

STATE OF MAINE
LINCOLN, SS.

SUPERIOR COURT
DOCKET NO.

LEOL CORSON,)	
)	
Plaintiff)	
)	
v.)	<i>EX PARTE</i> MOTION FOR
)	APPROVAL OF ATTACHMENT
JACOB BECK)	
)	
and)	
)	
JILL BECK)	
)	
Defendants)	
)	

Plaintiff Leol Corson hereby moves for an attachment of real estate and personal property appurtenant pursuant to M.R. Civ. P. 4A.

Plaintiff Leol Corson is an 84 years old widower. He suffers from challenges associated with age, including numerous chronic medical conditions. Since his wife's demise he has relied upon assistance from relatives in his household for care and support. Relying upon promises of care and support, Plaintiff transferred his home, his real estate, and all of his personal property to Defendants, who are his granddaughter and her husband, for far less than value. These transfers were made without independent representation by counsel and have impoverished Plaintiff while putting him at risk of punishing MaineCare penalties.

This Motion should be granted because (1) it is more likely than not that Plaintiff will be granted a judgment, effectively voiding the transfer of Plaintiff's home, real estate and personal property; (2) there is no liability insurance, bond, or other security nor any

property attached by other writ of attachment or trustee process that is known to Plaintiff to be available to satisfy the judgment; and, (3) there is a clear danger that the Defendants, if notified in advance of attachment of the property, will conceal it or will otherwise make it unavailable to satisfy a judgment.

ARGUMENT

I. Plaintiff Meets the Legal Standard Under Rule 4A.

Pursuant to M.R. Civ. P. 4A(c), attachment and may be ordered upon a finding by the Court that:

[I]t is more likely than not that the plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than the aggregate sum of the attachment and any liability insurance, bond, or other security, and any property or credits attached by other writ of attachment or by trustee process shown by the defendant to be available to satisfy the judgment.

In order to meet his burden of proof on this attachment motion, Plaintiff must establish that he will recover an amount equal to the value of the property he seeks to attach. *See Wilson v. DelPapa*, 634 A.2d 1252, 1255 (Me. 1993). In other words, Plaintiff “must show a greater than 50% chance of prevailing.” *See, Advisory Committee Notes* to Feb. 15, 1992 amendment of M.R. Civ. P. 4A.

Further, in order to obtain an *ex parte* attachment, Plaintiff must show that “there is clear danger that the defendant if notified in advance of the attachment of the property will conceal it or otherwise make it unavailable to satisfy a judgment.” M.R. Civ. P. 4A(g).

II. Plaintiff, Through Affidavits and Exhibits, Establishes a Strong Likelihood of Success Demonstrating Improvident Transfer of Title.

The facts presented by Plaintiff, through affidavits and exhibits, establish that it is more likely than not he will recover judgment, pursuant to Maine’s Improvident Transfer

of Title Act, thereby voiding the transfer of his home, all of his real estate, and all of his personal possessions thereon to Defendants, along with other relief.

A. Plaintiff is a Dependent Person.

Plaintiff, Leol Corson, is eighty-four (84) years old currently and was eighty-three years (83) old at the time of the transfer and hence an “elderly person” as defined by 33 M.R.S. § 1021(2). *Affidavit of Leol Corson* [hereinafter “Corson Aff.”] at ¶ 1. Plaintiff lives on a fixed income and suffers from a large number of medical conditions often associated with old age, including diabetes, ischemic heart disease, prostate and urinary issues along with balance and gait issues. *Id.* at ¶¶ 2, 3. He has recently had both knees replaced, rotator cuff surgery, gall bladder removal and had a toe amputated due to complications from diabetes. *Id.* at ¶ 4. Since the death of his wife in 2006 Plaintiff is dependent on members of his extended family for live in care, including housekeeping, driving and cooking. *Id.* at ¶ 5. Pursuant to his medical challenges and dependency on others Plaintiff is a dependent person pursuant to 33 M.R.S. § 1021(1).

