

**IN THE CIRCUIT COURT FOR BREVARD COUNTY, FLORIDA**

ANNEEN NINA GLORIA BAUM,  
an individual,

Plaintiff,

**PROBATE DIVISION**

**File No. 05-2013-CP 028863**

vs.

DAVID A. BAUM,  
as the Personal Representative of the  
Estate of Seymour Baum, deceased, and  
as an individual, et al.

Defendants.

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**HONORABLE JOHN M. HARRIS**

**MOTION FOR RELIEF FROM COURT ORDERS**  
**DUE TO RESPONDENT'S MISREPRESENTATION AND MISCONDUCT**

Petitioner, ANNEEN NINA GLORIA BAUM, (hereinafter "Petitioner"), by and through her undersigned counsel, and in accordance with Florida Rule of Civil Procedure 1.540(b), hereby files this Motion for Relief from this Court's November 15, 2013 and April 2, 2014 Orders, and as grounds state as follows:

1. On November 15, 2013, this Court entered an Order Compelling Service in Case No. 05-2012-CP-048343, and in Case No. 05-2013-CP-028863 (hereafter referred to as the "November 15, 2013 Orders") which required the Petitioner to "serve process on any Respondents not yet served in this action on or before December 13, 2013." Thereafter, on April 2, 2014, this Court entered an Order Dropping Parties and Dismissing the Amended Petition in Case No. 05-2012-CP-048343, and an Order Dropping Parties in Case No. 05-2013-CP-028863 (hereafter referred to as the "April 2, 2014 Orders") *because the Petitioner allegedly did not comply with this Court's November 15, 2013 Orders.*
2. The November 15, 2013 Orders were entered because Respondent/Personal Representative, David A. Baum, alleged that he had not been served with process "[a]s a result of Nina's delay." (See Motion to Dismiss attached hereto as Exhibit "A").

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848 Brickell Avenue, Suite 810, Miami, Florida 33131 ~ Telephone: 305.372.2877 Fax: 305.372.2875

Parties and Dismissing the Amended Petition in Case No. 05-2012-CP-048343, and an Order Dropping Parties in Case No. 05-2013-CP-028863 (hereafter referred to as the “April 2, 2014 Orders”) *because the Petitioner allegedly did not comply with this Court’s November 15, 2013 Orders.*

2. The November 15, 2013 Orders were entered because Respondent/Personal Representative, David A. Baum, alleged that he had not been served with process “[a]s a result of Nina’s delay.” (See Motion to Dismiss attached hereto as Exhibit “A”).
3. Petitioner’s undersigned counsel has since discovered that the Respondent was not served with process prior to the entry of the November 15, 2013 Orders because: (1) the Respondent was actively avoiding service of process for two months; and (2) the Respondent’s counsel, William T. Hennessey, refused to accept service of process even though he was required to do so as the Registered Agent of the Estate. (See Affidavit of Process Server, Ronald Kostin, attached hereto as Exhibit “B”; Affidavit of prior counsel for Petitioner, Kenneth Manney, attached hereto as Exhibit “C”; and Oath of Personal Representative and Designation and Acceptance of Resident Agent attached hereto as Exhibit “D”).
4. Fla. R. Civ. P. 1.540(b)(3) provides that a court may relieve a party from an order due to misrepresentation or misconduct of an adverse party.
5. As set forth in more detail below, Petitioner should be relieved from the November 15, 2013 Orders because the November 15, 2013 Orders would not have been entered but for the misconduct of the Respondent and his counsel, and the misrepresentation that they made to this Court.

**Petitioner is entitled to relief from the November 15, 2013 Orders**  
**pursuant to Fla. R. Civ. Pro. 1.540(b)(3)**

6. Petitioner’s former attorney, Kenneth Manney, hired Ronald Kostin, a Certified Process Server for Global Process Service, to serve the Respondent with a Summons and Amended Petition for Case No. 05-2012-CP-048343, and a Summons and Amended Complaint for Case No. 05-2013-CP-028863.
7. *Petitioner’s counsel has discovered that the process server attempted to serve these documents on Respondent on fifteen (15) different occasions between*

- September 7, 2013 and November 15, 2013.* (See Affidavit of Ronald Kostin, Exhibit "B").
8. The process server believed that the Respondent had his friend, Attorney Richard Bennett, call the process server (under a ruse of needing to use the process server's services in another case) to find out the make and model of the process server's car so that the Respondent could avoid that car and therefore ervice of process. (See Affidavit of Ronald Kostin, Exhibit "B").
  9. ***The Respondent therefore actively avoided service of process for over two (2) months by means which included trickery and deceit.***
  10. ***The Respondent could have been served on fifteen occasions if he had not engaged in this misconduct.*** (See Affidavit of Ronald Kostin, Exhibit "B").
  11. Respondent's counsel also refused to accept service of the Amended Petition and Amended Complaint on multiple occasions even though he was designated as the Resident Agent of the Estate. (See Affidavit of K. Manney attached hereto as Exhibit "C").
  12. ***By accepting the designation as Resident Agent, Respondent's counsel agreed to accept "service of process or notice in any action against [Respondent, David A. Baum], either in [his] representative capacity, or personally...."*** (See Oath of Personal Representative and Designation and Acceptance of Resident Agent attached hereto as Exhibit "D").
  13. Respondent's counsel therefore engaged in misconduct by refusing to accept service of process of the Amended Petition and Amended Complaint.
  14. Respondent's intentional avoidance of service of process, and the Respondent's counsel's refusal to accept service of process as Resident Agent establishes that **the Respondent and his counsel made a misrepresentation to the Court by alleging that the Respondent had not been served with process "as a result of [the Petitioner's] delay"**. (See Motion to Dismiss attached hereto as Exhibit "A").
  15. Respondent and his counsel knew that were the very reason that service of process had not been perfected on the Respondent at the time they made this

misrepresentation to the Court.<sup>1</sup>

16. The Court relied on this misrepresentation that the Respondent had not been served with process due to the Petitioner's delay, and entered the November 15, 2013 Orders compelling Petitioner to serve process on the Respondent by December 13, 2013.
17. The November 15, 2013 Orders compelling service would not have been entered but for the misconduct of the Respondent and his counsel, and their misrepresentation to this Court.
18. Petitioner should be relieved from the November 15, 2013 Orders because: (1) the Respondent engaged in misconduct by actively avoiding service of process; (2) the Respondent's counsel's engaged in misconduct by refusing to accept service on behalf of the Estate; and (3) the November 15, 2013 Orders were predicated on a misrepresentation that the Respondent and his counsel made to the Court. *See Fla. R. Civ. P. 1.540(b)(3); see also Schlapper v. Maurer, 687 So. 2d 982 (Fla. 5th DCA 1997)* (holding that relief from judgment was warranted pursuant to Fla. R. Civ. P. 1.540(b)(3) because of misrepresentations by opposing party's attorney).

