STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. FRA-25-550

DARBY SABIN

Plaintiff—Appellant

v.

SHAWN NEWCOMB, CYNTHIA SOUCY, and OWEN SOUCY

Defendants—Appellees

and

MERSCORP HOLDINGS, INC., JANICE SABIN, and ESTATE OF BRADLEY P. SABIN

Parties-in-Interest

ON APPEAL FROM THE SUPERIOR COURT
FRANKLIN COUNTY
DOCKET NO. FRASC-CIV-2025-0007

BRIEF OF APPELLEES CYNTHIA SOUCY AND OWEN SOUCY

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INTRODUCTION

Darby Sabin ("Darby")[1] appeals the dismissal of her Complaint, pursuant to M.R. Civ. P. 12(b)(6), in the Superior Court (Franklin Cty., *Mills, J.*). Darby brought claims for tortious interference with an expected inheritance, constructive trust, conspiracy, and punitive damages related to the estate of her late grandfather, Steven Sabin ("Steven").

She alleges that certain relatives, Shawn Newcomb ("Shawn"), Cynthia Soucy ("Cynthia"), and Owen Soucy ("Owen"), conspired to tortiously interfere with her expected inheritance. Allegedly, Shawn and Cynthia improperly sold Steven's residence to Owen for below market value and split the proceeds instead of distributing them as part of Steven's estate. Shawn also allegedly created or changed payable-on-death investment accounts, bypassing Steven's estate.

Steven's estate plan included a power-of-attorney, however, in which Steven granted Shawn authority to make these *inter vivos* property transfers. Shawn acted within the scope of that authority.

Darby's claims for constructive trust, civil conspiracy, and punitive damages, fail because they were all dependent on her underlying claim. Darby's claims against Cynthia and Owen fail because they depend on the underlying claim. Therefore, the trial court properly dismissed Darby's complaint.

[1] No disrespect is intended by the use of the parties' first names, which solely is for ease of reference.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Darby's Complaint alleges the following facts, which must be accepted as true for the purpose of evaluating dismissal.[2] In January 2022, eighty-one-year-old Steven and his wife, Christine Sabin ("Christine"), consulted an attorney for estate planning. (Appendix ("A.") 14-15 (Compl. ¶¶ 7, 20)). The preceding summer, both Steven and Christine had started experiencing some sort of "mental decline," as illustrated by Steven asking where his son was, while on the way to the son's funeral and at other events. (*Id*. 15 (Compl. ¶ 19)).

The couple owned residential real estate at 116 Walker Hill Road, Wilton, in joint tenancy with rights of survivorship ("Residence"). (*Id*. 14-15 (Compl. ¶¶ 9-10, 14-16)). Steven had three children who survived to adulthood: Paul Sabin ("Paul"), Kelly Sabin ("Kelly"), and Janice Sabin ("Janice"). (*Id*. 4 (Compl. ¶ 8)). Paul had died in June 2021, survived by his daughter Darby. (*Id*. 15 (Compl. ¶¶ 17-18)). Steven also had two step-children, who were Christine's children from a prior relationship: Shawn and Cynthia. (*Id*. 14 (Compl. ¶¶ 11-12)).

As part of his estate plan, Steven executed a Law Will and Testament, which noted the death of Steven's son, Paul, and named Darby to take her father's place. (*Id*. 15 (Compl. ¶¶ 21-22)).

[2] *Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 2, 250 A.3d 122, 125.

In the will, Steven nominated his daughter, Janice, and his step-son, Shawn, as co-personal representatives of his estate. (*Id*. (Compl. ¶ 21)). Steven also executed a medical power-of-attorney, naming his step-daughter, Cynthia, as his agent. (*Id*. 16 (Compl. ¶ 24)).

