STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-25-296

JOHN VENEZIANO,

Appellee

v.

ALISSA SAULNIER ET AL.,

Appellant

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT DOCKET NUMBER CIV-2025-20
(CUMBERLAND)

REPLY BRIEF OF APPELLANT BERNARD SAULNIER

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Introduction

This is a matter in which the Business and Consumer Docket ("Business Court") denied Appellant's Special Motion to Dismiss brought under 14 M.R.S. § 731 (2025), Maine's Uniform Public Expression Protection Act ("UPEPA").

On or about March 24, 2025, Appellee filed this civil action alleging six Counts based on allegations that Appellant has allegedly misdirected income to his wife or children and is benefiting from co-habituating with his wife and from driving a truck owned by his son.[1]

Appellant filed his Special Motion to Dismiss under UPEPA because the claims against the Appellant are subject to dismissal under Maine Rules of Civil Procedure, Rules 9(b) and 12(b)(6), and because the Complaint is based, in whole or in part, on Appellant's communications with a court or based on Appellant's communications on an issue under consideration or review by a court, or based on Appellant's petitioning activity. *See* Complaint ¶¶ 32-33, 37, 39, 43-47, 50-51, 56, 60-64, 66-76, 78, 81-83 and 106. (A. 25-32, 35).

[1] The Complaint alleges six counts: 1) Fraudulent Transfer Act; 2) Common Law Fraudulent Concealment; 3) Common Law Fraudulent Misrepresentation; 4) Aiding and Abetting Fraud; 5) Unjust Enrichment; and 6) Constructive Trust. Constructive Trust, Count VI, is pled against other parties, and not pled against the Appellant.

The UPEPA provides a procedure for early dismissal of covered claims and provides a moving party with the right to immediate appellate review of a denial of a Special Motion to Dismiss. 14 M.R.S. § 731, *et seq.*

ARGUMENT

I. Appellee's Complaint is subject to dismissal pursuant to Rules 9(b) and 12(b)(6).

a. Standard

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." M.R. Civ. P. 8(a).[2] In all averments of fraud, the circumstances constituting fraud must be stated with particularity. M. R. Civ. P. 9(b).

For the reasons which follow, Appellee's Complaint fails to meet Maine's pleading standards.

b. Fraudulent Transfer

(1) Income

Count I of Appellee's Complaint alleges, generally and without the required

[2] To state a claim, "[t]he complaint must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough." *Vitorino America v. Sunspray Condo Assoc.*, 2013 ME 19, ¶ 13, 61 A.3d 1249. Courts disregard legal conclusions and conclusory allegations contained in a complaint and only credit well pled allegations of fact. *Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 37, 250 A.3d 122 ("more than conclusory allegations are required"); *Larrabee v. Penobscot Frozen Foods*, 486 A.2d 97, 98 (Me.1984) (for the purposes of a Rule 12(b)(6) motion to dismiss" the court is not bound to accept any allegation that is "a legal conclusion rather than a factual pleading");

Rule 9(b) specificity, that Appellant fraudulently transferred to his wife or his sons his income. One who sues under the Uniformed Fraudulent Transfer Act, 14 M.R.S. §3571, *et. seq*., ("UFTA"), must plead the claim with specificity. *FDIC v. Proia*, 663 A.2d 1252, 1254, n.2 (Me. 1995); *Morin v. Dubois*, 1988 Me. 160, 713 A2d 956. Theorizing, contending or surmising, does not meet the heightened pleading requirements of Rule 9(b).

Nowhere does Appellee's Complaint allege, with specificity or otherwise, any enforceable right to income actually earned by the Appellant, nor an employment agreement, nor an amount of salary or rate of pay, nor number of hours worked, nor anything else creating, evidencing or even supporting the existence of actual earned income by the Appellant and an obligation to pay that income by someone else. The Uniform Fraudulent Transfer Act, 14 M.R.S. § 3572, defines an "asset" as "property of a debtor." Section 3572 of the Act defines "property" as an item that is a subject of ownership. Under the Uniform Fraudulent Transfer Act, to be an "asset" or "property transferred," the item must be actual, realized, and owned by the debtor-transferor. 14 M.R.S. § 3577(4).