**Petitioner is entitled to relief from the April 2, 2014 Orders**

19. The April 2, 2014 Orders were entered because the Petitioner allegedly did not comply with the November 15, 2013 Orders.
20. Petitioner should therefore be relieved from the April 2, 2014 Orders because they were predicated on the November 15, 2013 Orders which would not have been entered but for the misconduct of the Respondent and his counsel, and their misrepresentation to this Court. *See Fla. R. Civ. P. 1.540(b)(3)*.
21. Moreover, the involuntary dismissal of the Amended Petition was improper and

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<sup>1</sup>Respondent's counsel knew that the Petitioner was attempting to serve process at the time that the misrepresentation was made on October 15, 2013 because Petitioner's former counsel emailed Respondent's counsel on August 26, 2013 to ask when he'd be available to accept service of process on behalf of the Estate. (*See* email from K. Manney to W. Hennessey attached hereto as Exhibit "E"). The Respondent also knew that multiple attempts to serve process on him had been made prior to the time the misrepresentation was made because the process server left a card on the Respondent's door on September 9, 2013 to inform him that he was attempting to serve process on Respondent. (*See* Exhibit "B").

should be reversed because: (1) this Court did not make any written findings of the Petitioner's willful or deliberate refusal to obey the November 15, 2013 Orders; and (2) improper service is not a valid ground for dismissal. *See Fla. R. Civ. P. 1.420(b)*; *see also Lahti v. Porn*, 624 So.2d 765, 766 (Fla. 4th DCA 1993)(trial court abused discretion where it dismissed case with prejudice because there was no "showing of deliberate and willful disregard for the trial court's order"); *Hastings v. Estate of Hastings*, 960 So.2d 798, 801 (Fla. 3d DCA 2007) (where missed deadlines are concerned, "dismissal with prejudice should not be imposed as a sanction unless the lawyer or party has acted in a willful, deliberate, or contumacious manner...."); *Payette v. Clark*, 559 So. 2d 630 (Fla. 2d DCA 1990)(improper service of Petition to re-open estate by registered mail was not valid ground for dismissal of petition at trial court level).

22. For the reasons set forth herein, the November 15, 2013 Orders, and the April 2, 2014 Orders should be set aside.

WHEREFORE, Petitioner respectfully requests that the Court set aside the November 15, 2013, and April 2, 2014 Orders, and for any other relief this Court deems just.

### **CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of this document was served via the E-Filing Portal to all attorneys of record and via formal service on all other interested parties on April 29, 2014 to:

**David A. Baum, c/o William T. Hennessey, Esq.**, Gunster, Yoakley & Stewart, P.A.,  
777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401  
([whennessey@gunster.com](mailto:whennessey@gunster.com); [dcarr@gunster.com](mailto:dcarr@gunster.com); [eservice@gunster.com](mailto:eservice@gunster.com))

**Bruce M. Baum**, the biological son and heir at law; 155 West 71<sup>st</sup> Street, Apartment 5E,  
New York, NY 10023

**The Women's Zionist Organization of America, Inc., aka Hadassah, c/o William E. Boyes, Esq.**, 3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410  
([bboyes@boyesandfarina.com](mailto:bboyes@boyesandfarina.com); [asabocik@boyesandfarina.com](mailto:asabocik@boyesandfarina.com);  
[czill@boyesandfarina.com](mailto:czill@boyesandfarina.com))

**Chabad Trustees under the Chabad Trust, c/o, David H. Jacoby, Esq.**, 2111 Dairy

Road, Melbourne, FL 32904 ([davidhjacob@yahoo.com](mailto:davidhjacob@yahoo.com))

**Friends Of Israel Defense Forces, Inc c/o Jonathan Bernstein, 1430 Broadway, Suite 1301, New York, NY 10018; ([jonathan.bernstein@fidf.org](mailto:jonathan.bernstein@fidf.org))**

**Respectfully Submitted,**

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Attorney for Anneen Nina Gloria Baum

IN RE: ESTATE OF SEYMOUR BAUM,  
Deceased,

IN THE CIRCUIT COURT FOR THE  
18<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
BREVARD COUNTY, FLORIDA

ANNEEN NINA GLORIA BAUM,  
  
Petitioner,

PROBATE DIVISION  
  
CASE NO. 05-2012-CP-048323

v.

DAVID A. BAUM, individually and as Personal  
Representative of the Estate of Seymour Baum,  
BRUCE M. BAUM, LIZA  
CIOLKOWSKI BAUM, KEVIN P.  
MARKEY, CHABAD OF SPACE, INC.,  
a/k/a CHABAD JEWISH COMMUNITY CENTER,  
a/k/a CHABAD OF SPACE AND TREASURE COAST,  
a Florida not for profit corporation, THE WOMAN'S  
ZIONIST ORGANIZATION OF AMERICA, INC. a  
foreign not for profit corporation, d/b/a HADASSAH, and  
FRIENDS OF ISRAEL DEFENSE FORCES, INC., a  
Florida not for profit corporation,

Respondents.

**RESPONDENT'S MOTION TO DISMISS AMENDED PETITION, MOTION TO  
STRIKE CLAIM FOR ATTORNEYS' FEES IN COUNTS III-XI, AND MOTION TO  
STRIKE THE PETITIONER'S DEMAND FOR JURY TRIAL ON ALL COUNTS**

Respondent, David A. Baum, as the Personal Representative of the Estate of Seymour Baum, by and through his undersigned counsel, hereby moves to dismiss the Amended Petition filed by Petitioner, Anneen Nina Gloria Baum, to strike her claim for attorneys' fees in Counts III, IV, V, VII, VIII, and IX, and moves to strike the Petitioner's demand for a jury trial on all Counts, and in support thereof states:

**I. INTRODUCTION**

The Decedent, Seymour Baum, died in Brevard County on June 17, 2012. His Last Will and Testament dated March 22, 2011 (the "Last Will") was admitted to probate on January 22,



2013. The Decedent's son, David Baum ("David"), and the Decedent's long-time attorney, Kevin Markey ("Markey"), were appointed personal representatives. Markey has since resigned and been discharged by this Court. David continues to serve as the sole Personal Representative.

Petitioner is the Decedent's disgruntled, disinherited daughter. She had no significant contact with her father since the 1990s due to her own outrageous and threatening behavior. She has engaged in a pattern of frivolous litigation over the past decade and was convicted of felony fraud by the United States Government.

Petitioner has filed an Amended Petition containing eleven (11) counts, all of which should be dismissed. Petitioner is seeking a hodgepodge of relief: revocation of probate of the Decedent's Last Will; monetary damages and equitable relief against David; removal of David as personal representative; a judgment declaring that Markey, who no longer serves as personal representative, is unqualified to serve as personal representative; claims against the Estate; and claims for exempt property and a family allowance (neither claim is a cause of action). In Count IX, she asserts a damage claim for \$8 million for an alleged breach of the Decedent's promise to support the Petitioner for the remainder of her lifetime. She has no written agreement and no proof of the alleged promise of support (nor proof that the Decedent was even supporting her in the years prior to his death).<sup>1</sup> Counts III, IV, V, VII, IX, X, XI of the Amended Petition are duplicates of claims raised in the Petitioner's Amended Complaint filed in the case styled *Anneen Nina Gloria Baum v. David A. Baum, individually and as Personal Representative of the Estate of Seymour Baum, et al.*, Case No. 05-2013-CP-028863.<sup>2</sup> Counts VIII and IX contain claims against the Estate which are based upon a Statement of Claim that is time barred.