Additionally, Steven's estate plan included a Durable Financial Power of Attorney ("POA"), in which he named Shawn as his agent. (*Id*. 15 (Compl. ¶¶ 21, 25)). In the POA, Steven expressly authorized Shawn to transfer any interest in a broad array of Steven's property, including real estate, financial accounts, estates, trusts, and other beneficial interests. (*Id*. 38).[3]

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[3] The POA stated in pertinent part the following:

> I . . . appoint Shawn . . . as my Agent, having full authority to act for me and in my name, place and stead, in any and all of the following matters . . . .
>
> 1. Real Property . . . .
>
> . . . .
>
> 3. Stocks and Bonds . . . .
>
> 4. Commodities and Options . . . .
>
> 5. Banks and other Financial Institutions . . . .
>
> . . . .
>
> 8. Estates, Trusts, and Other Beneficial Interests . . . and my agent has the authority to create, amend, revoke or terminate an inter vivos trust, and my agent has the authority to assign, transfer, grant and convey, revocably or irrevocably, property of mine whether tangible or intangible, and whether real, personal, or missed, of any kind, wherever situated, which I may now or hereafter own or become entitled to upon such uses, trusts and conditions for the benefit of such person or persons (whether or not including me or my agent) as my agent may deem appropriate naming as trustee or trustees such person, persons, corporation or association, including my agent, as my agent may consider advisable; to add to, withdraw or direct the distribution of funds from, any trust under whose terms I might do so;

In the POA, Steven also authorized Shawn to dispose of assets specifically devised or bequeathed under a will, voiding the grant in the will.[4] (*Id*. 40). Additionally, the POA included an exoneration clause:

> I hereby exonerate my agent 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*.).

> to agree or refuse to agree to the modification of the terms of or the termination of any trust of which I am the settlor . . . .
>
> . . .
>
> 14. Gifts . . . and my agent has the authority to make gifts of any property, whether real, personal or mixed, outright or in trust 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) considered by my agent to be an object of my bounty . . . and whether or not any such gift is consistent with . . . any will or testamentary substitute executed by me before or after the date hereof.
>
> 15. . . . I hereby grant to my agent the authority to create, change rights of survivorship; to create or change a beneficiary designation; to delegate authority granted under this and any other power of attorney; to waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; to exercise fiduciary powers that the principal has authority to delegate; and to disclaim property, including a power of appointment.
>
> 16. Without in any way limiting the aforesaid powers or any of them by implication or otherwise, I give to my agent the power of authority to do and perform all other acts, matters or things whatsoever not specifically mentioned herein as fully in every respect as I, myself, could if personally present and competent, and I hereby ratify and confirm all that my agent shall do or cause to be done by virtue of this power of attorney.

(A. 38-39).

[4] The POA stated in relevant part as follows:

> In the event that my agent sells or otherwise disposes of an asset specifically disposed under a will . . . executed by me before or after the date of these presents, the disposition of such asset under such will . . . shall be adeemed, void and of no effect whatsoever, and no other asset of mine or of my estate shall be used to satisfy such disposition.

(*Id*. 40).

In August 2022, Christine moved from the Residence to an assisted living facility. (*Id*. 16 (Compl. ¶ 30)). Steven continued to live at the Residence, cared for by "various family members," including Darby, Cynthia, and Janet. (*Id*. (Compl. ¶ 32)). Nearly one year later, at the end of June or early July 2023, Steven also moved into the assisted living facility. (*Id*. 17 (Compl. ¶ 38)). Soon after, Cynthia's son, Owen, moved into the Residence. (*Id*. 18 (Comp. ¶ 39)).

Christine died in February 2024, at which point her ownership interest in the Residence passed to Steven by virtue of their joint tenancy. (*Id*. 18 (Compl. ¶¶ 45-46)). On or about March 4, 2024, Shawn, acting as Steven's agent pursuant to the POA, listed the Residence for sale with a real estate agent or broker, with a list price of $225,000. (*Id*. (Compl. ¶ 47)). On or about March 29, 2024, Shawn conveyed the Residence to Owen for $105,000, which allegedly was below fair market value. (*Id*. 19 (Compl. ¶¶ 49-50)). Shawn deposited the proceeds from the residential sale into a bank account that was jointly titled to Steven, Shawn, and Cynthia. (*Id*. 20 (Compl. ¶¶ 56-57)). Steven died in June 2024. (*Id*. 20 (Compl. ¶ 58)). Upon his death, the residential sale proceeds in the joint account passed to the surviving account holders, Shawn and Cynthia. (*Id*. 20 (Compl. ¶ 57)).

At some point after accepting his appointment as agent under the POA, and prior to Steven's passing, Shawn had also "setup certain investment accounts held by Steven . . . to transfer to beneficiaries outside of probate upon Steven['s] . . .

death." (*Id.* (Compl. ¶ 64)). Darby received $7,000 from one such account. (*Id*. 23 (Compl. ¶ 70)).

