

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT  
DOCKET NO. BCD-CV-18-23✓

ELDAR INVESTMENTS, LLC, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 HEALTH OUTCOMES WORLDWIDE, )  
 INC., et al., )  
 )  
 Defendants. )

ORDER DENYING PLAINTIFFS'  
MOTION FOR APPROVAL OF  
ATTACHMENT AND TRUSTEE  
PROCESS

Pending before the Court is Plaintiffs Eldar Investments, LLC and Charles Sidman's motion for approval of attachment and trustee process. *See* M.R. Civ. P. 4A, 4B. Defendants Business Instincts Group, Inc. ("BIG"), Cameron Chell, and Arden Styles (collectively the "BIG Defendants") and Defendant Robert Kennedy oppose the motion. The Court heard oral argument on the motion on October 2, 2018. Erica M. Johanson, Esq. appeared for Plaintiffs, Adam S. Taylor, Esq. appeared for the BIG Defendants, and Gavin G. McCarthy, Esq. appeared for Mr. Kennedy.

### **BACKGROUND**

This case arises out of Plaintiffs' one-count Complaint alleging violation of Maine's Uniform Securities Act, 32 M.R.S. § 16509, filed on January 16, 2018 against the multiple individual and entity Defendants, all or most of whom are Canadian citizens or companies. Plaintiffs filed the instant motion concurrent with the filing of their Complaint. As a result of delays affecting service on Mr. Kennedy and multiple orders granting uncontested motions to enlarge deadlines, the instant motion was not fully briefed until August 6, 2018.

### **STANDARD OF REVIEW**

A party seeking either attachment or trustee process must show "that it is more likely than

not that the plaintiff will recover judgement, including interest and costs, in an amount equal to or greater than the aggregate sum of attachment . . . .” M.R. Civ. P. 4A(c); M.R. Civ. P. 4B(c); *Libby O'Brien Kingsley & Champion, LLC v. Blanchard*, 2015 ME 101, ¶ 5, 121 A.3d 109. Accordingly, the movant must show a greater than fifty percent chance of successfully recovering a judgment. *Richardson v. McConologue*, 672 A.2d 599, 600 (Me. 1996). “Motions for attachment must be supported by affidavit evidence.” *Lindner v. Barry*, 2003 ME 91, ¶ 5, 828 A.2d 788 (citing *Wilson v. DelPapa*, 634 A.2d 1252, 1254 (Me. 1993)). Orders for attachment and trustee process are reviewable on appeal for an abuse of discretion or clear error. *Libby O'Brien Kingsley & Champion, LLC*, 2015 ME 101, ¶ 5, 121 A.3d 109.

### DISCUSSION

The parties agree that the issue before the Court is whether Plaintiffs have demonstrated a greater than fifty percent likelihood of success on the merits through affidavit evidence. Dr. Sidman has filed three affidavits; one with his initial motion and one each in response to the opposition memoranda of the BIG Defendants and Mr. Kennedy and the assertions in the affidavits supporting those memoranda. The parties' affidavits also attach multiple exhibits. The Court has reviewed all of this material, considered the arguments of the parties, and concludes that Plaintiffs have not met their burden of showing that it is more likely than not that they will prevail on the merits.

As Plaintiffs conceded in their opening remarks to the Court at the oral argument, the affidavits of the parties are in conflict. Plaintiffs argue that the exhibits attached to Dr. Sidman's affidavits, particularly certain emails between Dr. Sidman and Defendants, demonstrate that Dr. Sidman's affidavits are more credible than those of the Defendants and lead inexorably to the conclusion that Mr. Kennedy and the BIG Defendants made misstatements or omitted a material

fact in soliciting Dr. Sidman's investment. 32 M.R.S. § 16509(3). *See Porrazzo v. Karofsky*, 1998 ME 182, ¶ 7, 714 A.2d 826 (in deciding motion for attachment "the court assesses the merits of the complaint and the weight and credibility of the supporting affidavits"). Defendants agree that the affidavits are in conflict but argue that the exhibits are at best ambiguous and suggest that the Court cannot determine that it is more likely than not that they are liable to Plaintiffs for violating 32 M.R.S. § 16509(3) on the limited record before it.

The Court agrees with Defendants' argument. The "[a]ll shareholders hold the same" language from Sidman's Exhibit B, for example, is susceptible to differing interpretations, and therefore does nothing to resolve the conflict between the affidavits. Defendants presented equally credible affidavit explanations for why the communications between the parties do not amount to a Securities Act violation and the Court cannot resolve the ambiguity at this early stage in the litigation before any discovery has occurred. In sum, Plaintiffs have failed to meet their burden of showing that it is more likely than not that they will prevail on the merits. Plaintiffs' motion must be denied.


### CONCLUSION

Based on the foregoing, the entry will be:

Plaintiffs' motion for approval of attachment and trustee process is DENIED.

The Clerk is requested to enter this Order on the docket for this case by incorporating it by reference. M.R. Civ. P. 79(a).

Dated: 10-9-2018

  
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Michael A. Duddy  
Judge, Business and Consumer Court

Entered on the Docket: 10-9-18  
Copies sent via Mail  Electronically