

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

DECLARATION

Plaintiff,

-against-

10-cv-4334-JFB

**ALTITUDE EXPRESS, INC. & RAYMOND
MAYNARD**

Defendants.

-----X

Gregory Antollino, an attorney admitted to this district does hereby declare under penalty of perjury as follows:

1. I represented Donald Zarda until his premature death in September 2012.

2. The day that he died, Don's ex-partner, business associate and best friend, William Moore, called to tell me the news and to find out whether I would continue to prosecute the case. I told him yes at the time, and my position on the matter has not changed. This case, for multiple reasons, is and has been one of the most important and illuminating cases I have taken and I would sorely regret were I not to see it to its conclusion, plus it might be the only time I'll be able to try a case before Your Honor.

3. The Monday after his death, on October 6, my adversary Mr. Zabell filed a suggestion of death on the record, and since that time, many things have had to be organized in order for me to make this motion: (1) Don's executor obtaining Don's death certificate in Switzerland; (2) the estate's hiring a probate attorney to file a petition for letters testamentary; and (3) waiting for a hearing date from the Harris County Probate Court to obtain such letters; and (4) obtaining certified letters in hand. Insofar as this motion has been made within the 90-

day window allowed by Rule 25, the suggestion of death is now confirmed and the filing of this motion tolls the 90-day deadline in which this case would be dismissed if not for an application to substitute Don's estate for Don himself.

4. Attached hereto as "Exhibit A" are Don's will and letters testamentary to William Moore and Melissa Zarda. Insofar as this application for the substitution is granted, the caption should also be amended to reflect the following:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MELISSA ZARDA and WILLIAM MOORE,
co-independent executors of the
Estate of **DONALD ZARDA,**

Plaintiffs,

10-cv-04334-JFB

-against-

ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,

Defendants.

-----X

5. A proposed order is attached hereto as Exhibit B. I previously tendered this to my adversary Mr. Zabell, and he would not commit to signing it at the time; perhaps he will have no objection at this time.

6. The case was mostly trial ready. I ask that the motion be granted and that a conference be scheduled to pick a trial date and discuss other matters that will be pending. If necessary I will be available from Friday to the Tuesday after Thanksgiving even though I will



THE STATE OF TEXAS
Probate Court No. 3

CERTIFICATE

CAUSE NO. PR-14-03685-3

ESTATE OF: DONALD JEFFREY ZARDA, Deceased

I, **JOHN F. WARREN**, County Clerk of Dallas County and Clerk of the County Courts and Probate Courts within and for the County of Dallas, State of Texas, do hereby Certify and that the following is a **TRUE AND CORRECT COPY OF:**

1. LAST WILL AND TESTAMENT OF DONALD JEFFREY ZARDA
2. ORDER ADMITTING LAST WILL AND TESTAMENT AND APPOINTMENT OF CO-INDEPENDENT EXECUTORS

The same appear in the Original now on file and of record in the Probate Courts of Dallas County, Texas.

WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, this 11th day of November, 2014.



JOHN F. WARREN, County Clerk
Dallas County, Texas

By: , Deputy
TAYLOR TRICE



**LETTERS TESTAMENTARY
INDEPENDENT CO – EXECUTORS**
THE STATE OF TEXAS
Probate Court No. 3

CAUSE NO. PR-14-03685-3

I, **JOHN F. WARREN**, County Clerk and Clerk of the County and Probate Courts, in and for said County, do hereby certify that on the **11th day of November, 2014**

WILLIAM ALLEN MOORE, JR. AND MELISSA ZARDA

were appointed Independent Co - Executors, without bond, of the Will and Estate of :

DONALD JEFFREY ZARDA, Deceased,

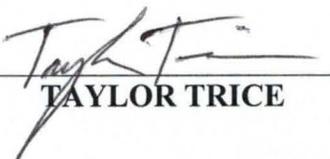
and that said appointees are fully and legally authorized and empowered to act as the Independent Co - Executors, without bond, of the Will and of the above named estate, having qualified by filing the oath on the **11th day of November, 2014**

I further certify that said appointment is still in full force and effect.

WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, this **11th day of November, 2014.**



JOHN F. WARREN, County Clerk
Dallas County, Texas

By , Deputy
TAYLOR TRICE

14-3685-3

LAST WILL AND TESTAMENT OF DONALD JEFFREY ZARDA

2014 OCT 29 AM 10:48

JOHN F. WARREN
COUNTY CLERK
DALLAS COUNTY

I, DONALD JEFFREY ZARDA, a resident of Dallas County and the State of Texas, being in good health, of sound and disposing mind and memory, do make and declare this instrument to be my Last Will and Testament, hereby expressly revoking all former Wills and Codicils made by me at any time heretofore, and intending hereby to dispose of all the property of whatever kind and wherever situated which I own, or in which I have any kind of interest at the time of my death.

I.

IDENTITY OF BENFICIARIES

At the time of the execution of this Will, I am an unmarried Man, having never been married, and I have no children now living nor deceased, either natural born or adopted.

As used in this Will, the term "issue" means all of the lineal blood descendants of the person or persons named in this Will, and includes any legally adopted children of such person or persons.

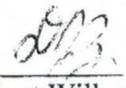
The following persons are the beneficiaries of this Will, and when such persons are referred to in this Will by an abbreviation or portion of their name, the reference is to the following persons:

- Sister: Melissa Sue Zarda;
- Friend: William Allen Moore, Jr.;
- Brother In Law: Matt Cathlina;

II.

PAYMENT OF EXPENSES

I authorize my Executor to pay any related expenses out of the of my residuary estate.


Last Will and Testament
of Donald Jeffrey Zarda



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

III.
DISPOSITION OF ESTATE

It is my intention to dispose of by this Will all of the property (real and /or peronal) that I have the power to dispose of at the time of my death. However, I do not intend to exercise any power of appointment that I now possess or that may be conferred on me, and no provision in this Will is to be construed as an exercise in whole or in part of any such power.

IV.
SPECIFIC BEQUEST
Personal Property

4.01 I hereby make a specific bequest to William A. Moore, Jr., a personal friend, residing at _____ ; the creamated remains of two cats, specifically, Little Cat and Mynx.

4.02 I hereby make a specific bequest to Matt Cathalina, my brother-in-law, residing at _____ ; as follows:

-
-
-
-

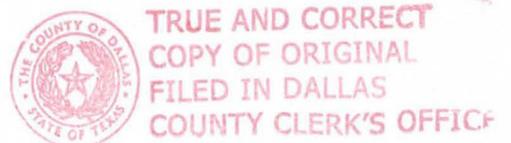
V.
DISPOSITION OF RESIDUARY ESTATE

5.01 I give to William Allen Moore, Jr. and to Melissa Sue Zarda the balance of my Estate to share equally as follows:

-50% to William Allen Moore Jr. and

50% to Melissa Sue Zarda.


Last Will and Testament
of Donald Jeffrey Zarda



This shall be inclusive of any and all real or personal property owned by me or that my Estate has an interest and /or claim pending. Further, this bequest shall be inclusive of any and all causes of action or pending litigation wherever situated, to which I may be legally or equitably entitled including any and all Judgements and or Settlements.

Mortgages and Other Encumbrances

5.02 If any of the property described in this Article 5 is subject to any mortgage, lien, pledge, or other encumbrance of any nature, the encumbrance is not to be paid or discharged out of any other part of my estate, and the beneficiary must take the property subject to the encumbrance, unless otherwise set forth herein.

5.03 I give all of the residue of my estate, consisting of all of the rest of the property that I own at the time of my death, both real and personal, or any interest in any and all causes of action wherever situated, to which I may be legally or equitably entitled as follows:

- 50% to William Allen Moore Jr. and
- 50% to Melissa Sue Zarda.

VI.