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<sup>1</sup> There is no truth to the allegations that the Decedent was supporting Nina. In fact, he was estranged from her for many years prior to his death.

<sup>2</sup> Count III (conversion) of the Amended Petition is a duplicate of Count I of the Amended Complaint. Count IV (constructive trust) of the Amended Petition is a duplicate of Count II of the Amended Complaint. Count V (breach



From a factual perspective, all of the claims in the Amended Petition are completely manufactured and have no basis in fact. However, accepting those facts as true for purposes of the motion to dismiss, the Amended Petition itself is a procedural train wreck. It fails to properly state causes of action. It has never been served in accordance with Florida law. Further, the Petitioner, who is not a beneficiary under the Decedent's Last Will, lacks standing to bring many of the claims alleged. The Amended Petition should be dismissed.

## **II. ARGUMENT**

### **A. FAILURE TO COMPLY WITH RULES 1.070(j) and 5.025**

As a preliminary matter, the Amended Petition should be dismissed because it was never even served.

Nina's Petition was filed more than four months ago on June 3, 2013. To date, the Petition has still not been served upon the personal representative.

The Florida Rules of Probate define an action seeking to remove a personal representative or seeking revocation of probate of a will as "Adversary Proceedings." Fla. R. Prob. 5.025(a). Thus, Nina's Petition is an adversary proceeding within the meaning of the Florida Probate Rules. The initial pleading in an adversary proceeding is required to be served by Formal Notice. Fla. R. Prob. 5.025(d)(1).

Nina has failed to serve the Personal Representative with formal notice as required by Florida Probate Rule 5.025. A party seeking revocation of a will or removal of a duly appointed personal representative is required to strictly comply with the procedural requirements. In re

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of fiduciary duty) of the Amended Petition is a duplicate of Count III of the Amended Complaint. Count VIII (unjust enrichment) of the Amended Petition is a duplicate of Count IV of the Amended Complaint. Count IX (promissory estoppel) of the Amended Petition is a duplicate of Count V of the Amended Complaint, Count X (exempt property) of the Amended Petition is a duplicate of Count VI of the Amended Complaint. Count XI (emergency funds) of the Amended Petition is a duplicate of Count VII of the Amended Complaint.

Odza's Estate, 432 So. 2d 740, 742 (Fla. 4th DCA 1983) (reversing order for removal of a personal representative due to the lack of formal notice).

Florida has a strong public policy concerning the expeditious, orderly administration of decedents' estates. See In re Estate of Clibbon, 735 So. 2d 487, 489 (Fla. 4th DCA 1998), quoting In re Williamson's Estate, 95 So. 2d 244, 246 (Fla. 1956) (it is a "matter of public policy in this state that the estates of decedents shall be speedily and finally determined with dispatch").

As a result of Nina's delay, the un-served Petition continues to prevent the Personal Representative from completing distribution of the decedent's estate in accordance with his Last Will.

Furthermore, adversary proceedings are governed by the Florida Rules of Civil Procedure. Fla. Prob. R. 5.025(d)(2). Florida Rule of Civil Procedure 1.070(j) requires that initial service of pleadings occur within 120 days of filing. It has now been more than 120 days since the filing of Nina's Petition. Pursuant to Florida Rule of Civil Procedure 1.070(j), an initial pleading which is not served within 120 days is subject to dismissal if good cause or excusable neglect is not shown for the delay. Powell v. Madison County Sheriff's Dept., 100 So. 3d 753, 754 (Fla. 1st DCA 2012). Nina has no good cause for her failure to serve the Petition.

Nina's Amended Petition should be dismissed because it has never been served it as required by law.

**B. THIS COURT SHOULD DISMISS COUNT I (REVOCATION OF PROBATE), COUNT II (UNDUE INFLUENCE), AND COUNT VI (REMOVAL OF PERSONAL REPRESENTATIVE) BECAUSE THE PETITIONER LACKS STANDING.**

**1. Petitioner Lacks Standing to Seek Revocation of Probate of the Decedent's Last Will.**

In Counts I and II, the Petitioners seeks to set aside the Decedent's Last Will on the grounds it was not properly executed and it is the product of undue influence. It is well established that in a will contest, the contestant must allege, and has the burden of proving, standing. Under Florida Probate Rule 5.270(a), "a petition for revocation of probate shall state the interest of the petitioner in the estate..." As the court in Wehrheim v. Golden Pond Assisted Living Facility noted, "[i]n order to properly petition for revocation of probate, a petition must 'state the interest of the petitioner in the estate and facts constituting the grounds on which revocation is demanded.'" 905 So. 2d 1002, 1006 (Fla. 5th DCA 2005) (citing Fla. Prob. R. 5.270(a)).

Whether a person is an "interested person" able to bring an action challenging the validity of a will is an element that must be established by the petitioner seeking revocation of probate. See Wehrheim, 905 So. 2d at 1006 (citing Fla. Prob. R. 5.270(a)); See § 733.109(1), Fla. Stat. (2012). Only "an interested person" can bring an action challenging the validity of a will. See § 733.109(1), Fla. Stat. (2012).

An "interested person" means "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved." Fla. Stat. § 731.201(23). Moreover, just because a party is an interested person under Fla. Stat. § 731.201 does not mean that they have standing to bring an action to contest a will. See In re Lewis' Estate, 411 So. 2d 368, 370 (Fla. 4<sup>th</sup> DCA 1982) (Fla. Stat. § 731.201 "is intended to provide for notice rather than to bestow automatic standing").

By her own allegations, Petitioner does not have standing as an intestate heir. See Id., fn. 5 (containing allegations that the Decedent was married for many years to Petitioner's mother and that it was uncertain whether the Decedent and Petitioner's mother divorced); § 732.102(2),

Fla. Stat. (2012) (providing that the Decedent's surviving spouse is the sole heir of the Decedent's intestate estate).

Petitioner unsuccessfully attempts to plead standing by alleging she is a beneficiary under the "Decedent's prior will." Amended Petition, ¶ 11. She does not provide the date or terms of the alleged "prior will" and has failed to attach a copy.

It has long been held in Florida that if there are prior wills that exclude the contestant, the contestant does not have standing to contest the will, unless the contestant proves that the prior wills are invalid or the doctrine of dependent relative revocation does not apply. Cates v. Fricker, 529 So. 2d 1253 (Fla. 2d DCA 1998).

Therefore, a "petitioner may not be an interested person in revocation and removal proceedings if previous and presumptively valid wills have been discovered that, similar to the current will, do not include the petitioner as a beneficiary of the estate." Wehrheim, 905 So. 2d at 1006. Naturally, "it is the burden of the petitioner seeking to revoke the present will to establish that the previous will, which also excludes the petitioner as a beneficiary, is invalid." Id.

The Petitioner fails to allege the date or the terms of the prior will. Most importantly, she fails to attach a copy of the alleged prior will to the Amended Petition. Florida Rule of Civil Procedure 1.130 requires that a copy of "all documents upon which action may be brought...be incorporated in or attached to the pleading". Failure to attach a necessary exhibit under this Rule is grounds for dismissal. Safeco Ins. Co. of America v. Ware, 401 So. 2d 1129 (Fla. 4th DCA 1981) ("One of the ways to reach a failure to attach a necessary exhibit [under Fla. R. Civ. P. 1.130] is by motion to dismiss.").

