STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Docket No. FRA-2025-550

DARBY SABIN

Appellant,

v.

SHAWN NEWCOMB, ET AL.

Appellees

On Appeal from the Superior Court (Franklin County)

BRIEF OF APPELLEE SHAWN NEWCOMB

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Complaint is premised on allegations that Appellant Darcy Sabin ("Ms. Sabin") did not receive an expected inheritance from the estate of her grandfather, Steven Sabin ("Mr. Sabin"), due, at least in part, to Defendant Shawn Newcomb ("Mr. Newcomb's)'s wrongful actions. (A. at 2.) The Complaint does not allege what it was that Ms. Sabin expected to inherit, or that the actions complained of were contrary to Mr. Sabin's expectations in any manner. (*Id.* at 12-15.)

Mr. Newcomb is the stepson of Mr. Sabin. (*Id.* 14 ¶¶ 11-12.) Ms. Sabin is Mr. Sabin's granddaughter; Ms. Sabin's father, Paul Sabin, predeceased her. (*Id.* at 15 ¶¶ 17-19.)

In January 2022, Mr. Sabin executed a Last Will and Testament, naming Mr. Newcomb as a co-personal representative and Ms. Sabin as a beneficiary. (*Id.* at 15 ¶¶ 20-22.) Mr. Sabin also appointed Mr. Newcomb as his agent pursuant to a power of attorney ("POA") at or about the same time. (*Id.* at 15 ¶ 23; *id.* at 38.)

The POA appointed Mr. Newcomb to act in Mr. Sabin's stead with regard to, *inter alia*, the following matters:

(i) Real Property, as defined in Section 5-934 of the Maine Uniform Power of Attorney Act, 13-C M.R.S.A. Part 9 ("MUPAA");

(ii) Banks and other Financial Institutions as defined in Section 5-938 of MUPAA.

(*Id.* at 38 ¶¶ 1, 5.)[1] The POA also granted Mr. Newcomb, *inter alia,* the following powers:

(i) To "assign, transfer, grant and convey, revocably or irrevocably, property of mine whether tangible or intangible, whether real, personal, or mixed, of any kind . . . for the benefit of such person or persons (whether or not including me or my agent) as my agent may deem appropriate."

(ii) To make gifts pursuant to Section 5-941 of MUPPA, and, in addition, to "make gifts of any property, whether real, personal or mixed . . . on such terms and conditions . . . as my agent may consider advisable or appropriate, which gifts may be made to or for the benefit of any person (including my agent) . . . ."

(iii) To create or change rights of survivorship; to create or change a beneficiary designation; to exercise fiduciary powers Mr. Sabin had the authority to delegate; and to disclaim property, all as contemplated by Section 5-931 of MUPAA;

(*Id.* at 38 ¶ 8; *id.* at 39 ¶¶ 14-15.) The POA further stated that "in the event that my agent sells or otherwise disposes of an asset specifically disposed of under a will, trust or other instrument executed by me . . . the disposition of such asset under a such will, trust or other instrument shall be adeemed, void and of no effect whatsoever, and no other asset of my estate shall be used to satisfy such disposition." (*Id.* at 40.) Finally, the POA included a provision exonerating Mr. Newcomb from liability for breach of fiduciary duty, except for any breach committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney. (*Id.*)

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[1] Documents referenced in the Complaint, along with official public documents, and documents central to a plaintiff's claim, may be considered on motion to dismiss without converting the motion into one seeking summary judgment. *Moody v. State Liquor & Lottery Comm'n,* 2004 ME 20 ¶ 11, 843 A .2d 43, 47-48.

The Complaint seeks to assert four counts. Count I seeks relief for tortious interference with an expected inheritance. Count II seeks the imposition of a constructive trust. Count III seeks relief for civil conspiracy. Count IV seeks punitive damages.

With respect to Count I, the Complaint alleges that Mr. Newcomb tortiously interfered with Ms. Sabin's expected inheritance by selling Mr. Sabin's property located at 116 Walker Road to Mr. Sabin's grandson, Owen Soucy ("Mr. Soucy"), for an amount below market value, and then depositing proceeds in a joint account held in the names of Steven Sabin, Mr. Newcomb, and Defendant Cynthia Soucy. (Compl. ¶¶ 47-57; A. at 18-20.) The Complaint also alleges that Mr. Newcomb wrongfully established investment accounts to distribute funds outside of probate. (Compl. ¶ 64; A. at 22.)[2]

Mr. Newcomb, Ms. Soucy, and Mr. Soucy each filed motions to dismiss the Complaint. (A. at 7.) By Order dated November 14, 2025, the Superior Court granted both motions. (*Id.* at 7-11.)

