

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO: 15-655

SECTION: 6

DIVISION: L

IN RE: INTERDICTION OF THOMAS MILTON BENSON, JR.

FILED: _____

DEPUTY CLERK

PETITIONERS' OPPOSITION TO DEFENDANT
THOMAS MILTON BENSON, JR.'S EXCEPTION OF NO CAUSE OF ACTION

MAY IT PLEASE THE COURT:

Petitioners Renee Benson, Rita LeBlanc, and Ryan LeBlanc (hereinafter, collectively, "Petitioners" or "Renee, Rita, and Ryan") respectfully oppose the *Exception of No Cause of Action* filed by defendant Thomas Milton Benson, Jr. ("Tom Benson"). For the reasons more fully set forth below, Tom Benson's *Exception of No Cause of Action* lacks merit and should be denied.

INTRODUCTION

Unfortunately, as alleged in the *Verified Petition for Interdiction* ("*Petition*"), Tom Benson is no longer in a position to care for himself and needs this Court's assistance to protect him. Contrary to the implications made by counsel for Tom Benson, the *Petition* filed in this matter is not a fight against Tom Benson, but rather a fight to protect Tom Benson. As stated in the *Exception of No Cause of Action*, Tom Benson "has always prioritized taking care of his family" and has spent years "groom[ing]" his daughter and grandchildren to succeed him in his various business interests. It is undisputed that after over half a century of "prioritizing" his family, Tom Benson allegedly has changed course in the last sixty (60) days and is seeking to cut all ties from them. Not only is this action inconsistent with his entire life's history, but it also is inconsistent with the need to have this Court intervene and help protect Tom Benson. Faced with the undisputed fact that Tom Benson's recent conduct is inconsistent with everything he has stood for his entire life, those handling him have begun employing a strategy of deflection.

Specifically, in their *Exception of No Cause of Action*, counsel for Tom Benson attempt to deflect the fact that the *Petition* herein is about Tom Benson, and not about Petitioners. As such, the statement in the *Exception* that Petitioners “never rose to the task” is irrelevant to the purpose of the *Petition*—attempting to protect Tom Benson. To that end, it must be pointed out that such statement, purportedly written on behalf of Tom Benson, is not verified by him, and thus on its face is vulnerable to scrutiny. In addition, the statement is self-impeaching since the notion that Petitioners “never rose to the task” is belied by the undisputed facts; for example that Tom Benson consistently gave Petitioners raises, promotions, and public praise for being fantastic leaders. This is not mere rhetoric; there are numerous public statements by Tom Benson when he was healthy praising Petitioners.

In fact, if the foregoing is not sufficient to illustrate just how far those handling Tom Benson will go (hence the reason the *Petition* was filed), just six (6) months ago, Tom Benson registered with the National Football League (“NFL”) his express desire for his successors in management to be Petitioners. The point being, those handling Tom Benson will now try anything, even a “Hail Mary” pass, to try to stop this Court from ordering a medical examination to address his health, mental capacity, and well-being. Fortunately, the law on interdictions is well settled, and according to that law, Petitioners have properly pled a cause of action for interdiction in their *Petition*.

I. Tom Benson’s Recent Unreasoned Actions.

It is necessary to first highlight what has been pled, the facts surrounding Tom Benson’s most recent inexplicable actions, and the actions of those around him taking affirmative steps to isolate him from examination. Despite his daughter and granddaughter’s lifelong efforts to better the businesses and enterprises he founded, Tom Benson purportedly made the abrupt decision in late December 2014, to cut them out of his life without any communication whatsoever. Even worse is that allegedly Tom Benson refuses to acknowledge that his decision was sudden or drastic, and has yet to identify what could have prompted such a sudden change of heart to derail plans that have been decades in the making.

Instead, counsel for Tom Benson (rather than Tom Benson himself) characterizes his decision as “deliberate, reasoned, and difficult” and a “long time coming.” This statement, made by Tom Benson’s lawyers rather than by Tom Benson, raises many questions, including why, as referenced in Paragraph 41 of the *Petition*, the New Orleans Saints submitted a formal Ownership Succession Plan to the NFL in the summer of 2014 that all the voting membership will pass to Petitioners. It is inconsistent and suspect that someone in the midst of “years of concern and misgivings” about Petitioners’ competence to run his businesses would also go so far as to publicly re-affirm his desire that Petitioners be named as his successors—just within the last year.¹ Given such a recent reaffirmation of Tom Benson’s longstanding succession plan, Petitioners ask what changed to warrant the dramatic decisions purportedly made by Tom Benson in the last few months except health issues that permit others to manipulate him to their advantage.

Even more suspect is that Tom Benson refuses to submit to an examination by an independent doctor specializing in geriatric psychiatry. Instead of coming forward and attempting to prove to the world that Petitioners’ allegations are untrue, Tom Benson’s handlers have effectively kept Tom Benson far from the reach of any independent medical expert such that no one can determine what is truly occurring. Their *Exception of No Cause of Action* represents an extension of their strategy—to avoid any independent medical examination of Tom Benson. If Tom Benson were honestly capable of consistently making reasoned decisions regarding the care of his person and property, and to communicate those decisions, he would have no problem readily consenting to an examination by an independent doctor, but yet those around him continue to refuse, delay, and avoid.

Thus, the issue here is not Petitioners’ work history or their dedication, but rather the issue is Tom Benson’s uncharacteristic actions and conduct. Specifically, Petitioners have always been extremely loyal to their father and grandfather, but his actions in recent months simply have not exuded the exemplary traits of character and judgment that have identified Tom

¹ See Jeff Duncan, *Succession plan in place for New Orleans Saints and Pelicans to remain with Tom Benson’s family*, NOLA.com (Mar. 29, 2014), http://www.nola.com/saints/index.ssf/2014/03/benson_succession_column_do_no.html.

Benson throughout his life and career. It is this sharp deviation from his long-standing practices of positive decision-making that is so concerning to Petitioners, especially when such deviation is completely unwarranted. As stated in their *Petition*, Petitioners filed the *Petition* “each with a heavy heart,” after their requests to meet with their father and grandfather were rejected at every turn (*Petition*, ¶¶ 54, 82), and after their family traditions for Thanksgiving and Christmas were derailed (*Petition*, ¶¶ 77-78). It became clear to Petitioners that their preferred non-adversarial, non-public avenues for protecting their father and grandfather would be futile.

