

2015 WL 4714119 (La. Dist. Ct.) (Trial Filing)
District Court of Louisiana,
22nd Judicial District.
St. Tammany Parish

Forest DOBRONICH, And George Dobronich, As Mandatory
Agents and Attorneys-in-Fact of Sidney Dobronich,
v.
Darnay THIBODAUX And Calvin Thibodaux.

No. 2013-11784.
May 14, 2015.

Division: "D"

Joint Pre-Trial Order

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FILED: May 14, 2015.

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DEPUTY CLERK

A. COUNSEL

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in-Fact of Sidney Dobronich

CLAIBORNE W. BROWN

Attorney for Defendant, DARNAY THIBODAUX

ROY K. BURNS, JR.

Attorney for Defendant, CALVIN THIBODAUX

B. PARTIES

Plaintiffs: Forest Dobronich and George Dobronich as Mandatory Agents and Attorneys-in-Fact of Sidney Dobronich

Defendants: Darnay Thibodaux and Calvin Thibodaux;

C. CASE STATEMENTS

Plaintiffs', Forest Dobronich and George Dobronich:

Defendants DARNAY THIBODAUX and CALVIN THIBODAUX took advantage of eighty-five (85) year old Sidney Dobronich's frail health and advanced age by exploiting him with the use of a Power of Attorney and Acts of Donations for their own advantage.

On or about July 2011 Darnay and Calvin Thibodaux rented a trailer from Sidney Dobronich. Sidney Dobronich lived in a trailer on a piece of land that was adjacent to the trailer he rented to the Thibodaux's. Sometime during the month of December 2012, while inside of Mr. Dobronich's home, Darnay Thibodaux discovered that Mr. Dobronich had investments well in excess of \$800,000.00. She immediately called her daughter Christina Penton on the phone and exclaimed to her that Mr. Dobronich had \$800,000.00 in the bank.

On or about February 10, 2013 Sidney Dobronich suffered a heart attack and was brought to St. Tammany Parish Hospital by Darnay and/or Calvin Thibodaux. The Thibodaux's failed to contact any of Mr. Dobronich's family members or friends that he had been hospitalized. During the hospitalization in February of 2013 the Thibodaux's brought a Notary to the hospital and fraudulently and with undue influence had Mr. Dobronich execute a Power of Attorney giving them full and complete authority over all of Mr. Dobronich's finances and assets.

During this same hospitalization, the Thibodaux's had two Acts of Donation prepared and fraudulently and with undue influence had Mr. Dobronich execute the Acts of Donation donating all of his immovable property to them with a lifetime usufruct to Mr. Dobronich. At no time did the Thibodaux's make any attempt to contact Mr. Dobronich's family members or friends to inform them that he had been hospitalized or that he was effectively granting the Thibodaux's Power of Attorney over all of Mr. Dobronich's assets and that he was allegedly transferring of all of his immovable assets to the Thibodaux's.

After the Thibodaux's fraudulently obtained the Power of Attorney, they then persuaded Mr. Dobronich to contact his broker, Mr. Joseph Romano, to withdraw large sums of cash from his brokerage accounts. Between February 14, 2013 and March 15, 2013 the Thibodaux's withdrew more than \$330,000.00 of Mr. Dobronich's cash from his accounts. They then proceeded to purchase the following items:

- Immovable property from Buffy Singletary and Charles Singletary in St Tammany Parish disguised as an Act of Donation
- 2013 Nissan Altima
- 1974 Chevy Nova
- 2006 Hond TRX
- 5x8 Carry on Trailer
- 2001 Chevy 1500 Truck
- 2013 Cub Cadet Lawnmower
- 2013 Kubota L3200 Tractor
- Parker Utility Tractor Trailer
- Woods Box Blad

- Country Line Auger
- Country Line Middle Buster Attachment
- other movables in the possession of the United States Secret Service.

The above items were purchased with Mr. Dobronich's money. The also attempted to purchase a \$37,000.00 camper in their name.