Darby alleges that Shawn, Cyntha, and Owen "conspired . . . with the intention of tortiously interfering with [her] . . . expectancy of inheritance," and they "acted with actual malice . . . or . . . their actions were so outrageous that malice . . . should be implied." (*Id*. 24 (Compl. ¶¶ 76-77). In March 2025, Darby filed a four-count Complaint against Shawn, Cynthia, and Owen, alleging claims for tortious interference with an expected inheritance, constructive trust, civil conspiracy, and punitive damages. (*Id*. 4). Shawn, Cynthia, and Owen moved to dismiss Darby's Complaint. (*Id*. 26-64).

In an Order entered in November 2025, the Superior Court (Franklin County, *Mills, J.*) granted Shawn, Cynthia, and Owen's respective Motions to Dismiss, without prejudice, pursuant to M.R. Civ. P. 12(b)(6), concluding that Darby had not sufficiently plead the elements of her tortious interference claim insofar as she failed to establish the nature and extent of her expected inheritance and she failed to show that she would have inherited the property absent their interference. (*Id*. 9-10). Darby's failure to establish that foundational tort claim, in turn, prevented her from supporting her derivative claims for constructive trust, civil conspiracy, and punitive damages. (*Id*. 10-11). This appeal followed. (*Id*. 6).

STATEMENT OF THE ISSUES

I. Ms. Sabin failed to plead the first necessary element of a claim for tortious interference with an inheritance, the existence of an expectancy of inheritance.

II. Ms. Sabin failed to plead the third necessary element of a claim for tortious interference with an inheritance, a reasonable certainty that the expectancy of inheritance would have been realized but for the defendant's interference.

III. The trial court correctly concluded that dismissal of Ms. Sabin's tortious interference claim resulted in dismissal of her other, derivative claims.

IV. There are reasons other than those cited by the trial court for dismissal of Ms. Sabin's complaint. (de novo review & harmless error doctrine) no allegations of fraud or undue influence. Even if Newcomb acted wrongfully, Soucy's did not.

STANDARD OF REVIEW

The facts alleged in a complaint should be pled in short, plain statements, sufficient to support each element of a claim. M.R. Civ. P. 8(a); *Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 28, 250 A.3d 122, 129. A motion to dismiss pursuant to M.R. Civ. P. 12(b)(6) tests the legal sufficiency of the complaint.[5] *Hamilton v. Greenleaf*, 677 A.2d 525, 527 (Me. 1996).

The legal sufficiency of a claim is a question of law, reviewed *de novo*. *Hamilton*, 677 A.2d at 527; *Meridian Med. Sys.*, 2021 ME 24, ¶ 2, 250 A.3d at 125. The Court "examines the complaint in the light most favorable to the plaintiff 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." *Meridian Med. Sys.*, 2021 ME 24, ¶ 2, 250 A.3d at 125.

Although the pleading 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.*, at ¶ 3, 250 A.3d at 125. Thus, a plaintiff may not proceed to litigate a cause of action if the plaintiff's complaint "has failed to allege facts with sufficient

[5] Dismissal is proper when the complaint fails to "state a claim upon which relief can be granted." M.R. Civ. P. 12(b)(6).

particularity so that if true, the facts would satisfy the elements of a cause of action." *Id*., at ¶ 2, 250 A.3d at 125.

Merely reciting the elements of a claim is insufficient. *Id*. Conclusory allegations, including those made "upon information and belief," are insufficient to avoid dismissal if a plaintiff fails to allege specific facts to make out a claim. *Id.*, at ¶ 10 n. 3, 785 A.3d at 126 n. 3. Additionally, the Court is not bound to accept the legal conclusions stated in a complaint. *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166, 1171. "Even ordinary notice pleading requires sufficient specificity to show why conduct is actionable." *Meridian Med. Sys*., 2021 ME 24, ¶ 47, 785 A.3d at 134.

ARGUMENTS

I. Darby Sabin failed to plead the first necessary element of a claim for tortious interference with an inheritance, the existence of an expectancy of inheritance.

