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*.**

APPELLEE BRIEF

ON APPEAL FROM THE KNOX COUNTY SUPERIOR COURT

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This appeal challenges the court's (Knox County, *Billings, J.*) order denying J/100 X, LLC's motion to dissolve an ex parte attachment and attachment on trustee process. The following facts are supported by the Affidavit of Rachel Klotz filed in support of her ex parte motion for attachment and attachment on trustee process.

In or around 2019, Rachel Klotz met Mark Haley while they were both in recovery at Borden Cottage, an addiction recovery program, and they entered a romantic relationship. (A. 63.) At the time, Klotz was particularly vulnerable. (A. 63.) Further, Klotz is the beneficiary of a significant trust account which vested not long after Klotz met Haley. (A. 65.) Haley presented himself as someone who was highly competent in spotting profitable investments and startups. (A. 65.) During the course of their romantic relationship from around 2019-2022, Haley leveraged this persona to defrauded Klotz out of millions of dollars of trust funds in a variety of ways, as described below.

In January 2021, Haley pressured Klotz into "loaning" him $500,000 for three days until he received funds from an SBA loan. (A. 66-67.) He waited until Klotz was having anxiety on a travel day, and told her that if she did not transfer the money all of his "deals" would fall through and he would be in trouble. (A. 66.) Haley assured Klotz that the funds would be returned to her in three days, wrote out what he wanted her to say to her Vanguard representative, and sat next to her while she made the call. (A. 67.) Haley did not return the money within three days, and although he continued to promise that he would, he never did so. (A. 67.) Klotz has asked on numerous occasions where her money is, only to receive nonsensical responses. (A. 72.) Klotz asked for the money to be returned, but Haley has not returned it. (A. 75.)

During the course of their relationship, Haley would often encourage Klotz to make certain investments that he claimed were "sure things," and convinced Klotz to let him invest her trust money for her. (A. 65.) Haley would manipulate Klotz by making her feel stupid for not seeing the value in the investments. (A. 65.) Between 2020-2022, Klotz transferred over $1,100,000 to Haley for investments which Haley assured her he made on her behalf. (A. 72.)

Haley told Klotz that in order to invest her funds, he would create LLCs matching the name of the investment. (A. 65.) For example, if he thought she should invest money in "Flybridg," he would create an LLC called "Flybridg LLC." (A. 65.) He would ask Klotz to transfer funds from her Vanguard investment account to Haley's personal account and would then transfer the funds into the bank account for the newly created LLC before investing them. (A. 65.) Haley created at least fifteen such LLCs in order to "invest" Klotz's funds, including an LLC called "J/100, X LLC." (A. 66.) Haley is the sole member of these LLCs, with the exception of a couple of LLCs that he also added Klotz's name to. (A. 66.)

Between 2020 and August 2022, Haley engaged in a number of suspicious behaviors. He started drinking again and went back to a rehabilitation center. (A. 67.) He forged Klotz's name on a check without informing her. (A. 67.) Despite not having any income and having financial difficulties, he purchased an expensive sailboat without consulting Klotz. (A. 67.) He also purchased an expensive Land Rover and convinced Klotz to put a loan for the vehicle in her name. (A. 40.) Haley's parents were giving him money for living expenses, but he often claimed he was unable to pay the home mortgage that he had promised to pay due to the cost of the boat and the vehicle. (A. 68.) He asked Klotz to conceal from his parents that he had purchased the boat. (A. 68.)

Despite this behavior, Haley's fraudulent conduct was not clear to Klotz until August 2022, when federal agents showed up at her house to interview her. (A. 67-69.) The agents informed Klotz that Haley was being investigated for PPP loan fraud. (A. 69.) Haley had used the numerous LLCs that he created, including J/100 X, LLC, to fraudulently apply for PPP loans. (A. 69, 79.) On the loan applications, he claimed that Klotz and her family members were employees of these various LLCs and created fictitious supporting documents. (A. 69.) According to Haley, the total amount that he stole through PPP loans is approximately $1,200,000. (A. 69.)

Haley was charged with federal financial crimes relating to the PPP loan fraud.[1] (A. 69.)

In an attempt to salvage the relationship, on August 29, 2022, Haley wrote Klotz an apology letter, which states, in part:

> I betrayed you and I betrayed your parents and family for my own greed. For my own benefit. I used your name and your father's name, your family's wealth to lie and deceive, to buy time, to cover up for my selfishness and dishonesty. In that moment, I do not know what [sic] I was thinking. The only thing that came to mind was "me." How do I protect "me"? To hell with anyone it may affect unknowingly, as long as it bought me an hour, a day, to try and scram and get away from the situation I created.