On or about March 12, 2013 Mr. Dobronich fell and broke his hip in his home. Darnay Thibodaux was present in Mr. Dobronich's home at the time of his fall. Again Darnay and Calvin Thibodaux failed to contact any of Mr. Dobronich's family members or friends to inform them that Mr. Dobronich had broken his hip and had been hospitalized.

On or about March 15, 2013, Mr. Dobronich's broker became suspicious and contacted one of Mr. Dobronich's friends to notify them of the large sums of cash being withdrawn from Mr. Dobronich's accounts. That friend immediately contacted Mr. Dobronich's nephews, Forest Dobronich and George Dobronich, and informed them of the Thibodaux's actions. Forest and George then contacted the St. Tammany Parish Sheriff's Office (STPSO). The STPSO immediately undertook an investigation into the activities of the Thibodaux's and Detective Stefan Montgomery of the STPSO contacted **Elder Abuse** Protective Services.

After obtaining the Power of Attorney and the Act of Donation from Sidney Thibodaux, the Thibodaux's then undertook to withdraw more than \$330,000.00 from Sidney Dobronich's investment accounts and purchased movable and immovable property for their own enjoyment and gratification. As a result of the investigation and subsequent arrest of Darnay and Calvin Thibodaux, more than \$292,000.00 of movable property and cash were seized by the STPSO; cash that had been withdrawn from Sidney Dobronich's investment accounts by the Thibodaux's. As will be shown at the trial of this matter, the cash and movable property that were seized by the STPSO were directly traced from Sidney Dobronich's investment accounts to the Thibodaux's.

On April 6, 2013 Darnay Thibodaux and Calvin Thibodaux were arrested by the St. Tammany Parish Sheriff's Department and charged with Exploitation of the Infirm pursuant to [La. R.S. 14:93.4\(A\)\(1\)](#) and Count Two [La. R.S. 14:93.4](#) with regard to the activities between Sidney Dobronich and the Thibodaux's and the transfer and expenditures of his assets.

On December 17, 2014 Calvin Thibodaux and Darnay Thibodaux both entered pleas of guilty to Count One and Count Two, [La. R.S. 14:93.4\(A\)\(1\)](#) and [La. RS. 14:93.4](#), Exploitation of the Infirm by the intentional expenditure, dimunition or use by any person including a caregiver of the property or assets of the infirmed by means of fraudulent conduct, practices or representation.

The Court sentenced defendant Calvin Thibodaux, as to each count, to serve a period of five (5) years at hard labor with the Department of Public Safety and Corrections of the State of Louisiana, but suspended said sentence and placed Calvin Thibodaux on Probation for a period of five (5) years.

On January 9, 2015 Darnay Thibodaux filed a Motion to Withdraw Guilty Plea and to Dismiss Indictment. A hearing was held on January 29, 215 as to both Motions and said motions were denied by the Court. Darnay Thibodaux was then sentenced as to each Count, to serve a period of ten (10) years at hard labor with the Department of Public Safety and Corrections of the State of Louisiana, but suspended five (5) years of said sentence. Upon release from incarceration, the Court placed the defendant on probation for a period of five (5) years under the supervision of the Department of Public Safety and Corrections of the State of Louisiana, under the general terms and conditions of probation with the following added special condition: 1) make restitution to the victim in an amount to be determined by probation.

On June 18, 2013 Sidney Dobronich executed an olographic will leaving all of his assets to his nine (9) nieces and nephews. Sidney Dobronich died on March 25, 2014. Mr. Dobronich's succession was opened and his olographic will was probated. On November 7, 2014 Darnay and Calvin Thibodaux filed a Petition to Annual Testament seeking to annul the olographic testament executed by Sidney Dobronich. The matter was entitled "*Succession of Sidney Dobronich*, Suit No. 2014-30680, Div. "I". A trial was held on February 24, 2015 wherein the court denied the Thibodaux's Petition to Annul Testament and dismissed the matter.

