The McKernon Group, Inc. v. Felten, No. 737-10-08 Wrcv (Eaton, J., Jan. 16, 2009)

STATE OF VERMONT
WINDSOR COUNTY, SS

The McKernon Group, Inc. Plaintiff v. Kenneth & Elisabeth Felten Defendant	SUPERIOR COURT Docket No. 737-10-08 Wrcv

DECISION ON MOTIONS

The above matter came on for hearing on several motions related to writs of attachment on December 4, 2008 and January 8, 2009. Plaintiff The McKernon Group, Inc., was represented by James Foley, Esq. Defendants Kenneth and Elisabeth Felten were represented by W.E. Whittington, Esq.

An *ex parte* writ of attachment was granted in favor of McKernon Group on October 24, 2008 in the amount of $76,432.10. V.R.C.P. 4.1(b)(3). The present motions before the court are the Feltens' requests to dissolve the *ex parte* writ (MPR #2) and for a writ of attachment on the counterclaim for breach of contract against McKernon Group (MPR #3). Both motions were consolidated for hearing. At the hearing, McKernon Group requested modification of the *ex parte* attachment to the increased amount of $125,000.

Standard of Review

On the motion to dissolve the *ex parte* attachment, McKernon Group bears the burden of justifying continuance of the writ by demonstrating a "reasonable likelihood" that they will recover judgment 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 Feltens to be available to satisfy the judgment. V.R.C.P. 4.1(e)(1).

The finding of a "reasonable likelihood" of success on the merits "is intended to be 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."

V.R.C.P. 4.1, Reporter's Notes—1973. The court considers affirmative defenses and modifying evidence when making this determination, because the granting of a writ of attachment "require[s] more than a mere finding that plaintiff makes out a prima facie case or that there is probable ground to support plaintiff's claim." *Id*. These standards are consistent with the view that writs of attachment are an extraordinary remedy, not lightly to be given. *Brastex Corp. v. Allen International, Inc.*, 702 F.2d 326, 332 (2d Cir. 1983).

The Feltens bear the burden of proof on their motion for attachment on the counterclaim. V.R.C.P. 4.1(f).

Findings of Fact

The following findings are made in the context of an attachment hearing at the commencement of the case. Although the parties have presented a considerable amount of evidence, they have not had full opportunity to conduct discovery or develop the issues through litigation. In addition, the underlying construction disputes are still evolving. The findings are based only on the preliminary evidence presented at the attachment hearing, and are not a final determination of the merits of the parties' claims.

The dispute arises out of a fixed-price contract for construction of a large home at [Redacted Address A] in Woodstock, Vermont. Plaintiff McKernon Group is a design-build contractor with offices in New York and Vermont. Defendant Ken Felten is a real estate broker doing business in Vermont as Vermont Country Real Estate.

Before undertaking the construction of a home at [Redacted Address A], the Feltens lived at [Redacted Address B]. Both properties were part of the same parcel prior to subdivision.

The Feltens hired McKernon Group to design and build the new home at [Redacted Address A], which consists of approximately 20 acres. The parties entered into a series of contracts. The "original" contract is Plaintiff's Exhibit #7, and was executed on November 29, 2006. The original contract was amended three times. See Plaintiff's Exhibits ## 8–10.

Plaintiff's Exhibit #11 is another contract between the parties that was executed on December 21, 2007, a few days prior to the commencement of construction on the new home. The contract contemplates some work on the existing home at [Redacted Address B], including inspection and replacement of damaged structural members and siding on one end of the structure. However, the agreement also provides for keeping Westerdale Road (a public highway) and the lengthy private driveway open during winter months for construction access. For these reasons, the court does not agree with the Feltens' assertion that Plaintiff's Exhibit #11 does not pertain to the construction of the new home. The court finds that Plaintiff's Exhibit #11 is an agreement, in part, for services ancillary to the construction of the new home at [Redacted Address A], which

was commencing in earnest nearly contemporaneously with the execution of Plaintiff's Exhibit #11.

Construction of the new home began approximately January 1, 2008, and was nearly complete when the present dispute arose. Construction costs thus far have totaled slightly less than $1,600,000. As is typical of many construction contracts, the construction costs include several change orders that have been executed by the parties. Plaintiff's Exhibit #18.