APPOINTMENT OF EXECUTOR

6.01 I hereby nominate, constitute and appoint the following as Co-Independent Executors:

- William Allen Moore, Jr. and
- Melissa Sue Zarda


Last Will and Testament
of Donald Jeffrey Zarda

Page 3 of 7



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

Bond Not Required

6.02 It is my will and desire and I hereby direct that in the administration of my estate, my Co- Independent Executor's shall not be required to furnish any bond of any kind and that no action shall be had in any court in the administration of my estate other than the probating of this my Last Will and Testament, and the filing of the Inventory, Appraisement and List of Claims of my estate that may be required.

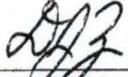
Independent Administration

6.03 I authorize my Co-Independent Executor's to administer my estate Independently, and said Co-Independent Executor's shall be free from judicial supervision, adjudication, order, or direction to the extent allowed by law including but not limited to the conveyance or lease of real property.

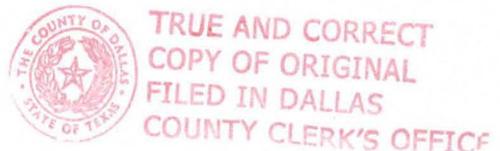
VII.

IN TERROREM CLAUSE

If any individual and/ or beneficiary under this Will shall in any manner contest or attack this my Last Will and Testament or any of its provisions, any share or interest in my estate given to such contesting individual / beneficiary under this Will or by the laws of intestacy is hereby deemed for any and all purposes to have pre-deceased me and said contesting individual/ beneficiary and or their heirs at law shall not be deemed as a beneficiary of this estate. This In Terrorem Clause is in effect and any Motion for Instructions or Interpretation of this my Last Will and Testament shall be considered as a contest or attack on this my Last Will and Testament.


Last Will and Testament
of Donald Jeffrey Zarda

Page 4 of 7



VIII.

GENERAL PROVISIONS

Revocability

8.01 I have not entered into any contract to make a Will or devise, any contract to die intestate, or any contract not to revoke a will or devise. This Will is revocable at any time at my sole discretion.

Partial Invalidity

8.02 If any part, clause, provisions, or condition of this Will is held by a court of competent jurisdiction to be void, inoperative, ineffective, or otherwise invalid, its invalidity shall not effect any other part, clause, provision, or condition of this Will, and the remainder of this Will shall be carried into effect as if this Will had been executed without the invalid part, clause, provision, or condition being included.

Survival Defined

8.03 For the purposes of this Will, in determining whether a person has survived me or another person, the person is deemed to have survived me or another person, the person is deemed to have survived if he or she is alive at least 60 days past the date of my death or the death of the other person.

Law Governing Will

8.04 This Will is to be exclusively governed by and construed with the laws of the State of Texas.

Headings

8.05 The headings located above the various articles, provisions, and paragraphs of this Will have been included for convenience in locating the subject covered by each provision and are not to be considered part of the Will or used in construing this Will or in ascertaining my intention.


Last Will and Testament
of Donald Jeffrey Zarda

Page 5 of 7



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

IN WITNESS WHEREOF, I, DONALD JEFFREY ZARDA, hereby sign my name to this, my Last Will and Testament, on each page of which I have placed my initials, on this 30TH day of JUNE 2013, in Dallas, Dallas County, Texas.

Donald J Zarda

DONALD JEFFREY ZARDA
Testator

June 30, 2013

We hereby certify that in our presence and on the date appearing above, Donald Jeffrey Zarda signed, sealed, published and declared the foregoing instrument as his Last Will and Testament; that at his request and in his presence and in the presence of each other, we have signed our names below as witnesses, and that at such time we believed him to be of sound mind and memory.

