

**Maine Supreme Judicial Court
Sitting as the Law Court**

Docket No. Kno-24-538

Rachel Klotz,

Appellee,

v.

J/100 X, LLC, et al.,

Appellant.

On Appeal from the Maine
Superior Court, Knox County

Appellant J/100 X, LLC's Brief

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Statement of the Case

The following facts are drawn from the affidavit Klotz submitted in connection with her ex parte motion for attachment and attachment on trustee process. *Wilson v. DelPapa*, 634 A.2d 1252, 1254 (Me. 1993).

Rachel Klotz met Mark Haley in 2019, and the pair quickly entered into a serious romantic relationship. (A. 63; Klotz Aff. ¶ 4.) They rented a house together from August 2019 to April 2020. (A. 63; Klotz Aff. ¶ 7.) In March 2020, they decided to move to Maine permanently. (A. 63; Klotz Aff. ¶ 8.) To that end, Klotz purchased property at 181 Mill Street in Rockport, Maine. (A. 63; Klotz Aff. ¶ 9.) She paid 50% of the purchase price and financed the rest. (A. 63; Klotz Aff. ¶ 10.) Whereas Haley's credit and capital were insufficient to this purpose, he contributed no money. (A. 63-64; Klotz Aff. ¶¶ 10-11.) The deed conveyed the property in joint tenancy, and it was agreed between the parties that Haley would pay the monthly mortgage payments. (A. 64; Klotz Aff. ¶¶ 12-13.)

Klotz's family has "significant financial resources," and Klotz benefits from a trust. (A. 64-65; Klotz Aff. ¶¶ 16-17.) During their relationship, Haley discussed investment opportunities with Klotz and explained that he could create limited liability companies to use as a vehicle for investments. (A. 65; Klotz Aff. ¶ 22-24.) For example, if Haley thought that Klotz should invest in a company called

“Flybridg,” he would create a Delaware limited liability company called “Flybridg LLC,” and ask her to invest money. (A. 65; Klotz Aff. ¶ 24.)

Haley has created 15 limited liability companies of which he is or claims to be the sole member, including J/100 X, LLC. (A. 66; Klotz Aff. ¶ 26.) Klotz’s affidavit states that she is a member of MHRK Investments LLC, Burntcoat Simpletrade LLC, and J/100 X, LLC. (A. 66; Klotz Aff. ¶ 27.) This assertion appears premised on Klotz seeing a “Maine Revenue Notice listing my name.” (Klotz Aff. ¶ 28.) Otherwise, Klotz states that she has not been involved in the management or activities of any of those limited liability companies. (A. 66; Klotz Aff. ¶ 28.) Klotz’s affidavit does not provide details about the Maine Revenue Notice such as when she saw it, or in what capacity her name was listed (e.g., member, employee, etc.).

In January 2021, Haley asked Klotz to give him a \$500,000 personal loan. (A. 66; Klotz Aff. ¶ 29.) He told her that he received an SBA loan and would repay the \$500,000 in three days but did not do so. (A. 67; Klotz Aff. ¶¶ 31-21.)

In August 2022, not long before Klotz and Haley were to be married, federal agents interviewed Klotz and told her that Haley was under investigation for PPP loan fraud. (A. 69; Klotz Aff. ¶¶ 47-49.) They told her that Haley had used various limited liability companies that he created as investment vehicles to fraudulently

apply for PPP loans, listing Klotz and her family members as employees with fictitious supporting documents. (A. 69; Klotz Aff. ¶ 49-53.) Later that month, Haley apologized to Klotz for betraying her trust. (A. 70-71; Klotz Aff. ¶¶ 58-59.) Klotz called off their wedding and ended their relationship. (A. 71; Klotz Aff. ¶ 60.)

After learning about the investigation, Klotz began exploring her investments with Haley. (A. 72; Klotz Aff. ¶ 66.) She found that she had given him over \$1,100,000 (apart from the \$500,000 short-term loan) for investments that he assured her were invested on her behalf. (A. 72; Klotz Aff. ¶ 67.) Klotz asked Haley where her money was but received only what she perceives as “non-sensical” responses and spreadsheets referring to various companies and investments. (Klotz Aff. ¶¶ 68-87.)

On October 21, 2022, Klotz filed a complaint in Superior Court against Haley; J/100 X, LLC; and several limited liability companies for conversion of \$500,000 (Count 1), conversion of \$1,100,000 (Count 2), conversion of a Land Rover (Count 3), unjust enrichment (Count 4), fraud (Count 5), interference with advantageous economic relations (Count 6), “constructive trust/accounting and restitution” (Count 7), partition of real estate (Count 8), and punitive damages

(Count 9). (A. 28-36.) Her complaint included an ex parte motion for attachment and attachment on trustee process. (A. 43.)