B. Defendants Convinced Plaintiff to Transfer His Home and Assets to Defendants for Much Less Than Market Value.

In September of 2016 a number of the family members who had lived with Plaintiff and cared for him moved out of his home. *Corson Aff.* at ¶ 6. Defendants who are Plaintiff’s grandson-in-law and favorite granddaughter, had recently moved to Maine from Orem, Utah. *Corson Aff.* at ¶¶ 7, 8, 9, 10. Thereafter, Defendants offered to buy Plaintiff’s home at significantly less than market value by taking over the mortgage (the equity in the home, essentially, transferred for free) and promised to move in with Plaintiff and provide the care he needed to continue to live in his home. *Id.* at ¶ 11.

Defendants are within the class of those deemed to have a “confidential or fiduciary relationship” with the Plaintiff. 33 M.R.S. § 1022 (2)(A).

In November 2016 Defendant Jill Beck presented Plaintiff with a Purchase and Sale Agreement describing the transfer of his home, all of his real estate, and all of his personal possessions located on his real estate to the Defendants for \$105,000. *Corson Aff.* at ¶¶ 12 and *exhibit A* attached thereto. Plaintiff signed that agreement to transfer all of his real estate (valued by him at \$175,000) his personal property (valued by him at \$50,000) for no payment without counsel or representation by an attorney. *Corson Aff.* at ¶¶ 13, 14, 15; *Affidavit of Attorney James W. Gallagher* [Hereinafter “Gallagher Aff.”] at ¶¶ 5, 6. On December 19, 2016, Plaintiff deeded over all of his real estate, valued by the Town of Bristol at \$125,000 to Defendants, receiving no monetary payment in return. *Corson Aff.* at ¶¶ 14, 17 and *exhibit B* attached thereto. In December of 2016 everything I owned in this world was worth less than \$230,000. *Corson Aff.* at ¶ 16. This transfer of real estate and property worth far more than 10% of Plaintiff’s estate represents a major transfer for less than value pursuant to 33 M.R.S. § 1021(4).

C. Plaintiff Did Not Have Independent Counsel With Regard to His Transfer to Defendants of His Home and Personal Property.

Plaintiff did not have independent representation by counsel, per 33 M.R.S.A § 1021((3), as Attorney James W. Gallagher represented all parties to the transfer. *Corson Aff.* at ¶ 21; *Affidavit of Attorney James W. Gallagher* [Hereinafter “Gallagher Aff.”] at ¶ 7, 9. Attorney Gallagher also drafted and provided counsel to all parties regarding a “Living Arrangement Agreement” dated December 19, 2016, that was signed by Jill and Jacob Beck only. *Corson Aff.* at ¶ 21, 22 and *exhibit C* attached thereto; *Gallagher Aff.* at

¶ 8. Plaintiff, therefore had no representation by counsel regarding the Purchase and Sale Agreement and no independent representation by counsel, as defined in 33 M.R.S. § 1021(3) regarding the deed or the “Living Arrangement Agreement.”

Despite promises of care and fealty, Defendants, continued to live in a tag along trailer in a campground in Freeport, Maine, *Corson Aff.* at ¶ 18, and did not move in with and care for Plaintiff, thereby causing him to rely on his son and daughter-in-law instead for live in support and care. *Id.* at ¶ 18. In August of 2017 Defendants, through counsel, moved to evict Plaintiff’s caretakers and they were forced to move out. *Corson Aff.* at ¶¶ 19, 20. Plaintiff, unable to cook, clean, and otherwise care for himself had little choice but to follow his caretakers move into their mobile home. *Id.* at ¶ 20.

D. Defendants’ Actions Fall Squarely Within the Protections of Maine’s Improvident Transfers of Title Act, 33 M.R.S. § 1021 et seq.