Marshall Adamson
(Witness Signature)

Marshall Adamson
(Print Name)

1400 Hi Line Dr.

Dallas, Texas 75219
(Address)

Steve Reynolds
(Witness Signature)

Steve Reynolds
(Print Name)

1400 Hi Line Dr., #715

Dallas, Tx 75207
(Address)

[Signature]
Last Will and Testament
of Donald Jeffrey Zarda



TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

SELF-PROVING AFFIDAVIT

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared DONALD JEFFREY ZARDA, (Testator); Marshall Adamson (Witness) and Steve Reynolds (Witness), known to me to be the Testator and the Witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said DONALD JEFFREY ZARDA, Testator, declared to me and to the said Witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his Oath stated to me, in the presence and hearing of the Testator that the said Testator had declared to them that said instrument is his Last Will and Testament and that he executed the same as such and wanted each of them to sign it as a Witness; and upon their respective Oaths, each Witness stated further that they signed the instrument as witnesses in the presence of the said Testator and at his request; that the Testator was at that time eighteen years of age or over and was of sound mind; and that each of the said witnesses was then at least fourteen years of age.

[Signature of Donald Jeffrey Zarda]
DONALD JEFFREY ZARDA
[Signature of Marshall Adamson]
(Witness Signature)

[Signature of Steve Reynolds]
(Witness Signature)

SUBSCRIBED AND SWORN TO BEFORE ME by Donald Jeffrey Zarda, Testator, and Marshall Adamson and Stephen Reynolds, Witnesses, this 30th day of June 2013.

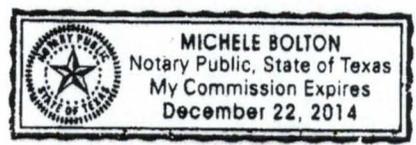
[Signature of Michele Bolton]
Notary Public, State of Texas

My Commission Expires: 12/22/2014 Printed Name: Michele Bolton

[Signature]
Last Will and Testament
of Donald Jeffrey Zarda



Page 7 of 7
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COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE



 ORIGINAL

CAUSE NO. PR- 14- 3685- 3

ESTATE OF	§	IN THE PROBATE COURT
	§	
DONALD JEFFREY ZARDA	§	NUMBER THREE (3) OF
	§	
DECEASED	§	DALLAS COUNTY, TEXAS

ORDER ADMITTING LAST WILL AND TESTAMENT AND APPOINTMENT OF CO-CO-INDEPENDENT EXECUTORS

On this day came on to be heard the Application to Probate the Last Will and Testament of DONALD JEFFREY ZARDA; Deceased (“Decedent”) and for Appointment of Co-Independent Executors filed by WILLIAM ALLEN MOORE, JR AND MELISSA ZARDA, (“Co-Applicants”), and it appearing to the Court that after taking testimony in open Court and the testimony being committed to writing; that the Application complies with the Texas Estates Code; that the Decedent died October 4, 2014, in Scex Rouge Peak Les Diablerets; Ormont-Dessus; Switerland and that four (4) years have not elapsed since the date of death of Decedent, and the filing of the Application; that this Court has jurisdiction and venue over the Estate of Decedent; that citation has been served and returned in the manner and for the length of time required by the Texas Estates Code; that the Co-Applicants for whom Letters Testamentary is sought is entitled thereto by law and is not disqualified; that Decedent at the time of executing the Last Will and Testament was at least twenty-one (21) years of age, and of a sound mind; that Decedent executed his Last Will and Testament with the formalities and solemnities and under the circumstances required by law to make it a valid Last Will and Testament; that the Will was not revoked by Decedent; that all of the necessary proof required for the probate of the Will has been made; and that the Co-Applicants to whom Letters of Testamentary are to be granted are named in the Last Will and Testament as Co-Independent Executors and are capable of acting as Co-Independent Executors, without bond; it is accordingly,

ORDERED, ADJUDGED and DECREED by the Court that the Last Will and Testament of Donald Jeffrey Zarda dated June 30, 2013 is hereby admitted to Probate, and the Will, together with the Application for Probate, is Ordered to be recorded by the Clerk in the minutes