The trial court granted Klotz's ex parte for \$3 million against all defendants. (A. 7, 60.) As to the amount, Klotz's affidavit asserted losses of the \$1,100,000 in investments with added interest of 7% per annum had those funds been prudently invested, the \$500,000 loan, unspecified capital gains tax liability for her withdrawals from her Vanguard account to make the investments, payments on a car loan, the equity on the real estate, emotional distress, and punitive damages. (A. 75-76; Klotz Aff. ¶¶ 91-103.)

J/100 X, LLC moved to dismiss the complaint and to dissolve the attachment. (A. 13, 16, 37.) The trial court granted J/100 X, LLC's motion to dismiss as to Count 3 and 7, but otherwise denied the motion. (A. 16.) Later, the trial court denied J/100 X, LLC's motion to dissolve in a handwritten motion reading "motion denied." (A. 21.) This appeal followed.

Questions Presented

1. Did the trial court abuse its discretion by denying J/100 X, LLC's motion to dissolve ex parte attachment and attachment on trustee process?

Argument

This Court has emphasized that, “[b]ecause prejudgment attachment may operate harshly upon the party against whom it is sought, there must be strict compliance with the procedures prescribed by legislation and implemented by court rules.” *Wilson*, 634 A.2d at 1254 (quoting *First Nat’l Bank of Damariscotta v. Staab*, 505 A.2d 490, 491 (Me. 1986)). “A motion to dissolve an ex parte attachment is treated as the equivalent of a contested motion for attachment; thus, when confronted with a motion to dissolve, a party seeking an attachment bears the burden of proving by a preponderance of the evidence that it is likely to recover a judgment in an amount equal to or greater than the amount of the attachment.” *Portland Museum of Art v. Germain*, 2019 ME 80, ¶ 5, 208 A.3d 772; *see also* M.R. Civ. P. 4A(g), 4B(i). This burden entails submitting affidavits containing “specific facts sufficient to warrant the required findings[.]” M.R. Civ. P. 4A(i) (entitled “Requirements for Affidavits”), 4B(c) (stating that affidavits must “meet[] the requirements set forth in Rule 4A(i)”). In contrast, “general unsubstantiated allegations[], without more, are inadequate to establish grounds for an attachment under a preponderance of the evidence standard.” *Trans Coastal Corp. v. Curtis*, 622 A.2d 1186, 1189 (Me. 1993). The denial of a motion to dissolve an ex parte

attachment is reviewed for abuse of discretion. *Portland Museum of Art*, 2019 ME 80, ¶ 4.

As explained below, Klotz failed to show that she is more than 50% likely to recover judgment of \$3 million or more against J/100 X, LLC. The trial court's order denying J/100 X, LLC's motion to dissolve should be reversed.

I. Klotz's affidavit does not show that Klotz is more than 50% likely to recover a judgment against J/100 X, LLC.

A. Count 1: Conversion of \$500,000.

Count 1 is based on the \$500,000 loan Klotz gave Haley in 2021. "The gist of conversion is the invasion of a party's possession or right to possession at the time of the alleged conversion." *Est. of Barron v. Shapiro & Morley, LLC*, 2017 ME 51, ¶ 14, 157 A.3d 769 (quoting *Withers v. Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798). To prove conversion, a plaintiff must establish "(1) the person claiming that his or her property was converted has a property interest in the property; (2) the person had the right to possession at the time of the alleged conversion; and (3) the party with the right to possession made a demand for its return that was denied by the holder." *Id.*

Klotz's underlying legal theory is flawed. Because a plaintiff must have an immediate right to the property at the time of the alleged conversion, courts have held that failure to repay a loan does not give rise to a conversion claim. *See, e.g.,*

Bich v. WW3 LLC, No. 20-C-1016, 2022 U.S. Dist. LEXIS 233542, at *33 (E.D. Wis. Dec. 30, 2022) (“Failure to repay a loan, especially a loan to a third party, is not conversion or theft”); *Gelfman Int’l Enters. v. Klioner*, 2006 U.S. Dist. LEXIS 104153, at *18 (E.D.N.Y. Feb. 8, 2006) (“failure to repay a loan constitutes a breach of contract and does not amount to conversion” (citing *Borumand v. Assar*, 2005 U.S. Dist. LEXIS 5496, 2005 WL 741786, *9 (W.D.N.Y. 2005))); *Corp. Plaza Partners v. Am. Employers’ Ins. Co.*, 1996 U.S. Dist. LEXIS 4637, at *3 (E.D. Pa. Apr. 3, 1996) (“there is no cause of action for conversion where a borrower merely fails to repay a loan”).

