Maine Supreme Judicial Court
Sitting as the Law Court

Docket No. Kno-24-538

Rachel Klotz,

Appellee,

v.

J/100 X, LLC, et al.,

Appellant.

On Appeal from the Maine
Superior Court, Knox County

Reply Brief for Appellant J/100 X, LLC

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I. Klotz's attempt to shift her evidentiary burden to J/100 X, LLC is unsupported by Rule 4A(h) and 4B(j).

Klotz insists that the motion to dissolve was properly denied because J/100 X, LLC's affidavit of filed in support of the motion was "too vague," did not state the purpose of J/100 X, LLC, and did not trace where Klotz's investments with Haley ended up if not with J/100 X, LLC. (Red Br. at 17-19.) It is well established that a motion to dissolve an ex parte attachment is treated as a contested motion for an attachment in which the party seeking the attachment—Klotz here—must prove that she is more likely than not to recover judgment in an amount greater than or equal to the attachment sought. *Portland Museum of Art v. Germain*, 2019 ME 80, ¶ 5, 208 A.3d 772; *see also* M.R. Civ. P. 4A(g), 4B(i). Once a party moves for dissolution of the attachment, the party seeking the attachment in the first instance must "justify[] any finding in the ex parte order that the moving party has challenged by affidavit." M.R. Civ. P. 4A(h).

This framework precludes Klotz's argument for three reasons. First, the ex parte order contained no specific findings of fact. Instead, it merely concluded that "it is more likely than not that Plaintiff will obtain a judgment in this action, including against . . . J 100 X, LLC . . . in an amount equal to or greater than the

aggregate sum of at least Three-Million Dollars ($3,000,000)[.]" Since there were no specific findings to challenge, no affidavit was required.

Second, even if the ex parte order's statements could be viewed as a finding, J/100 X, LLC's affidavit sufficiently challenged that finding. Consistent with the ex parte order's level of specificity, the affidavit asserted that the affiant, Mark X. Haley, II, is the sole member of J/100 X, LLC and that J/100 X, LLC was not involved in the transfers or transactions alleged in Klotz's complaint. (A. 41.) The ex parte order contained no other findings for J/100 X, LLC to challenge by affidavit.

Third, J/100 X, LLC was entitled to rely upon Klotz's failure of proof in seeking to dissolve the attachment, just as if it were opposing a motion for attachment in the first instance. As detailed in the opening brief, J/100 X, LLC contends that the ex parte attachment was improperly granted because Klotz's affidavit failed to establish a prima facie case for her various claims. In this sense, J/100 X, LLC was entitled to rely on Klotz's affidavit to support its position that her showing was insufficient to establish that she is more likely than not to recover judgment in the amount sought. To be sure, in *Sanders v. Sanders*, this Court held that a party had no burden to justify an ex parte order's findings when the party seeking to dissolve the attachment did not file an affidavit. 1998 ME 100, ¶ 7, 711

A.2d 124. But *Sanders* fails to provide any rationale for why a party seeking to dissolve an ex parte order cannot rely on the inadequacy of the plaintiff's own affidavit, just as if the motion were contested. Reading *Sanders* to impose a burden on a party seeking to dissolve an attachment is contrary to the rule that a motion to dissolve is treated the same as a contested motion for attachment. *Portland Museum of Art,* 2019 ME 80, ¶ 5. This Court should therefore clarify that challenging an ex parte order "by affidavit" may entail challenging the insufficiency of the affidavit filed by the party seeking the attachment.

II. The doctrine of piercing the corporate veil does not apply to Klotz's claims against J/100 X, LLC.

Klotz's arguments say conspicuously little about J/100 X, LLC. Understandably so: Klotz's affidavit in support of the motion for an ex parte order barely mentions J/100 X, LLC. As a workaround, Klotz argues that she need not present any specific information about J/100 X, LLC because she has asserted that the corporate veil should be pierced.