Appellee cites to *Huber v. Williams*, 2005 ME 40, ¶ 27, 869 A.2d 737 for the premise that "the Law Court has expressly recognized that indirect transfers by the debtor through others can constitute fraudulent transfers under section 3575(1)(A)

[of the UFTA]." While this statement may be true, the citation in this context is misleading. The Appellee ignores the requirement of *ownership.* Before there can be a fraudulent transfer by a debtor, the debtor must first *own* the item transferred. Nowhere in the Complaint does Appellee allege that Appellant has acquired any enforceable right in and to any earned income, nor the amount of that earned income, nor the date or dates the income was earned, nor the date or dates (or amounts) the earned income was allegedly transferred and to whom transferred on those dates. Appellee merely hypothesizes that a third person is paying *perceived* income to Appellant's wife or sons in the form of in-kind goods or services, like use of office space. Respectfully, Appellee's "perceptions" or "beliefs" do not satisfy the heightened pleading requirements of Rule 9(b). Unless or until Appellee actually acquires evidence and pleads an actual enforceable right to earned income of some calculable amount that is being paid by an employer to third persons, for less than equivalent value in exchange, a cause of action does not exist under the UFTA. As pled, the claim is meritless.

(2) <u>Home</u>

The Complaint alleges that Appellant fraudulently transferred title to his home to his wife. However, and as pled in Appellee's own Complaint, Appellant did not transfer his home to anyone; rather, Appellant filed for Bankruptcy and the

Bankruptcy Trustee of his Bankruptcy Estate, with the Bankruptcy Court's approval, sold the home.

As pled by Appellee himself, the home transferred as follows:

> "[b]y instrument dated July 7, 2021, Edmond J. Ford, in his capacity as Chapter 7 Trustee of the Bankruptcy Estate of Mr. Saulnier, Bankruptcy Case No. 20-20257-PGC, conveyed via Trustee Deed to Sherman Holdings, LLC, real property located at 24 North Avenue in Saco, which parcel includes the home in which the Saulnier's reside. See York County Registry, Bk. 18729, Pg. 20

Complaint at ¶ 91; Motion to Dismiss at 3, 4, Ex 1. (A. 21)

A Bankruptcy Court's approved sale by a Bankruptcy Trustee to a buyer, who later re-sells the home, cannot possibly qualify as a "fraudulent transfer." At the time of the Bankruptcy Court sale, the asset was owned by a Bankruptcy Estate, not by the Appellant. Further, and importantly, the Appellee was a party-creditor in the Appellant's Bankruptcy, and he had the full opportunity to object to the sale, or to submit a competing bid, and he did nothing. *Id.* Appellee's claim that the home was fraudulently transferred is barred by Res Judicata, Collateral Estoppel, and Federal Bankruptcy pre-emption. This claim, like the first, is meritless.

(3) Truck

Still relying on *Huber* to argue that Appellant transferred his truck to another "to prevent Mr. Veneziano from recovering the judgment," Appellee again fails to allege sufficient facts to state a fraudulent transfer. 2005 ME 40, ¶ 27, 869 A.2d 737.

The Complaint alleges that Appellant transferred title to a truck. No where does the Appellee's Complaint allege that the truck had any equity or value, or what that value was at the time of transfer, or that reasonably equivalent value was not provided in exchange.

In order for the transfer of the truck to be actionable under the UFTA, it has to have a "value" and it has to be transferred for less than its reasonably equivalent value. 14 M.R.S. § 3576(1).[3]

The Complaint utterly fails to state a claim as to the truck under Rules 9(b) and 12(b)(6) because no facts are pled to allege that the truck had a value, or what that value was. Without any allegation of value, a transfer of property without a value is not fraudulent. Appellee cites no law to contradict this argument and his claim, as pled, is meritless.

c. <u>Fraudulent Concealment</u>

Appellee mis-cites the law of "fraudulent concealment" and, instead, cites and argues the common law of "fraudulent misrepresentation," citing *Fitzgerald v.*

[3] *See also Morin v. Dubois*, 1998 Me 160, ¶ 8, 713 A.2d 956 (UFTA applied when transferor transferred to his son his entire property valued at $230,000, however the trial court and the dissenting opinion by Justice Roberts and joined by Chief Justice Wathen noted that Plaintiffs "failed to provide any evidence regarding the value of the property"); *see also Plourde v. Plourde*, 678 A.2d 1032, 1035 (holding that plaintiff sufficiently pled fraudulent transfer because ex-husband transferred a business which the family court valued at $200,000 just days beforehand).

Gamester, 658 A.2d 1065, 1069 (Me. 1995) (alleging misrepresentation, fraud, unjust enrichment, and violations of Maine's Unfair Trade Practice statutes).