Here, Klotz voluntarily paid Haley the \$500,000 in the first instance with the specific understanding that it would be repaid later, thereby ceding her right to possession of the funds at the time of the taking. “Once this amount was turned over, [Klotz] no longer had an immediate right of possession to it.” *Corp. Plaza Partners*, 1996 U.S. Dist. LEXIS 4637, at *3. The remedy for the alleged failure to repay the \$500,000 is in contract, not tort. Holding otherwise “would blur the line between contract and tort, turning every unpaid debt into a conversion[.]” *Id.* Moreover, Klotz’s affidavit fails to establish “specific facts” showing that she is more likely than not to recover judgment on Count 1 against J/100 X, LLC. M.R.

Civ. P. 4A(i). Her affidavit makes no connection between the \$500,000 loan and J/100 X, LLC, and states no facts establishing J/100 X, LLC's liability.

B. Count 2: Conversion of \$1,100,000.

Count 2 asserts conversion of \$1,100,000 and is based on various transfers to Haley totaling \$1,100,000 between 2020 and 2022. Klotz's affidavit contains no details about these funds, other than that they were transferred to Haley for investments on her behalf. (Klotz Aff. ¶¶ 67, 94.) She fails to identify the investments, the companies she believed she was investing in, or the maturity date for those investments. And, more problematically, no information is presented in the affidavit linking these investments to J/100 X, LLC.

Klotz's showing on Count 2 is deficient for the same reasons as Count 1. As noted earlier, conversion deals with "invasion of a party's possession or right to possession *at the time of the alleged conversion.*" *Estate of Barron*, 2017 ME 51, ¶ 14 (emphasis added). Klotz voluntarily transferred the funds to unspecified recipients, and there exists nothing in the record showing that any defendant interfered with Klotz's possessory right "at the time the alleged conversion." *Id.* Like the remedy for failure to repay a loan, the remedy for failure to pay out on a matured investment sounds in contract, not tort. And beyond that, the record is devoid of anything establishing J/100 X, LLC's liability on Count 2.

C. Count 4: Unjust enrichment.

To prove unjust enrichment, the complaining party must show “(1) it conferred a benefit on the other party; (2) the other party had appreciation or knowledge of the benefit; and (3) the acceptance or retention of the benefit was under such circumstances as to make it inequitable for it to retain the benefit without payment of its value.” *Me. Eye Care Assocs., P.A. v. Gorman*, 2008 ME 36, ¶ 17, 942 A.2d 707. An unjust enrichment claim “presupposes the absence of a contract[,]” and the presence of a contractual relationship “precludes the availability of any recovery in equity for unjust enrichment.” *York Cty. v. PropertyInfo Corp.*, 2019 ME 12, ¶ 26, 200 A.3d 803.

Klotz’s affidavit offers nothing to show that J/100 X, LLC received anything from her. *Me. Eye Care Assocs.*, 2008 ME 36 ¶ 17. Without evidence of what J/100 X, LLC received, or demonstrating it received anything at all, Klotz cannot say that J/100 X, LLC was unjustly enriched. Moreover, the underlying arguments are premised on contract theories: that Klotz agreed to give Haley money under a promise of repayment, which went unrealized. (Klotz Aff. ¶¶ 29-33 (failure to repay loan); *id.* ¶ 66-90, 94 (failure to account on or repay investments).)

D. Count 5: Fraud.

A person is liable for fraud if the person: “(1) makes a false representation (2) of a material fact (3) with knowledge of its falsity or in reckless disregard of whether it is true or false (4) for the purpose of inducing another to act or to refrain from acting in reliance on it, and (5) the other person justifiably relies on the representation as true and acts upon it to the damage of the plaintiff.” *Fitzgerald v. Gamester*, 658 A.2d 1065, 1069 (Me. 1995) (quoting *Grover v. Minette-Mills, Inc.*, 638 A.2d 712, 716 (Me. 1994)).

Again, no evidence exists to meet any of these elements as to J/100 X, LLC. Klotz failed to show that she is more likely than not to prevail on a claim of fraud against J/100 X, LLC.

E. Count 6: Interference with advantageous economic relations.

As Maine Tort Law explains “the cases ... continue to require a showing of fraud or intimidation as a *prima facie* element of an action for tortious interference with a contractual or advantageous economic relationship.” Donald Zillman, et al., MAINE TORT LAW § 11.09, 11-18 (2004)(internal footnotes omitted); *see also Petit v. Key Bank of Maine*, 688 A.2d 427, 433 (Me. 1996) (“[t]o recover for tortious interference with advantageous economic relationships, a plaintiff must prove that the defendant acted fraudulently or with intimidation” (Clifford, J., concurring in

part and dissenting in part)). “Interference by intimidation involves unlawful coercion or extortion.” *Rutland v. Mullen*, 798 A.2d 1104, 1111 (Me. 2002).