(A. 70-71.) Haley stated that everything that happened was due to his "dishonesty and breach of trust. And fraudulent actions." (A. 71.)

After learning about Haley's fraudulent conduct, Klotz called off her

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[1] In February 2023, it was publicly reported that Haley pleaded guilty in the U.S. District Court in Portland, Maine to crimes relating to the fraudulent PPP loan applications, through which he obtained $1,010,581. Stephen Betts, *Rockland man pleads guilty to paycheck protection program fraud*, Courier-Gazette (Feb. 9, 2023), https://www.pressherald.com/2023/02/08/rockport-man-pleads-guilty-to-paycheck-protection-program-fraud/. The documents that Haley submitted to obtain the funds included false federal employment tax returns, fake time sheets, and falsified bank records. *Id.* Haley used some of the funds to make a down payment on a sailboat, which was purchased in the name of one of the fictitious businesses. *Id.*; *see also Sailor Gets 18 Months in Jail for $1 Million PPP Loan Fraud*, Coleman Report, https://colemanreport.com/sailor-gets-18-months-in-jail-for-1-million-ppp-loan-fraud/ (Last visited Jun. 3, 2025) (stating that Haley used some of the funds to make a down payment on a sailboat, which he then claimed was a functioning business with multiple employees in an attempt to steal additional PPP funds). On October 4, 2023, Haley was sentenced to 18 months in prison followed by three years of supervised release, and was ordered to pay $1,010,581 in restitution. *South Thomaston Man Sentenced to 1.5 Years for Fraudulently Obtaining More than $1 Million in PPP Loans*, United States Attorney's Office, https://www.justice.gov/usao-me/pr/south-thomaston-man-sentenced-15-years-fraudulently-obtaining-more-1-million-ppp-loans (Last visited Jun. 3, 2025).

engagement to Haley and ended their romantic relationship. (A. 71.) Klotz also started demanding information about the "investments" Haley had made on her behalf. (A. 72.) Haley gave Klotz nonsensical responses with spreadsheets that he himself created and some bank statements that did not actually corroborate his explanations. (A. 72.) The bank statements that Haley provided show only that Klotz would transfer money to Haley or one of his business entities, Haley would transfer it to an external account or LLC, and Haley would tell Klotz that the money was then invested in her name, with no corroboration whatsoever of that fact. (A. 74.)

Haley failed to provide Klotz with any documents showing if or where her funds were actually invested. (A. 75.) Klotz asked Haley to return all funds to her, but he has failed to do so. (A. 75.) In addition to not having access to the funds themselves, Klotz has lost investment growth on the funds, incurred capital gains liability tax, suffered emotional distress, and is seeking punitive damages against Haley. (A. 75-76.)

B. Procedural History

On October 21, 2022, Klotz filed a complaint in the Knox County Superior Court. (A. 7.) Because Haley, individually and as an agent of the LLCs that he created, was transferring Klotz's funds to and from the various LLCs, the complaint lists as Defendants Haley individually as well as the LLCs, including J/100 X, LLC. (A. 75.) Additionally, Klotz filed an ex parte motion for attachment and attachment on trustee process. (A. 43.) The court granted Klotz's motion and signed two orders attaching $3 million against all defendants. (A. 7, 58-61.)

The docket record shows that Klotz served the attachment and attachment on trustee orders on numerous banks, law firms, and other entities where Haley and his LLCs conducted business. However, Klotz has only managed to attach less than $15,000 in funds. (A. 4-20.) It remains unclear where Haley and/or his LLCs placed the funds that Haley obtained from Klotz. J/100 X, LLC is the only entity to appeal the attachment order.

On March 20, 2023, J/100 X, LLC (and other defendants) moved to dismiss the claims against it. (A. 13.) J/100 X, LLC argued, in part, that the claims against J/100 X, LLC were not sufficiently specific. (A. 13; R. Order on Outstanding Motions July 10, 2023, 8.) The court found J/100 X, LLC's argument unpersuasive, stating:

> [T]he allegations in the Complaint explain why Ms. Klotz does not differentiate between the conduct of the LLCs: she is alleging that the LLCs are a deliberate smoke screen to obfuscate Mr. Haley's tortious conduct and make the money he wrongfully acquired more difficult to track. Reading the allegations in the Complaint in the light most favorable to Ms. Klotz, she has alleged that the LLCs are the alter ego of Mr. Haley, and that Mr. Haley abused the corporate form to commit various torts against Ms. Klotz. It would be absurd to rule that Ms. Klotz's inability to specify the conduct of each specific LLC invalidates her claim when she is claiming that the purpose of the cloud of LLCs that surrounds Mr. Haley is to obfuscate his conduct.
>
> . . .