In *Fitzgerald*, the defendant failed to disclose to plaintiff material information regarding a property Plaintiff had agreed to purchase. *Id.* at 1068. The facts of *Fitzgerald* simply do not align with the facts of this case, and do not support an argument that Appellee has alleged sufficient facts to support a cause of action for "fraudulent concealment"—which is the claim brought by Appellee and a claim that was not brought in *Fitzgerald*. *Id.* at 1069. Fraudulent concealment only applies when someone fails to disclose material facts to a person to whom a duty to disclose those facts is owed. *FDIC v. S. Prawer & Co.*, 829 F.Supp. 453, 457 (D. Me. 1993); *Broussard v. Caci-Federal, Inc.,* 780 F. 2d. 162, 164 (1st. Cir. 1986); *Atwood v. Chapman*, 68 Me. 38, 40 (1877). Importantly, "*the tort does not deal with physical concealment.*" *S. Prawer*, 829 F. Supp at 457 (*emphasis added*).

In order to state a claim for "fraudulent concealment," a plaintiff must allege either an affirmative active concealment of a known material fact related to a transaction under contemplation between the parties *or* a confidential or special (fiduciary) relationship imposing a duty of affirmative disclosure. *Id.* at 453, 445-447, citing *HEP Development Group, Inc. v. Nelson*, 606 A.2d 774, 775 (Me. 1992). Nowhere does Appellee's Complaint allege a confidential or special relationship or

that Appellant actively concealed a known material fact to a transaction under consideration between the parties.[4] Further, nowhere does Appellee's Complaint allege that he justifiably relied upon some concealed material fact to his detriment. The tort of "fraudulent concealment" is simply not applicable to this case and not supported by the allegations pled in Appellee's Complaint. This claim, like the prior claims, is meritless.

d. <u>Fraudulent Misrepresentation</u>

For Appellee to plead, with particularity, a claim for fraudulent misrepresentation, he must allege facts sufficient to show that he justifiably relied, to his detriment, on a false representation of material fact made by Appellant with actual knowledge or reckless disregard for its truth or falsity. *See Flaherty v. Muther*, 2011 ME 32, ¶ 45, 17 A.3d 640. No where does the Complaint allege any facts evincing that Appellee relied on any representation made by Appellant, or that Appellant acted at all, or that Appellant made any statements besides his sworn deposition and in-court testimony—which are absolutely privileged statements. *McCrate,* 32 Maine 442 (1851); *Garing v. Fraiser,* 76 Me 37, 42 (Me 1884); *Dunbar*

[4] Notably, and importantly, the complained of sale and transfer of the home and truck were matters of public record.

v. Greenlaw, 152 Me 270, 128 A. 2d 218 (Me 1956). For these reasons, the claim for fraudulent misrepresentation is meritless.

Appellee cherry-picks dicta and contorts the law of "fraudulent misrepresentation" in an attempt to support his claim. In contrast to Appellee's argument, *Pasquantino v. United States*, 544 U.S. 349, 356 (2005)[5], did not concern a party who "concealed his assets when *settling* debts with his creditors." *Pasquantino* is completely inapposite to the present case. Regardless, Appellant and Appellee have not settled anything. Here, Appellee has not relied on any false statements or concealed facts in compromising or reducing a debt owed by Appellant. The Appellee's Complaint entirely fails to state a claim of "fraudulent misrepresentation" because Appellee did not compromise or reduce a debt, or otherwise rely to his detriment, justifiably or otherwise, on anything said or done by Appellant.

e. <u>Aiding and Abetting</u>

Appellee's claim for aiding and abetting liability fails because Appellee has not sufficiently or successfully pled an independent underlying tort to which aiding and abetting liability can attach. Appellee concedes that neither a fraudulent transfer

[5] *Pasquantino,* the only case cited by Appellee for the law of fraudulent misrepresentation, is a *criminal* case in which Defendants were convicted in the United States District Court for the District of Maryland of wire fraud in connection with scheme to evade Canadian liquor importation taxes. 544 U.S. 349, 356 (2005). The plaintiffs smuggled cheap liquor into Canada and the court analyzed the claims under criminal fraud and not under a theory of fraudulent misrepresentation. *Id.*

nor a civil conspiracy can support a claim of aiding and abetting, acknowledging *S. Prawer*, 829 F.Supp. 453, 458 (D. Me. 1993). Appellee then claims that it's irrelevant because he has stated a claim for "fraudulent concealment." However, as explained *supra* at section I (c) on page 6-8, Appellee has not stated a viable claim for "fraudulent concealment."

