

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-18-573

KAILA HARRIS,

Plaintiff

v.

RUTH SWASEY,

Defendant

ORDER ON PLAINTIFF'S MOTION
FOR ATTACHMENT AND
ATTACHMENT ON TRUSTEE
PROCESS

Before the court is plaintiff Kaila Harris's motion for attachment and attachment on trustee process. M.R. Civ. P. 4A & 4B. For the following reasons, plaintiff's motion is denied.

BACKGROUND

Plaintiff alleges the following. On August 19, 2018, William Fletcher died. (Compl. ¶ 5.) Plaintiff is Mr. Fletcher's granddaughter. (Compl. ¶¶ 6-7.) Defendant is Mr. Fletcher's sister. (Compl. ¶ 12.) Mr. Fletcher executed a will in 2016 and named plaintiff as the primary beneficiary. (Compl. ¶ 9.) Mr. Fletcher executed a second will in 2018 and named defendant as the primary beneficiary. (Compl. ¶ 15.) Plaintiff also was the beneficiary of two North American Life Annuity Contracts before a change initiated by defendant in 2018. (Compl. ¶ 10.) In her complaint, plaintiff alleges defendant tortuously interfered with plaintiff's expectancy and violated the Improvident Transfers of Title Act.

PROCEDURAL HISTORY

Plaintiff filed her complaint and moved for attachment and attachment on trustee process on December 19, 2018. Defendant filed an opposition to plaintiff's motion on December 26, 2018.

¹ The 2016 will is not attached to the complaint. (Compl. ¶ 9.)

DISCUSSION

Plaintiff requests an attachment, including attachment on trustee process, of defendant's property in the amount of \$100,000 or attachment of the proceeds from North American Life Annuity Contracts 8000046814 and 8000046815. (Pl.'s Mot. 1.) Defendant claims that Mr. Fletcher obtained independent legal counsel when executing his 2018 will, which rebuts any presumption of undue influence. See 33 M.R.S. § 1022(1); Young v. Lagasse, 2016 ME 96, ¶ 9, 143 A.3d 131; (Stenbak Aff.) Defendant argues that because plaintiff has not met her burden of showing that it is more likely than not that she will recover judgment, the motion must be denied. (Def.'s Opp'n to Pl.'s Mot. 2.)

A motion for attachment may be entered "upon a finding by the court that it 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." M.R. Civ. P. 4A(c). Based on this record, plaintiff has failed to show that it is more likely than not that she will recover judgment or that she will recover an amount equal to or greater than \$100,000. Further, plaintiff does not provide the basis for the claimed amount of \$100,000 in either her complaint or her affidavit. (See Harris Aff.)

The entry is

Plaintiff's Motion for Attachment and Attachment on
Trustee Process is DENIED.

Date: February 14, 2019



Nancy Mills
Justice, Superior Court