

3/20/03

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX DIVISION

PROBATE AND FAMILY  
COURT DEPARTMENT  
DOCKET NO.: 02P5533AA

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)  
IN RE: ESTATE OF BENJAMIN C. THOMPSON )  
)  
\_\_\_\_\_)

**AFFIDAVIT OF OBJECTIONS**

Nicholas Thompson, (the "Objector"), makes the following statements under the pains and penalties of perjury in opposition to the Petition for Probate of certain instruments purporting to be the Last Will (the "purported will") dated April 21, 1995 and a Codicil dated December 21, 1995 (the "purported codicil") of the Decedent Benjamin C. Thompson (the "Decedent" or "Ben").

**A. GROUNDS**

1. Ben was not mentally competent and lacked testamentary capacity to execute the purported will and codicil.

2. The purported will and codicil was procured through the undue influence of the decedent's spouse, Jane Thompson ("Jane") who inherits the substantial majority of Ben's assets under the purported will, which pours assets into the Benjamin C. Thompson 1995 Family Trust. See Bruno v. Bruno, 10 Mass. App. Ct. 918 (1980) ("Undue influence is 'whatever destroys free agency and constrains the person whose act is under review to do that which is contrary to his own untrammelled desire....'"). See also Popko v. Janik, 341 Mass. 212 (1960); Ryan v. Ryan, 419 Mass. 86, 92 (1994).

(a) In a case of undue influence, the person's own free will is overcome so that he does what is contrary to his own desires. *Welman v. Carter*, 286 Mass. 237 (1934). Massachusetts courts consider the following factors in determining whether undue influence has occurred: (1) A person who can be influenced, (2) the fact of deception practiced or improper influence exerted, and (3) submission of the overmastering effect of such unlawful conduct. *Miles v. Caples*, 362 Mass. 107, 284 (1972); *Neill v. Brackett*, 234 Mass. 367, 370 (1920).

(b) Jane controlled Ben's financial affairs, and therefore had a fiduciary relationship with Ben. As such, she bears the burden of showing that there was no undue influence. *Cleary v. Cleary*, 427 Mass. 286 (1998) (a "fiduciary who benefits in a transaction with the person for whom he is a fiduciary bears the burden of establishing that the transaction did not violate his obligations.") *Id.* at 290 (emphasis added).

3. The purported will and codicil were both procured through fraud.

4. The purported will and codicil were both improperly executed and do not comport with Massachusetts requirements. See M.G.L.c. 191, §§ 1-2.

## **B. SUPPORTING FACTS**

1. I am the son of Ben from Ben's first marriage to my mother, Mary Thompson. I have always maintained a close relationship with my father. Prior to my father's death, Jane isolated him from his children and friends. Jane is Ben's second wife and he was her fourth husband. Ben and Jane had no children together. Jane took advantage of my father, and is responsible for the execution of the purported will and codicil, which I believe do not reflect Ben's wishes.

### **1. Ben's Diminished Capacity and Depression**

2. On information, according to Ben's physicians and his medical records, respectively on April 21, 1995 and December 21, 1995, when Ben executed the purported will and codicil, Ben

suffered from medical conditions including depression, hallucinations, extreme insomnia, glaucoma and failing vision. Ben was ultimately prescribed anti-psychotic medication and a sedative to treat his hallucinations and insomnia. For many years prior to, and after Ben's second stroke in 1994 through his death, I was his closest non-paid companion. I cared for and visited him usually daily, either at the hospitals or his Cambridge home. Most of the time, I was the only family member present for doctor's appointments. Often at critical moments when decisions had to be made about Ben's health, Jane was not there. After Ben almost died in 1994, he never walked again - he was on complete bed rest with 24-hour care ordered by Jane. Because Jane had always been and continues to be cold, distant and unwelcoming toward my siblings and I, and would monitor my communications with my father, I would only visit him when I knew she would not be present. This was a substantial amount of time, however, because Jane was typically away from home at work for eight to twelve hours a day and was often gone for days at a time even through Ben's numerous hospital stays.

## **II. Undue Influence on Ben**

3. I believe that Jane acted to obtain assets of my father to my detriment as well as to execute the purported last will and codicil.

### **(a) Ben Could be Easily Influenced and Taken Advantage of.**

4. Especially after 1994, as he was bedridden and suffering from his various medical conditions, Ben was dependent on Jane to take care of his legal and financial affairs. Jane is a forceful and manipulative woman who basically looks out for herself (with the possible exception of her own two children), exclusively. I witnessed Jane regularly display a volatile temper towards my father in cases where he resisted her often inflexible positions.