> *Ms. Klotz does not need to allege which specific LLC engaged in what conduct in this context, where they are allegedly entangled with one another and controlled by a single person to engage in a variety of tortious acts.* Determining the specific acts of each LLC, including which LLCs, if any, took money from Ms. Klotz, is an appropriate inquiry for discovery and possible summary judgment . . . .

(R. Order on Outstanding Motions July 10, 2023, 10 (emphasis added).)

In its motion to dismiss, J/100 X, LLC also made specific arguments with regard to each count. It argued that Count I must be dismissed because failure to pay a loan cannot constitute conversion. (R. Order on Outstanding Motions July 10, 2023, 11.) Even if this were an accurate interpretation of the law, which the court did not conclude, the court found that:

> Ms. Klotz argues that the amount $500,000 was not actually a loan. Instead, Ms. Klotz argues, that money was fraudulently obtained by Mr. Haley with no intent to pay it back. As plead[ed], Ms. Klotz has a colorable claim that Mr. Haley falsely promised to pay Ms. Klotz back as a way of inducing her to give him the funds. While Ms. Klotz may have considered this a loan at the time, she alleged that is only because Mr. Haley had allegedly deceived her.

(R. Order on Outstanding Motions July 10, 2023, 11-12.) Thus, the court denied J/100 X, LLC's motion to dismiss Count I.

Similarly, J/100 X, LLC argued that Count II, Conversion of the approximately $1,100,000 transferred for investment purposes, must be dismissed because Klotz did not allege her funds would be returnable on demand, never alleged that Haley promised what specific investment opportunities he would pursue, and did not plead with particularity each specific investment opportunity Haley allegedly invited Klotz to pursue. (R. Order on Outstanding Motions July 10, 2023, 12.) The court rejected all these arguments, finding that Klotz alleged that Haley claimed to have knowledge of investment opportunities, but not that he actually invested her money. (R. Order on Outstanding Motions July 10, 2023, 12.) "Ms. Klotz is not alleging that there was any oral contract between herself and Mr. Haley for the investment of funds, she is alleging that he tricked her so that he could gain control of the money from her trust account." (R. Order on Outstanding Motions July 10, 2023, 12-13.)

Further, the court denied J/100 X, LLC's motions to dismiss Klotz's claims of unjust enrichment, fraud, and interference with advantageous economic relations. Regarding unjust enrichment, the court stated that Klotz had adequately alleged that the events outlined in the complaint "were not actually contracts, but were deceptions employed by Mr. Haley to get money from Ms. Klotz." (R. Order on Outstanding Motions July 10, 2023, 14.) Regarding the remaining claims, the court found that Klotz had pleaded fraud with particularity and pleaded a cognizable prospective advantage. (R. Order on Outstanding Motions July 10, 2023, 16.) The court found that "much of the money that Ms. Klotz lost was allegedly withdrawn from a trust fund and transferred to some combination of Mr. Haley and the LLC defendants. The trust qualifies as a prospective economic advantage, such that fraudulently inducing Ms. Klotz [sic] to transfer funds from it could make out a claim for tortious interference." (R. Order on Outstanding Motions July 10, 2023, 17.)

Two counts—counts 3 (conversion as to the Land Rover) and 8 (real estate partition)—were dismissed as to J/100 X, LLC by agreement. (R. Order on Outstanding Motions July 10, 2023, 8; A. 30, 35.) The court also dismissed count 7 for a constructive trust on the basis that Klotz did not sufficiently allege a confidential relationship with Haley, with leave to amend. (R. Order on Outstanding Motions July 10, 2023, 18-19; A. 34.) The motion to dismiss was denied as to the remaining counts. (R. Order on Outstanding Motions July 10, 2023, 19.)

On July 5, 2023, J/100, X LLC filed a motion to dissolve the ex parte attachment and attachment on trustee process. (A. 17, 37.) In support of the motion to dissolve, Haley filed an affidavit stating, in full, the following:

> I, Mark X. Haley II, being duly sworn, do hereby depose and say as follows:
>
> 1. My name is Mark X. Haley II. I am the sole member of J/100 X, LLC.
>
> 2. J/100 X, LLC was not involved in the transfers or transactions alleged in Rachel Klotz's complaint.
>
> 3. Through legal counsel, J/100 X, LLC has explained in its motion to dismiss briefing, and in a motion to dissolve attachment it will be filing, why Rachel Klotz is not more likely than not to recover judgment against J/100 X, LLC in an amount equal or great to \$3,000,000, or in any amount.