In counsel for Tom Benson’s misguided strategy to deflect the real issues in this case, they paint Tom Benson’s daughter and grandchildren as unappreciative, ignoring the well-known fact that his daughter and grandchildren have devoted their entire lives and careers to upholding and advancing the businesses and enterprises that Tom Benson lovingly founded or furthered so many years ago in an effort to try to make him proud. To be clear, money has never been the motivating factor to Renee, Rita, or Ryan (as counsel for Tom Benson seemingly admits when he notes that Petitioners are still the beneficiaries of various trust interests Tom Benson established, and to whom he granted the vast majority of his assets). Instead, this *Petition* represents Renee, Rita, and Ryan’s best efforts to protect their father and grandfather’s best interests and to continue their lifelong efforts to carry on his legacy.

II. Although Not the Subject of the *Petition* Herein, It Is Important to Address Petitioners’ Years of Tireless Work on Their Father and Grandfather’s Behalf.

As previously discussed, counsel for Tom Benson asserted in the *Exception of No Cause of Action* that Petitioners “never rose to the task.” Although Petitioners’ abilities are irrelevant to whether they stated a cause of action for the interdiction of Tom Benson, Petitioners feel obliged to respond to counsel for Tom Benson’s statement because, in reality, nothing could be further from the truth.

A. Renee Benson’s Service to Her Father’s Ranching, Banking, and Automobile Pursuits.

Renee Benson has been most involved in the Benson Farm and Ranch, the banking business founded by Tom Benson, and the automobile dealerships founded by Tom Benson. Specifically, from 1979 to 1987, Renee served as Secretary of the Benson Farm and Ranch,

taking on the responsibilities of bookkeeping, tax reporting, communication with vendors, handling and registering pedigrees for the Jockey Club and the Angus Cattle Association, coordinating staff schedules, and managing vaccination and ear tags for cattle. From 1979 to 1989, Renee ran the Thoroughbred Division of Operations and was responsible for scheduling the breeding of twenty (20) mares, caring for the foals, and managing approximately one hundred twenty (120) thoroughbreds over a period of twelve (12) years. In 1986, Renee was promoted to General Manager of the Benson Ranch and Farm, accomplishing: expense control; design of rotational schedules for the burning range land and registered Black Angus cattle operation; division of the land into one hundred twenty-five (125) acre pastures to properly use the range land for cattle; development of an angora goat division of operations; and management of a honey bee farm.

From 1994 to 1996, Renee was introduced into her father's banking business, where she served on the Advisory Board and was the first female to serve on the Board of Directors. Renee remained a Director until the banks were sold. Additionally, from 2002 until present, Renee served as a member of the Board of Directors of Lone Star Capital Bank, which operates seven (7) branches in San Antonio and Texas Hill Country.

From 1996 until present, Renee has managed the automobile sector of her father's business in San Antonio and New Orleans. As manager, she was responsible for the appointment and termination of General Managers and Treasurers in all dealerships. Additionally, she was responsible for reviewing and critiquing financial statements and month-end packages. Renee coordinated real and personal property tax matters, insurance matters, capital loans, and networking capital statements. Renee was also tasked with maintaining the corporate minute books and franchise files. She oversaw the corporate Human Resources Department, the Information Technology Department, and the Corporate Safety & Security Program. Renee also monitored the employee benefits program. Lastly, Renee coordinated property rentals, dealership rents, and leases.

B. Rita LeBlanc's Dedicated Work on Behalf of Her Grandfather's Sports Teams.

Of all of Tom Benson's family, Rita has had the most experience with his sports teams, and has continued to prove her worthiness as his successor.² Rita has attended NFL executive meetings since 1997—for the last seventeen (17) years—with and without Tom Benson. Such ownership board meetings are crucial to the operation of the NFL, because it is at those meetings that league policies are debated and voted upon. Important topics typically discussed include labor, media, television, finances, team ownership transfers, team transactions related to stadium construction, and NFL rules. If Rita were unable to “rise to the task,” as counsel for Tom Benson alleges, surely Tom Benson would not have entrusted her to attend such critical meetings on his behalf well before seventeen (17) years had elapsed.

As set forth in the *Petition*, in 2001, Rita began working fulltime for the New Orleans Saints in football operations. She next worked in the finance department and then in the marketing department, performing scouting, statistical tendency analysis, marketing administration, managing charitable contributions and sponsorship meetings, and preparing and reviewing sponsorship materials and promotional signage.

Since serving as Executive Vice President of the Saints starting in 2005, Rita has been involved in approving and planning game day entertainment, ticket pricing plans, promotional campaigns, and employee raises and bonuses. In the aftermath of Hurricane Katrina, she managed the New Orleans Saints' administration and marketing departments until her promotion to Vice Chairman in 2012. Rita counts her contribution to the Saints' comeback following Hurricane Katrina among her biggest career highlights. The team's 2006-07 season was a full season ticket sellout—the first in its history—and Saints season tickets have continued to sell out ever since. The Saints also opened the season in the Superdome on Monday Night Football,

² Although not the primary service she has provided to her grandfather, Rita has also worked in the business offices of the automobile dealerships founded by Tom Benson, including answering phones, installing a new filing system in the service and parts departments, processing invoices from the Tom Benson Chevrolet Service Department, working in the accounts payable and receivables department of Tom Benson Chevrolet, working in the Honda finance department processing credit applications and verifying insurance policies, and participating in morning sales update meetings for team strategy. Additionally, Rita has spent years attending National Automotive Dealers Association conventions, throughout college and while working for the New Orleans Saints and Pelicans. Rita has participated as one (1) of two (2) dealership representatives at various NCM Associates group meetings over the years.

which required months of meetings and preparations.

As one of the faces of the team, Rita would regularly host sponsors during games and training camps, and she sponsored hospitality events and various civic functions in the City of New Orleans. On a weekly basis, Rita would preside over meetings with the executive staff, which included Mike Stanfield (Ticket Sales), Ben Hales (Marketing), Vicky Neumeyer (In-House Legal Counsel), Dennis Lauscha (Chief Financial Officer), and later, Jean-Paul Dardenne (Corporate Sales). Following in her grandfather's footsteps of committee involvement, Rita chairs the NFL Employee Benefits Committee and serves on the NFL International Committee.