Although more than \$292,000.00 was seized by the STPSO, there remains a certain sum of cash that is unaccounted for and three pieces of immovable property presently in the Thibodaux's name, all property fraudulently obtained from Sidney Dobronich.

Exploitation of the Infirm is defined as the "*intentional expenditure, diminution, or use by any person, including a caregiver, of the property or assets of the infirmed, a disabled adult, or an aged person, including but not limited to a resident of a nursing home, mental retardation facility, mental health facility, hospital, or other residential facility without the express voluntary consent of the resident or the consent of a legally authorized representative of an incompetent resident, or by means of fraudulent conduct, practices, or representations.*" La. RS. 14:93.4(A)(1) The statute also states that it is a violation to use "*an infirmed person's, or aged person's, or disabled adult's power of attorney or guardianship for one's own profit or advantage by means of fraudulent conduct, practices, or representations.*" La. R.S. 14:93.4(A)(2) The Thibodaux's have pled guilty to those charges and have admitted in open court that they undertook the fraudulent, intentional expenditure, diminution and use of Sidney Dobronich's assets for their own personal gratification.

Defendant, Darnay Thibodaux:

Mr. Sidney Dobronich passed away on March 25, 2014. Prior to that time, he had acquired over one million dollars in assets spread over various investment, checking and savings accounts, as well as maintaining an unknown amount of cash. His one wish was to be allowed to live out his life at his home in Bogalusa, Louisiana and was eagerly willing to expend considerable sums and to bequeath all of his property to effect that arrangement. Mr. Dobronich had attempted such an arraignment in 2009 with his step grandson, Mr. Craig Burdine, turning all of his property over to him, as well as purchasing the parcel of land and a trailer for him (at 29127 Nell Drive, the parcel that Mr. Dobronich had lived at the time he met the Thibodauxs). The arraignment did not work out. The execution of the various documents in February of 2013, as well as the numerous transactions within the month following was Mr. Dobronich's attempt at solidifying such an arrangement with the Thibodauxs.

This attempt was initially successful, until it was discovered by his Nephews, Forest and George Dobronich ("the Nephews") in March of 2013. Mr. Dobronich not only did not trust his Nephews, but was afraid of them.

This fear and mistrust was not misplaced.

The Nephews, with the assistance of the St. Tammany Parish Sheriff's Office, leveraged a criminal investigation and prosecution against the Thibodauxs. The criminal investigation was performed by Detective Stefan Montgomery ("Det. Montgomery") of the STPSO, who apparently was unduly sympathetic to the Nephews. Throughout the investigation and thereafter, Det. Montgomery developed and asserted a narrative that was false, misleading and unsupported by his own evidence. This false narrative asserted that Mr. Dobronich maintained a modest \$1,500 per month living expense from his retirement account, that he neither had, nor spent any other money, and that he had followed this pattern for several years. This false narrative was used to enlist the support of the United State's Secret Service and the United States Department of Justice in effecting civil asset forfeiture proceedings against the Thibodaux's, and to induce the threat federal criminal prosecution.

This false narrative was also submitted to this Court and was used, in part, to secure from the Court a judgment, dated August 27, 2013, declaring Mr. Dobronich incompetent to testify. In addition to this false and misleading narrative, the Nephews, as the agents in fact of Mr. Dobronich, in a lawsuit they instituted on his behalf; sought to secure a judgment declaring him mentally incompetent. On July 9, 2013, and again on August 13, 2013, the Nephews submitted medical reports of Dr. Paul Verrette

(dated July 2, 2013 and July 25, 2013, respectively) to this Court, stating that Mr. Dobronich suffered from “dementia” and that he was “not able to direct his affairs concerning person or property in matters consistent with his own interest.”