(A. 41.) Haley provided no further information as to which entities were involved in the transfers or transactions alleged in Klotz's complaint or the current location of the funds. In its motion, J/100 X, LLC argued that the attachment and attachment on trustee process should be dissolved because Klotz did not show a greater than 50% chance of recovering against J/100 X, LLC where her affidavit mentioned J/100 X, LLC only three times and alleged no specific facts regarding J/100 X, LLC's conduct, and because Klotz failed to prove damages in an amount equal to or greater than the attachment—$3 million. (A. 38-39.) J/100 X, LLC did not request a hearing.

Klotz filed an opposition, arguing that (1) J/100 X, LLC failed to properly challenge the court order by affidavit pursuant to M.R. Civ. P. 4A(h), and (2) that Klotz properly proved by a preponderance of the evidence that she was more likely to recover against J/100 X, LLC in an amount equal to or greater than $3 million. (A. 80-85.)

In an order entered in the court docket on November 12, 2024, the court summarily denied J/100 X, LLC's motion to dissolve. (A. 21.) J/100 X, LLC did not file a motion for findings of fact. *See* M.R. Civ. P. 52. J/100 X, LLC filed a timely notice of appeal. (A. 19.)

STATEMENT OF ISSUE

I. Whether the court abused its discretion when it denied the motion filed by J/100 X, LLC to dissolve an ex parte attachment and attachment on trustee process.

ARGUMENT

I. THE COURT DID NOT ABUSE ITS DISCRETION BECAUSE HALEY FAILED TO FILE AN AFFIDAVIT PROPERLY CHALLENGING THE ATTACHMENT AND ATTACHMENT ON TRUSTEE PROCESS ORDERS.

M.R. Civ. P. 4A(h) and 4B(j) provide the sole remedy for Defendant J/100 X, LLC's objections to the attachment and attachment on trustee orders. M.R. Civ. P. 4A(h) states:

> [A]ny person having an interest in property that has been attached pursuant to an *ex parte* order entered under subdivision (g) of this rule may appear, without thereby submitting to the personal jurisdiction of the court, and move the dissolution or modification of the attachment, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. At such hearing the plaintiff shall have the burden of justifying any finding in the ex parte order *that the moving party has challenged by affidavit*.

M.R. Civ. P. 4A(h) (emphasis added). The language set out in M.R. Civ. P. 4B(j) is substantively identical but applies to the attachment on trustee process. When a Defendant fails to challenge the findings made by the trial court by affidavit, the Plaintiffs have "no burden to justify them." *Sanders v. Sanders*, 1998 ME 100, ¶ 7, 711 A.2d 124; *see also Levine v. KeyBank Nat'l Ass'n,* 2004 ME 131, ¶ 11, 861 A.2d 678; *Beesley v. Landmark Realty, Inc.*, 464 A.2d 936, 937 (Me. 1983).

Relevant here, in the orders of attachment and attachment on trustee process, the court found that it is more likely than not that Klotz will obtain a judgment in this action against J/100 X, LLC, in an amount equal or greater to $3,000,000. (A.

59.) The affidavit submitted by J/100 X, LLC in support of its motion to dissolve contains just three averments. (A. 41.) The first states that the affiant is Mark Haley, the sole member of J/100 X, LLC, and is not substantive. (A. 41.) The second states that "J/100 X, LLC was not involved in the transfers or transactions alleged in Rachel Klotz's complaint." (A. 41.) The third averment—that J/100 X, LLC's *counsel* has made additional arguments in pleadings—does not incorporate those pleadings into any sworn affidavit and does not contain any substantive statements made by affidavit.

Thus, the only averment that could be read to substantively attempt to challenge the court's findings is the statement that "J/100 X, LLC was not involved in the transfers or transaction alleged in Rachel Klotz's complaint." This statement is certainly too vague to properly challenge the findings in the ex parte order. Haley did not state in his affidavit any legitimate purpose of J/100 X, LLC, or where he actually placed Klotz's money if not with J/100 X, LLC. Further, Haley stated only that J/100 X, LLC was not involved in the transfers or transaction "alleged in the complaint," rather than stating that it has not been involved in transfers or transactions involving Klotz's funds. This not sufficient to challenge the court's findings where, as J/100 X, LLC points out, Klotz's complaint does not list each transfer or transaction that Haley and his LLCs made regarding her funds, but instead describes a course of conduct implicating J/100 X, LLC.