5. On information, after she married Ben, Jane controlled Ben completely. She gave the impression at Ben's architectural firm, Benjamin Thompson & Associates, Inc., that she managed the office, made significant design judgments for clients and in fact may as well have been an architect, which irritated and annoyed Ben's architect employees and staff members. From what I assessed from their interactions, when it came to personal finances and personal legal matters, Ben was unable to do anything other than what Jane wanted.. It is my belief that Jane made all the important financial and legal decisions in her marriage with Ben and intimidated and/or coerced him to let her do so with her unrelenting badgering.

(b) **Improper Influence on Ben.**

6. Both the purported will and the purported codicil were signed in 1995, after Ben had suffered two strokes. At the time he executed those respective documents, Ben was completely paralyzed on his left side, bedridden, and under twenty-four hour a day nursing care. On information, he was mentally weak, not able to concentrate or speak much more than a sentence at a time. At the time he was also observed to be unable to read well, and did not understand simple arithmetic problems. Jane took advantage of Ben's weakened condition to force the execution of the purported 1995 documents, which I believe to be invalid.

(c) **The Overmastering Effect of Undue Influence/Jane's Fraud.**

7. On February 7, 1992, Ben executed a Will and Trust which left 50% of Ben's interest in a company that he had founded and owned, BTA/Union Station Associates ("BTA/USA") to each of his children. Jane was given a lifetime interest in the other 50% of Ben's interest in BTA/USA, and no percentage of BTA/USA outright.

8. I believe that Jane wrongfully obtained assets of my father to my detriment, including the family home in Barnstable that was originally owned by Ben and my mother. I believe that Jane,

rather than Ben, wrongfully caused and facilitated the execution of the purported last will (with a new trust) dated April 21, 1995 and a codicil dated December 21, 1995. Under the purported 1995 instruments, Jane is given 50% of the BTA/USA interest outright. My siblings and I receive by right of representation a one-fifth share each of 25% of our father's interest in BTA/USA - that is 5% each.

9. Further, in late 1994, Ben asked one of my brothers, Anthony Thompson ("Tony"), to review the substantive changes that Jane had been seeking from an attorney in the form of a new revision to Ben's 1992 Will and Trust. At the time, on information, Ben could not understand the documents even though Jane had asked Attorney Steven Wolfberg to represent Ben's interests. The modifications Ben requested Tony to review included an outright gift to Jane of 50% of Ben's interest in BTA/USA, as well as a life interest in the income from an additional 25% of BTA/USA. Those provisions, which Ben was unsure of, are the provisions included in the purported 1995 documents. My siblings and I tried to discuss any new will my father might have signed with Jane. However, Jane insisted that she would not discuss anything related to Ben's estate plan with myself or my siblings unless we each first signed a waiver agreeing never to sue her.

10. An additional part of Jane's plan to disinherit me as well as Ben's other children without his knowledge, was accomplished by forcing Ben to agree to a debt of over \$1,000,000 to Jane and by Jane's leveraging Minnesota real estate Ben had inherited to finance restaurants which were unwise and unprofitable investments.

### **III. The Purported Will and Codicil are Invalid Due to Improper Execution**

11. The purported December 21, 1995 codicil is invalid. It does not comport with the witness requirements of M.G.L.c. 191, §§1-2. The 1995 codicil adds an *in terrorem* clause. One

of the witnesses, Henry E. Claiborne ("Henry"), has signed an affidavit which states that he did not witness Ben signing the document, and that when he signed the second page of the codicil, it was completely blank. In addition, Henry did not see the other witness sign the codicil. The original notarized Affidavit of Henry E. Claiborne is attached hereto as Exhibit A. Basically, according to Henry's affidavit, Jane, as Henry's employer, simply put the blank second page of the codicil in front of Henry and instructed him to sign it, which he did. Id.

12. Sarah Miwanda is the other supposed witness to the purported codicil and one of the supposed witnesses to the purported will. Sarah is a care giver from Uganda who was employed by Jane at the time. In 1995, on the dates said documents were supposed to have been executed, Sarah had no green card and, on information, was concerned about her immigration status. I believe that Sarah would have done anything Jane commanded her to do without question, including signing her name on documents that Jane placed in front of her.

13. On information, I believe that the purported will was executed in a manner similar to the purported codicil, and is invalid on that ground as well as the other bases previously described.

*VERIFICATION*

*The undersigned hereby states that he has read the within document. The factual statements therein are true based on his personal knowledge, except for those stated on information, and those are believed to be true based on the information and documents presently available to the undersigned.*

*Signed and sealed under the penalties of perjury this \_\_\_\_\_ day of March, 2003.*

\_\_\_\_\_  
Nicholas Thompson

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that I served the foregoing Affidavit of Objections, by hand/ mailing a copy thereof, by first-class mail, postage prepaid to:

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Date: \_\_\_\_\_

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