As is also typical of many construction contracts, the parties addressed a number of concerns as construction progressed. These concerns included, for example, the placement of power transformers, expenses related to the sanding and plowing of Westerdale Road, and water pressure. The issues are most thoroughly discussed in an email from McKernon Group dated July 25, 2008, and a response from Mr. Felten dated July 29, 2008. Defendant's Exhibit #I. As of the date of the hearing, McKernon Group had not sent a surreply.

The Town of Woodstock issued a certificate of occupancy on October 16, 2008, and the Feltens have moved into the property and are using as their residence. In addition, Chittenden Bank (who provided partial financing for the construction) has prepared a final completion certificate on the home, and their report indicated that the work was 100% complete.

The Feltens have also listed the property for sale with a listing price of $3,495,000, including the value of the property. The listing sheet, prepared by Mr. Felten, describes the residence as "built to the highest standards."

Nevertheless, the Feltens contend that McKernon Group has been unresponsive to their construction complaints. The most recent summary of complaints appears to be set forth in Plaintiff's Exhibit #38 and Defendant's Exhibit #C, and includes a number of items that were discussed in the July emails. The Feltens contend that the cost of correcting the complaints exceeds $263,000. McKernon Group contends that some of the complaints are unfounded, and that the remaining disputes concern "punch list" items that McKernon Group remains ready, willing, and able to address. The Feltens have not permitted McKernon Group to complete the items on the punch list.

The Feltens were current on their payments to McKernon Group as of October 3, 2008, but have not made any additional payments. In addition, in connection with the financing, the parties (Chittenden Bank, McKernon Group, and the Feltens) agreed to retain two times the amount of the punch list, disbursing funds as the punch list items were addressed. (This agreement varies from Chittenden Bank's normal practice of a 5% retainage on construction loans.) As the Feltens have not permitted the punch list work to go forward, the Feltens have instructed Chittenden Bank not to disburse the remaining funds they are holding.

The amount in dispute in early October was $76,432.10. The parties held a meeting on October 23, 2008, but no resolution of the dispute was reached at the meeting. As a result, McKernon Group filed a notice of a contractor's lien on October 23, 2008, in the amount of $76,432.10. McKernon Group filed the present action the following day, and requested an *ex parte* writ of attachment, which was granted on October 24, 2008.

The most recent invoice was billed on October 30, 2008. It shows a balance due on the construction contract of $99,017. Exhibit #6. The Feltens have not paid this invoice.

It therefore appears that the essence of the dispute is that construction is nearly complete, but disputes have prevented the contract from being completed. On one hand, the Feltens contend that they have withheld payment in order to correct defective and uncompleted work. On the other, McKernon Group contends that they have not been given adequate time to address matters that they consider to be "punch list" in nature, and that many of the disputed issues can be satisfactorily addressed if they are allowed to complete their work, which they remain ready and willing to do.

Under these circumstances, the role of the court is essentially to determine (1) whether McKernon Group has shown a reasonable likelihood of proving that the homeowners were not justified in terminating the contract and (2) whether the Feltens have demonstrated a reasonable likelihood of proving that McKernon Group breached the contract by defective construction. *VanVelsor v. Dzewaltowski*, 136 Vt. 103, 105–06 (1978). The present posture of the case—the nascent litigation, the undeveloped and undiscovered nature of the evidence, the ongoing construction relationship, etc.—makes this an extremely difficult prediction for the court to make. It is for this reason that the court reiterates that the following findings are based only upon the current state of the evidence as it was presented during the attachment hearing. They are not final determinations of the merits of the parties' claims.

McKernon Group's Complaint

The balance owed to McKernon Group on the construction contract is $99,017, and this amount has been due since October 30, 2008. For the reasons discussed in more detail below, McKernon Group is reasonably likely to prove that they have been prevented from completing performance under the contract, and that they are entitled to damages in the amount of the remaining contract price, plus attorney's fees.

However, these findings are subject to the court's consideration of the issues related to setoffs and counterclaims for defective workmanship and work not performed, as follows.

Transformer locations

The Feltens were dissatisfied with the location of electrical transformers, meters, and related equipment servicing the underground power to the house. Mr. Felten claims

that the proposed locations were marked but that the equipment was actually installed in different locations.