In short, the affidavit filed by Haley as an agent of J/100 X, LLC is wholly inadequate to challenge the findings made by the court supporting the attachment and attachment on trustee orders. As such, the court did not abuse its discretion in denying J/100 X, LLC's motion to dissolve, and no further review is required.

II. THE COURT DID NOT ABUSE ITS DISCRETION BECAUSE KLOTZ DEMONSTRATED A LIKELIHOOD TO PREVAIL AGAINST J/100 X, LLC BY A PREPONDERANCE OF THE EVIDENCE IN AN AMOUNT EQUAL TO OR GREATER THAN $3,000,000.

Even if this Court were to find that J/100 X, LLC's affidavit was sufficient to challenge the attachment and attachment on trustee orders, the trial court did not abuse its discretion in denying J/100 X, LLC's motion to dissolve.

After a motion to dissolve an ex parte attachment has been filed, "the attaching plaintiff has the burden to establish, by a preponderance of the evidence, its entitlement to recovery of an amount equal to or greater than the amount of the attachment." *Estate of Summers v. Nisbet*, 2016 ME 88, ¶ 10, 141 A.3d 1109 (quotation marks omitted). "A trial court entertaining a motion for attachment reviews and assigns weight to affidavit evidence in the same manner that it does with other evidence, and its findings will not be disturbed by this Court unless there is no competent evidence to support a finding as to the plaintiff's likelihood of success." *Plourde v. Plourde*, 678 A.2d 1032, 1035 (Me. 1996) (citations omitted). This Court considers the denial of a motion to dissolve an ex parte attachment for an abuse of discretion. *Portland Museum of Art v. Germain*, 2019 ME 90, ¶ 4, 208 A.3d 772.

Contrary to J/100 X, LLC's arguments, the trial court did not abuse its discretion in finding that Klotz proved that she is more than 50% likely to recover a judgment of $3 million or more against J/100 X, LLC.

a. <u>Klotz's affidavit shows that Klotz is more likely than not to recover a judgment against all Defendants, including J/100 X, LLC</u>

Klotz's complaint brings five substantive counts against J/100 X, LLC: Conversion of $500,000, Conversion of $1,100,000, Unjust Enrichment, Fraud, and Interference with Advantageous Economic Relations.

With regard to each count, J/100 X, LLC argues that there are insufficient facts to support an attachment or attachment on trustee process as to J/100 X, LLC specifically as opposed to Mark Haley. However, it is important to note that Klotz does not need to assert specific information as to J/100 X, LLC because she is asserting that the corporate veil should be pierced because Haley has misused the corporate form and an unjust or inequitable result would arise if the court recognized a separate corporate existence. *Johnson v. Exclusive Props. Unlimited*, 1998 ME 244, ¶¶ 5-6, 720 A.2d 568; *see also Dineen v. Ward*, 2005 Me. Super. LEXIS 60, *13 (Me. Super. Mar. 17, 2005). Although typically, an individual might use a corporate form to shield him or herself from personal liability, here Haley is using his personal form to try to shield his LLCs from liability to avoid attachment and collection. Despite the unusual posture, this is misuse of a corporate form all the same and the spirit of the doctrine requires the same result—access to the alter-ego that is holding Klotz's assets.

In any event, as described below, Klotz showed by a preponderance of the evidence that she is more likely than not to recover against J/100 X, LLC specifically with regards to all five counts.

i. ***Count 1: Conversion of $500,000***

A claim for conversion requires a showing of the following:

> (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.

Estate of Barron v. Shapiro & Morley, LLC, 2017 ME 51, ¶ 14, 157 A.3d 769. "To determine whether an interference is sufficiently serious as to amount to conversion, the court should consider the extent and duration of the actor's exercise of dominion or control; the actor's good faith; the extent and duration of the resulting interference with the other's right to control; the harm done; and the inconvenience and expense caused to the owner." *Lougee Conservancy v. CitiMortgage, Inc.*, 2012 ME 103, ¶ 22, 48 A.3d 774.

J/100 X, LLC asserts that Count I is based on Haley's failure to repay a loan, and that a failure to repay a loan cannot constitute conversion. (Blue Br. 12.) Neither the facts of this case, nor the law, support their argument.

First, Klotz's affidavit sufficiently asserts that the converted funds were not actually loans, but rather fraudulently obtained funds. Although Klotz may have initially believed that Haley was asking her for a three-day loan, her affidavit makes clear that Haley intimidated Klotz into providing the funds, lied about an incoming SBA loan, and never had any intent to repay the funds. Thus, the transfer of the funds from Klotz to Haley and his LLCs does not actually constitute a loan.