The elements of a claim for tortious interference with an expectancy in an inheritance are as follows:

> (1) the existence of an expectancy of inheritance; (2) an intentional interference by a defendant through tortious conduct, such as fraud, duress, or undue influence; (3) a reasonable certainty that the expectancy of inheritance would have been realized but for the defendant's interference; and (4) damage resulting from that interference.

Cote v. Cote, 2016 ME 94, ¶ 12, 143 A.3d 117, 121.

One need not "prove that one is a beneficiary in the will or that one has been devised the particular property at issue," but in order to mitigate the danger of courts enforcing unduly attenuated claims, this cause of action is limited to claims in which the claimant demonstrates "to a *reasonable degree of certainty* that the bequest or devise would have been in effect at the time of the death of the testator." *Plimpton v. Gerrard*, 668 A.2d 882, 886 (Me. 1995) (citing Restatement (Second) of Torts 744B, cmt. d, at 59 (1979)) (emphasis added). Thus, even when a claimant establishes that she is a descendent of a testator, she nevertheless has the burden of proving "the source, nature and extent of the expected inheritance." *Morrill v. Morrill*, 1998 ME 133, ¶ 8, 712 A.2d 1039, 1042.

The trial court correctly concluded that Darby failed to plead an expectancy of inheritance "given the discretion the POA gave" to Shawn. (A. 9). On appeal, Darby argues that, in accordance with the holding of *Morrill v. Morrill*, 679 A.2d 519, 521 (Me. 1996), she sufficiently alleged her testamentary expectancy by alleging that she was the testator's grandchild and that she was a beneficiary in his will. (Appellant's Brief, at 13-14). Darby further contends that she complied with the holding in *Morrill*, 1998 ME 133, ¶ 8, 712 A.2d at 1042, because she "went much further than necessary in establishing the nature and extent of her interrupted inheritance." (*Id*., at 14). It is Darby, not the trial court, who misapplies the *Morrill* line of cases.[6]

The pleading deficiency is not that Darby was the testator's granddaughter, or that she was designated in his will both as a named beneficiary and by virtue of an anti-lapse statute, or that the testator had owned valuable real estate and financial accounts. On the contrary, limited to this information, she might have successfully pled an expected inheritance.

Her pleadings contained additional information, however, which undermined her claimed expectancy of inheritance. Steven's estate plan included the POA, in

[6] Darby also argues that the standards set forth in the *Morrill* line of cases do not apply at the pleading stage. (Appellant's Br. 14). However, a 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." *Meridian Med. Sys.*, 2021 ME 24, ¶ 2, 250 A.3d at 125.

which he authorized Shawn to dispose of his real property, financial accounts, estates, trusts, and other beneficial interests. The pleadings are devoid of any mention of Steven's intentions or expectations, other than as expressed in his POA. The pleadings do not allege that any particular property was specifically bequeathed in his will, but the POA authorized Shawn to dispose of such property as well.

Darby argues in a circular fashion that she could have expected to inherit the property but for wrongful interference. (Appellant's Brief 13-14). Contrary to her contentions, an expected inheritance must exist before it can be interfered with. The issue of causation is addressed below, but as a threshold matter, Shawn was authorized to convey *inter vivos* property that could otherwise have passed through Steven's will to Darby, and Shawn could have done so without breaching any legal duties to Steven or to Darby. Darby's allegations do not establish the existence of an expectancy of inheritance. Consequently, the trial court correctly dismissed her Complaint on these grounds.

II. Darby Sabin failed to plead the third necessary element of a claim for tortious interference with an inheritance, a reasonable certainty that the expectancy of inheritance would have been realized but for Shawn Newcomb's interference.

After correctly concluding that Darby had failed to establish an expectancy of inheritance, the trial court further determined that she had failed to plead that she would have inherited the property absent interference, reasoning that the plain language of the POA authorized Shawn to dispose of the property as he did. (A. 10). "There can be recovery only for an inheritance or gift that the other would have received but for the tortious interference of the actor." (*Id*. (citing *Cote*, 2016 ME 94, ¶ 19, 143 A.3d at 123 (quoting *Plimpton*, 668 A.2d at 886)).