In her role with the New Orleans Pelicans, Rita has participated in National Basketball Association ("NBA") board of governors' meetings similar to the owners meetings that she attended on behalf of her grandfather for the NFL.³ Rita played a key role in the development of the Pelicans' new brand identity, logos, and color scheme in 2013 as the Benson family renamed the team, which had been the Hornets. Rita has also attended NBA marketing meetings with department staff, where decisions as to ticket sales, promotions, and league statistics were made. Cementing Rita's leadership role, she represented NBA owners in a panel discussion with the NBA Technology Summit in 2014 and co-hosted the Newsmakers Brunch with Commissioner Adam Silver that same year. Rita also served on the NBA Labor Committee at a time when the league was facing serious pressure from the players' union. Finally, Rita served as an executive member of the NBA All-Star Host Committee and served as Co-Chairwoman of the Host Committee of the 2014 NBA All-Star weekend with Avery Johnson.

Not only has Rita participated in the day-to-day activities of leading the Saints and the Pelicans, but she also has played a role in the overall development of the teams as New Orleans institutions. She advocated and planned for improvements to both the Mercedes-Benz Superdome and the Smoothie King Center over the years and participated in selection and design

³ Additionally, it should be noted that Rita for several years worked tirelessly on behalf of the New Orleans VooDoo. In particular, Rita was responsible for all marketing and entertainment business; planning and executing the advertising campaign; and communications and interactions with season ticket holders. Under Rita's leadership, the VooDoo set a league record for season ticket sales in 2007 and led the Arena Football League ("AFL") in attendance. Rita represented the VooDoo as one (1) of two (2) attendees to AFL owners meetings and served as chair of the Marketing Committee and member of the Executive Committee of the AFL. In fact, Rita received the award of Executive of the Year from the AFL in 2004.

meetings from the request for proposal process through to completion. Importantly, Rita has been involved in discussions with attorneys, staff, Tom Benson, and three (3) Louisiana governors over the years with an eye toward keeping the New Orleans Saints in New Orleans. To that end, Rita has promoted investment in downtown New Orleans through the sports facilities and a public private partnership to bring nearby property out of blight and turn a twenty (20) year old building into the first Leadership in Energy and Environmental Design (“LEED”) certified commercial office tower in downtown New Orleans.

It follows that Rita has won numerous awards for business leadership, such as being named three (3) times to Street and Smith’s Sports Business Journal’s “40 Under 40” list. Rita serves frequently as a public speaker on professional sports issues such as women in sports, technology, and innovation. Over the years, Rita has taken part in national discussions regarding women in sports and technology, and has participated in the highly regarded Massachusetts Institute of Technology Sloan Sports Analytics Conference. Further, Rita is a member and speaker for the Beyond Sports World Summit.

Rita has also served as a board member for numerous local business and civic organizations, including the Business Council of New Orleans and the River Ridge Region, Greater New Orleans, Inc., Business Alliance of New Orleans (to which she was a mayoral appointee), Mayor Mitch Landrieu’s Economic Development Task Force, the Young Presidents’ Organization, the Shirley Landry Benson PACE Center, the Oblate Missionary Partnership, Ogden Museum of Southern Art, Loyola University New Orleans, the New Orleans Police and Justice Foundation, and the Louisiana Film and Entertainment Association. Additionally, Rita serves on the Board of Selectors of Jefferson Awards for Public Service.

Furthermore, Rita has lead the Saints’ philanthropic efforts, including championing Community Relations and Youth Football initiatives in the local and regional communities, as well as working closely with directors of charitable organizations to reach as many charities and youth football programs as possible. In total, Rita has overseen more than \$7 million in annual charitable donations from the Saints to the New Orleans area. In the days following Hurricane Katrina, Rita assisted in establishing the Saints Hurricane Katrina Relief Fund, which raised

more than \$1 million to help residents throughout the Gulf South. Additionally, in 2010, Rita was a key figure in raising more than \$1.5 million for areas most affected by the Deepwater Horizon oil spill. After Hurricane Isaac in 2012, Rita led the Saints and Pelicans in raising \$50,000.00 for local chapters of the Second Harvest Food Bank and Catholic Charities. Furthermore, Rita is heavily involved in the Susan G. Komen organization, serving as the New Orleans Race for the Cure Co-Chair for the past seven (7) years. Rita also serves as a spokeswoman for Lemonade Day Louisiana, and has assisted in fundraising for Special Olympics. Given all of these activities, it is difficult to imagine how Rita LeBlanc could be accused of not being fully engaged or not up to the task of leading the Saints and the Pelicans and solidifying their stability in the City of New Orleans.

C. Ryan LeBlanc's Accomplishments with Regard to His Grandfather's Ranch and Automobile Businesses.

Ryan LeBlanc has always worked tirelessly to carry on his grandfather's business interests in ranching and in the automobile industry. Ryan consistently works forty-seven and a half (47 ½) to sixty (60) hours per week.

Ryan started off working at the Benson Farm and Ranch as a ranch hand in 2001. In 2002, Ryan was promoted to General Manager of the ranch. Soon after, Ryan started a marketing campaign in order for the ranch to attract hunters from across the country. Ryan also dedicated his time to improving every area of the ranch, including the pump house, fields, vehicles, deer blinds, deer processing facility, lodge, fences, farm equipment, ranch management, deer herd management, and cattle management. In 2004, when Ryan was only twenty-four (24) years old, his efforts caused the ranch to produce its first profit under his leadership. This trend continued, and throughout the years that Ryan managed the ranch, his leadership ensured that the ranch's revenue continued to see increases above and beyond historical benchmarks.

In the beginning of 2010, Ryan moved to San Antonio to begin his career in the Tom Benson-founded automobile business. That year, he diligently shadowed employees in various divisions of operations at all three (3) San Antonio dealerships, eager to learn his new trade. After his training, Ryan became responsible for review and management of financial statements, sales numbers, and service numbers; handling human resources issues; Equal Employment

Opportunity Commission claims, employee grievances, and lawsuits; refining hiring practices; responding to customer complaints; overseeing construction projects for the Texas and Louisiana dealerships; coordinating policy with national, regional, district, and local franchise representatives; managing insurance issues, including loss runs for casualty and workers compensation claims; and overseeing approximately six hundred (600) employees in Texas and Louisiana.