McKernon Group agrees that the locations were marked at a meeting with Central Vermont Public Service personnel in December 2007, and asserts that the electrical equipment was actually installed at the marked location. McKernon contends that the conflict arose because the final location of the driveway was different than the temporary road. Plaintiff further asserts that it was not involved in the construction of the driveway (the driveway was constructed under a separate contract with Montague Hill), that CVPS had placed restrictions on the distance the equipment could be located from the driveway for purposes of utility service access, that no mapping of the driveway or electrical service was ever done, and that McKernon had requested that Mr. Felten be present at the time the pads were to be poured, but he was unable to do so.

The Feltens do not dispute that the driveway was relocated or that CVPS placed restrictions on the equipment's location. In addition, landscaping services are specifically excluded from the construction contract. At this stage, the court does not find that the transformers were installed at a location other than as marked and intended by the parties, and does not find a failure of performance on the part of McKernon.

Sizing of water pipes

The Feltens are dissatisfied with the size of installed water pipes. They claim that the installed pipes are smaller than what is necessary, and that this has resulted in reduced water pressure and water volume. This has been an issue between the parties since at least July 2008. McKernon Group has been aware of the Feltens' concerns regarding the adequacy of water pressure and supply since early in the project.

There is currently a 1" pipe bringing water from the well into the house. This line then feeds into a ¾" line inside the house and then goes to the hot water heater, which is tapped for a ¾" fitting. It is undisputed that this line was installed by a McKernon subcontractor, that it is undersized, and that it must be replaced.

In recognition of this, McKernon hired Mark Pelletier, a master plumber, to look into the issue. Pelletier determined the 1" line to be undersized and believes it can be fixed by replacing it with a 1¼" line into the house, and connecting it to the hot water heater with a 1" line. He believes the water heater can be re-tapped to accept a 1" line. These are not major repair items.

In addition, Mr. Pelletier believes the supply lines can be made more efficient by re-piping in the basement. The cost to correct the supply issue is about $4,700. Mr. Pelletier has been authorized to do this work by McKernon, and will do so if allowed to complete the work.

The Feltens contend that the issues can be resolved only by removing and replacing the plumbing fixtures themselves. This approach would necessitate ripping into the walls, and would cost at least $65,000.

McKernon acknowledges that a problem exists. McKernon also freely acknowledges the importance to the Feltens of having adequate water pressure in the house, and their representatives have said they will do what is necessary to provide it. McKernon has not expressed a limitation on expenses to correct the problem, though it is reasonable for them to approach the problem by trying the least expensive alternative first.

At this juncture, it appears likely that the solutions recommended by Mr. Pelletier will address most, if not all, of the plumbing concerns as expressed by the Feltens. This approach is the most reasonable first step in resolving the issues. Even if it does not work, there is no evidence before the court that McKernon will not do whatever is required to fix the problem. Accordingly, the Feltens' claim for $65,000 to correct the problem is not supported at this time.

Well yield

The Feltens are dissatisfied with issues related to their well. The construction contract carried an allowance of $8,000 for the drilling of the well and installation of the pump. The allowance was calculated using as estimate of expected well depth of 425 feet.

The actual well as drilled by Ottaqueechee Well Drilling is 550 feet in depth, and the actual cost of drilling alone was about $10,000. (The parties executed a change order to cover the $2,000 over the allowance.) In addition, the installation of the pump cost approximately $5,500. Mr. Felten was then dissatisfied with the pump, and paid for the installation of a second pump. Mr. Felten refused a change order for the cost of the first pump, and has never been billed for it.

The Feltens seek $8,200 in damages for expenses incurred in addressing problems with the well. The problem with this claim is that the construction contract carried an allowance for the anticipated costs of the well and pump. By their nature, allowances are estimates of cost rather than commitments to deliver a specific item at a specific price. Allowances shift the risk to the homeowner, who has the freedom to exceed the allowance or to spend less and receive a credit.

This arrangement makes sense because, unlike municipal water supplies, drilled wells are subject to a number of variables, including depth of drilling and water production. That this well cost more than estimated in the contract was a vicissitude of the undertaking. It has not been shown that additional expenses were a result of deviation from the contract as opposed to homeowner dissatisfaction over water production even though the well met contract requirements. Moreover, it appears that McKernon Group has absorbed a loss on the original pump, which ultimately was not used, and for which

the Feltens have not been billed. The claimed expenses of $8,200, therefore, appear to be more properly considered as allowance overruns rather than damages.