It is not clear from the trial court's Order whether it reasoned that the property dispositions cannot serve as the "but for" cause of a loss of an expected inheritance because they were proper under the POA or because, even if they were considered as improper for purposes of the dismissal analysis, essentially identical, legitimate property dispositions were authorized by the terms of the POA and could have taken place. Put another way, one cannot prove that an expected inheritance would have been realized absent interference, when even without such interference, the property could have, and very well might have been lawfully transferred. Either way of interpreting the trial court's reasoning would dictate dismissal of Darby's Complaint. The second interpretation would lead to this conclusion even if Darby had sufficiently pled intentional interference, which she did not do. As a result, the trial court properly relied on these grounds for dismissing Darby's Complaint.

III. Under 18-C M.R.S. 5-914 and 5-915, Shawn Newcomb did not breach any fiduciary duties while acting as Steven Sabin's agent under the POA.

Both at the trial level and on appeal, Darby has accepted the validity of the POA,[7] and instead she has argued that Shawn breached duties owed by an agent to a principal pursuant to 18-C M.R.S. § 5-914.[8] (Appellant's Br. 15-16). Under the

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[7] Neither at the trial level nor on appeal has Darby argued intentional interference through the use of undue influence to procure the POA. Undue influence is "unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relationship between them is justified in assuming that that person will not act in a manner inconsistent with his welfare." *Cote*, 2016 ME 94, ¶ 14, 143 A.3d at 121.

A presumption of undue influence arises when the existence of a confidential relationship between two parties has been established. *Id*. A confidential relationship exists where (1) an individual placed trust and confidence in the defendant; and (2) there was a great disparity of position and influence in the relationship. *Id*. Therefore, "a finding of great disparity of position and influence remains a necessary prerequisite to a determination that a confidential relationship exists, even where the parties are related." *Sylvester v. Benjamin*, 2001 ME 48, ¶ 8, 767 A.2d 297, 300.

Darby's allegations do not establish that a confidential relationship existed between Steven and Shawn, which enabled Shawn to exert undue influence in procuring the POA. Shawn was Steven's stepson and Steven was elderly when he executed the POA, but there is no indication of a great disparity of position and influence between them. At most, Darby insinuates a disparity of position and influence by alleging that Steven was experiencing "mental decline." Although this alleged mental decline must be treated as true for purposes of evaluating the sufficiency of the Complaint, the allegation does not credibly establish the nature or extent of Steven's mental decline or that it brought Steven under Shawn's dominion. Darby does not allege that Shawn persuaded Steven to grant any particular scope of authority in the POA—or to even execute the POA.

Darby's other allegations overwhelmingly contradict such a disparity. Unlike the presumption of a confidential relationship found in *Cote*, there is no allegation that Shawn chose Steven's estate planning attorney, brought Steven to the attorney, or paid for the attorney. *C.f.*, 2016 ME 94, ¶ 15, 143 A.3d at 122. There is likewise no allegation that Steven depended on Shawn for care, transportation, and management of his finances. *Id*. There is no allegation that Shawn limited Darby's, or anyone else's, ability to spend time with Steven and learn information about his wellbeing. *Id*. Shawn was only nominated as a co-personal representative in Steven's will.

On the contrary, Steven went to an attorney for the preparation of the POA. Steven lived independently in his Residence for over a year after executing the POA. When Steven started to need in-home care, it was provided by various family members, including Darby. The facts alleged do not create a presumption that Steven procured the POA by undue influence.

[8] In asserting breach of duties contained in the POA, Darby is essentially arguing that she established the second element of a claim for tortious interference with an expected inheritance, requiring "an

Maine Uniform Power of Attorney Act, Title 18-C of the Maine Revised Statutes, Article 5, Part 9 ("Act"), subsection 5-914(1) imposes mandatory duties that *canno*t be waived, while subsection 5-914(2) imposes default duties that *can* be waived.

A. Shawn Newcomb did not breach any of the non-waivable, mandatory duties set forth in Subsection 5-914(1).

Subsection 5-914(1), entitled "Minimum mandatory duties," states as follows:

> Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:
>
> A. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and otherwise act as a fiduciary under the standards of care applicable to trustees as described under Title 18-B, sections 802 to 807 and Title 18-B, chapter 9;[9]
>
> B. Act in good faith; and
>
> C. Act only within the scope of authority granted in the power of attorney.