**2. The Petitioner Lacks Standing to Seek Removal of David as Personal Representative in Count VI.**

In Count VI, the Petitioner seeks to remove David as Personal Representative. Only the court and interested persons are authorized to commence removal proceedings. Fla.Prob. R. 5.440(a). An interested person is any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. § 731.201(23), Fla. Stat. (2012). The Petitioner is not a beneficiary of the Estate. Amended Petition, Exh. A. Additionally, the Petitioner has failed to allege an interest in the Estate such that Petitioner may reasonably be expected to be affected by the personal representative's removal. See Wehrheim, 905 So. 2d at 1002 (standing is an element of proof that must be established).

Moreover, although she has brought a will contest in the Amended Petition, a will contestant is not an interested person for purposes of seeking the personal representative's removal. James G. Pressly, "Standing to Bring Removal Action", LITIGATION UNDER FLORIDA PROBATE CODE (Fla. Bar. CLE 9th ed. 2013), *citing* § 733.109(2), Fla. Stat. (2012) and Fla. Prob. R. 5.270(b) (authorizing personal representatives to proceed with estate administration when a will contest is pending).

Likewise, Petitioner's status as a claimant in this Estate (although the Personal Representative maintains her claims are time barred) would not make her an interested person. A claimant with unresolved pending litigation against the estate has no standing to seek removal of the personal representative. Id., *citing In re Estate of Shaw*, 340 So. 2d 491 (Fla. 3d DCA 1976). Petitioner's claims are pending and unresolved; in fact, she is seeking to litigate them in the Amended Complaint in Case No. 05-2013-CP-028863 and in Counts VIII and IX of the Amended Petition. Moreover, as discussed below, Petitioner's claims are time barred as she did not file her Statement of Claim within the statutory creditor's period.

Because Petitioner is not an interested person and lacks standing to bring a removal action, Count VI should be dismissed. In the alternative, this claim should be stayed pending resolution of Petitioner's will contest or creditor claims in the event they are not dismissed.

**C. THIS COURT SHOULD DISMISS PETITIONER'S CLAIMS FOR CONVERSION, CONSTRUCTIVE TRUST AND BREACH OF FIDUCIARY DUTY (COUNTS III – V).**

In Counts III, IV and V of the Amended Petition, Petitioner is suing David for conversion (Count III), constructive trust (Count IV), and breach of fiduciary duty (Count V) for alleged conduct relating to the Decedent's property.

**1. The Petitioner Lacks Standing to Assert Claims on Behalf of the Estate.**

David disputes the factual allegations of Counts III through V. There were no improper transfers by the Decedent to David. However, even if such allegations were true, the case law provides that the claims belong to the Estate. To the extent the Plaintiff is purporting to act on behalf of the Estate to protect estate property, her argument is flawed. The Petitioner has no authority to bring lawsuits on behalf of the Estate. Putting aside for a moment that the Petitioner is not even a beneficiary of the Estate, even if she was a beneficiary, pursuant to Florida law, a personal representative is the only party who can bring an action on behalf of an estate. See All Children's Hospital, Inc. v. Owens, 754 So. 2d 802, 806-07 (Fla. 2d DCA 2000); Brake v. Murphy, 687 So. 2d 842, 843 (Fla. 3d DCA 1997) (the personal representative is the only party permitted to bring an action on behalf of an estate).

It is the general duty of the personal representative to settle and distribute the estate. All Children's Hospital, 754 So. 2d at 806; § 733.602, Fla. Stat. (2012). Further, the Florida Probate Code makes it clear that a claim to recover estate assets rests with the personal representative. § 733.607(1), Fla. Stat. (2012). In All Children's Hospital, residuary beneficiaries under a will attempted to bring a claim against a third party who received lifetime transfers from the

decendent. The Second DCA labeled this the “bigger piece of the pie” theory because the beneficiaries were claiming that the third party had wrongfully procured those gifts and had tortiously interfered with their right to receive a larger share of the decedent’s estate. In other words, the beneficiaries were attempting to have pre-death transfers returned to the estate in order to increase their eventual payout as residuary beneficiaries. The court held that the personal representative is the proper party to bring those types of claims. Id. at 807.

In this case, Plaintiff is not even a beneficiary of the Estate. Until the validity of the Last Will is determined, she has no claim to Estate assets. Thus, she is in a worse position than even the named residuary beneficiaries in All Children’s Hospital. Considering the four corners of the Amended Petition, the All Children’s Hospital case confirms that Plaintiff lacks standing to bring this claim. Therefore, Counts III through V should be dismissed.

**2. Constructive Trust Is Not a Cause of Action and the Petitioner has failed to Identify a Specific Res.**

Count III should be dismissed because it is well settled in Florida that “constructive trust” is not a cause of action. Rather, it is an equitable remedy invoked to avoid unjust enrichment. Saporta v. Saporta, 766 So.2d 379, 381 (Fla. 3d DCA 2000) (*quoting* Wadlington v. Edwards, 92 So.2d 629, 631 (Fla.1957)). See B & C Investors, Inc. v. Vojak, 79 So.3d 42 (Fla. 2d DCA 2011) (affirming a dismissal of a claim for constructive trust because it is an equitable remedy); Swope Rodante, P.A. v. Harmon, 85 So. 3d 508, 511 (Fla. 2d DCA 2012).

Additionally, even if it were an actual cause of action, the Petitioner’s constructive trust claim (Count III) fails to properly identify the trust *res*. A constructive trust can only be imposed where the trust *res* is specific and identifiable property, or can be clearly traced in assets of the defendant. Gersh v. Cofman, 769 So. 2d 407, 409 (Fla. 4th DCA 2000). But all Petitioner has alleged is that David conveyed “large amounts of [his father’s] wealth” to himself or his

businesses. A blanket statement like this does not state the alleged *res* with the specificity required under Florida law. See, Trend Setter Villas of Deer Creek v. Villas on the Green, Inc., 569 So. 2d 766, 768 (Fla. 4th DCA 1990). Therefore, Count III should be dismissed.

**3. Counts III and IV Should Be Dismissed, or Alternatively Stricken, Because They Are Vague and Ambiguous.**

Petitioner's conversion and constructive trust claims (Counts III and IV, respectively) should be dismissed because the allegations supporting them are too vague. There are no apparent factual allegations supporting Petitioner's conversion claim, although Petitioner uses the word "embezzlement" and references an *intent* by David to transfer "the greater weight" of the Decedent's assets to himself or his businesses. Amended Petition, ¶ 15.

In the alternative, Counts III and IV should be stricken pursuant to Florida Rule of Civil Procedure 1.140(e) because they are so vague and ambiguous that Respondent cannot reasonably be required to frame a responsive pleading.

**4. Count VI (Fiduciary Duty) Should Be Dismissed Because It Is Duplicative of Other Counts and Improperly Combines Distinct Causes of Action.**

In Count VI, the Petitioner has intermingled a number of causes of action into a claim for "breach of fiduciary duty". For example, in ¶ 36(a) she states that David forged the Decedent's Will. That is really an allegation relating to Count I for revocation of probate. Since Count VI is duplicative of other Counts, it should be dismissed.