Following the death of Mr. Dobronich in March of 2014, the Nephews, Forest and George Dobronich, along with several other purported nieces and nephews, opened a succession: *Succession of Dobronich*, No. 2014-30680, 22nd J.D.C., Div “I” (“the Successions Proceedings”), in which the Nephews submitted an affidavit, dated July 16, 2014, probating a purported olographic testament of Mr. Dobronich. This purported hand written testament, dated on July 18, 2013, is bracketed by the Nephews' July 9, 2013 and August 13, 2013 submissions to this Court regarding Mr. Dobronich's ability to “direct his affairs concerning person or property in matters consistent with his own interest.” The July 18, 2013 date is one day after the acknowledgement of the status conference by the Nephew's attorney in this action noting the Nephews opposition to the setting of a deposition of Mr. Dobronich “based on his incompetency and dementia.” The purported hand written testament leaves his estate “to his nieces and nephews to be divided equally.”

Defendants herein challenged the validity of the hand written testament, explicitly raised the issue of mental competency, as well as the existence of a mental condition inhibiting same, by virtue of the evidence proffered in this matter to wit: The July 2 medical report and July 25 follow up report of Dr. Paul Verrette. The proponents of the July 18, 2013 testament specifically contested those issues and obtained a judgment upholding the hand written testament, even going so far as to object to those reports, which they themselves submitted to this Court, as unreliable hearsay.

Louisiana law is clear that a person is presumed to have the capacity to make contractual transactions and, specifically, to make donations *inter vivos* and *mortis causa* and that a person who challenges such transaction or donation must prove by clear and convincing evidence that the donor lacked capacity at the time the donor made the donation. [La. C.C. art. 1842](#). With the exception of the self serving testimony of the nephews and the overtly biased testimony of Det. Montgomery, the evidence overwhelmingly supports the proposition that the donations and purchase of all movable and immovable property constituted knowing donations in favor of the Thibodaux's by Mr. Dobronich. It is undisputed that Mr. Dobronich, in addition to executing a power of attorney, executed a valid statutory testament in favor of the Thibodauxs on February 14, 2013. The statements of Det. Montgomery notwithstanding, in the two instances where Mr. Dobronich provided sworn testimony, he clearly indicated that all property found in possession of the Thibodauxs, and the donations of immovable property in their favor, were made with his explicit authorization and consent. Any representation of a lack of capacity by Mr. Dobronich, by virtue of the July 9, 2013 and August 13, 2013 submissions of the Nephews in this case, were clearly disavowed and admitted as fraudulent by their actions in the Successions proceedings.

Additionally, based on the wrongful and fraudulent actions of the Nephews in procuring a judgment from this Court declaring Mr. Dobronich incompetent to testify; defendants hereby raise the application of the adverse presumption rule. Where a litigant fails to produce evidence that is available to him, there is a presumption that the evidence would be unfavorable to his cause. [Randolph v. General Motors Corporation](#), 93-1983 (La. App. 1 Cir. 11/10/94), 646 So. 2d 1019; [Boh Brothers Construction Company v. Luber-Finer, Inc.](#), 612 So. 2d 270, 274 (La. App. 4. Cir. 1993). The presumption is rebutted where the litigant provides a reasonable explanation for why the evidence is unavailable. *Id.* In this case, the record is crystal clear as to Defendant's repeated attempts to have Mr. Dobronich submit to a deposition, as well as the repeated attempts by the nephews to thwart same. By virtue of their power of attorney acquired on March 28, 2013, and filed into evidence of these proceedings; the Nephews had complete custodial control of Mr. Dobronich from the time of his discharge from the hospital on April 2, 2013 until his death on March 24, 2014. As clearly evidenced by their submissions in the Successions proceedings for Mr. Dobronich's estate; the Nephews intentionally and fraudulently sought to deprive Defendants of favorable, and dispositive testimony from Mr. Dobronich. First and foremost, the Nephews opened a succession and sought to probate a hand written will, purportedly executed by Mr. Dobronich who was under their custodial control, during the very same time that they advocated a position to this Court that Mr. Dobronich lacked not only transactional capacity, but the capacity to testify. Additionally, the very actions of the Nephews in advocating for a judgment declaring Mr. Dobronich incompetent was clearly in violation of their fiduciary duty as his agent in fact. See [Noe v. Roussell](#), 310 So. 2d 806, 818-19 (La. 1975). Clearly, there is no explanation that the Nephews can submit herein that would prevent the rightful application of the adverse presumption rule in this case.