Second, the out-of-state cases cited by J/100 X, LLC are not analogous and do not support J/100 X, LLC's position. In the Wisconsin case that was cited, the court dismissed the conversion claim on summary judgment, concluding that to sustain a conversion claim in Wisconsin, the plaintiff must prove that his or her property was taken "without the owner's consent," and voluntarily loaning money did not meet this requirement. *Bich v. WW3 LLC*, No. 20-C-1016, 2022 U.S. Dist. LEXIS 233542, at *33-34 (E.D. Wis. Dec. 30, 2022). Unlike Wisconsin law, Maine law allows for conversion claims even when the property is initially transferred voluntarily with the owner's consent, and therefore this case is inapplicable. *See Withers v. Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798 (stating that a person with the right to possession need only make a demand for return if the holder obtained the property rightfully).

Similarly, J/100 X, LLC's reliance on New York law is misplaced. *See*

Gelfman Int'l Enters. v. Klioner, No. CV-05-3826(CPS), 2006 U.S. Dist. LEXIS 104153 (E.D.N.Y. Feb. 8, 2006) (citing *Borumand v. Assar*, No. 01-CV-6258P, 2005 U.S. Dist. LEXIS 5496, at *9 (W.D.N.Y. Mar. 31, 2005)). In *Borumand*, the plaintiff sued for conversion, but the defendant claimed that the funds at issue were voluntarily given as a loan with no agreed-upon payback date because he and his wife were experiencing financial difficulties. *Borumand,* 2005 WL 741786, at *14. The court found that the plaintiff failed to prove that she had a right to possession of the funds superior to that of the defendant. *Id.* at *42. In other cases, however, courts have implied that under New York law, a claim for conversion of an unpaid debt could succeed if the plaintiff showed "acts that were unlawful or wrongful as opposed to mere violations of contractual rights." *Shetel Indus. LLC v. Adin Dental Implant Sys.,* 493 F. Supp. 3d 64, 121 (E.D.N.Y. 2020) (quoting *OTG Brands, LLC v. Walgreen Co.*, No. 1:13-cv-09066, 2015 U.S. Dist. LEXIS 42629, at *9 (S.D.N.Y. Mar. 31, 2015)).

Although this Court has not spoken on the issue, additional jurisdictions would allow for a conversion claim in response to an unpaid loan under certain circumstances. For example, in Delaware, a conversion claim for money is to be recognized "where there is an obligation to return the identical money delivered by the plaintiff to the defendant." *Goodrich v. E.F. Hutton Grp., Inc.*, 542 A.2d 1200, 1203 (Del. Ch. 1988) (internal citations omitted) (quoting *Lyxell v. Vautrin*, 5th Cir., 604 F.2d 18 (1979)).

Here, even if the transfer is considered a loan and this Court decides to hold that generally, failure to repay a loan cannot constitute conversion in Maine, this Court should find that the facts support a valid claim of conversion. As described in *Shetel*, Haley engaged in acts that were wrongful in order to procure the funds. Haley's actions went beyond a mere failure to repay a typical loan, and the policy considerations discouraging conversion claims for breach of loan terms are not applicable. Further, as stated in *Goodrich*, Haley has been asked to return the identical money delivered by Klotz.

Based on all of the above, the trial court's finding that Klotz is more likely than not to recover against J/100 X, LLC for conversion of her funds relating to the "loan" does not constitute an abuse of discretion.

ii. Count 2: Conversion of $1,100,000

Similarly, J/100 X, LLC argues that the attachment order cannot be premised on Count 2, which asserts conversion of the $1,100,000 transferred by Klotz for investment purposes.

First, J/100 X, LLC argues that Count 2 cannot provided a basis for the attachment because Klotz failed to provide sufficient details about the investments. This argument misconstrues Klotz's allegations. As described above, although Klotz was initially under the impression that she was giving funds to Haley to invest on her behalf, her affidavit makes clear that she no longer believes the funds were actually invested on her behalf. Instead, she alleges that the Defendants, including J/100, X, LLC, have diverted these funds for the personal use of Haley. That said, Klotz's affidavit does incorporate exhibits showing Haley's summaries pertaining to the investments. (A. 74 (citing R. Aff. of Rachel Klotz, Ex. 31-33)). To the extent that Klotz has not provided more details, it is because Haley has refused to provide information that would allow Klotz to do so.

Second, J/100 X, LLC states that "no information is presented in the affidavit linking these investments to J/100 X, LLC." (Blue Br. 13.) Contrary to this assertion, based on Klotz's description of the course of conduct employed by Haley and his LLCs, there is competent evidence in the record for the court to find by a preponderance of the evidence that J/100 X, LLC, like all of Haley's LLCs, was used by Haley to perpetuate the torts committed against Klotz, including this conversion.

