

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)

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