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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-21-0028

DEVGRU FINANCIAL LLC

v.

ORDER

LADO LODOKA,
et. al.

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Before the court is Defendant's objection to the attachment of his property. On March 30, the court granted Plaintiff's Motion for Ex Parte Attachment. On April 14, the court received an objection to the Motion. The court treats the objection as a Motion to Dissolve Attachment and Attachment on Trustee Process. M.R.Civ.P. 4A(h), 4(B)(j). The Defendant has filed a response. For the reasons described below, the court dissolves the attachment and the attachment by trustee process.

The Plaintiff is alleging a fraudulent conveyance and provided a Superior Court judgment against Lado Lodoka in the amount of \$75,564.30 dated November 10, 2021. The Plaintiff also provided four deeds showing conveyances from Lodoka to Zero Fenway, LLC dated November 30. Based on these documents, the court concluded it was more likely than not Lodoka was conveying assets to an insider in order to avoid a creditor.

In their opposition, the Defendants did not dispute the existence of either the judgment or the conveyances. Instead, they argue that because Plaintiffs have a mortgage on Defendant's Horton Street property, there is sufficient security already available. They also argue that the Plaintiff has failed to establish that it is more likely than not Plaintiff will prevail.

To order an attachment, the court must find:

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 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.

M.R.Civ.P. 4A(c), 4B(c)(emphasis supplied). “The language of Rule 4A appears to place the burden on the defendant of showing the availability of sources other than attachment to satisfy some or all of the judgment likely to be recovered.” *Lyman Morse Boatbuilding Co. v. Lee*, 2011 U.S. Dist. LEXIS 83764, *6.¹

A party seeking attachment must strictly comply with the procedures prescribed by rule. *Lindner v. Barry*, 2003 ME 91, ¶ 4. Those procedures include the requirement that affidavits be submitted in support of the motion. *Id.*

In this case, the Defendant met its burden to provide *prima facie* evidence of the existence of “other security” on the Horton Street property. A mortgage is “other security” under the Rule. Defendant provided evidence that the value of the equity on the Horton Street property exceeds the value of the judgment against the Defendant. The transaction from the Plaintiff to Zero Fenway is subject to the mortgage.

Plaintiff raises substantial concerns whether the “other security” is “available.” The court finds, however, that there is insufficient information in front of the court by affidavit to conclude that the “other security” is not available.

Because the court dissolves the attachment because of the existence of “other security,” the court does not address the Defendant's argument that Plaintiff failed to meet its burden to show that it was more likely than not that they will prevail on their fraudulent conveyance action.

¹ *But see, Citizens Bank N.H. v. Acadia Group*, 2001 ME 41, ¶12 (court dissolves attachment, in part, because plaintiff did not “present reliable evidence regarding the collectability of the ‘other security.’”)

The court DISSOLVES the Attachment and Attachment by Trustee Process without prejudice to a new motion.

. This Order is incorporated on the docket by reference pursuant to M.R.Civ.P. 79(a).

DATE: Apr 30, 2021



Thomas R. McKeon
Justice, Maine Superior Court

Entered on the Docket: 04/30/21
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