Further, as evidenced by the sworn statements of Mr. Dobronich, the adverse presumption would be that Mr. Dobronich had fully intended and desired to donate all movable and immovable property to the Thibodauxs, including the property located at 29145 Nell Drive; the property purchased at Ellis Drive, as well as the vehicles, equipment and cash seized from Calvin Thibodaux's bank account. The adverse presumption would also reasonably include testimony to the effect that Mr. Dobronich was coerced by his Nephews to make contrary statements to Det. Montgomery, that Mr. Dobronich was intimidated in speaking with Det. Montgomery, and that, after over two months of being in exclusive custodial control of the Nephews, that much of his July 25, 2013 direct testimony and initial cross examination testimony before this Court was, likewise, coerced. Finally, the adverse presumption rule requires the presumption that Mr. Dobronich was coerced into signing the March 28, 2013 power of attorney in favor of the Nephews and was further coerced into executing the hand written testament of July 18, 2013 after being shown the medical reports of Dr. Verrette indicating that he was incompetent. In any event, based on the above, Defendants are entitled to a judgment dismissing all of plaintiffs' claims, with prejudice, and for a return of all property seized by the STPSO.

Calvin Thibodaux

Calvin Thibodaux did not submit a Statement of the Facts.

D. STIPULATIONS. WITNESS AND EXHIBIT LIST

A. Written stipulations:

George and Forest Dobronich on behalf of Sidney Dobronich and Darnay Thibodaux stipulate to the admissibility of the testimony and exhibits introduced at the June 25, 2013 sequestration hearing.

B. Witness List

Plaintiffs may call the following witnesses at trial:

1. Forest Dobronich to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
2. George Dobronich to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
3. Det. Stefan Montgomery to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
4. Joseph Romano to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
5. Darnay Thibodaux to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
6. Calvin Thibodaux to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
7. Christina Penton to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
8. Lynn Lemoine to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
9. Buffy Singletary to testify as to the facts regarding Mr. Dobronich, Calvin Thibodaux and Darnay Thibodaux
10. Any expert retained by Defendant;
11. Any witness listed by any other party;

12. Any witness called by any other party;
13. Any witness needed for impeachment purposes;
14. Any witness needed to authenticate any document or exhibit

Plaintiffs reserve the right to amend this list if necessary upon proper notice to the Court and opposing counsel.

Defendant Darnay Thibodaux *will* call the following witnesses:

1. Rebecca Crawford -- fact (Competence of Sidney Dobronich, execution of February 14, 2013 Will and accompanying documents, execution of Donation, execution of March 27, 2013 affidavit)
2. Joseph P. Romano - fact (Competence of Sidney Dobronich, intent to make donations in favor of the Thibodauxs)
3. Detective Stefan Montgomery -- fact (Competence of Sidney Dobronich, intent to make donations in favor of the Thibodauxs)
4. Calvin Thibodaux -- fact (Competence of Sidney Dobronich, intent to make donations in favor of the Thibodauxs)
5. Darnay Thibodaux -- fact (Competence of Sidney Dobronich, intent to make donations in favor of the Thibodauxs)
6. Forest Dobronich - fact (Competence of Sidney Dobronich)
7. Any witness called by Plaintiffs.