Finally, J/100 X, LLC argues that the conversion claim must fail because Klotz voluntarily transferred the funds for investment purposes. Again, this argument fails factually, where Klotz's "voluntary" transfer was actually the result of Haley's deception. In any event, J/100 X, LLC misunderstands Maine law on conversion, which allows for conversion claims even when property has initially been obtained rightfully. It has been observed that "[t]he puzzle of conversion lies in the variety of differing ways in which the tort can be committed." Simmons, Zillman, and Furbish, Maine Tort Law § 6.01 (2022 Edition, LexisNexis Matthew Bender). The means of committing the tort of conversion are divisible into three categories: "(1) acts that in and of themselves constitute the tort; (2) acts that can amount to conversion depending on their consequences; and (3) a refusal to honor a demand to return the goods." *Id.* The third category will only exist where the property was taken rightfully. *See Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798.

Here, even if the court found that Klotz willingly transferred Haley and his LLCs the funds to invest on her behalf, she then demanded return of those funds and proof as to the location and status of those funds. Haley, individually and as an agent of the LLCs, did not provide her with either. Thus, a finding that Klotz initially transferred the funds voluntarily would not defeat a conversion claim under the circumstances.

In short, the trial court's finding that Klotz is more likely than not to recover against J/100 X, LLC for conversion of her funds relating to the "investments" does not constitute an abuse of discretion.

iii. Count 4: Unjust enrichment

In *Landry v. Landry*, 1997 ME 173, ¶ 5, 697 A.2d 843, the Law Court set forth the elements of unjust enrichment:

> To decide an unjust enrichment claim a court must ascertain whether a benefit has been conferred, whether the party receiving the benefit has an appreciation or knowledge of it, and whether 'the acceptance or retention by the defendant of the benefit [is] under such circumstances as to make it inequitable for the

> defendant to retain the benefit without payment of its value.' [citation omitted].

J/100 X, LLC first argues that Klotz's claim must fail because Klotz has not demonstrated that J/100 X, LLC received anything from her. Contrary to this assertion, based on Klotz's description of the course of conduct of Haley and his LLCs, there is competent evidence in the record for the trial court to find that the LLC Defendants each ascertained a benefit in the form of Klotz's property. An affidavit that articulated every transaction made by Haley and the Defendant LLCs over a multi-year period would be impossible without Defendants' cooperation in the discovery process.

J/100 X, LLC, further argues that the unjust enrichment count fails because the claims made against J/100 X, LLC sound in contract, not tort. (Blue Br. 14.) As described above, Klotz properly alleged that the events outlined in the complaint were not actually contracts, but were deceptions employed by Haley to get money from Klotz.

As such, it was not an abuse of discretion for the trial court to find that Klotz demonstrated the unjust enrichment claim against J/100 X, LLC by a preponderance of the evidence.

iv. Count 5: Fraud

The elements that must be alleged to establish of claim of tortious interference by fraud are:

> (1) making 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 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.

Rutland v. Mullen, 2002 ME 98, ¶ 14, 798 A.2d 1104 (internal citations omitted).

J/100 X, LLC attempts to defeat Klotz's claim of fraud by asserting that Klotz did not set out facts meeting the elements of fraud with regard to J/100 X, LLC specifically. (Blue Br. 15.) However, contrary to this argument, Klotz alleged that J/100 X, LLC was a company created by Haley to perpetuate the fraud that she described. As noted by the trial court, it would be unreasonable to expect Klotz to outline the separate conduct of each LLC created by Haley where she alleges that he used these LLCs in order to create a smoke screen for his conduct.

Thus, it was not an abuse of discretion for the trial court to find that Klotz proved by a preponderance of the evidence that she is more likely than not to recover against J/100 X, LLC with regards to her fraud claim.

v. Count 6: Interference with advantageous economic relations

A claim for interference with advantageous economic relations requires showing "the existence of a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference." *Petit v. Key Bank of State*, 688

A.2d 427, 430 (Me. 1996) (quoting *Barnes v. Zappia*, 658 A.2d 1086, 1090 (Me. 1995).

J/100 X, LLC alleges that Klotz failed to assert facts to support these elements as to J/100 X, LLC specifically. As demonstrated above, Klotz's affidavit is sufficient to prove that J/100 X, LLC defrauded her and interfered with a prospective economic advantage.