Ryan is proud to count the following achievements among his greatest accomplishments in the automobile business. In 2012, Ryan accomplished the hiring of the dealerships' first outside advertising agency in over fifteen (15) years, assisting the dealerships with building the positive public image they enjoy today. Also in 2012, Ryan improved the dealerships by championing a policy that each be equipped with air conditioning, increasing the efficiency of the dealerships and creating a better quality work environment for his employees. In 2013, Ryan initiated the first service award program for his employees. Also in 2013, Ryan helped produce the highest net profit performance in recent Tom Benson automobile dealership history. That year, under Ryan's leadership, Mercedes-Benz of New Orleans and Mercedes-Benz of San Antonio won the Best of the Best award given to the top twenty-five (25) dealerships in the country—a great accomplishment, especially given that Mercedes-Benz of San Antonio's Customer Service Index had been ranked as one of the worst in the nation in 2012. Also in 2013, Best Chevrolet sales ranked in the top five (5) for the State of Louisiana.

In 2014, Ryan's success continued, and his efforts resulted in Tom Benson Chevrolet, Mercedes-Benz of New Orleans, and Best Chevrolet finishing above 2013 net profit numbers. Additionally, Tom Benson Chevrolet and Best Chevrolet were ranked in the top five (5) in performance out of twenty-nine (29) dealerships across the country in the December 2014 NCM Associates 20 Group Composite. Prior to Ryan taking the helm, those two (2) dealerships ranked close to last in the same composite. Likewise, Mercedes-Benz of San Antonio and Mercedes-Benz of New Orleans ranked in the top seven (7) out of twelve (12) dealers in the December 2014 NCM Associations 20 Group Composite, one of the most elite groups of dealerships in the country.

D. Family First

In short, the conduct of Tom Benson when he was healthy was a singular pronouncement of “family first,” and his family—Petitioners herein—were leaders and managers that routinely were promoted and praised. Tom Benson’s recent conduct has been astonishingly different, revealing a vulnerable man whose mental health has seriously declined.

LAW AND ARGUMENT

It is well-established that the allegations in a petition are to be construed liberally “to afford litigants their day in court, to arrive at the truth, and to do substantial justice.” La. Code Civ. Proc. art. 865; *Kuebler v. Martin*, 578 So.2d 113, 114 (La. 1991). When it can reasonably do so, the court should maintain a petition against a peremptory exception so as to afford the litigant an opportunity to present his evidence. *Id.*

Specifically, the peremptory exception of no cause of action determines whether—based on the facts alleged in the four corners of the petition—the law affords the plaintiff a remedy. *Jenkins v. Gray Ins. Co.*, 11-0035 (La. App. 4 Cir. 7/06/11), 67 So.3d 707, 709. The pertinent question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff’s behalf, the petition states any valid cause of action for relief. *State, Div. of Admin., Office of Facility Planning and Control v. Infinity Sur. Agency, L.L.C.*, 10-2264 (La. 5/10/11), 63 So.3d 940, 946. The mover has the burden of demonstrating that the petition states no cause of action. *Id.* Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Fink v. Bryant*, 2001-0987 (La. 11/29/01), 801 So.2d 346, 349. Every reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. *Jackson v. State ex rel. Dept. of Corrections*, 2000-2882 (La. 5/15/01), 785 So.2d 803, 806. Here, counsel for Tom Benson cannot meet his burden and, therefore, this *Exception of No Cause of Action* should be denied, as a simple reading of the *Petition* establishes that Petitioners’ claims are legally sufficient under Louisiana interdiction law.

Furthermore, should this Court sustain the instant *Exception of No Cause of Action*, and provided that the grounds thereof may be removed by amendment of the petition, “the judgment sustaining the exception shall order such amendment within the delay allowed by the court.” *In re Interdiction of Coulon*, 2012-1429 (La. App. 1 Cir. 3/22/13), 116 So.3d 688, 690. Only if the grounds for the exception cannot be removed by amendment of the petition, or if the petitioner fails to comply with the judgment ordering amendment, then the action may be dismissed pursuant to La. Code Civ. Proc. art. 934. *Id.* Thus, if this Court finds that the instant *Exception of No Cause of Action* has merit, which it should not, then this Court should permit Petitioners to amend their *Petition* prior to dismissing this case.

I. The Suitability of Interdiction Should Be Determined by this Court, Rather than by Counsel for Tom Benson.

Petitioners appreciate the fact that interdiction is a harsh remedy. *See, e.g., Interdiction of Haggerty*, 519 So.2d 868, 869 (La. App. 4 Cir. 1988). It is for that reason that filing the *Petition* was such a heart-wrenching decision for them, but their need to protect their father and grandfather was stronger. Additionally, Petitioners are aware that it is their burden in this case to prove by clear and convincing evidence that interdiction—whether it be full or limited—is appropriate. La. Code Civ. Proc. art. 4548. However, Petitioners are not required to furnish that proof in their petition, particularly where, as here, Tom Benson’s medical state is peculiarly within the knowledge of Gayle Marie LaJaunie Bird Benson (“Gayle”) and Tom Benson’s new doctor(s), persons to whom Petitioners have been denied access.

Rather, it is clear under Louisiana law that Petitioners are only required to plead the basic elements of an interdiction claim, which are: (1) infirmity; (2) inability to care for one’s person; (3) inability to care for one’s property; and (4) necessity. *In re Interdiction of Noel*, 2012-6 (La. App. 3 Cir. 5/2/12), 94 So.3d 104, 105 (citing La. Civ. Code art. 389). Given that these elements were properly pled, Petitioners have stated a cause of action for interdiction. It is axiomatic that Petitioners are not required to present evidence or submit proof that interdiction—whether it be full or limited—is appropriate in their petition, so long as they have alleged facts that state a valid claim for relief.