Septic system

The Feltens are dissatisfied with expenses related to the installation of the septic system. The building site is a very difficult one in terms of septic design, and the Feltens used the expertise of McKernon Group to get a system certified by the State of Vermont.

At the same time, the construction contract excludes costs related to the installation of the septic system. The third amended contract contains the following language:

> Note: All site work by Montague Hill; backfill; trenching; supplying and placing gravel; sand and other imported fill; landscaping; ground heating; snow removal and sanding; septic system; and driveway construction; is not part of this contract and is to be contracted by the owner with assistance in supervision by McKernon Group, Inc. . . .

Plaintiff's Exhibit #10 (emphasis added).

Costs related to the installation of the septic system were not part of the construction contract. At this stage there does not appear to be a basis for the Felten's claim for $37,500 in damages related to the septic system.

Air conditioning

The heating system for the house is comprised of a radiant floor system as well as a forced hot air system in conjunction with the air conditioning system. The Feltens attempted to use their air conditioning system at one time and found that it was blowing out heat instead. They claim a cost of correction of $10,000.

McKernon admits that the air conditioning unit is not functioning properly. Mr. Pelletier has investigated the problem, and feels that the problem is related to the way the system is wired. He believes that it can be corrected by installing a relay in the wiring. Mr. Pelletier has purchased the relay at a cost of $15 and is prepared to install it, at no cost to the Feltens, if they allow him to do so.

There is insufficient evidence at this time to establish the cost of correction as anything other than a minor expense, which McKernon Group will incur as a part of its punch list work. In the event the problem is more extensive than anticipated, there is no evidence that McKernon will not repair the system as necessary.

Electrical wiring

The Feltens claim that the electrical wiring was improperly installed, resulting in impact on phone and data lines and indiscriminate turning on/off of lights. The Feltens claim a cost of correction of $20,000.

At this time, the Feltens have not established the nature of any wiring defects beyond their bare allegations and have not established what, if anything, is necessary to correct the problems.

The one specific complaint concerns the failure to separately wire phone lines and computer lines in the children's bedroom. At this point, it has not been established that such wiring was required under the contract, which provides for TV and CAT5 wiring in all living spaces and also notes the entire house was to be wireless in addition to the specialty wiring called for in the contract at Division 16. How the wiring installation deviated from the contract requirements, if at all, is unclear. Similarly, the costs of correction have not been established.

Snow removal and skid steer rental

The Feltens object to charges for snow removal. Originally, these charges were around $37,000, but have been reduced to just under $19,000. These charges were made by McKernon Group pursuant to the December 2007 contract (Plaintiff's Exhibit #11) and are not sums included in the McKernon request for an attachment or in the sums sought in this litigation. The Feltens contend that the sums demonstrate improper billing practices on the part of McKernon and constitute a defense to attachment.

The Feltens also object to the rental of a skid steer (Bobcat) to assist with winter conditions.

Both items are addressed by Plaintiff's Exhibit #11, which followed emails concerning the need to keep the road open for construction vehicles during the winter. The contract contemplates keeping Westerdale Road (a public road) open during winter construction months, skid steer rental, winter mix for sanding, and plowing and sanding of the road. The Feltens object to this because Westerdale Road is a publicly maintained road, but this was no less true at the time they entered into the contract. Had the parties wished to wait for the Town of Woodstock, or nature, to clear the road sufficiently for access to construction vehicles they were free to do so. The desire to expedite construction by minimizing site delays caused the parties to enter into this additional agreement for ancillary work on the roadway, including the public way. Plaintiff's Exhibit #11 supports McKernon's position that the expenses were justified, and does not provide support for any claims of improper billing practices.

"Bogus" billing charges

The Feltens claim "bogus" billing charges in the amount of $25,000. The only specific claim, however, is $5,500, which appears to correspond to the original well

pump, which was removed. The related change order was not agreed to by the Feltens, and no charge for the pump has ever been further asserted by McKernon.

Beyond the pump, it appears that the Feltens raised questions about the amount of charges for built in cabinets and up-charges concerning painting. Based upon the testimony presented, it appears that the cabinetry charges are proper, although further evidence on the issue may be forthcoming at a later date.