The Superior Court cited two grounds for dismissing Count I: (i) Ms. Sabin had failed to allege that she had any expectancy of inheriting an interest in the Property or other assets that are the subject of the Complaint, and (ii) the authority granted to Mr. Newcomb under the POA precluded Ms. Sabin from establishing liability under the

[2] The Complaint is self-contradictory with regard to the investment accounts, alleging first that Mr. Newcomb established the accounts to transfer funds to beneficiaries outside of probate. (Compl. ¶ 64; A. at 22.) But then the Complaint then goes on to allege that Mr. Newcomb was not aware as to whether beneficiaries even had been designated. (Compl. ¶¶ 67-68; A. at 22.) The Complaint also alleges that Mr. Newcomb gave Ms. Sabin funds attributable to an investment account. (Compl. ¶ 70; A. at 23.)

facts alleged. (*Id.* at 9-10.) The Superior Cout dismissed Ms. Sabin's remaining claims on the grounds that they all were dependent on the assertion of a separate, viable tort, and, therefore, could not survive given the dismissal of Coun I. (*Id.* at 10-11.) Ms. Sabin subsequently filed this appeal.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the Superior Court Err In Dismissing Count I Of The Complaint When Ms. Sabin Did Not Allege That She Expected To Inherit Any Interest The Assets That Are The Subject Of The Claims Against Mr. Newcomb, When The POA Expressly Granted Mr. Newcomb Broad Authority To Transfer Assets And Even Gift Assets To Any Person, Including Himself, When The Complaint Does Not Allege A Breach Of Any Non-Waivable Duty, And When The POA Waived Other Duties?

2. Did The Superior Court Err In Holding That The Dismissal Of Count I Of The Complaint Required Dismissal Of Counts II-IV?

LEGAL STANDARD OF REVIEW

The legal sufficiency of a complaint is reviewed *de novo*. *Meridian Medical Systems, LLC v. Epix Therapeutics, Inc.,* 2021 ME 24, ¶ 2, 250 A.3d 122, 125. The complaint is to be examined "to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* (internal quotation and citation omitted).

The complaint "must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough." *Id.* (internal quotation and citation omitted). Although courts understand that this standard is "forgiving," the complaint "must describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief." *Id.* ¶ 3, 250 A.3d at 125.

Conclusory allegations made "upon information and belief" are insufficient to state a claim in the absence of factual allegations that could support the claim. *See, e.,g., id.* at ¶ 10 n. 3, 250 A.3d at 126 n.3 (assertion made "upon information and belief" was conclusory); *Grafton & Upton Railroad Company v. Burt,* 276 N.E.3d 190, 197-98 (Mass. App. Ct. 2026) (allegation made "upon information and belief" could not support a claim in the absence of other factual allegations that could support underlying conspiracy claim).

As explained in detail below, the Superior Court did not err in dismissing the Complaint because Ms. Sabin has not alleged facts that, if proven, would entitle her to relief.

SUMMARY OF ARGUMENT

The Complaint fails to state a claim for tortious interference with an expected inheritance because it does not allege that Ms. Sabin expected to inherit any interest in any of the assets that are the subject of the Complaint. Even if the Complaint could be read to include such allegations, it still would fail to state a claim because it does not allege that Mr. Newcomb breached any non-waivable duties, and it implicates actions that (i) fell squarely within Mr. Newcomb's authority under the POA and (ii) reflected Mr. Sabin's expectations, as expressed in the POA.

The Complaint's failure to state a claim for tortious interference is fatal to the other claims and requests for relief set forth in the Complaint because those claims and requests are dependent on the proper assertion of an independent tort.

ARGUMENT

I. The Superior Court Did Not Err In Dismissing Count I Of The Complaint When Ms. Sabin Did Not Allege That She Expected To Inherit Any Interest In The Assets That Are The Subject Of The Claims Against Mr. Newcomb, When The POA Expressly Granted Mr. Newcomb Broad Authority To Transfer Assets And Even Gift Assets To Any Person, Including Himself, When The Complaint Does Not Allege Breach Of Any Non-Waivable Duty, And When The POA Waived Other Duties?

A. The Complaint Does Not Allege That Ms. Sabin Expected To Inherit an Interest In The Assets That Are The Subject Of The Claims Asserted Against Mr. Newcomb.

To succeed on a claim for tortious interference with an expected inheritance, a party must prove four elements: (i) "the existence of an expectancy of inheritance;" (ii) "an intentional interference by a defendant through tortious conduct, such as fraud, duress, or undue influence," (iii) "a reasonable certainty that the expectancy of inheritance would have been realized but for the defendant's interference;" and (iv) "damage resulting from that interference." *Morrill v. Morrill*, 1998 ME 133, ¶ 7, 712 A.2d 1039, 1041-42.