Appellee also argues, incorrectly, that *Meridian* "likely" rendered *Prawer* bad law. Appellee is incorrect because *Meridian* itself requires that an independent underlying tort exist to which aiding and abetting liability can attach.[6] *Meridian*, 2021 ME ¶ 19, 250 A.3d 24. For the reasons previously explained in sections I (c)-(d), Appellee has failed to sufficiently plead with particularity any independent underlying tort. Appellee's claim for aiding and abetting liability is meritless.

f. <u>Unjust Enrichment</u>

Appellee again distorts and misapplies the law in arguing his claim for Unjust Enrichment. In each case cited by Appellee, the parties suing were seeking to obtain a judgment for their own benefits conferred on the opposite party. By way of illustration, Appellee suggests that *Knope v. Green Tree Servicing, LLC*, supports his theory of Unjust Enrichment because the plaintiff in *Knope* was awarded the

[6] *See also, Eastern Maine Medical Center v. Walgreen Co.,* 2025 Me 10, ¶ 29, citing *Cohen v. Bowdoin,* 288 A. 2d 106, 110 (Me. 1972) (Claim of civil conspiracy fails absent actual commission of some independently recognized tort.)

value of a benefit retained when there was no contractual relationship between the parties. 2017 ME 95, ¶ 12, 16 A.3d 696. *Knope* is irrelevant to Appellee's Count for Unjust Enrichment because the presence or absence of a contract is irrelevant to the issue of Appellee conferring a benefit. Appellee's claim fails to allege that Appellee conferred any benefit, retained or otherwise, on Appellant, and therefore the claim fails.[7] *Knope,* similarly, resulted from payment the plaintiff made on behalf of a defendant, and was for restitution. *Knope*, 2017 ME 95, ¶ 18, 161 A.3d 696. Nothing in the Appellee's Complaint supports a claim for restitution.

Appellee next cites to *Federal Insurance co. v. Maine Yankee Atomic Power Co.,* 183 F.Supp.2d 76, 82 (D. Me. 2001) for an argument that it does not matter whether or not he *directly* conferred anything on Appellant. In *Maine Yankee*, the plaintiff made payments on defendant's behalf to third parties, for which he sought reimbursement from defendant. *Id.* In this case, Appellee conferred nothing, no benefit, financial or otherwise, on anyone. *Maine Yankee* was also a case for restitution. *Id*. at 86 ("Federal Insurance thus has benefited from payments *Maine Yankee* made under circumstances that would make it unjust not to provide restitution.").

[7] Appellee's claim that Appellant is being "*unjustly"* enriched by living with his wife or driving her automobile, or by driving his son's automobile, is a stretch beyond what any court should reasonably tolerate for pleading a claim of Unjust Enrichment under Rule 11. Clearly, family members may lovingly provide support, maintenance and gifts regardless if someone owes a money judgment.

Here, Appellee already has a judgment against Appellant for all benefits conferred. Since the date of judgment to the present date, no new benefits have been conferred by Appellee on Appellant. Complaint*, in toto.* What Appellee is actually attempting to do, through a distortion of the law of Unjust Enrichment, is to collect his judgment against Appellant by claiming that he is entitled to collect "benefits," just and unjust, conferred on Appellant by other people. After an exhaustive search, no case law can be found to support such a proposition under the law of Unjust Enrichment. Unjust Enrichment is simply inapplicable to the present matter and the claim is meritless.

II. Appellee's Complaint is based on Appellant's communications in a judicial proceeding or based on Appellant's communications on an issue under consideration or review in a judicial proceeding or based upon petitioning activity.

Maine's Uniform Public Expression Protection Act prohibits suits that are subject to a Rule 12(b)(6) motion to dismiss and based on, *inter alia*: i) communications in a judicial proceeding; ii) communications on an issue under consideration or review in a judicial proceeding; and/or iii) petitioning activity. 14 M.R.S. § 733 (A), (B) and (C) (2025).[8]

[8] Appellee devotes considerable space in his brief analyzing Maine's repealed Anti-SLAPP statute. *Compare* 14 M.R.S. § 556 (2023) (*repealed and replaced by* P.L. 2024, c. 626 (effective Jan. 1, 2025)) *with* 14 M.R.S. § 731. Respectfully, the repealed anti-SLAPP statute is markedly different from the current Uniform Public Expression Protection Act.