**D. CLAIM FOR DECLARATORY JUDGMENT AGAINST MARKEY (COUNT VII)**

Count VII of the Amended Petition is a claim for declaratory relief that should be dismissed because Petitioner lacks standing and, in any event, Petitioner has failed to state a claim for declaratory relief.

In Count VII, Petitioner seeks a judgment declaring that Markey, who has already resigned as personal representative, is not qualified to serve as personal representative and that



the Estate not be required to use his legal services despite the Decedent's direction in his Last Will.

Similar to Count VI of the Amended Petition, the Petitioner does not have standing to bring this claim because she is not an interested person. Cates, 529 So. 2d at 1254. As discussed above, the Petitioner is neither a beneficiary nor a judgment creditor of the Estate. She has failed to allege any other cognizable interest in this Estate which would grant her standing to seek removal.

Further, and in any event, Petitioner's claim for declaratory relief is moot and should not be entertained because there is no bona fide, actual, present practical need for the requested declaration. Sec May v. Holley, 59 So. 2d 636 (Fla. 1952). Count VII falls short of the standard for a complaint seeking declaratory judgment set forth by the Florida Supreme Court:

Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a *bona fide, actual, present practical need for the declaration*; that *the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts*; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity. *These elements are necessary* in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.

May, 59 So. 2d at 639. [emphasis added].

Markey has already resigned and been discharged as a personal representative. Amended Petition, fn. 4. The Amended Petition contains no allegations that indicate that re-appointment of Markey may be sought. Petitioner admittedly only "desires to *ensure* that [Markey] is not appointed in the future as Personal Representative." Amended Petition, fn. 15 [emphasis added]. This, however, is not the function of declaratory judgments in Florida. See State v. Florida

Consumer Action Network, 830 So. 2d 148 (Fla. 1<sup>st</sup> DCA 2002). “While one may seek a declaration of his or her rights without an allegation of actual injury, an aggrieved party must nonetheless make *some* showing of a real threat of immediate injury, rather than a general speculative fear of harm that may possibly occur at some time in the indefinite future.” Id. at 152 [emphasis added]; See also State ex rel. Florida Bank & Trust Co. v. White, 21 So. 2d 213, 215 (Fla. 1944)(“It is settled law that a court will not entertain a suit to determine a declaration of rights for parties upon facts which have not arisen, upon matters which are contingent, uncertain or rest in the future, or upon a matter which is past...”)

Therefore, Count VII should be dismissed.

**E. PETITIONER’S CREDITOR CLAIMS AGAINST THE ESTATE SHOULD BE DISMISSED (COUNT VIII – IX).**

In Counts VIII and IX of the Amended Petition, Petitioner is seeking relief against the Estate for the creditor claims that she filed on May 14, 2013 for \$27,000.00 and \$8,000,000.00 respectively. First, it should be noted that these claims are based upon a Statement of Claim which the Petitioner filed beyond the statutory deadline to file creditor’s claims. The Personal Representative has filed a verified petition to strike the Petitioners’ Statement of Claim as being untimely filed under § 733.702 of the Florida Probate Code.

Second, Counts VIII and IX should be dismissed as a matter of law because Petitioner is required to bring these claims as a separate action outside of this probate proceeding instead of simply petitioning this Court for payment of these claims.

A creditor of the decedent who wishes to enforce against the Estate an obligation owed by the Decedent must file a claim in the probate proceeding. § 733.702, Fla. Stat. (2012). If an objection to this claim is filed in the probate proceeding, the creditor must “bring an independent action upon the claim”. § 733.705(5), Fla. Stat. (2012). This independent action must be a

separate action on the claim filed against the estate as opposed to a petition for payment on the claim in the probate action. Estate of Fornash v. Barnes, 372 So. 128 (Fla. 2d DCA 1979)(reversing final judgment in favor of claimant where probate court failed to require claimant to file an independent action and permitted claimant to litigate the merits of the claim in the probate proceeding); In re Estate of Pridgeon, 349 So. 2d 741 (Fla. 1st DCA 1977). As this is the probate proceeding and Petitioner is seeking to litigate the merits of a creditor claim, Counts VIII and IX must be dismissed.

**F. FAILURE TO STATE A CAUSE OF ACTION FOR EXEMPT PROPERTY (COUNT X)**

In Count X, Petitioner is seeking to compel the Personal Representative to distribute exempt property. Florida Statutes § 732.402(5) specifically provides that “property specifically or demonstratively devised by the decedent’s will to any devise shall not be included in exempt property.” All of the decedent’s tangible personal property was specifically devised pursuant to Article 3.1 of the Decedent’s Last Will. Because Petitioner is not a named recipient of tangible personal property under Article 3.1 the Decedent’s Last Will, she is not entitled to such property and has no standing to have such property declared exempt. Count X should therefore be dismissed.

**G. FAILURE TO STATE A CAUSE OF ACTION FOR FAMILY ALLOWANCE (COUNT XI)**

Finally, Count XI for Family Allowance should be dismissed because Petitioner lacks standing. As set forth above, Petitioner is specifically disinherited pursuant to the terms of the Decedent’s Last Will which has been admitted to probate. Florida Statutes § 732.403 provides a mechanism for providing emergency funds to the Decedent’s family for “maintenance during

administration.” Petitioner is not a beneficiary of the Estate and is therefore not entitled to funds from the Decedent’s Estate.

**III. MOTION TO STRIKE CLAIM FOR ATTORNEYS’ FEES IN COUNTS III-XI**

Petitioner is seeking to recover her attorneys’ fees in Counts III-XI. It is well settled under Florida law that attorneys’ fees and costs are only recoverable by contract or statute. Trytek v. Gale Industries, Inc., 3 So. 3d 1194, 1198 (Fla. 2009) (holding it is well-settled that attorneys’ fees can derive only from either a statutory basis or an agreement between the parties).

The Petitioner does not allege that she had a written contract with the Decedent or the Estate. Moreover, the claims raised in Counts III-XI do not provide for attorneys’ fees. Therefore, this Court should strike the Petitioner’s claim for attorneys’ fees in Counts III-XI.

**IV. THIS COURT SHOULD STRIKE THE PETITIONER’S DEMAND FOR JURY TRIAL**

The Petitioner has demanded a jury trial on all counts of the Amended Petition. It is well settled that a jury trial is not available for the revocation of a probate, removal of a personal representative, counts relating to the administration of the probate, or a declaratory relief action contained in Counts I-VII and X-XI. Allen v. Dutton’s Estate, 394 So. 2d 132, 135-36 (Fla. 5th DCA 1980). Further, Counts VIII and IX are counts seeking equitable relief for which Petitioner has no right to a jury trial. It is well-settled under Florida law that “the right to a jury trial, in the absence of specific statutory authorization, depends upon whether the nature of the cause of action is legal or equitable.” Cerrito v. Kovitch, 457 So. 2d 1021, 1022 (Fla. 1984); *see also* King Mountain Condominium Association, Inc. v. Gundlach, 425 So. 2d 569, 570 (Fla. 4th DCA 1983)(holding that “it is certain that the right to a jury trial applies only to legal, as opposed to equitable causes of action”). All of the claims raised in the Amended Petition are equitable in nature.