This standard requires more than mere allegations that a plaintiff expected to inherit *something* from a decedent. Rather, a plaintiff must allege a nexus between a defendant's wrongful acts and a specific inheritance or gift that the plaintiff claims s/he would have received but for those wrongful acts. *See Cote v. Cote,* 2016 ME 94, ¶ 19, 143 A.3d 117, 123 ("[t]here can be recovery only for an inheritance or gift that the other would have received but for the tortious interference of the actor.") (quoting *Plimpton v. Gerrard,* 668 A.2d 882, 886 (Me. 1995)); *Francis v. Stinson,* 2000 ME 173, ¶ 52, 760 A.2d 209, 219 (to succeed on a claim for tortious interference, a plaintiff "must prove that the defendants 'unlawfully caused the decedent to convey inter-vivos property that would have passed to [them] through the will.'") (quoting *Burdzel v. Sobus,* 2000 ME 84, ¶ 9, 750 A.2d 573, 576).

Ms. Sabin argues that this standard does not apply at the pleading stage, and that, in any event, she sufficiently has alleged an expected inheritance. Each of these arguments is misplaced.

Ms. Sabin's first argument misses the point that it is her burden to allege facts that could establish all elements of her claim, meaning it is her burden to allege that she expected to inherit a specific bequest, and that she would have but for Mr. Newcomb's wrongful acts. *Cote,* 2016 ME at ¶ 19, 143 A.3d at 123 (stating that this is required under the third element of the cause of action); *Meridian Medical Systems, LLC,* 2021 ME 24, ¶ 2, 250 A.3d at 125 (establishing the pleading standard); *Morrill,* 1998 ME 133, ¶¶ 7-9, 712 A.2d at 1041-42. Ms. Sabin has raised no such allegations.

Even if Ms. Sabin were able to prove all of the allegations in the Complaint, she could establish only that she expected to inherit *something* from Mr. Sabin. She could not establish, based on her allegations, that she had any expectancy of inheriting an interest in the Property sold to Mr. Sabin's grandson, or an interest in the proceeds of that sale, or an interest in funds deposited in investment accounts. The Superior Court committed no error in concluding that Count I of the Complaint fails to state a claim upon which relief might be granted.

B. The POA Expressly Granted Mr. Newcomb Broad Authority To Transfer Assets And Even Gift Assets To Any Person, Including Himself, The Complaint Does Not Allege A Breach Of Any Non-Waivable Duty, And The POA Waived Other Duties.

Ms. Sabin argues that the Superior Court erred in holding that the POA effectively barred the claims asserted in the Complaint. To this end, Ms. Sabin argues the her Complaint alleges breach of non-waivable duties imposed by 18-C M.R.S. § 914(1), and default duties set forth in 18-C M.R.S. § 914(2). (Appellant Brief at 16.)

As a general proposition, an agent acting under power of attorney does not breach any duty when acting in accordance with the terms of the power of attorney. *See*

Wood v. Oliveira, 2024 WL 4948459, at *1 (Me. Feb. 1, 2024); *Andriolo v. Maines*, 2007 WL 4711514, at *1 (Mass. Super. Dec. 19, 2007). Sections 5-914(1) and 5-914(2) nonetheless impose various duties on an agent when acting under a power of attorney.

Section 5-914(1) provides that an agent must (i) "act in accordance with the principal's reasonable expectation to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees," (ii) act in good faith, and (iii) act within the scope of authority granted in the power of attorney. 18-C M.R.S. § 5-914(1). Although these duties apply notwithstanding provisions in a power of attorney, it is the principal's "reasonable expectations" that are the "primary guideline for agent conduct." 18-C M.R.S. § 5-914 Uniform Comment. This reflects a "policy preference for 'substituted judgment' over 'best interest' as the surrogate decision-making standard." *Id.* In this sense, an agent's duties cannot be read outside of the context of the authority conveyed to the agent, at least to the extent a power of attorney expresses the principal's expectations. *See, id.*

Section 914(2) enumerates various duties, including, in pertinent part, the duty of loyalty, the duty to avoid conflicts of interest, a duty of care, and a duty to preserve the principal's estate plan. 18-C M.R.S. § 914(2). These waivable default duties govern an agent's conduct "[e]xcept as otherwise provided in the power of attorney." *Id.*

The Complaint does not allege a breach of the duties imposed by Section 5-914(1). For instance, there are no allegations in the Complaint that any of Mr. Newcomb's alleged wrongdoing – selling Mr. Sabin's house to Mr. Sabin's grandson at a price below market, placing the proceeds of the sale in a joint account under Mr. Sabin's name, or creating an investment account in Mr. Sabin's name – was contrary to Mr. Sabin's reasonable expectations. It does not even allege what Mr. Sabin's expectations were.