Furthermore, J/100 X, LLC claims that Klotz has failed to demonstrate interference with a valid contract or prospective economic advantage that is sufficiently specific. Unlike the cases cited by J/100 X, LLC, Klotz has demonstrated interference with a prospective economic advantage—her trust fund. As the trial court found upon considering J/100 X, LLC's motion to dismiss, "the trust qualifies as a prospective economic advantage, such that fraudulently inducing Ms. Klotz to transfer funds from it could make out a claim for tortious interference." (R. Order on Outstanding Motions July 10, 2023 17.)

Moreover, J/100 X, alleges that Klotz's claim fails because she has not identified any third party with whom she may have had a prospective economic advantage. (Blue Br. 17-18). However, the case cited by J/100 X, LLC, states only that "*[g]enerally*, 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." *Harlor v. Amica Mut. Ins. Co.*, 2016 ME

161, ¶ 12, 150 A.3d 793. J/100 X, LLC (emphasis added). There is no *per se* rule requiring a prospective economic advantage with a third party. Although no third party is involved, Klotz has clearly demonstrated that the fraud of Haley and his LLCs has interfered with a prospective economic advantage in the form of her trust fund and investments.

As a result, the court did not abuse its discretion in finding that Klotz had proven interference with advantageous economic relations by a preponderance of the evidence.

b. Klotz substantiated her claimed damages of $3 million

Finally, J/100 X, LLC claims that Klotz did not prove that she is more likely than not to recover against J/100 X, LLC in the amount of $3 million.

In her affidavit, Klotz alleged that she is owed the $500,000 that she transferred to Haley based on his request for a "loan"; the $1.1 million transferred to Haley for investment purposes; growth on those funds in the amount of $70,000; compensation for capital gains liability tax which Klotz would not have incurred but for Haley's misrepresentations; punitive damages; and emotional distress. (A. 66, 72, 75-76.)

The amounts of punitive damages and damages awarded for emotional distress can vary significantly from case to case. "In the context of a motion for an attachment, the court must determine what kind of damage outcome is more probable than not, based on its experience with jury awards and the nature of the emotional distress described in the affidavits." *Vogt v. Churchill*, 679 A.2d 522, 524 (Me. 1996).

In 2019, this Court upheld a judgment in a case involving fraud awarding the plaintiff $1.5 million in punitive damages. *Cianchette v. Cianchette*, 2019 ME 87, ¶ 18, 209 A.3d 745. In another case, this Court upheld a punitive damages award of $1 million where compensatory damages totaled $62,060, stating that the 16-1 ratio, although high, was not breathtaking or out of proportion to the injuries inflicted. *Harris v. Soley*, 2000 ME 150, ¶ 33, 756 A.2d 499.

Moreover, in analogous procedural postures, "[if] the trial court makes findings on the required determinations, *and* there was no request for further findings under Rule 52(b)," this Court will "infer that the trial court found all the facts necessary to support its judgment, if those findings are supported by competent evidence in the record." *In re Christian D.*, 2025 ME 16, ¶ 7, 331 A.3d 409 (internal quotations omitted). Considering that Klotz has established $1,670,000 in compensatory damages, it is reasonable to conclude that the court found that Klotz was more likely than not to recover at least $1,330,000 in emotional distress and punitive damages, amounts that would be well within or below the range of other awards.

Even if this Court were to find that damages of $3 million could not be substantiated, the remedy would be for the attachment and attachment on trustee order to be modified to a lower amount as to J/100 X, LLC, not vacated. *See Official Post Confirmation Comm. Of Creditors Holding Unsecured Claims v. Markheim*, 2005 ME 81, ¶ 19, 877 A.2d 155 (stating that "[b]ecause the facts in the affidavits are insufficient to support a finding that it was more likely than not that [Appellant] was a first transferee of $4,844,756.20, the renewed attachment order cannot stand and [Appellant] is entitled to a modification of the order in such an amount as the [Appellee] can show by affidavit is more likely than not the value of assets fraudulently transferred to her by [Appellant's ex-husband].").

In sum, Klotz proved that she is more likely than not to recover damages in the amount of at least $3 million against J/100 X, LLC.

CONCLUSION

For the reasons stated above, the Appellee, Rachel Klotz, respectfully requests that the court's Order entered on November 12, 2024, be affirmed, and that this Court order any further relief it determines to be just.

Respectfully submitted,

Dated: June 10, 2025

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CERTIFICATE OF SERVICE

I, Christopher K. MacLean, Esq., attorney for the Appellee in this matter, hereby certify that I have made service of an electronic copy of the foregoing BRIEF OF APPELLEE on the following counsel, and upon acceptance of this brief by the Court, two paper copies will be served:

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Dated at Camden, Maine this 10th day of June 2025

/s/ Christopher K. MacLean
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