Carpentry complaints

The Feltens complain about issues related to the wood lift, the opening of the office door, and poorly designed desks in the children's bedrooms. The Feltens claim these problems will cost $8,500 to correct.

The issue concerning the children's desks concerns the size of the opening for the computer towers. McKernon gave a credit to the Feltens of $2,450 in order to buy computers that would fit within the space provided. The other carpentry issues have not been fully addressed at this time, but their scope and magnitude appear to be *de minimis* in a project of this nature. Given the evidence before the court, the $8,500 claim for carpentry issues is not supported at this time.

Supervision and alternate housing costs

The Feltens claim $52,500 in costs for alternate housing and for their supervision of the work of McKernon Group. McKernon contends that these costs are improper because no alternative housing was in fact obtained by the Feltens, and the supervision costs do not naturally flow from any breach of contract.

It is not necessary for the court to reach these issues in the context of the current motion. Further consideration of these issues may be had in the context of motion practice directed specifically at them, or a final merits hearing.

Allegations in the affidavit

Mr. Felten takes issue with an affidavit, filed by John McKernon in support of the writ of attachment, setting forth the amounts allegedly due for various aspects of the construction contract. The affidavit states that "Defendants have not complained about either the workmanship or the costs of the above items." Mr. Felten feels his lengthy response to the July email, which has still gone unanswered, makes the McKernon affidavit misleading.

Comparison of the Felten complaints with the sums set forth in the McKernon affidavit reveals the affidavit to be correct so far it goes. While there were other, and perhaps more extensive, complaints being made by the Feltens, they did not pertain to the

sums outlined in the McKernon affidavit. Complete candor would have acknowledge the existence of other disputes, but the affidavit is not false.

Attorneys Fees

McKernon's attorneys' fees currently amount to $17,000. McKernon reasonably believes its attorneys fees will exceed $25,000 after litigation.

Other Security

The *ex parte* writ of attachment has prevented the Feltens from refinancing their new home. To this end, the Feltens have offered to escrow $100,000 on a temporary basis pending rulings on these motions, and have further offered to only refinance their home to 50% of its value and provide a recordable promise not to refinance or encumber the remaining 50% without 30 days notice to McKernon. The court considers these offers not as offers to compromise, but as evidence on the need for attachment beyond other security. No other security has been shown to be present at this time.

Conclusions of Law

As discussed in more detail above, Rule 4.1 requires the party seeking attachment to show a reasonable likelihood that it 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.

Reasonable likelihood of recovering judgment

The general rule governing construction disputes of this nature is as follows:

> In an action for breach of a construction contract, the measure of damages depends upon which party breached the contract. Where the owner breaches the contract by demanding that the work shall stop, the contractor is entitled to recover the contract price less his cost to perform the remainder of the contract. On the other hand, if the contractor breaches the contract by defective construction, whether the breach is partial or total, or by refusal or failure to complete the work, the owner can get a judgment for damages measured by the reasonable cost of reconstruction and completion in accordance with the contract, if this is possible and does not involve unreasonable economic waste.

VanVelsor v. Dzewaltowski, 136 Vt. 103, 105–06 (1978). In other words, the measure of damages depends upon whether (and the extent to which) the homeowners were justified in terminating the contract. Cf. *Fletcher Hill, Inc. v. Crosbie*, 2005 VT 1, ¶ 3, 178 Vt. 77; *Burke v. N.P. Clough, Inc.*, 116 Vt. 448, 451 (1951); *Peist v. Raymond*, 97 Vt. 97, 99 (1923).

Based upon the evidence presented at this time, there is a reasonable likelihood that McKernon Group will succeed in proving that the Feltens breached the construction contract by refusing to pay the amounts due, and by preventing them from completing the punch list items discussed above. *VanVelsor*, 136 Vt. at 106; *Burke*, 116 Vt. at 451; *Peist*, 97 Vt. at 99. To the extent that the defenses, setoffs, and counterclaims for defective workmanship involve legitimate issues that have yet to be addressed, there is a reasonable likelihood that McKernon will succeed in proving that it would correct the problems at no extra cost to the Feltens if allowed to do so. It is therefore reasonably likely that McKernon will prove that the Feltens were not justified in terminating the contract prior to its completion, and that McKernon will prove damages in the amount presently due on the contract: $99,017. *VanVelsor*, 136 Vt. at 106; *Peist*, 97 Vt. at 99.