Maine's public policy is that "corporations are separate legal entities with limited liability." *Johnson v. Exclusive Props. Unlimited*, 1998 ME 244, ¶ 5, 720 A.2d 568 (quoting *Theberge v. Darbro Inc.*, 684 A.2d 1298, 1301 (Me. 1996)). Courts are thus "generally reluctant to disregard the legal entity and will cautiously do so only when necessary to promote justice." *Id.* (quoting *Anderson v. Kennebec River Pulp &*

Paper Co., 433 A.2d 752, 756 n.5 (Me. 1981)). Piercing the corporate veil ordinarily seeks to hold a shareholder liable to a third party for the acts of the corporation. *See generally Stanley v. Liberty*, 2015 ME 21, 111 A.3d 663. Klotz's argument looks to do the opposite: hold a corporate entity liable to a third party for the acts of a shareholder. Of course, if a plaintiff establishes that a member engaged in wrongful conduct in the shareholder's capacity as a corporate officer, then the corporation could be held vicariously liable. But that's not what Klotz is arguing; she believes that J/100 X, LLC should be liable for Haley's misconduct. Although not labeled as such or otherwise developed in her brief, Klotz's legal theory is known as "reverse piercing" the corporate veil.

This Court has not recognized the doctrine of reverse piercing. *McIntyre v. Nice*, 2001 Me. Super. LEXIS 71, *15-16 (Me. Super. 2001) (citing *Sturtevant v. Town of Winthrop*, 1999 ME 84, ¶ 22, 732 A.2d 264). As was observed in *Sturtevant*, "the weight of authority is against reverse piercing." 1999 ME 84, ¶ 22. The reason is well explained in *Postal Instant Press, Inc. v. Kaswa Corp.*, 162 Cal. App. 4th 1510, 1522-23 (Cal. App. 4th 2008). When it is the shareholder's own misconduct at issue, the plaintiff can simply sue the shareholder directly (as Klotz is doing to Haley) and collect against the shareholder's assets, possibly including the shareholder's interests in the subject companies. *Id.* If the concern is the

transfer of personal assets to the corporation to avoid liability, fraudulent conveyance laws already protect creditors from that evil. *Id.* Ultimately, recognizing reverse piercing as a valid doctrine in Maine would be a "radical and problematic change in standard alter ego law." *Id.* at 1521. An undeveloped record on an interlocutory appeal on a motion to dissolve attachment is the wrong mechanism to evaluate this change.

In any event, even if piercing the corporate veil was available to hold J/100 X, LLC liable for Haley's actions, Klotz still fails to establish it. A party seeking to pierce the corporate veil must prove "(1) the defendant abused the privilege of a separate corporate identity; and (2) an unjust or inequitable result would occur if the court recognized the separate corporate existence." *State v. Weinschenk*, 2005 ME 28, ¶ 19, 868 A.2d 200, 207 (internal quotations omitted). The factors to be considered on the first prong—abuse of the privilege of a separate corporate entity—are:

> (1) common ownership; (2) pervasive control; (3) confused intermingling of business activity[,] assets, or management; (4) thin capitalization; (5) nonobservance of corporate formalities; (6) absence of corporate records; (7) no payment of dividends; (8) insolvency at the time of the litigated transaction; (9) siphoning away of corporate assets by the dominant shareholders; (10) nonfunctioning of officers and directors; (11) use of the corporation for transactions of the dominant shareholders; [and] (12) use of the corporation in promoting fraud.