The Improvident Transfer of Title Act (hereinafter “ITTA”) establishes a presumption of undue influence when an elderly person transfers property to another person in the context of a confidential relationship for less than full consideration. If the transferor successfully establishes the presumption of undue influence by a preponderance of the evidence, and the person benefitting from the transfer fails to rebut the presumption, the transferor is entitled to avoid the transfer. 33 M.R.S. § 1021; *see also McCollor v. McCollor*, 2014 ME 39, 87 A.3d 761. Here, following his wife’s death, Plaintiff was in a vulnerable position and a dependent person pursuant to the ITTA definitions and he trusted his granddaughter and grandson-in-law. This dependency resulted in the improvident transfer of almost all property of value owned by the Plaintiff, including his personal property, without independent representation of counsel, to

Defendants for less than value and therefore establishes the elements necessary under the ITTA statute.

III. Defendants' Conduct Also Satisfied Plaintiff's Remaining Counts

In addition to the statutory claim for improvident transfer, Plaintiff asserts claims for Abuse of a Confidential Relationship and Unjust Enrichment. Based on the affidavits, exhibits and averments offered by the Plaintiff he will prevail in demonstrating unjust enrichment by showing "that [Plaintiff] conferred a benefit on the other party . . . that the other party had 'appreciation or knowledge of the benefit' . . . and . . . that 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." *Forrest Associates v. Passamaquoddy Tribe*, 2000 ME 195, ¶ 14, 760 A.2d 1041, 1045-46, citing, *Howard & Bowie v. Cloutier & Briggs*, 2000 ME 148, ¶ 13, 759 A.2d 707.

Plaintiff's affidavits, exhibits and averments also demonstrate abuse of a confidential relationship by showing he placed trust and confidence in "another and there [was] a great disparity of position and influence in the relationship." See *Albert v. Albert*, 2015 ME 5, ¶ 8, 108 A.3d 388.

IV. There is a Clear Danger That the Defendants, if Notified in Advance of Attachment of the Property, Will Make it Unavailable Through Sale, Mortgage or Other Encumbrance to Satisfy a Judgment.

Despite the promises of care and support that underlay the transfer of virtually everything in the world owned by Plaintiff to Defendants, and despite the "Living Arrangement Agreement" drafted by Attorney Gallagher and signed by Jill and Jacob Beck, Defendants are currently trying to sell Plaintiff's home and are actively selling Plaintiff's possessions for cash. The home and real estate at issue is listed for sale with

Zillow and Trulia, "priced to sell" at \$139,000 with Defendants offering to pay closing costs. Affidavit of Kerstin Corson at ¶¶ 3, 4 and *exhibits A and B attached thereto*. The contents of the home at 1913 Bristol Road, including a refrigerator, freezer, classic LP records and collectible National Geographic magazines are currently for sale through on line advertisements. Affidavit of Kerstin Corson at ¶¶ 5, 6 and *exhibits C and D attached thereto*.

These listings coupled with Defendants' course of conduct thus far and lack of longstanding ties to the state of Maine create a clear danger that if notified in advance Defendants will remove the property (or its cashed out value) from the state or otherwise make it unavailable to satisfy a judgment.

V. Plaintiff Knows of No Security Available to Satisfy a Judgment in This Matter.

Plaintiff knows of no insurance, bond or other security of any form or nature, or any other attachment or trustee process, which will be available to satisfy Plaintiff's judgment against Defendants Cathy Jill and Jacob Beck in this action. *See, Plaintiff's Attorney's Affidavit*, attached hereto.

CONCLUSION

Plaintiff's Complaint and Affidavits provide the evidence necessary to meet the evidentiary requirements under M.R. Civ. P. 4A. Given that there is an urgent, present, risk of sale of the real estate and sale of the personal property at issue and that the Plaintiff is more likely than not to prevail pursuant to the Improvident Transfer of Title Act and other causes of action, this Court should grant Plaintiff's *Ex Parte* Motion for Attachment and an Order for Attachment should be granted in order to secure the property at issue in this matter.

Dated this 6th day of March, 2018



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