiff may not have performed the contract in a good and workmanlike manner may defeat the plaintiff's reasonable-likelihood showing for prejudgment attachment.
3. The court did not need to decide whether a defendant's counterclaim may be offset against a plaintiff's claim in determining the amount of an attachment because the evidence concerning defendants' defense independently defeated Kingsbury's reasonable-likelihood showing.

KEY QUOTATIONS

“The reasonable likelihood standard requires “a realistic conclusion by the court on the basis of affidavits and other evidence presented at the hearing as to the actual probability of recovery by the plaintiff.”” (Order at 2)

“The overriding point is “to limit prejudgment takings of property to situations where the property taken is in fact likely to be subject to a subsequent judgment.”” (Order at 2)

“in every contract there is an “implied duty to perform with care, skill, reasonable expedience and faithfulness”” (Order at 3)

FACTUAL BACKGROUND

The Goodriches hired Kingsbury Companies, LLC to install a septic system and leach field at their home but withheld payment after the work was completed. They alleged that fill brought onto the property by Kingsbury introduced Japanese knotweed, a destructive weed requiring extensive and expensive eradication. At the attachment hearing, the evidence indicated that Kingsbury performed the physical excavation and construction work but may not have performed it appropriately, adequately, or consistently with the parties' contractual obligations.

PROCEDURAL HISTORY

Kingsbury Companies, LLC filed an action for breach of contract and violation of Vermont's Prompt Pay Act after Winton and Valerie Goodrich withheld payment for septic-system and leach-field work. With the

complaint, Kingsbury sought a writ of attachment against the Goodriches' real property. Following a March 13, 2023 hearing, the court concluded that the evidence did not establish a reasonable likelihood that Kingsbury would recover judgment because the evidence indicated that Kingsbury's performance may have been deficient and may have caused a Japanese knotweed infestation.

DISPOSITION

writ_denied

CASES CITED

- Casco N. Bank, N.A. v. New England Sales, Inc., 573 A.2d 795, 797 (Me. 1990)
- S. Burlington Sch. Dist. v. Calcagni-Frazier-Zajchowski Architects, Inc., 138 Vt. 33, 44 (1980)
- Rothberg v. Olenik, 128 Vt. 295, 305 (1970)
- Long Trail House Condo. Ass'n v. Engelberth Const., Inc., 2012 VT 80, 192 Vt. 322, 336
- Melody Home Mfg. Co. v. Barnes, 741 S.W.2d 349, 358 (Tex. 1987)

OPINION

PER CURIAM.

Vermont Superior Court Filed 04/2 23 Washmgton mt VERMONT SUPERIOR COURT CIVIL DIVISION Washington Unit Case No. 22-CV-03928 65 State Street fr Montpelier VT 05602 802 —828—2091 wwwvermontjudiciaryorg Kingsbury Companies, LLC v. Winton Goodrich et al Opinion and Order on Motion for Writ of Attachment Defendants Winton and Valerie Goodrich hired Plaintiff Kingsbury Companies, LLC to install a new septic system and leach field at their home.

The Goodriches Withheld payment after Kingsbury completed its work, prompting Kingsbury to file this action for breach of contract and violation of the Prompt Pay Act, 9 V.S.A. §§ 4001—4009. With the complaint, Kingsbury sought a writ of attachment encumbering the Goodriches' real property in the amount claimed due, \$31,400, to secure a potential judgment. Vt. R. Civ.

P. 4.1. A hearing was held on March 13, 2023, after which the parties filed supplemental briefing. The Court now determines as follows. 1. Background The Goodriches oppose any writ of attachment on the strength of their counterclaim and defense to Kingsbury's claims.

The heart of the dispute is the Goodriches' allegation that Kingsbury, when adding fill acquired offsite to the Goodrich property, imported Japanese knotweed, a noxious and highly destructive weed that was not present previously, and which will require extraordinary effort and expense to eradicate, far exceeding the value of Kingsbury's claims. Order Page 1 of 5 22—CV-03928 Kingsbury Companies, LLC v. Winton Goodrich et al 2.

Standard The purpose of a writ of attachment is to provide security for “any judgment for damages and costs the plaintiff may recover.” Vt. R. Civ. P. 4.1(a). The writ is approved “upon hearing and 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.” Vt. R. Civ.

P. 4.1(b)(2). The reasonable likelihood standard requires “a realistic conclusion by the court on the basis of affidavits and other evidence presented at the hearing as to the actual probability of recovery by the plaintiff.” Reporter’s Notes—1973 Amendment, Vt. R. Civ. P. 4.1.