Indeed, it is well-settled that, where a court can reasonably do so, it should maintain a petition as against the peremptory exception of no cause of action “so as to afford the litigant an opportunity to present his evidence.” *Haskins v. Clary*, 346 So.2d 193, 194-95 (La. 1977). This principle prevails even when allegations may be somewhat incredulous, which is not close to the case here. *Crier v. City of New Orleans*, 365 So.2d 35, 36 (La. App. 4 Cir. 1978). Thus, Petitioners should be entitled to meet their evidentiary burden after discovery, including a review of Tom Benson’s medical records, and after a thorough examination of Tom Benson by a geriatric psychiatrist. *See, e.g., In re Interdiction of Noel*, 94 So.3d at 107 (noting, in affirming trial court’s grant of summary judgment, that the petitioners could have sought the appointment of an examiner, but chose not to do so, and thus the court found that the petitioners did not put forth evidence at summary judgment to demonstrate the existence of a genuine issue of material fact as to whether the restrictions inherent in a full interdiction are necessary). Instead of truly contesting the merits of the *Petition* in this matter, which counsel for Tom Benson knows to be sufficiently pled, the pending *Exception of No Cause of Action* represents an attempt to keep Tom Benson isolated and without the protection that this Court can offer.

A. Petitioners Clearly Allege Infirmary.

Tom Benson argues that Petitioners have identified “no specific infirmities whatsoever” from which Tom Benson purportedly suffers. However, Louisiana law has not required the naming of any specific infirmity in an interdiction petition since before the Civil Code articles were revised in 2000. Revision Comment (a) to La. Civ. Code art. 389 discusses the change in the law, noting that under prior law, full interdiction was appropriate when the defendant was “subject to a habitual state of imbecility, insanity, or madness” or when the defendant “owing to any infirmity” was incapable of taking care of his person and administering his estate. *See also* Civil Code Articles 389 and 422 (1870). The law changed by making eligibility for interdiction dependent upon functional inability uncomplicated by the labels of “insanity,” “madness,” and the like. La. Civ. Code art. 389, Revision Comment (a).

Additionally, in 2003, the Louisiana Legislature enacted 2003 La. Acts 1008, clarifying the requirements of a petition for interdiction by amending La. Code Civ. Proc. art. 4541A.

Specifically, the Legislature added the words “to the extent known” before setting forth the required contents of a petition for interdiction. Thus, the revised version of Article 4541A reads, in pertinent part: “The petitioner shall verify the petition and, to the extent known, shall set forth the following with particularity . . . (3) The reasons why interdiction is necessary, including a brief description of the nature and extent of the alleged infirmities of the defendant.” La. Code Civ. Proc. art. 4541A. Therefore, as in this case, where a petitioner may not be apprised of an official particular diagnosis of a specific “infirmity,” but the petitioner can set forth “a brief description of the nature and extent” of the known manifestations of the infirmity, the petitioner has stated a cause of action “to the extent known,” as required under Louisiana law.

Furthermore, Louisiana jurisprudence recognizes that mental infirmities vary greatly in nature and degree, and thus the determination as to whether interdiction is appropriate is not one governed by a hard and fast rule, but instead, “is largely dependent upon the facts of each case.” See *In re Interdiction of Fabre*, 371 So.2d 1322, 1324 (La. 1979); see also *Interdiction of White*, 463 So.2d 53, 55 (La. App. 3 Cir. 1985). As a result, the cases discussing interdiction, both full and limited, pursuant to La. Civ. Code arts. 389 and 390, focus largely on the functional ability of the defendant rather than what particular infirmity is the cause of the inability. It follows that, while Petitioners acknowledge that La. Civ. Code art. 389, Revision Comment (b) makes explicit that advanced age alone is not an infirmity, “categorizing the infirmity from which a person suffers is significantly less important than evaluating his functional ability to make reasoned decisions and to communicate those decisions.” La. Civ. Code. art. 389, Revision Comment (b).

Although the term “infirmity” is not specifically defined by Louisiana statutes or jurisprudence, Black’s Law Dictionary defines infirmity as “disability; feebleness” and defines “infirm” as “lacking moral character or weak of health.” Black’s Law Dictionary, 779 (6th ed. 1990). Similarly, Merriam-Webster Dictionary defines “infirm” as “of poor or deteriorated vitality” and “not solid or stable.” Merriam-Webster Dictionary, available at <http://www.merriam-webster.com/dictionary/infirm>.

Petitioners have alleged a thorough description of the nature and extent of the known manifestations of Tom Benson’s infirmity, going well beyond his advanced age, sufficient to

state a cause of action for interdiction under Louisiana law. Indeed, it is compelling that counsel for Tom Benson does not bring to this Court's attention the relevant allegations in the Petition. Specifically, Petitioners alleged the following facts descriptive of the manifestations of Tom Benson's infirmity, both as to the care of his person and property:

- Tom Benson "has acknowledged to others that he has been having difficulty thinking and suffering from apparent memory lapses." *Petition*, ¶ 59.
- Tom Benson "has appeared disoriented in public, including in press interviews." *Id.*
- Tom Benson "has acknowledged on occasions that he does not know his age, where he is, what day of the week it is, nor what date it is." *Id.*
- Tom Benson "has had difficulty sustaining mental concentration on his own." *Id.*
- "The diet of Tom Benson has drastically deteriorated, with him rarely consuming full, nutritious meals, but instead, for some reason, subsisting on candy, ice cream, sodas, and red wine." *Id.* at ¶ 60.
- "Tom Benson has difficulty ambulating and sometimes requires a walker or a wheelchair as well as caregivers, to steady his gait. When he is capable of being taken to his office, which is sporadic, Tom Benson works limited hours and routinely falls asleep during business hours." *Id.* at ¶ 61.
- "Upon information and belief, [Tom Benson] forgets the name of his doctors, and on occasion the first name of his current wife Gayle." *Id.* at ¶ 62.
- "[U]pon information and belief, when Tom Benson was recently asked who the current president of the United States was, he replied that Ronald Reagan was the president. After being told that Reagan was not the current president, Tom Benson's second guess was Harry Truman. This is especially concerning given that Tom Benson has donated to, met, and socialized with, presidents subsequent to Ronald Reagan, something he would not forget, but for a decline in his memory." *Id.*
- "On at least one recent occasion, Tom Benson failed to recognize his daughter Renee, and he recently—and quite uncharacteristically—failed to remember or commemorate her birthday." *Id.* at ¶ 63.

