

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0883

TERESA MAE BADEAUX FERNANDEZ

VERSUS

DONALD F. HEBERT, ET AL.

*DATE OF JUDGMENT: June 8, 2007*

ON APPEAL FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT  
(NUMBER 101047 DIV. "C"), PARISH OF LAFOURCHE  
STATE OF LOUISIANA

HONORABLE WALTER I. LANIER, III, JUDGE

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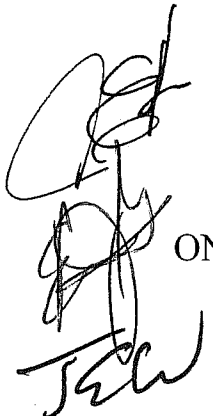
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**BEFORE: KUHN, GAIDRY, AND WELCH, JJ.**

**Disposition: AFFIRMED.**

KUHN, J.

Plaintiff-appellant, Charles Raymond Fernandez,<sup>1</sup> appeals the trial court's grant of summary judgment in favor of defendants, Camille Morvant and the law firm of Morvant & Cavell, dismissing the claims against Morvant, an attorney of Morvant & Cavell, which aver that he fraudulently conspired to and altered a power of attorney he had prepared for his client, Viola Mary Tabor Badeaux (decedent), in favor of her nephew, Thomas Badeaux, thereby allowing for the sale of decedent's assets and the subsequent purchase of an annuity; and against Morvant & Cavell, under a theory of *respondeat superior* liability for Morvant's acts. We affirm.

The gist of Fernandez's appellate contention is that whether Morvant participated in altering the power of attorney is an outstanding issue of material fact which precludes summary judgment. But as explained in our earlier opinions, *see Fernandez v. Hebert*, 06-1558 (La. App. 1st Cir. 5/4/07), --- So.2d ----; *Fernandez v. Hebert*, 06-1416 (La. App. 1st Cir. 5/4/07) (unpublished opinion); and *Fernandez v. Hebert*, 06-2401 (La. App. 1st Cir. 5/4/07) (unpublished opinion), the acts of donation by Thomas Badeaux to himself, his siblings, and the Rodrigues,<sup>2</sup> all in conformity with the decedent's will, were valid without reliance on the power of attorney. And the decedent ratified Thomas Badeaux's acts of selling the Hibernia stock and purchasing the ANICO annuity when, at a request by ANICO

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<sup>1</sup> Although this lawsuit was instituted by Teresa Mae Badeaux Fernandez, after her death Charles Raymond Fernandez, the duly-appointed testamentary executor of her succession, was substituted as plaintiff.

<sup>2</sup> Our affirmance of the judgment in *Fernandez*, 06-1416 (unpublished opinion), noted the Rodrigues had established that any declaration of the nullity of the donations to them by Thomas Badeaux would have resulted in restoration of the stock to the decedent's patrimony which, under the will would have then be distributed back to them and, therefore, there were no outstanding issues of material fact precluding summary judgment since Fernandez failed to establish that he had suffered any damages because of the transfer.

representatives, she personally applied for and purchased the annuity, initially signing five different documents and later an ANICO customer service form, which specifically designated her beneficiaries. Additionally, Fernandez stipulated that he had no evidence that Morvant directly participated in or advised about the sale of decedent's assets and the purchase of the annuity by Thomas Badeaux.

As noted in the earlier appeals, defendants established that decedent had capacity at the time that she gave authority to her nephew to donate her corporate stock to the Badeauxs, *Fernandez*, 06-1558 at pp. 9-11, --- So.2d at ----, as well as when she applied for and purchased the annuity and designated her beneficiaries, *see Fernandez*, 06-2401 at pp. 6-7 (unpublished opinion), a showing Fernandez failed to rebut. Thus, whether the power of attorney had been altered was not a material fact that precluded a summary judgment concluding the transactions were valid.

Accordingly, the trial court correctly granted summary judgment and dismissed Fernandez's claims against Morvant and Morvant & Cavell. In compliance with La. URCA Rule 2-16.1B, the trial court's judgment is affirmed. Appeal costs are assessed against Charles Raymond Fernandez.

**AFFIRMED.**