**V. CONCLUSION**

Based upon the foregoing, this Court should dismiss the Amended Petition in its entirety, strike the Petitioner's claim for attorneys' fees in Counts III-XI, and strike the demand for jury trial on all Counts.

WHEREFORE, Respondent, David A. Baum, as the Personal Representative of the Estate of Seymour Baum, respectfully requests an Order dismissing the Amended Petition, striking the Petitioner's claim for attorneys fees in Counts III-XI striking the Petitioner's demand for jury trial on all Counts, and awarding such other and further relief that this Court deems just and proper under the circumstances.

Dated this 14<sup>th</sup> day of October, 2013.

GUNSTER, YOAKLEY & STEWART, P.A.  
Attorneys for Respondent, David A. Baum, as  
Personal Representative  
777 South Flagler Drive, Suite 500 East  
West Palm Beach, FL 33401-6194  
Telephone: 561-655-1980  
Facsimile: 561-655-5677

By: \_\_\_\_\_

William T. Hennessey, Esquire  
Florida Bar No. 0104809  
Ann Burke Spalding, Esquire  
Florida Bar No. 093408  
Primary: [whennessey@gunster.com](mailto:whennessey@gunster.com)  
Secondary: [dcarr@gunster.com](mailto:dcarr@gunster.com)  
Secondary: [eservice@gunster.com](mailto:eservice@gunster.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy has been furnished via E-Mail on this 14<sup>th</sup> day of October, 2013 to all parties on the attached service list.

By: \_\_\_\_\_

William T. Hennessey, Esq.

## Service List

**Kenneth J. Manney, Esq.**  
P.O. Box 644324  
Vero Beach, FL 32964  
[kennethmanney@bellsouth.com](mailto:kennethmanney@bellsouth.com)  
*Attorney for Petitioner,  
Anneen Nina Gloria Baum*

**Patrick F. Roche, Esq.**  
321 Fairmont Avenue  
West Virginia, WV 26554  
[Patrick@pfrochelaw.com](mailto:Patrick@pfrochelaw.com)  
*Attorney for Petitioner,  
Anneen Nina Gloria Baum*

**William E. Boyes, Esq.**  
3300 PGA Boulevard  
Suite 600  
Palm Beach Gardens, FL 33410  
[bboyes@boyesandfarina.com](mailto:bboyes@boyesandfarina.com)  
[asabocik@boyesandfarina.com](mailto:asabocik@boyesandfarina.com)  
[czill@boyesandfarina.com](mailto:czill@boyesandfarina.com)  
*Attorney for Hadassah*

**David H. Jacoby, Esq.**  
David H. Jacoby, P.A.  
2111 Dairy Road  
Melbourne, FL 32904  
[davidhjacobgy@yahoo.com](mailto:davidhjacobgy@yahoo.com)

**Ronald L. Harrop, Esq.**  
John W. Bussey, III  
Wilson Elser Moskowitz Edelman & Dicker LLP  
P. O. Box 531086  
Orlando, FL 32853-1086  
[ronald.harrop@wilsonelser.com](mailto:ronald.harrop@wilsonelser.com)  
[john.bussey@wilsonelser.com](mailto:john.bussey@wilsonelser.com)

WPB\_ACTIVE 5568578.1

**AFFIDAVIT OF RONALD KOSTIN**

1. I, Ronald Kostin, am a Certified Process Server for Global Process Service, which is located at 5831 NW Drill Court, Port St. Lucie, Florida.

2. I was hired by Attorney Ken Manney to serve David A. Baum with a Summons and Amended Petition for Case No. 05-2012-CP-048343, and a Summons and Amended Complaint for Case No. 05-2013-CP-028863, which I did attempt on fourteen (14) different occasions between September 7, 2013 and November 15, 2013. (See Verified Return of Non-Service for Case No. 05-2012-CP-048343, and Verified Return of Non-Service for Case No. 05-2013-CP-028863 attached hereto as Composite Exhibit "A").

3. On October 18, 2013, two days after my eleventh attempt to serve David A. Baum, I received a phone call at 11:30 A.M. from a lawyer who did not give me his name but whose phone number was (954) 415-4919. I have subsequently googled the phone number and determined that it is registered to an attorney named Richard Bennett (see attached Exhibit B, Google Search Result showing phone number is for Richard Bennett). For purposes of this affidavit I will refer to the attorney calling from that phone number as Attorney Bennett since the person on the end of the phone identified himself as an Attorney and the number is registered to Attorney Richard Bennett.

4. Mr. Bennett asked me if I could serve a court document on a woman at the Melbourne Theatre. He told me that I would have to stay at the theatre between the hours of 1PM – 5PM in order to catch her.

5. I was also informed that a man named David Baum would be meeting up with me to give me the court document that I needed to serve, and a check for my services.

6. I let Attorney Bennett know that I could meet David Baum at the Hess Gas Station on N. Wickham Road and Route 95 in order to pick up the court document, and the check

**EXHIBIT  
B**

for my services. Attorney Bennett then asked me for the make and model of my vehicle so that David Baum would be able to recognize me

7. After providing Attorney Bennett with the make and model of my car, he stated that he would call me back in ten minutes to confirm the time and place for the pick-up from David Baum.

8. Attorney Bennett called me back and thanked me for my time but stated that he could not use me as a process server because it would be a conflict with another case.

9. Based on my phone conversation with Attorney Bennett, and the fact I was the process server who had previously attempted to serve David Baum with process for Case No. 05-2012-CP-048343 for Case No. 05-2013-CP-028863 on eleven (11) different occasions, I believe that it is obvious that Attorney Bennett was not trying to retain my services for process on another matter but was using the purported matter as a decoy to obtain my identity, and the make and model of my car, in order to allow David Baum to continue to actively avoiding my service of process on him.

10. Based on my phone conversation with Attorney Bennett, and the fourteen (14) attempts that I made to serve David A. Baum, I also believe that David A. Baum was actively avoiding service of process for Case No. 05-2012-CP-048343 and for Case No. 05-2013-CP-028863.

Dated: April 22, 2014



RONALD KOSTIN, AFFIANT



STATE OF FLORIDA

)

COUNTY OF BREVARD

)

)

SWORN TO AND SUBSCRIBED before me, this <sup>23<sup>rd</sup></sup> day of April, 2014, by Affiant, Ronald Kostin, who is personally known to me or who has produced a Florida driver's license as identification.

*Ronald P. Kostin*  
4/23/14

*Tracy A. King*  
NOTARY PUBLIC

[Print, type or stamp commissioned name of notary or deputy clerk.]