Interference by fraud involves the same five elements that make up a fraud cause of action, discussed above. Zillman, et al., MAINE TORT LAW § 11.09, 11-19 (citing *Grover*, 638 A.2d at 716).

Klotz’s affidavit contains no facts showing that J/100 X, LLC intimidated or defrauded her. *See generally St. Hilaire v. Edwards*, 581 A.2d 806, 807 (Me. 1990) (affirming a dismissal of a tortious interference claim because “[t]he pleading fails to allege ... that the [defendants] used fraud or intimidation to procure the breach of St. Hilaire’s contract, an essential element of that claim”). While it alleges facts specific to Haley, it does not follow that J/100 X, LLC is liable for Haley’s alleged actions.

Another problem is that Klotz fails to prove interference with “a valid contract or prospective economic advantage[.]” *Harlor v. Amica Mut. Ins. Co.*, 2016 ME 161, ¶ 12, 150 A.3d 793. “Generally, a plaintiff claiming tortious interference alleges that the defendant interfered with a contract or prospective economic advantage involving the plaintiff and someone other than the defendant.” *Id.* A prospective economic advantage must be reasonably identifiable and not left to speculation.

For example, in *MyFreeMedicine.com, LLC v. Alpine Investors*, 739 F. Supp. 2d 8 (D. Me. 2010), the court dismissed a tortious interference claim where the prospective economic advantage was with all qualifying members of the public and the proposed economic advantage depended on “speculation that their business would have continued to grow had the defendant not engaged in the conduct complained of in the complaint.” *Id.* at 34. In *Griffin v. Town of Cutler*, the court entered summary judgment on a plaintiff’s tortious interference claim when the plaintiff asserted that the complained-of conduct interfered with his ability to conduct business but did not point to a specific “business relationship” that was impacted. 2006 U.S. Dist. LEXIS 66818, at *69 (D. Me. Sep. 15, 2006). Finally, in *Norris v. Bangor Publ’g Co.*, the court granted summary judgment on a claim for tortious interference with prospective employment relationships when the plaintiff did not point to any specific employment opportunities that were lost. 53 F. Supp. 2d 495, 509 (D. Me. 1999). Although the plaintiff identified “potential employers” who “theoretically might have been sources of work for Plaintiff, the relationship between Plaintiff and these ‘potential employers’ is in this case is too attenuated and speculative to support this claim.” *Id.*

Klotz’s affidavit establishes no prospective economic advantage for two reasons. First, she identifies no third party with whom she had prospective

economic advantage. *Harlor*, 2016 ME 161, ¶ 12. Second, as with *MyFreeMedicine.com*, *Griffin*, and *Norris*, the economic advantage itself is the speculative assertion that Klotz “lost investment opportunities” and sustained tax liabilities because of transferring the money to Haley or a limited liability company. The idea that Klotz could have put the money transferred to Haley to better use elsewhere is too speculative to qualify as a cognizable prospective economic advantage. If that were enough, then virtually any loss could meet this element.

II. Even if Klotz could prove that she’s more than 50% likely to recover a judgment, she failed to substantiate her claimed damages of \$3 million.

“Rule 4A requires a showing not just as to the likelihood of success on the merits of the claim, but also as to the likelihood of recovery in an amount at least equal to the sum attached.” *Wilson*, 634 A.2d at 1255. Because the rule reflects a “more likely than not” standard, a movant’s showing “the plaintiffs must . . . convince the court by a preponderance of the evidence that they will recover an amount equal to or greater than the amount attached.” *Id.* In making this showing, “[t]he arguments of counsel cannot substitute for the required sworn statements of relevant facts.” *Wilson*, 634 A.2d at 1254. Instead, as the rule says, the supporting affidavit must contain “specific facts sufficient to warrant the required findings[.]” M.R. Civ. P. 4A(i).

Klotz's affidavit does not support the \$3 million attachment against J/100 X, LLC. How Klotz arrived at \$3 million at all is less than clear, but it appears to be the aggregate total Klotz is seeking against all defendants. However the \$3 million figure was decided upon, recoverable damages against J/100 X, LLC, if any, turns on what funds were transferred to that entity. There is no evidence in the record on that issue. Nor is there any other evidence substantiating the extent of J/100 X, LLC's liability for damages. On this record, the trial court could not find, by a preponderance of evidence, that J/100 X, LLC is liable for any damages.

Conclusion

J/100 X, LLC respectfully requests that the Court reverse the order denying its motion to dissolve.

Respectfully submitted,

Dated: April 16, 2025

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Certificate of Service

I hereby certify that on the date stated below I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this brief by the Court, two paper copies of this brief will be served on the following counsel.

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