

STATE OF MAINE
CUMBERLAND, SS.

BUSINESS AND CONSUMER COURT
LOCATION: PORTLAND
Docket No. BCD-CV-17-02

ANNE GOBEIL,)
)
 Plaintiff,)
)
 v.)
)
 ROBERT M.A. NADEAU, ESQ. and)
 NADEAU LEGAL, PLLC,)
)
 Defendants.)
)

ORDER ON PLAINTIFF’S MOTION FOR
APPROVAL OF ATTACHMENT

Plaintiff Anne Gobeil has moved for approval of attachment against Defendants Robert M.A. Nadeau, Esq. and Nadeau Legal, PLLC pursuant to Maine Rule of Civil Procedure 4A. For the following reasons, Plaintiff’s motion is denied.

BACKGROUND

According to Plaintiff’s motion, Plaintiff Anne Gobeil was terminated from her employment with Laboratory Billing Service Providers, LLC (“LBS”) on August 27, 2012. (Pl. Mot. Attach. 2-3.) Plaintiff hired Defendants Robert M.A. Nadeau, Esq. and Nadeau Legal, PLLC to represent her in October 2012. (*Id.* at 2.) Plaintiff asserts that she provided Defendants with sufficient information to establish viable claims against LBS for retaliation and hostile work environment under the Maine Human Rights Act (“MHRA”) and the Maine Whistleblower’s Protection Act (“MWPA”). (*Id.*)

Plaintiff assert that Defendants erroneously lead her to believe that it was not necessary to file a complaint with the Maine Human Rights Commission (“MHRC”) in order to pursue claims for compensatory damages, punitive damages, and injunctive relief in the Superior Court. (*Id.* at 4.) Defendants did not file a complaint on behalf of Plaintiff with the MHRC. (*Id.*) On March

10, 2014, Defendants filed a five-count complaint on behalf of Plaintiff against LBS. (*Id.*) Plaintiff contends that LBS asserted several affirmative defenses, including failure to exhaust administrative remedies under the MHRA and statutes of limitation. (*Id.* at 5.)

Defendants withdrew from representation on November 4, 2015. (*Id.*) On July 11, 2016, Plaintiff, with the assistance of new counsel, engaged in mediation with LBS. (*Id.*) The parties agreed to a settlement of \$20,000.00 which represented Plaintiff's lost income, out-of-pocket medical expenses, and attorney's fees. (J. Clifford Aff. ¶ 16.)

Plaintiff filed a three-count complaint for legal malpractice and breach of contract against Defendants on October 5, 2016. Defendants answered on November 18, 2016. This matter was subsequently transferred to the Business and Consumer Court. Plaintiff filed a motion for approval of attachment on February 8, 2017. Defendants filed an opposition on April 14, 2017. Plaintiff filed a reply on April 28, 2017. A hearing was held on May 5, 2017.

DISCUSSION

Pursuant to Maine Rules of Civil Procedure 4A, the court shall grant an order approving attachment only upon a finding that "it is more likely than not" that the plaintiff will recover a judgment, including interest and costs, greater than or equal to the aggregate sum of the attachment and trustee process plus any liability insurance, bond, other security, or other attached property available to satisfy the judgment. M.R. Civ. P. 4A(c). Thus, a plaintiff must prove by a preponderance of the evidence that they are likely succeed on their claims and recover an amount equal to or greater than the amount of the attachment sought. *Trans Coastal Corp. v. Curtis*, 622 A.2d 1186, 1188 (Me. 1993).

A motion for attachment must be supported by affidavits. M.R. Civ. P. 4A(c). The

affidavits must “set forth specific facts sufficient to warrant the required findings and shall be upon the affiant’s own knowledge, information or belief; and, so far as upon information and belief, shall state that the affiant believes this information to be true.” M.R. Civ. P. 4A(i).

In support of her motion for attachment, Plaintiff has submitted purported “affidavits” from herself and her attorney, James A. Clifford, Esq. *See* (A. Gobeil Aff.; J. Clifford Aff.) An affidavit is a voluntary declaration of facts reduced to writing and sworn to by a declarant before an officer legally authorized to administer oaths. Black’s Law Dictionary 68 (10th ed., 2014); Ballentine’s Law Dictionary (Lexis 3d ed., 2010). Neither Plaintiff’s nor Attorney Clifford’s affidavit contains a jurat or any other statements evidencing that the affidavit was sworn to before an officer legally authorized to administer oaths. *See* (A. Gobeil Aff.; J. Clifford Aff.) Therefore, both “affidavits” are deficient and fail to meet requirements of Maine Rule of Civil Procedure Rule 4A.

Even if the court were to consider the “affidavits,” Plaintiff has still failed to establish by preponderance of the evidence it is more likely than not that she will recover an amount equal to or greater than the amount of the attachment sought. Plaintiff seeks attachment in the amount of \$200,000.00. (Pl. Mot. Attach. 1.) Plaintiff asserts that it is more likely than not she will recover a judgment equal to or greater than \$300,000.00. (*Id.*) Plaintiff’s assertion is based solely on her attorney’s affidavit. (*Id.* at 6.) In his affidavit, Attorney Clifford states, “I believe that Plaintiff will recover a judgment against Defendants in an amount equal to or greater than \$300,000.00 exclusive of interest, costs, and attorney’s fees.” (J. Clifford Aff. ¶ 2.) Attorney Clifford’s belief appears to be based solely on the MHRA’s statutory cap on damages. Attorney Clifford’s affidavit states, “Under the MHRA, a statutory cap on compensatory and punitive damages of

\$300,000.00 would have applied to a settlement with or judgment against LBS.” (*Id.* ¶ 5.)

In legal malpractice actions, an attorney’s opinion regarding damages cannot rest on speculation or conjecture. *Allen v. McCann*, 2015 ME 84, ¶¶ 9-11, 120 A.3d 90. An attorney must provide a sufficient foundation for their opinion in order for the fact finder to assess their opinion without resorting to speculation. *Id.* ¶ 11. Attorney Clifford’s affidavit provides no foundation for his opinion or any facts supporting his assertions. Moreover, there are no facts in either Plaintiff’s or Attorney Clifford’s affidavit regarding Plaintiff’s damages. Thus, Plaintiff’s assertion that she is likely to recover a judgment equal or greater to \$300,000.00 appears to be based on pure speculation and conjecture. Therefore, even if the court were to consider the submitted affidavits, Plaintiff has failed to demonstrate it is more likely than not that she will recover an amount equal to or greater than the amount of the attachment sought. Accordingly, Plaintiff is not entitled to attachment.

CONCLUSION

Plaintiff Anne Gobeil’s motion for approval of attachment is DENIED.

The Clerk is instructed to enter this Order on the docket for this case incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: May 17, 2017

/s/ Mulhern
Richard Mulhern
Judge, Business & Consumer Court