It is also reasonably likely that McKernon will recover attorneys' fees in an amount exceeding $25,000 as the substantially prevailing party in a proceeding to recover payment on a construction contract. 9 V.S.A. § 4007(c). The total judgment including interest and costs is reasonably likely to exceed $125,000.

Based on the present state of the evidence, and in light of McKernon's offers to cure the defects at no cost to the Feltens, the Feltens are not reasonably likely to establish entitlement to setoffs or counterclaims for defective workmanship. To the extent that the Feltens might prove some damages at trial, they are not entitled to attachment because it is not reasonably likely that the amount of any damages would exceed the amount they are presently withholding.

Availability of other collateral

The Feltens have not shown the present existence of any liability insurance, bond, or other security available to satisfy the judgment. However, they have shown that the present attachment has caused them significant hardship by preventing the refinancing of their home, and they have represented that they are willing to escrow $100,000, and have offered further conditions related to the refinancing of their home.

McKernon objects to any substitution of collateral. McKernon contends that substitution of collateral is not allowed under the contractor's lien statute, 9 V.S.A. § 1924, and that contractor's liens require attachment of the property that is the subject of the lien.

The court does not agree with McKernon's position for three reasons. First, the present motions for attachment require the court to decide whether it will issue orders of approval under V.R.C.P. 4.1, not whether it will approve perfection of a contractor's lien

under § 1924. The contractor's lien statute provides statutory procedures for the recording and perfecting of liens; one of the required steps is that the plaintiff must obtain a writ of attachment on the real property that is the subject of the contractor's lien. 9 V.S.A. § 1924; *In re Rainbow Trust*, 216 B.R. 77, 83 (2d Cir. B.A.P. 1997). This requirement applies only to the perfection of contractor's liens, and does not circumscribe the authority of the court under Rule 4.1 to reduce the attachment by the amount of other security shown to be available to satisfy the judgment, or to substitute collateral.

Second, the primary purpose of both the writ of attachment and the contractor's lien is to establish priorities on real or personal property, and thereby obtain limited payment protection for claims for money damages that have a reasonable likelihood of success. *In re Rainbow Trust*, 216 B.R. at 83; *In re Rainbow Trust*, 200 B.R. 785, 790 (Bankr. D. Vt. 1996); *Newport Sand & Gravel Co. v. Miller Concrete, Inc.*, 159 Vt. 66, 69 (1992); 2 Fifty St. Constr. Lien & Bond L. §§ 46.01, 46.03. The limited payment protection afforded by obtaining a security preference on real property is not needed if there are other securities shown to be available to satisfy the judgment. This fundamental principle is not obviated when the dispute involves the construction of a home.

Finally, the dispute in this case is between a general contractor and a homeowner who are in contractual privity with one another. This is not a case where a subcontractor or supplier has not been paid, and needs the right to an *in rem* lien against the property in order to secure payment for the benefits provided to the project. *Newport Sand & Gravel*, 159 Vt. at 69. In short, the circumstances of the present case show no reason why the court should not reduce the amount of the attachment by any liability insurance, bond, or other security shown to be available.

There is no liability insurance, bond, or other security presently available. Accordingly, McKernon has met its burden of justifying continuance of the writ of attachment, and has further justified modifying the amount of the attachment to $125,000.

However, the court will accept a substitution of collateral under V.R.C.P. 4.1(e)(2) if acceptable substitution is offered by the Feltens. The substitution may take the form of a bond, or another form of security that adequately protects McKernon's reasonable interest in payment. If adequate substitution is offered, the court will modify or discharge the attachment accordingly.

The court expresses no opinion on the effect that any substitution of collateral, modification or discharge might have in relation to any contractor's lien.

ORDER

(1) Defendants' Motion to Dissolve the *Ex Parte* Attachment (MPR #2) is ***denied***;

(2) Defendant's Motion for Writ of Attachment on the Counterclaim (MPR #3) is ***denied***; and

(3) The court will approve Plaintiff's request for an attachment in the amount of $125,000. Plaintiff's attorney shall submit a form of writ of attachment and order of approval within five days.

Dated at Woodstock, Vermont this ____ day of January, 2009.

_____
Hon. Harold E. Eaton, Jr.,
Superior Court Judge