- “Tom Benson will often call someone to ask a question, receive the answer to the question, and then call the same person back minutes later to ask the exact same question as though the prior conversation had never occurred.” *Id.* at ¶ 64.

In addition to the above allegations, Petitioners also alleged drastic deviations from Tom Benson’s normal decision-making as to his property. *Id.* at ¶¶ 65-90. Some of these changes, that are atypical of the savvy businessman that Tom Benson is known as, and that are completely unrelated to any alleged “change in heart” as to Petitioners, are: (1) cancelling Board meetings for his business enterprises and refusing to allow regular Board meetings to be held; (2) attempting to purchase the Fairgrounds Race Course and Slots after sitting on and chairing the NFL Finance Committee that established rules prohibiting NFL owners from acquiring interests in a gambling operation; and (3) failing to perform certain duties as trustee of his late wife Shirley Benson’s Testamentary Trust, including failing to timely pay: property insurance premiums and property taxes; rent on the hangar for aircraft in which the trust has an interest; and the monthly management fee for the company owned by Renee Benson that oversees and coordinates management of multiple automobile dealerships. *Id.* at ¶¶ 73-74, 87.

These facts clearly set forth the nature and extent of Tom Benson’s infirmity to the extent known by Petitioners. As previously stated, all other information regarding Tom Benson’s infirmity is within the peculiar knowledge of Tom Benson, his wife, and his doctors—to whom Petitioners have no access.

B. Petitioners Clearly Allege that Tom Benson Is Unable to Consistently Make Reasoned Decisions.

Tom Benson’s lawyers’ argument that Petitioners have failed to allege any facts establishing that Tom Benson is unable to consistently make reasoned decisions regarding the care of his person and property is belied by the allegations in the *Petition*.

1. Petitioners Clearly Allege that Tom Benson Is Unable to Consistently Make Reasoned Decisions Regarding the Care of His Person.

As to the care of Mr. Benson’s person, as previously discussed, Petitioners have alleged that “[t]he diet of Tom Benson has drastically deteriorated, with him rarely consuming full, nutritious meals, but instead, for some reason, subsisting on candy, ice cream, sodas, and red

wine.” *Id.* at ¶ 60. Surely, such diet would not be recommended by a medical doctor. Petitioners have also alleged that “Tom Benson has difficulty ambulating and sometimes requires a walker or a wheelchair as well as caregivers, to steady his gait. When he is capable of being taken to his office, which is sporadic, Tom Benson works limited hours and routinely falls asleep during business hours.” *Id.* at ¶ 61. Again, were Tom Benson able to properly care for his person, he would be able to remain alert at the office. Petitioners also alleged that, despite the fact that Tom Benson was recovering from a stomach procedure and was under anesthesia, he still made the decision to attend the NFL owners’ meeting in Atlanta. *Id.* at ¶ 55. As Petitioners also allege, it was at that owners’ meeting on May 20, 2014, that “Tom Benson lost his balance while stepping back from the podium and fell.” *Id.* These decisions, if made by Tom Benson, do not constitute reasoned decisions regarding the care of his person.

2. Petitioners Clearly Allege that Tom Benson Is Unable to Consistently Make or Communicate Reasoned Decisions as to the Care of His Property.

Although it is unnecessary for Petitioners to allege both that Tom Benson is unable to consistently make reasoned decisions regarding the care of his person or property and to communicate these decisions, Petitioners have alleged both. *See* La. Civ. Code art. 389 (“A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate these decisions.”).

As to the care of Tom Benson’s property, the sheer irregularity of his recent decisions, given that they represent a gross deviation from Tom Benson’s normal business practices, indicate that Tom Benson is likely not capable of making reasoned decisions as to his property. Tom Benson makes much of his purported “right” to take the actions that he has taken. However, having the right or ability to take certain actions does not automatically transform those actions into reasoned ones. Additionally, contrary to the argument made by Tom Benson’s counsel, Petitioners do not base their allegations that Tom Benson is unable to make reasoned decisions as to his property on Petitioners’ agreement, or lack thereof, with those decisions. Instead, Petitioners ask this Court to focus on the drastic, unexplained nature of Mr. Benson’s

alleged change of heart, as well as the fact that the recent imprudent decisions he has made grossly diverge from the prudent decisions he made before he suffered from the infirmity that currently afflicts him.

Contrary to the argument made by counsel for Tom Benson, the strange decisions made by Tom Benson are not merely “imprudent” decisions, but rather, are unreasoned decisions made by someone suffering from an infirmity, as contemplated by Revision Comment (b) to La. Civ. Code art. 389. An example of such an “unreasoned,” but not necessarily financially imprudent decision is Tom Benson’s recent attempt to purchase the Fairgrounds Race Course and Slots, as mentioned *supra*. As set forth in Paragraph 74 of the *Petition*, Tom Benson attempted such purchase, despite the fact that it is against NFL rules for team owners to have interests in gambling facilities, and despite the fact that Tom Benson should have known about this rule, given that he sat on and chaired the NFL Finance Committee, which established the prohibition of NFL owners owning gambling interests. Such decision is not necessarily “imprudent,” but instead is completely illogical and unreasoned.

The most compelling evidence as to Tom Benson’s inability to make reasoned decisions and communicate his decisions is the letter he supposedly authored and forwarded to Petitioners by email on Saturday, December 27, 2014. In that letter, as set forth in the *Petition*, Tom Benson announces out of nowhere that he never wants to see Renee, Rita, or Ryan again. *Petition*, at ¶ 79; *see also* Exhibit “A” to *Petition*. The letter also purports to ban Renee, Rita, and Ryan from “the Saints facilities or games, the Basketball facilities or Pelican games, the Benson Towers, the T.V. facilities, [and] the automotive facilities in New Orleans.”⁴ *See* Exhibit “A.” Further, the letter purports to remove Renee, Rita, and Ryan’s right to give directions or orders, or hire and fire any personnel. *Id.* Someone who is capable of normal communications does not communicate his decision to never see his closest relatives again via a typed email attachment in large font with no letterhead or pagination, and signed “Sincerely yours,” with his full name. *Id.*

⁴ This Court should note that, contrary to the argument of counsel for Tom Benson, Tom Benson is within his rights to make all of the alleged business decisions he has made over the past two (2) months; however, Tom Benson does not have any right to ban Renee, Rita, or Ryan from Saints games, Pelicans games, the New Orleans Arena, or the Superdome, all of which are open to the public. This reality alone places Tom Benson’s capacity at issue.