 TRUE AND CORRECT
COPY OF ORIGINAL
FILED IN DALLAS
COUNTY CLERK'S OFFICE

PR - 14 - 03685 - 3
COMPL
ORDER - PROBATE OF WILL AND LETTER
682741



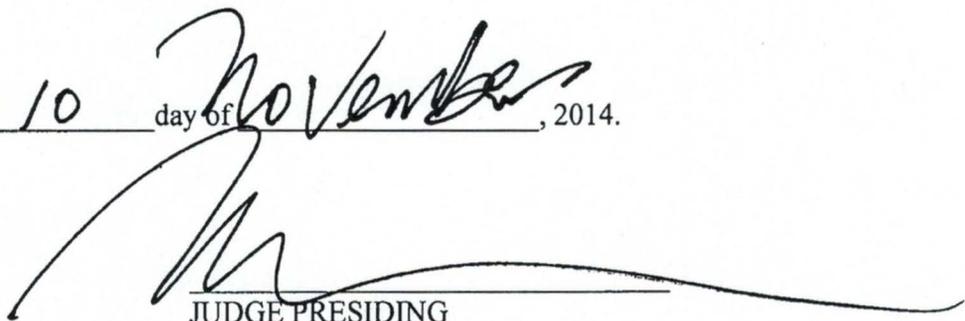
of this Court. It is further,

ORDERED, ADJUDGED and DECREED that WILLIAM ALLEN MOORE, JR, and MELISSA ZARDA are hereby appointed as Co-Independent Executors of the Estate of DONALD JEFREY ZARDA, Deceased, to serve without bond, and that Letters Testamentary shall be issued to WILLIAM ALLEN MOORE, JR and MELISSA ZARDA upon taking the Oath as required by law. It is further,

ORDERED, ADJUDGED and DECREED that WILLIAM ALLEN MOORE, JR and MELISSA ZARDA shall file an Inventory, Appraisalment and List of Claims, as required by law, and that no other action shall be taken by this Court in relation to the Administration of the Estate. It is further,

ORDERED, ADJUDGED and DECREED that there is no necessity for the appointment of appraisers.

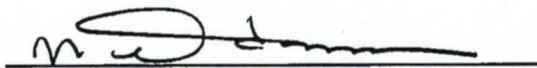
SIGNED on this the 10 day of November, 2014.



JUDGE PRESIDING

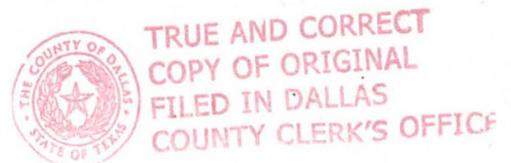
APPROVED AS TO FORM ONLY:

MARSHALL E. ADAMSON,
ATTORNEY AT LAW



Marshall Adamson
TBA 00797973
2728 Hood St. # 311
Dallas, Texas 75219
713- 522-8600
214- 370-3720 Facsimile

ATTORNEY FOR CO-APPLICANT'S



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

ORDER

DONALD ZARDA,

Plaintiff,

10-cv-04334-JFB

-against-

**ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,**

Defendants.

-----X

WHEREAS, plaintiff Donald Zarda died on or about October 4, 2014; and

WHEREAS, defendants suggested his death on the record on October 6,
2014; and

WHEREAS, Letters Testamentary were issued to co-independent executors
Melissa Zarda and William Moore by the Probate Court of Harris County on or
about October 11, 2014; and

WHEREAS independent executor William Moore retained Gregory
Antollino and timely moved the Court substitute the Estate as plaintiff in this
action; it is hereby

ORDERED that the motion is granted and the Estate of Donald Zarda shall
be substituted as plaintiffs in this action; and it is further

ORDERED that the caption shall be amended to reflect the substitution as follows:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

MELISSA ZARDA and WILLIAM MOORE,
co-independent executors of the estate
of **DONALD ZARDA,**

Plaintiffs,

10-cv-04334-JFB

-against-

ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,

Defendants.

-----X

Dated: Central Islip, New York
November , 2014

Joseph F. Bianco, U.S.D.J.