Johnson v. Exclusive Props. Unlimited, 1998 ME 244, ¶ 7, 720 A.2d 568, 571. The second prong is an inequitable result from recognition of the separate corporate form. *Id*. at ¶ 9, 720 A.2d at 572. "An inability to collect on a judgment does not, by itself, constitute an inequitable result." *Arandell Corp. v. Xcel Energy, Inc.*, 605 F. Supp. 2d 1118, 1133 (D. Nev. 2009) (internal quotation omitted). Rather, the "[t]he fraud or injustice must relate to the forming of the corporation or abuse of the corporate form, not a fraud or injustice generally." *Id.*

The facts in Klotz's affidavit are insufficient to show, by a preponderance of the evidence, abuse of the corporate form as to J/100 X, LLC. Although she asserts misconduct by Haley with respect to their relationship and investment discussions, this says nothing about whether the factors stated above are met as to J/100 X, LLC. And while Klotz complains that it would be "unreasonable to expect [her] to outline the separate conduct of each LLC created by Haley where she alleges that he used these LLCs in order to create a smoke screen for his conduct" (Red Br. 28), this is a motion to dissolve attachment and not a motion to dismiss. When filing a complaint, a pleader need only provide a "short and plain statement of the claim" giving "fair notice of the cause of action[.]" *Burns v. Architectural Doors & Windows*, 2011 ME 61, ¶ 16, 19 A.3d 823. So even though Klotz could not link J/100 X, LLC to Haley's allegedly fraudulent conduct, the notice pleading standard

provided some leeway for development of facts in discovery. In contrast, a party seeking a prejudgment attachment must prove that they are more likely than not to obtain judgment in an amount greater than or equal to the amount of the attachment—in other words, the party must meet an evidentiary burden. If a plaintiff cannot meet that burden, the remedy is to conduct discovery and file a motion for attachment once facts are sufficiently developed.

III. Klotz failed to present prima facie evidence of her various claims against J/100 X, LLC, or the extent of damages for which J/100 X, LLC is liable.

Klotz's brief fails to cite any evidence as to any of her claims against J/100 X, LLC. Instead, she broadly asserts that there is "competent evidence" (or other words to that effect) supporting her claims but fails to include any record citations to evidence allowing a factfinder to conclude that the elements of the various causes of action are met as to J/100 X, LLC. On Count One (conversion of $500,000), Klotz does not reference J/100 X, LLC beyond its status as a party to the case. (Red Br. 21-24.) On Count Two (conversion of $1,100,000), Klotz refers to J/100 X, LLC but fails to cite any evidence showing that J/100 X, LLC ever received any of these funds—much less the full $1.1 million allegedly transferred over the course of the relationship. (Red Br. 24-26.) On Count Four (unjust enrichment), Klotz simply makes general reference to "Defendant LLC[s]" and

announces without citation that competent evidence exists. (Red Br. 26-27.) On Count Five (fraud), Klotz describes conduct by Haley and not by J/100 X, LLC. (Red Br. 27-28.) And on Count Six (interference with advantageous economic relations), she writes that she has "clearly" demonstrated the fraud of Haley and his LLCs. (Red Br. 30.) This is not enough to demonstrate that it is more likely than not that Klotz will recover judgment on any of these theories as to J/100 X, LLC.

Klotz's brief also fails to justify the amount of the attachment. A party seeking an attachment must "make a sufficiently specific showing by providing evidence from which an 'informed projection' can be made as to the amount of damages[.]" *Wilson v. DelPapa*, 634 A.2d 1252, 1255 (Me. 1993). Klotz argues that she has incurred $1,670,000 in financial damages.[1] But this is the total amount of damages she believes she can recoup against all defendants, not the subset of her total damages for which J/100 X, LLC might be liable. Thus, this figure is not an informed projection of the extent of J/100 X, LLC's liability. Likewise, Klotz offers no evidence from which the trial court could have made an informed projection that she would recover an additional $1,330,000 in emotional distress damages and

[1] Specifically, Klotz asserts that the defendants are liable for the $500,000 short term loan, the $1.1 million in investments, and $70,000 that she thinks she would have earned on those funds but for the transfer.

punitive damages. Overall, the $3 million attachment amounts to pure guesswork as to J/100 X, LLC's liability, contrary to the requirements of Rule 4A and 4B.

Respectfully submitted,

Dated: June 30, 2025

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Certificate of Service

I hereby certify that on the date stated below I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this brief by the Court, two paper copies of this brief will be served on the following counsel.

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