There can be no legitimate argument that testimony, in a deposition or in court, are communications to a court and communications on issues under consideration or review by a court, and petitioning activity. Indeed, testimony is the clearest example of protected speech. *Lane v. Franks*, 573 U.S. 228, 238 (2014). Testimony has been absolutely privileged and immune from suit in Maine for over 100 years. *Barnes v. McCrate*, 32 Maine 442 (1851); *Garing v. Fraiser*, 76 Me 37, 42 (Me 1884). *Dunbar v. Greenlaw*, 152 Me 270, 128 A. 2d 218 (Me 1956).

Appellee argues that notwithstanding that Appellant's testimony was given in a judicial proceeding, it is not protected. Appellee claims that the testimony is unnecessary to his case and that his case has factual underpinnings independent of the transcript citations. However, a review of Page 10 of Appellee's brief, where the Appellee lists the salient facts underlying his Complaint, virtually every fact cited has its genesis in the testimony of the Appellant. Arguing that his action is not based on Appellant's testimony, or that Appellant's testimony is immaterial, is disingenuous. Until the Appellee obtained the testimony, Appellee was unable to and did not file a suit.

Appellee further argues that his claims against the Appellant are not within the scope of UPEPA, arguing that Appellant's testimony was not on a matter of

public concern[9], or that the claims against the Appellant are not based on testimony in the disclosure proceeding but rather on the overall fraudulent scheme and that there is no other immunity or other common law principle insulating Appellant from fraud[10] because he testified about it in a judicial proceeding.

Finally, Appellee argues that "The anti-SLAPP statute's definitional focus is not on the form of the plaintiff's cause of action, but rather on the defendant's activity that gives rise to his or her asserted liability and whether that activity constitutes protected speech or petitioning," citing Unif. L. Comm'n Notes, §2, cmt.1. Irrespective of the recitation, the *activity* about which the Appellee complains is that which is evidenced *only* by the testimony of Appellant. To attempt to separate the "content" of the Appellant's testimony from his "testimony" to avoid the application of the UPEPA, is to defeat the clear and unequivocal mandate of the Legislature in enacting the UPEPA.

[9] Respectfully, all testimony in a judicial proceeding, regardless of the type of hearing, is of public concern – testifying in public under oath is the core basis for our judicial system.

[10] As previously argued, Appellee has failed to successfully plead any claim of fraud. The elements of fraud are, (1) 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 a person to act in reliance upon it; and (5) the person *justifiably relies upon the representation as true and acts upon it to [his] damage*. *Diversified Foods, Inc. v. First Nat'l Bank*, 605 A.2d 609 (Me. 1992); *Me. Eye Care Assocs., P.A. v. Gorman,* 2008 ME 36, 942 A.2d 707 (internal citations omitted). Nowhere in the Appellee's Complaint are these elements pled, with or without particularity as required by Rule 9(b).

III. Attorney's Fees

Appellant's Special Motion to Dismiss was filed because the Appellee's Complaint is utterly meritless. The Special Motion was filed for the entirely proper purpose of dismissing the meritless Complaint. The Special Motion was not filed for delay. In an effort to survive the Special Motion to Dismiss, the Appellee repeatedly distorts case law. Just because the action has been stayed during the pendency of this appeal, which is a statutory requirement, does not mean that this appeal—of a new statutory scheme with no Maine case law interpreting it—was filed *in bad faith with an intent to delay*.

The UPEPA provides the Appellant a statutory right of an early Motion to Dismiss and an interlocutory appeal in the event his Special Motion is denied. The Appellant has demonstrated in this brief that each and every count of the Appellee's Complaint is meritless. The Complaint, itself, significantly cites for reliance Appellant's communications with a court, communications on issues under consideration or review by a court and petitioning activity. See page 1, *supra*. Should this Court not reverse the Business Court, this Court must still not award Appellee his attorneys' fees because this Special Motion to Dismiss and appeal were properly filed in good faith.

CONCLUSION

Because Section 733 applies to Appellant's deposition and in-court testimony and because, in accordance with 14 M.R.S. § 738, Appellee' s Complaint (in whole or in part) is meritless, the Appellant's Special Motion to Dismiss must be granted, together with all other relief as is just.

DATED in Portland, Maine on the ____th day of November 2025,

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on November___, 2025 I served true copies of the above Appellant's Reply Brief, by providing electronic copies and paper copies to Appellant's Counsel:

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