Equally compelling is Tom Benson's failure to provide any real explanation for shutting out his family so abruptly, or, in other words, failing to communicate his allegedly reasoned decision to do so. Tom Benson states in Footnote 2 of his *Opposition* that "Petitioners affirmatively (and shockingly) seek to avoid any responsibility for the family rift of which they complain . . ."; however, Tom Benson has provided no explanation for the abruptness of his decision to shut out his family. Although Tom Benson makes rather obscure references to potential reasons for the shut out in his December 27, 2014 letter, stating that his daughter and grandchildren suddenly "became offensive" after he remarried, and "did not act in an appropriate manner," he does not explain his sudden decision to send such correspondence over a decade after remarrying. In fact, even in his *Opposition*, where he asserts that he has had years of misgivings about Petitioners' ability to competently participate in and take over the management of his businesses, Tom Benson remains unable to concretely identify any reason for his sudden change of course, much less any provocation by Petitioners. Had Tom Benson been able to communicate specific concerns and/or misgivings that he had with Petitioners recently, they may have been less concerned about his health and safety.

Additionally, someone with the ability to rationally make and communicate his decisions does not purportedly: (1) instruct the United States Postal Service to forward all of the trust mailings to an office in Metairie rather than to the San Antonio address where Petitioners received such mailings; (2) instruct Pat McKinney to send Rita LeBlanc a form letter terminating her employment with the Saints, without cause or explanation; (3) instruct representatives to threaten immediate repossession of her vehicle; (4) instruct a representative to terminate Rita LeBlanc's long-standing lease at Benson Tower and evict her if necessary; (5) refuse to meet with his own family; and (6) instruct his automobile dealerships to bar Petitioners from using the facilities and to repossess Petitioners' dealership-owned vehicles. *See, Petition*, at ¶¶ 80-85.

Furthermore, Petitioners ask this Court to focus on another irrational recent decision purportedly made by Tom Benson—his apparent decision to attempt to exchange hundreds of millions of dollars in assets in his irrevocable trusts, including the majority of the stock in the New Orleans Saints and New Orleans Pelicans, for only unsecured promissory notes, which

promissory notes devalued the New Orleans Pelicans from \$650,000,000 to \$63,650,000 and devalued the New Orleans Saints from \$1,110,000,000 to \$351,380,000. *Id.* at ¶ 85. Given Tom Benson's well-recognized business acumen, it is highly improbable that he would certify a devaluation of his sports teams by over ninety percent (90%) and sixty percent (60%), respectively. *Id.*

Tom Benson's argument that he can communicate his decisions to everyone except Petitioners is also unpersuasive, as Petitioners have alleged that Gayle oversees and "manages" virtually all of Tom Benson's communications, such that it is truly Gayle who is communicating on behalf of Tom Benson. Specifically, Petitioners allege that "Gayle screens almost all, if not all, of Tom Benson's phone calls, emails, and regular mail. Gayle apparently has Tom Benson under close watch and monitors who he speaks with, what he says, and selects those whom she will permit to be near him." *Petition*, at ¶ 69. Petitioners also allege that "when Tom Benson makes or takes a phone call, Gayle holds the phone, thereby listens to the conversation, and has been overheard coaching Tom Benson as to what to say." *Id.* at ¶ 70.

These strange behaviors simply are not the behaviors of someone who is capable of communicating his reasoned decisions to others. These unreasoned decisions, combined with a decline in health, raise serious concerns as to whether Tom Benson is capable of making reasoned decisions regarding the care of his property. As such, Petitioners have adequately alleged that Tom Benson is unable to consistently make reasoned decisions and communicate his decisions as to the care of his person and property.

C. The Powers of Attorney Apparently Executed by Tom Benson Do Not Vitiating the Viability of this Interdiction Proceeding.

Counsel for Tom Benson attempt to introduce evidence that Tom Benson executed a Medical Power of Attorney and a Power of Attorney with regard to his business affairs and property on January 7, 2015, during the time period when he was making all of the other bizarre, unreasoned decisions alleged in the *Petition*—decisions that Petitioners allege were made under undue influence by taking advantage of Tom Benson's infirm state. Counsel for Tom Benson argues that, based on the January 7, 2015 powers of attorney, Petitioners somehow fail to state a cause of action for interdiction, apparently because those powers of attorney protect Tom Benson

by less restrictive means than an interdiction. Such argument is not only inappropriate on an exception of no cause of action, but it also directly contradicts on point Louisiana law on this issue.

As an initial point, as discussed *supra*, when determining whether to sustain an exception of no cause of action, the trial court is confined to the four (4) corners of the petition. See *Bonnette v. State*, 2006-1339 (La. App. 4 Cir. 11/14/07), 972 So.2d 340, 342. Furthermore, no evidence may be introduced at any time to support or controvert the exception of no cause of action. La. Code Civ. Proc. art. 931. Thus, counsel for Tom Benson's attempt to introduce the powers of attorney here is completely improper, and such documents should be disregarded by this Court.

Even if this Court does consider the existence and contents of the powers of attorney, Louisiana law is clear that such instruments do not moot an interdiction proceeding. In *Womack v. Stephenson*, 08-493 (La. App. 5 Cir. 1/13/09), 8 So.3d 1, the court specifically held that the fact that a less restrictive means, in the form of a power of attorney, or procuration, in effect in an interdiction case, does not "trump" or render moot, the interdiction proceeding. *Id.* at 2-3. As the Fifth Circuit pointed out, La. Civ. Code art. 2989, governing procurations, provides that a procuration is subject to the rules governing mandate. *Womack*, 8 So.3d at 2. La. Civ. Code art. 3024 holds that both the mandate and the authority of the mandatary terminate upon the interdiction of the principal. As the Fifth Circuit noted, the implication of Article 3024 is that merely because a person has issued a procuration or contract of mandate does not mean that a person can never subsequently be interdicted. *Womack*, 8 So.3d at 2. The court recognized that this is especially true where, as here, petitioners have alleged that the proposed interdict's interests are not, in fact, being protected under the power of attorney. *Id.* at 3.