The defendant may contest the plaintiff’s “showing of ‘reasonable likelihood’ through contrary evidence and through the assertion of affirmative defenses.” *Id.* (citation omitted). The overriding point is “to limit prejudgment takings of property to situations where the property taken is in fact likely to be subject to a subsequent judgment.” *Id.* At the hearing, the Court requested supplemental briefing on the propriety of considering a defendant’s counterclaim as an offset against a plaintiff’s claim when considering whether to approve an attachment or in determining its amount.

Specifically, the Court noted that Vermont’s Rule 4.1 is derived from Me. R. Civ. P. 4A. The Reporter’s Notes under that Rule are clear: “As under existing law, specificity is required in the showing for the amount of the attachment, and this amount cannot be offset by claims of the non-moving party. See *Casco N. Bank, N.A., et al. v. New England Sales, Inc., et al.*, 573 A.2d 795, 797 (Me.

1990).” Order Page 2 of 5 22-CV-03928 Kingsbury Companies, LLC v. Winton Goodrich et al In response to the Court’s request, Kingsbury takes the position that a counterclaim is not properly considered because Rule 4.1 does not list it as an offset while it does require the amount to be reduced to the availability of “liability insurance, bond, or other security.” The Goodriches’ position is that the matter is irrelevant in this case because the underlying basis for its counterclaims is essentially the same as its direct defense to Kingsbury’s claims—that Kingsbury failed to perform in a good and workmanlike manner.

Vermont’s attachment statutes are silent on the matter. See 12 V.S.A. §§ 3251–3410. The Court agrees with the Defendants. The Court sees no need to reach the question of whether to consider the impact of the counterclaim.

The evidence put forth by Defendants goes to the very essence of Plaintiff’s performance under the contract. 3. Analysis The hearing evidence established that Plaintiff performed the work agreed to in the contract, but not fully. While Plaintiff did the physical, excavating, and construction work envisioned by the parties’ agreement, the evidence at the hearing failed to establish that the work

was done appropriately or adequately or consistently with parties' understandings as to their mutual obligations under the contract.

See *S. Burlington Sch. Dist. v. Calcagni-Frazier-Zajchowski Architects, Inc.*, 138 Vt. 33, 44 (1980) (in every contract there is an "implied duty to perform with care, skill, reasonable expedience and faithfulness"); *Rothberg v. Olenik*, 128 Vt. 295, 305 (1970) (recognizing cause of action for breach of implied duty of good workmanship), cited in *Long Trail House Condo.*

Ass'n v. Engelberth Const., Inc., 2012 VT 80, ¶ 31, 192 Vt. 322, 336; see also *Melody Home Mfg. Co. v. Barnes*, 741 S.W.2d 349, 358 (Tex. 1987) (explaining that the "implied duty of good Order Page 3 of 5 22-CV-03928 Kingsbury Companies, LLC v. Winton Goodrich et al and workmanlike performance has been applied... as an affirmative defense... or offensively... to collect damages proximately caused by unskillful and deficient work").

At a minimum, the early evidence adduced at hearing showed a reasonable likelihood that the knotweed infestation on the Goodrich property was caused by fill deposited there by Kingsbury (and not by environmental happenstance); that knotweed is extremely destructive and needs to be eradicated; that Kingsbury acknowledged the knotweed infestation (while denying liability for it); that Kingsbury had offered to undertake some efforts to address the problem; that eradication is complex and expensive, especially where, as here, its source is not a single mother plant but is spread throughout the property by many tiny, underground rhizomes that can lie dormant in various places waiting to spring to life; that the use of chemical herbicide is both unlikely to be effective against such an infestation and contraindicated given that Defendants had created/cultivated a largely organic lawn and garden at their property; and, as a result, that Plaintiff's offers to provide minor "fixes" to the problem would be ineffectual.

Given those (preliminary) factual determinations, the Court cannot conclude that Plaintiff fully performed as required by the contract and, therefore, cannot find a reasonable likelihood of a judgment in Kingsbury's favor in this case.

For that reason, Kingsbury's request for a writ of attachment must be denied. Order Page 4 of 5 22-CV-03928 Kingsbury Companies, LLC v. Winton Goodrich et al Conclusion For the foregoing reasons, Kingsbury's motion for a writ of attachment is denied. Electronically signed on Wednesday, April 26, 2023, pursuant to V.R.E.F. 9(d). _____ Timothy B. Tomasi Superior Court Judge Order Page 5 of 5 22-CV-03928 Kingsbury Companies, LLC v. Winton Goodrich et al