Vermont Superior Court
Filed 01/26/26
Washington Unit

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 25-CV-05595

Paige Brown v. Erik Poitras

ENTRY REGARDING MOTION

Title: Motion for Writ of Attachment Ex Parte (Motion: 3)
Filer: Paige Isabella Brown
Filed Date: January 19, 2026

The motion is DENIED.

The present action seeks to recover damages based on claims of negligence, trespass, private nuisance, and negligent undertaking claims. Plaintiff alleges in her verified complaint that Defendant Erik Poitras' tenants flushed large objects into their municipal sewer lines, which caused a back-up and collapse of Plaintiff's sewer lines, which has caused on-going sewer back-ups and overflow into her bathroom fixtures. Plaintiff Paige Brown has filed a motion for an ex parte prejudgment writ of attachment in the amount of $25,000.

To prevail on a motion for an ex parte prejudgment writ of attachment, the moving party must put forward sufficient evidence to establish two prongs. V.R.C.P. 4.1(b)(3). First, Plaintiff must establish, "(A) 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**" and that there is no sufficient liability insurance or other security to satisfy the judgment. Id. (emphasis added). Second, Plaintiff must also establish (B) that there is a "clear danger shown by specific facts" that defendant will remove or conceal the property or "immediate danger shown by specific facts" that defendant will damage, destroy, or sell the property. Id. Both prongs must be met before the Court can grant the relief sought.

In this case, Plaintiff presents the following allegations in her verified complaint. On September 15, 2024, Defendant's tenants disposed of foreign material in the toilets at Defendant's rental property located at 9 Warren Street in Barre, Vermont. These items caused an obstruction in the municipal lines affecting Plaintiff's property at 15 Plain Street in Barre,

Vermont. The resulting obstruction and hydraulic pressure caused the line to collapse and sent sewage into Plaintiff's bathroom.

Plaintiff states that Defendant has acknowledged the actions of his tenants and the resulting harm. Plaintiff states that Defendant paid for a plumber to snake the system, which provided limited remedial relief but has not resolved the problem. Plaintiff has sought and obtained estimates that put the cost of repair for the system between $20,000 and $25,000.

The primary issue with Plaintiff's complaint lies with Defendant's liability. The law only allows a landlord to be held liable for the negligence, trespass or nuisance of a tenant if the landlord has notice of the tenant's activities. *Gross v. Turner*, 2018 VT 80, ¶¶ 11, 18; see also Restatement (Second) of Torts § 379A (premising liability for negligence and physical harm on the landlord's knowledge of the activity and the unavoidable and unreasonable risk involved in the activity); Restatement (Second) of Torts § 837 (premising liability for nuisance on landlord's knowledge of the nuisance or its likelihood). In this case, Plaintiff has not put forward any evidence that Defendant was aware of his tenant's activities prior to blockage.

Further there is no evidence that renting a house with a toilet unavoidable and unreasonably involves a risk that a tenant will misuse the toilet in such a way that causes the toilet to block the sewer system. This is consistent with the law of tenancy that gives over to a tenant possession, use, and occupancy of a rented premises. The landlord cannot oversee a tenant's use of the property, and unless some evidence indicates that the landlord had such knowledge, Landlord's liability cannot be inferred. *Gross*, 2018 VT 80, at ¶ 18; see also *Doyle v. Exxon Corp*., 592 F.2d 44, 46 (2d Cir. 1979) ("Under Vermont law, as in most states, a landlord is not an insurer of the safety of a tenant; rather, the duty of a landlord has been characterized as one of reasonable diligence and ordinary care to maintain, in a reasonably safe condition, areas of the premises over which he has control.").

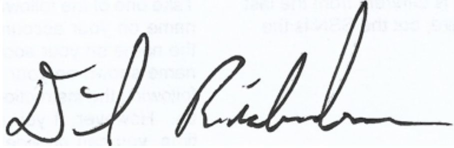
As to the negligent undertaking allegation, the facts as presently pled do not support Plaintiff's claim to the standard necessary for a writ of attachment. The standard for negligent undertaking has three possible iterations. A party may be held liable for this claim for failing to exercise reasonable care because: (1) their failure to exercise reasonable care in the undertaking increases the risk of harm; or (2) the person has undertaken to perform a duty owed by the other to the third person; or (3) the harm is suffered because of reliance of the other or the third person

upon the undertaking. *Sheldon v. Ruggiero*, 2018 VT 12, ¶30 (quoting Restatement (Second) of Torts § 324A. In this case, there has been no allegation that the plumber hired by Defendant performed the snaking incorrectly or that his snaking made the problem worse. Instead, Plaintiff contends that the snaking was not enough and that more work needs to be done to fix the problem. This would leave only option two as a claim. The problem with this claim is that there is by Plaintiff's admission no clear indication that Defendant undertook to perform the entire repair or to perform it in lieu of the tenants at 9 Warren Street. Id at ¶ 35. At this stage, the Court cannot conclude under the first prong of Rule 4.1(b)(3)(A) that this evidence presents a likelihood of the judgment.

ORDER

Given the lack of evidence on the likelihood of success that Plaintiff is likely to recover a judgment equal to or greater than the amount sought, as required under V.R.C.P. 4.1(b)(3)(A), Plaintiff's motion for an ex parte prejudgment writ of attachment is **Denied.**[1] The Court will set this motion for a preliminary writ of attachment hearing.

Electronically signed on 1/21/2026 7:20 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge

[1] Based on the Court's findings, it has not analyzed the second prong of Rule 4.1(b)(3)(B), but there are substantial issues regarding the nature of this portion of the motion as Plaintiff has not established that Defendant lacks the ability to pay or that his available funds would be insufficient as a matter of law to satisfy a judgment. While an available asset is set for sale, it does not necessarily follow that this sale will render Plaintiff unable to pay a judgment or put his assets beyond the reach of a judgment creditor.