**VERIFIED RETURN OF NON-SERVICE**

State of Florida

County of Brevard

Circuit Court

Case Number 05-2012-CP-048323



Plaintiff  
ANNEEN NINA GLORIA BARUM,

vs

Defendant  
DAVID A. BAUM, AS THE PERSONAL REPRESENTATIVE OF THE  
ESTATE OF SEYMOUR BAUM, DECEASED AND AS AN INDIVIDUAL,  
ET AL

For  
Kenneth J. Manney, Esq  
P O. Box 644324  
Vero Beach, FL 32964-4324

Received by GLOBAL PROCESS SERVING INC on the 29th day of August, 2013 at 12:21 pm to be served on  
DAVID A. BAUM,, 6101 MEGHAN DRIVE, MELBOURNE, FL 32940

I, Ronald Kostin, do hereby affirm that on the 13th day of November, 2013 at 6:53 pm, I:

**NON-SERVED** the **SUMMONS/FORMAL NOTICE AMENDED PETITION/FORMAL NOTICE OF CIVIL ACTION/AMENDED PETITION/EXHIBIT'S "A B C D E F"** for the reason that I failed to find **DAVID A. BAUM**, or any information to allow further search. Read the comments below for further details.

**Additional information pertaining to this Service:**

Attempted Service 6101 Meghan Dr., Melbourne FL 32940, several attempts were made, could not make contact with anyone at residence. Attempts made 1st 9/7 @ 7:06 am no one home. 2nd 9/9 @ 7:38am left card, no one home. 3rd 9/10 @ 6:58pm card on door. 4th 9/12 @ 1:46pm card on door. 5th 9/16 @ 10:02am card on door. 6th 9/24 @ 11:13am card removed. 7th 10/7 @ 8:03am no contact made. 8th 10/8 @ 9:13pm no contact made. 9th 10/9 @ 7:55 am no contact made. 10th 10/12 @ 8:48pm no contact. 11th 10/16 @ 6:45am no contact. 12th 10/25 @ 9:53pm no contact. 13th 11/2 @ 1:06pm no contact. 14th 11/9 @ 7:08am no contact. 15th 11/13 @ 6:53pm no contact.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

Ronald Kostin  
C P S 316

GLOBAL PROCESS SERVING, INC.  
5831 Nw Drift Ct  
Port St Lucie, FL 34988  
(772) 224-6318

Our Job Serial Number EAR-2013000899

GLOBAL PROCESS SERVING, INC. IS AN EQUAL OPPORTUNITY EMPLOYER. Process Server's Fee: \$150.00

Composite Exhibit  
A

## VERIFIED RETURN OF NON-SERVICE

State of Florida

County of Brevard

Circuit Court

Case Number: 05-2013-CP-028883



**Plaiff:**  
ANNEEN NINA GLORIA BAUM,

vs.

**Defendant:**  
DAVID A. BAUM, AS THE PERSONAL REPRESENTATIVE OF THE  
ESTATE OF SEYMOUR BAUM, DECEASED AND AS AN INDIVIDUAL,  
ET AL

**For:**  
Kenneth J. Marney, Esq  
P.O. Box 644324  
Vero Beach, FL 32964-4324

Received by GLOBAL PROCESS SERVING, INC. on the 28th day of August, 2013 at 1:08 pm to be served on  
DAVID A. BAUM, AS A INDIVIDUAL, 6101 MEGHAN DRIVE, MELBOURNE, FL 32940

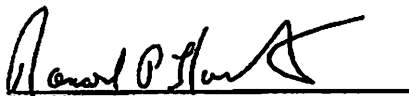
I, Ronald Kostin, do hereby affirm that on the 13th day of November, 2013 at 6:53 pm, I:

**NON-SERVED** the **SUMMONS/NOTICE OF LIS PENDENS/AMENDED COMPLAINT/EXHIBIT'S "A B C D E F"**  
for the reason that I failed to find **DAVID A. BAUM, AS A INDIVIDUAL** or any information to allow further search.  
Read the comments below for further details.

**Additional information pertaining to this Service:**

**Attempted Service Attempted Service** 6101 Meghan Dr., Melbourne FL 32940, several attempts were made, could not make contact with anyone at residence. Attempts made 1st 8/7 @ 7:08 am no one home, 2nd 8/9 @ 7:38am left card, no one home, 3rd 8/10 @ 8:58pm card on door, 4th 8/12 @ 1:48pm card on door, 5th 8/18 @ 10:02am card on door, 6th 8/24 @ 11:13am card removed, 7th 10/7 @ 6:03am no contact made, 8th 10/8 @ 9:13pm no contact made, 9th 10/9 @ 7:55 am no contact made, 10th 10/12 @ 8: 48pm no contact, 11th 10/18 @ 6:45am no contact, 12th 10/25 @ 9:53pm no contact, 13th 11/2 @ 1:06pm no contact, 14th 11/9 @ 7:06am no contact, 15th 11/13 @ 6:53pm no contact.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.



Ronald Kostin  
C.P.S. 318

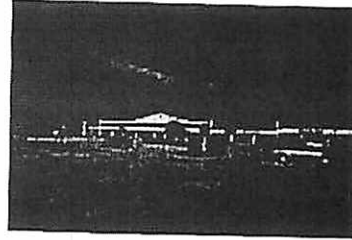
**GLOBAL PROCESS SERVING, INC.**  
5831 Nw Driv Ct  
Port St Lucie, FL 34986  
(772) 224-6018

Our Job Serial Number: EAR-2013000809

# FL. ROCKLEDGE- VILLAGE GREEN PLAZA

S. FISKE BLVD. & BARTON BLVD., Rockledge, FL 32955

ROCKLEDGE, FL  
NEC S. FISKE BLVD. & BARTON BLVD.  
(VACANT WINN DIXIE CENTER)



Owner Parcel 1, Vacant Winn Dixie Shopping Center:

Richard Bennett (Family Attorney) 954-415-4919

Sherry Fuller (Broker)

321-458-1427

David Baum (Owner) 561-416-0214

Owner Parcel 2, Small retail strip backing up to Fiske Blvd:  
David C. Ray 321-639-3624 Asking \$695,000

Owner Parcel 3, Fitness center in 5,632 s.f. building on .59 acres of land on Barton.  
Asking \$600,000

Land Size: 6.84 acres

Price: Bought it for \$5,500,000 on 6/16/2005; we have signed LOI for Parcel 1 for \$5,000,000. Negotiating purchase agreement.

Walmart Building: 41,000 sq. ft. prototypical Neighborhood Market.

Traffic Count: S. Fiske Blvd.: 26,462 Avg. Daily Volume    Barton Blvd.: 18,234 Avg. Daily Volume.

Distance	1 mi.	2 mi.	3 mi.
Population	5,948	23,105	39,744
Households	2,452	9,611	16,710
Avg HH Income (\$)	\$71,610	\$69,085	\$61,481
Median Age	41	41	42

Exhibit B



GATLIN DEVELOPMENT COMPANY


Gatlin Development Company | 888 E. Las Olas Blvd. Suite 600 Ft. Lauderdale, FL 33301  
P: 954.302.5900 | F: 954.302.5901 | www.gatfindc.com

## **AFFIDAVIT OF KENNETH J. MANNEY, ESQ.**

I, KENNETH J. MANNEY, ESQ., affirm under penalty of perjury the following:

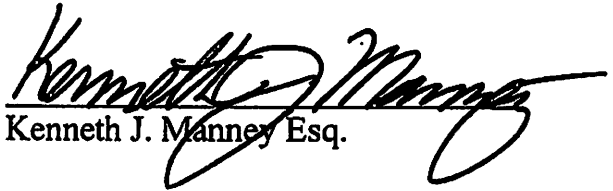
1. My name is Kenneth J. Manney, I am an attorney duly licensed in the State of Florida and am competent to make this affidavit.
2. I was retained by Ms. Anneen Nina Gloria Baum on or about 17 May 2013.
3. I filed the original Petition and Complaint in June, which was then amended on her behalf in August of 2013.
4. I prepared the relevant Summons and Formal Notices to be served on all interested parties for both actions and commissioned Global Process Serving, Inc. to perfect said service.
5. Global Process Serving, Inc. notified me on several occasions that they were having difficulty in serving David Baum, notwithstanding the fact that their agent had attempted on several occasions to serve David Baum at his personal residence at 6101 Meghan Dr., Melbourne, Florida 32940.
6. I notified opposing counsel, William T. Hennessey, III, on several occasions of the problems that I was having in perfecting service on David Baum and inquired whether he would accept service on behalf of his client.
7. Opposing counsel refused on multiple occasions to accept service on behalf of his client David Baum.
8. I was advised by Global Process Serving, Inc. that David Baum was actively avoiding service and was in fact going to extreme measures to obstruct service.
9. I was further advised that David Baum was utilizing his attorney/friend Richard Bennett, Esq. to assist him in avoiding service as is stated in the letter of Ronald Kostin attached hereto as Exhibit "A".
10. That during the later part October, 2013, irreconcilable differences between Petitioner and my office developed causing the relationship to deteriorate to the point that I moved to withdraw as Ms. Baum's Attorney.
11. My motion to withdraw was granted on 13 November 2013.

Signed on the 17<sup>th</sup> day of April, 2014

  
Kenneth J. Manney Esq.

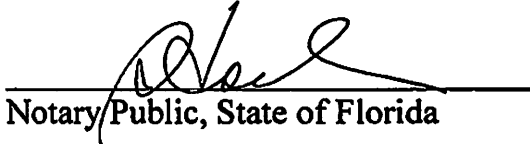
EXHIBIT

C

  
Kenneth J. Manney Esq.

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

SUBSCRIBED AND SWORN TO BEFORE ME on 23 day of April,  
2014 by Kenneth J. Manney.

  
Notary Public, State of Florida

Personally Known      OR Produced Identification k  
Type of Identification Produced Driver License



## Exhibit "A"

Global Process Service  
5831 NW Drill Court  
Port St. Lucie, Florida

Dear Earl,

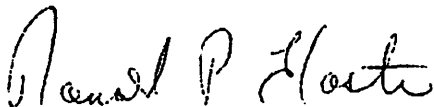
On October 18, 2013, I received a phone call from a lawyer (954-415-4919) at 11:30 AM, asking me if I could serve a court document on a lady at the Melbourne Theatre. I was told I would have to wait between the hours of 1 PM – 5 PM in order to catch her.

I was informed a Mr. David Baum would meet me to give me the court documents and a check for my services. I suggested a meeting place at the Hess Gas Station on N. Wickham Road and Route 95. He then asked for the make & model of my vehicle in order for Mr. Baum to recognize me. After giving him this information, he said he would call me back within 10 minutes, to confirm time and place for pick-up from Mr. David Baum.

He did, in fact, call me back and thanked me for my time. However, he could not use me to serve the above mentioned documents because it would be a conflict with another case.

I believe it is obvious from this conversation, that this David Baum and the David Baum I've been trying to serve eleven (11) subpoenas for Resident Agent is one in the same.

Best Regards,



Ronald Kostin  
Certified Process Server #316

**IN THE CIRCUIT COURT FOR BREVARD COUNTY,  
FLORIDA PROBATE DIVISION**

**IN RE: ESTATE OF**

**SEYMOUR BAUM**

**Deceased.**

**File No.  
05-2012-CP-048323**

**Division Probate**

**2013 JAN 22 A 8:14  
FILED IN TYL-02  
CLERK OF CIR. CT.  
BREVARD CO FL  
SCOTT ELLIS**

**OATH OF PERSONAL REPRESENTATIVE  
AND DESIGNATION AND ACCEPTANCE OF RESIDENT AGENT**

**STATE OF FLORIDA  
COUNTY OF BREVARD**

I, David Baum (Affiant), state under oath that

1 I am qualified within the provisions of Sections 733 302, 733 303 and 733 304 of the Florida Probate Code to serve as personal representative of the estate of Seymour Baum, deceased

2 I will faithfully administer the estate of the decedent according to law

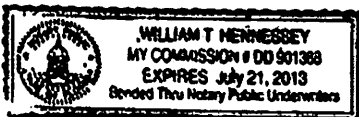
3 My place of residence is 6101 Meghan Drive, Melbourne, Florida 32940, and my post office address is 6101 Meghan Drive, Melbourne, Florida 32940

4 I hereby designate William T Hennessey, who is a member of The Florida Bar, who is a resident of Palm Beach County, Florida, whose office address is 777 S Flagler Drive, Suite 500E, West Palm Beach, FL 33401, and whose post office address is the same as my agent for the service of process or notice in any action against me, either in my representative capacity, or personally, if the personal action accrued in the administration of the estate



David Baum, Affiant

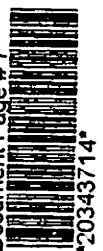
Sworn to and subscribed to before me on January 22, 2013, by Affiant, who is personally known to me  or who produced \_\_\_\_\_ as identification



  
Notary Public State of Florida  
(Affix Notarial Seal)

**EXHIBIT  
D**

Case # 05-2012-CP-048323-XXXX-XX  
Document Page # 7






**ACCEPTANCE**

I CERTIFY that I am a permanent resident of Palm Beach County, Florida, and my office address is as indicated above I hereby accept the foregoing designation as Resident Agent

Signed on January 22, 2013

  
\_\_\_\_\_  
William T. Hennessey, Esq, Resident Agent

**Hennessey, William**

---

**From:** Hennessey, William  
**Sent:** Tuesday, August 27, 2013 9:44 AM  
**To:** 'KENNETH MANNEY'  
**Subject:** RE: Baum Estate

Kenneth-

I'll be in the office all week except for Wednesday. I am going to have to insist that you serve as required by Florida law. To that end, in response to your note below, I am not authorized to accept service beyond that which is permitted or allowed by Florida law.

On a separate note, I kindly ask that you provide me dates for your client's deposition in Florida. If Nina is going to move forward (which is unfortunate given the many inaccuracies in her pleadings), we need to proceed with discovery.

Many thanks.

Bill

William T. Hennessey, III  
Gunster, Yoakley & Stewart, P.A.  
777 S. Flagler Drive, Suite 500E  
West Palm Beach, FL 33401  
(561) 650-0663 office  
(561) 655-5677 fax

---

**From:** KENNETH MANNEY [mailto:kennethmanney@bellsouth.net]  
**Sent:** Monday, August 26, 2013 11:53 AM  
**To:** Hennessey, William; Kenneth Manney  
**Subject:** Baum Estate

Bill,

As you know, I represent Nina Baum. We are ready to serve your client, David Baum, and I would appreciate your confirming that you will accept service for him by replying to this email. In addition, what is the best address for you and how is your schedule this week so that I can let my server know when you will be at your office?

Thanks,  
Kenneth

Kenneth J. Manney  
Attorney at Law

**EXHIBIT  
E**