Nor does the Complaint allege a breach of the duty of good faith,[3] meaning the duty to act with "honesty in fact." 18-C M.R.S. § 5-902(4).[4] The Complaint does not, for example, allege that Mr. Newcomb sold the Property below market value to Mr. Soucy, placed proceeds in a joint account, or created an investment fund as part of a dishonest scheme to frustrate Mr. Sabin's expectations. All the Complaint alleges are acts that fell within Mr. Newcomb's authority under the POA and that were consistent with Mr. Sabin's objectives as expressed therein.

The closest the Complaint comes to attempting to allege a breach of good faith is the allegation that, "[u]pon information and belief," Mr. Newcomb and Ms. Soucy listed the Property for sale with a licensed real estate agent "to give the wrongful substantially below market [ ] sale to [Mr. Soucy] a false appearance of propriety." (Compl. ¶ 52.) This conclusory assertion crumbles under the weight of scrutiny, given that the Complaint concedes that the proceeds from the sale of the Property ended up

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[3] Or any other non-waivable duty.

[4] Bad faith "imports a dishonest purpose and implies wrongdoing or some motive of self-interest." *America v. Sunspray Condominium Ass'n,* 2013 ME 19, ¶ 15, 61 A.3d 1249, 1255.

in an account under Mr. Sabin's name.[5] It amounts to nothing more than Ms. Sabin stating "this was dishonest," without having any factual assertions to support the conclusion. Such an allegation cannot give rise to a cause of action. *Meridian Medical Systems, LLC,* 2021 ME 24, ¶ 10 n. 3, 250 A.3d at 126 n.3; *Grafton & Upton Railroad Company,* 276 N.E.3d at 197-98.

If there were a possible factual scenario under which a breach of good faith, or the obligation to act within the scope of authority under the POA, could be alleged given the authority conferred on Mr. Newcomb, and the fact that the acts complained of fall squarely within that authority, such a scenario has not been alleged. Indeed, the Complaint does not even attempt to assert a breach of the duty of good faith, a breach of Mr. Newcomb's duty to act within the scope of his authority, or a breach of any other non-waivable duty imposed by Section 5-914(1).

What the Complaint actually alleges is that Mr. Newcomb had a duty to avoid engaging in self-dealing, a duty to exercise reasonable care, and a duty to exercise his authority in a manner that did not "unnecessarily interfere" with Mr. Sabin's estate plan. (Compl. ¶¶ 26-29.) These allegations might implicate waivable default duties imposed by 5-914(2), but not the duties set forth in Section 5-914(1).

The POA leaves no serious question that the Section 5-914(1) default duties all were waived by Mr. Sabin through an exoneration clause and provisions permitting Mr.

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[5] In other words, what is the alleged dishonesty? Mr. Newcomb could have gifted the Property in its entirety. Instead, he sold it and put proceeds in an account under Mr. Sabin's name.

Newcomb to transfer property or make gifts to anyone he deemed appropriate, including himself. This dispenses with any claims based on default duties set forth in Section 5-914(2).

Read in conjunction with the POA, the Complaint does nothing more than allege that Ms. Sabin's expectation of inheriting some unidentified bequest was frustrated by Mr. Newcomb engaging in acts that were consistent with his authority and consistent with Mr. Sabin's expectations. The Superior Court committed no error in determining that the Complaint failed to state a claim upon which relief might be granted.

II. The Superior Court Did Not Err In Holding That The Dismissal Of Count I Required Dismissal Of Counts II-IV.

The failure of Count I to state a claim required dismissal of Counts II-IV. As the Superior Court properly noted, Counts II (constructive trust) and IV (punitive damages) are requests for relief, and do not assert any cause of action. *Zani v. Zani,* 2023 ME 42, ¶ 16, 299 A.3d 9, 14 ("a constructive trust is a remedy and not a substantive stand-alone claim for relief."); *Garey v. Stanford Management, LLC,* 2024 ME 46 ¶ 1 n.1, 319 A.3d 1022, 1025 ("Punitive damages are not an independent cause of action.") Civil conspiracy is a cause of action, but it is not an independent tort. *Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 1998 ME 70, ¶ 8, 708 A.2d 283, 286. When a "complaint that fails to state cognizable claim of a separate tort," a court must dismiss the civil conspiracy claim. *Maine Med. Ctr. v. Walgreen Co.*, 2025 ME 10, ¶ 29, 331 A.3d 380, 39; *see Campbell*, 1998 ME 70, ¶ 8, 708 A.2d at 286. Given the fatal infirmities of Count I, the Superior Court did not err in dismissing Counts II-IV, all of which could survive only if Count I had stated a claim upon which relief could be granted.

CONCLUSION

For the reasons set forth above, Defendant Shawn Newcomb respectfully requests that the Court affirm the Superior Court's dismissal of the Complaint, and grant such further relief as the Court deems just and appropriate.

DATED: April 27, 2026

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