Calvin Thibodaux

No witnesses submitted by Calvin Thibodaux

B. Exhibit List

Plaintiff may offer the following exhibits:

1. All evidence admitted and transcript of hearing on Plaintiff's Petition for Sequestration hearing held on June 25, 2013
2. Bill of Information for Darnay Thibodaux and Calvin Thibodaux filed September 6, 2013, Case No. 5386436
3. Plea of guilty of Darnay Thibodaux dated December 17, 2014
4. Minute Entry of sentencing of Darnay Thibodaux dated January 29, 2015
5. Plea of guilty and sentencing of Calvin Thibodaux dated December 17, 2014
6. Act of Donation of February, 2013 from Sidney Dobronich to Darnay Thibodaux and Calvin Thibodaux
7. Bank statements of Sidney Dobronich from Capital One and Citizens Savings Bank

8. Bank statements of Calvin and Darnay Thibodaux
9. Sale documents and checks for purchase of 2001 Chevy C1500 Truck
10. Sale documents and checks for purchase of 2013 Nissan Altima
11. Sale documents and check for purchase of tractor
12. Sale documents and checks for purchase of 2013 Rockwood Camper
13. Various cancelled checks written by Darnay and/or Calvin Thibodaux from Sidney Dobronich's bank account
14. Cancelled check identified by Sidney Dobronich as being a forged signature of his name
15. Document entitled Act of Donation between Buffie Lynn Crawford Singletary, wife of and Charles E. Singletary and Darnay and Calvin Thibodaux dated March 13, 2013
16. Document entitled Donation Inter Vivos between Sidney Dobronich and Darnay and Calvin Thibodaux executed on February 13, 2013 and filed in the Conveyance records of St. Tammany Parish on February 25, 2013.
17. Sidney Dobronich's receipt book for rent received from Calvin and Darnay Thibodaux
18. Document entitled "Will Questionnaire" dated February 13, 2013
19. Document entitled "Last Will & Testament of Sidney Dobronich", unsigned and dated February 14, 2013
20. Revocation of Last Will & Testament executed by Sidney Dobronich dated March 28, 2013
21. Olographic Will of Sidney Dobronich dated June 18, 2013
22. Video recording of Sidney Dobronich regarding his June 18, 2013 olographic will
23. Transcript of Ruling from hearing on Petition to Annul Probated Testament of Sidney Dobronich held on February 24, 2015
24. Certified pleadings entitled "*Succession of Sidney Dobronich*, Suit No. 2014-30680, Div. 'T' "
25. Any exhibits listed or used by any other party

Plaintiffs reserve the right to offer and introduce additional exhibits at the trial upon proper notice to the Court and opposing counsel

Defendant Darnay Thibodaux may offer the following exhibits:

1. March 28, 2013 POA in favor of nephews;
2. February 14, 2013 Will, POA and questionnaire;
3. February 2013 donation of 29145 Nell Drive to Thibodauxs

4. March 18, 2013 financial records authorization;
5. Bank records of Sidney Dobronich obtained by Detective Montgomery;
6. March 24, 2013 check to Berryland Campers;
7. March 27, 2013 affidavit of Sidney Dobronich
8. March 2011 settlement agreement between Sidney Dobronich and Craig Burdine;
9. March 2011 POA revocation of Craig Burdine by Sidney Dobronich;
10. June 25, 2013 testimony of Joseph Romano;
11. June 25, 2013 testimony of Sidney Dobronich;
12. July 9, 2013 and August 25, 2013 submissions and attached reports of Dr. Verrette regarding the competency of Sidney Dobronich;
13. July 14, 2014 affidavit of probate of Nephews, purported olographic testament of Sidney Dobronich and Sworn Descriptive List (Succession Proceedings)
14. March 23, 2015 Judgment, Petition to Annul and Memorandum in Support (Succession Pleadings);
15. Mortgage records for 29127 Nell Drive
16. Any exhibit introduced by Plaintiffs.

Calvin Thibodaux

No exhibits submitted by Calvin Thibodaux

D. TRIAL GRAPHICS

None from Plaintiffs, Forest Dobronich and George Dobronich

None from Defendant, Darnay Thibodaux

No submission from Calvin Thibodaux

F. SIGNATURE LINES

Respectfully submitted,

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Respectfully submitted,

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