On a similar note, Tom Benson's argument that "interdiction is not a remedy for undue influence" does not affect the viability of Petitioners' interdiction suit. Petitioners acknowledge that it is possible to utilize other causes of action to challenge Tom Benson's capacity to have made his recent decisions. The fact that Petitioners instead chose to file an interdiction proceeding instead of challenging that capacity act by act speaks volumes as to the genuine

nature of Petitioners' desire to protect their father and grandfather going forward. To that end, Petitioners submit that Tom Benson's vulnerability to undue influence is a symptom of his infirmity. Indeed, were Tom Benson adequately able to care for his person and property, he would not be so vulnerable. The court in *Womack* faced a similar situation to this one, where there were allegations that the proposed interdict's interests were not being protected by her husband or her son, and found that the plaintiff should be entitled to an evidentiary hearing on the interdiction. *Id.* Thus, like the plaintiff in *Womack*, Petitioners in this case are entitled to a hearing to determine whether or not Tom Benson's interests can be protected by the powers of attorney in place, or whether more restrictive means are warranted.

II. It Is Proper for this Court to Order a Mental and Physical Examination of Tom Benson.

First, as established *supra*, Petitioners have stated a valid cause of action for interdiction, so Petitioners' request for an order that Tom Benson submit to an independent medical and psychiatric examination by Board Certified geriatric psychiatrist Ted Bloch, III, M.D., and cooperate fully with Dr. Bloch's requests, is not moot.

Second, it is proper for this Court to order Tom Benson to submit to a medical and psychiatric examination pursuant to La. Code Civ. Proc. art. 4545 and La. Code Civ. Proc. art. 1464. As acknowledged by counsel for Tom Benson, La. Code Civ. Proc. art. 4545 gives this Court the authority to appoint an examiner with training or experience in the type of infirmity alleged and also to order the defendant to submit to an examination by the examiner. *See In re Interdiction of Noel*, 94 So.3d at 107 (noting that under La. Code Civ. Proc. art. 4545, the petitioners could have sought the appointment of an examiner, but they chose not to do so); *In re Interdiction of Parnell*, 2013-1201 (La. App. 4 Cir. 11/13/13), 129 So.3d 690, 691 (noting that the district court issued an Order appointing a specialist in geriatric psychiatry to examine the proposed interdict and submit a report under oath as to the defendant's medical condition, but vacating the judgment of interdiction because it was rendered without conducting a contradictory hearing as required by Louisiana Code of Civil Procedure); *In re Interdiction of Haggerty*, 485 So.2d 67, 68-69 (La. App. 4 Cir. 1985) (reversing the trial court's granting of summary judgment because the court did not permit an examination of the defendant, as required by the former

version of La. Code Civ. Proc. art. 4545 when the defendant resided out-of-state); *In re Interdiction of Haggerty*, 519 So.2d 868, 869-70 (La. App. 4 Cir. 1988) (reversing a judgment of interdiction because there was never an examination of the defendant as ordered by the trial court—also decided under the former version of La. Code Civ. Proc. art. 4545).

Additionally, pursuant to La. Code Civ. Proc. art. 1464, when the mental or physical condition of a party is in controversy and there is good cause for requiring the party to submit to the examination, this Court has the authority to order the party to submit to a physical or mental examination by a physician. *See, e.g., Leaf v. Leaf*, 2001-1417 (La. App. 4 Cir. 8/15/01), 796 So.2d 42, 44-45 (noting that Article 1464 is not limited to personal injury cases and holding that it was an abuse of discretion for the trial court to deny husband's motion for mental evaluation given that there was *prima facie* evidence that the mental conditions of the parties were at issue, and depriving the husband of the opportunity to compel his wife to submit to an independent mental evaluation would prevent him from proving and/or defending his case for custody); *White v. State Farm Mut. Auto Ins. Co.*, 95-551 (La. App. 3 Cir. 7/17/96), 680 So.2d 1, 3 (noting that, as a general rule, parties have the right under Article 1464 to send adverse party to a doctor of their choice unless a specific, personal bias or prejudice can be shown). Given that Petitioners have asserted that Tom Benson's mental and physical health has deteriorated, whereas Tom Benson asserts that he can appropriately make reasoned decisions as to the care of his person and property, the mental and physical condition of Tom Benson is clearly in controversy, thereby triggering the application of Article 1464.

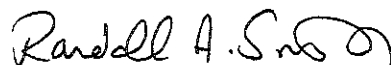
Lastly, Petitioners' failure to allege any particular infirmity has no effect on the authority of this Court to order an examination. As previously discussed, Petitioners have no obligation under Louisiana law to allege any particular infirmity in a petition for interdiction. Nevertheless, Petitioners have clearly associated Tom Benson's infirmity with his advancing age. *See Petition*, at ¶ 51 ("As Tom Benson's health has declined in his 87th and 88th years . . . "); ¶ 62 ("Tom Benson's memory, which was for years remarkably good, now appears significantly impaired."). Furthermore, it is common knowledge that memory loss and decrease in attention and executive function are common symptoms of infirmities that characteristically face the elderly population,

such as dementia and Alzheimer's. For these reasons, Petitioners submit that an examination of Tom Benson by Board Certified geriatric psychiatrist such as Ted Bloch, III, M.D. is proper, given the allegations contained within the *Petition*, to determine the nature and extent of Tom Benson's infirmity.

CONCLUSION

For the foregoing reasons, petitioners Renee Benson, Rita LeBlanc, and Ryan LeBlanc respectfully request that this Honorable Court deny the *Exception of No Cause of Action* filed by defendant Thomas Milton Benson, Jr. Furthermore, for the reasons set forth above, and because Petitioners clearly state a claim for interdiction, Defendant's request for attorney fees and costs pursuant to La. Civ. Code art. 399 and La. Code Civ. Proc. art. 4550 should also be denied.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record, via email, facsimile, or U.S. Mail, this 3rd day of February, 2015.



RANDALL A. SMITH