18-C M.R.S. § 5-914(1). The principal's "reasonable expectations" are the "primary guideline for agent conduct." *Id.*, § 5-914 Uniform Cmt. This reflects a

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intentional interference through tortious conduct, such as fraud, duress, or undue influence." *Cote*, 2016 ME 94, ¶ 12, 143 A.3d at 121.

[9] Subsection 914(1)(A) incorporates section 802 of the Maine Uniform Trust Code, which in turn provides that "[a] trustee shall administer the trust solely in the interest of the beneficiaries." (18-B M.R.S. § 802(1)). However, a trustee has no such duty if "[t]he transaction was authorized by the terms of the trust." (*Id.*, at § 802(2)(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.

The allegations in Darby's Complaint do not establish breaches of the mandatory duties set forth in subsection 5-914(1). With regard to subsection 5-914(1)(A), there is no mention of Steven's expectations or of Shawn's knowledge of them— other than the language of the POA itself. Subsection 5-914(1)(A) includes a fiduciary duty to act in the principal's best interest as if the agent was a trustee, but a trustee would have no such duty regarding transactions authorized by the terms of the trust. 18-B M.R.S. § 802(1), (2)(A); 18-C M.R.S. § 5-914(1)(A); § 5-914 Uniform Cmt. (describing mandatory duties as "acting in accordance with the principal's reasonable expectations, if known, and otherwise in the principal's best interest" and then separately describing the duty of "good faith"). As a result, there is no suggestion that Shawn failed to act in accordance with Steven's reasonable expectations to the extent actually known or that Shawn failed to act in Steven's best interest in the sense that Shawn acted in a manner not authorized by the terms of the POA.

Moreover, regarding subsection 5-914(1)(C), all of Shawn's actions— even those that Darby characterizes as tortious— were within the scope of authority that Steven granted to Shawn in the POA. With no allegations concerning Steven's expectations and no allegations that Shawn's actions were outside the scope of authority granted in the POA, the only other mandatory duty left is the duty to act in "good faith." 18-C M.R.S. § 5-914(1)(B).

The duty to act in good faith is not a duty to act in the principal's best interest. As discussed above, the duty to act in the principal's best interest is contained in the previous subsection 5-914(1)(A), and there is no such duty with regard to transactions authorized by the terms of the POA. Nor is the duty to actin in good faith a duty of loyalty or a duty to avoid self-dealing, both of which are waivable duties under subsection 5-914(2), which will be addressed below.

Instead, as applied to agent conduct, the duty of good faith merely requires honesty. *Id*., at § 5-902(4) (defining "good faith" as "honesty in fact"). In fact, the Act permits a principal to exonerate the agent provided the agent's actions are not "committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney." 18-C M.R.S. § 5-915(1).[10]

[10] Darby seems argues that the inclusion of this exoneration clause in the POA is inappropriate, because it "arguably waives or limits, to some extent, some of the fiduciary duties listed in 18-C § 5-914(2)." (Appellant's Br. 16 (quoting A. 40)). Firstly, a POA provision relieving an agent of liability for breach of duty except for those "committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney" is specifically authorized by 18-C M.R.S. § 5-915(1).

Secondly, as already explained above, the default duties listed in subsection 5-914(2) are expressly waivable. By referencing the limiting language set forth in Subsection 5-915(1), the POA emphasizes Steven's intention to exonerate Shawn of liability for all but the bare minimum duties mandated by the statutory scheme. As already discussed, above, Steven did not breach any of those mandatory duties.

At worst, Darby alleges that "[u]pon information and belief," Shawn and Cynthia listed the real estate for sale "to give the wrongful substantially below market [] sale to [Owen] a false appearance of propriety." (A. 19 (Compl. ¶ 52)). Conclusory allegations made "upon information and belief" cannot support a claim in the absence of factual allegations that could support the claim. *Meridian Med. Sys.*, 2021 ME 24, ¶ 10, 250 A.3d at 126 n.3. Aside from the lack of personal knowledge, this factual allegation falls short of breaching an agent's duty of good faith owed to a principal.

Shawn did not have to create a false appearance of propriety. He did not engage in dishonesty. As a matter of law, improper motive cannot inspire actions that were authorized by the terms of the POA. At the risk of belaboring the point, Shawn could not have acted dishonestly or with improper motive, given that Steven had authorized him in the POA to sell the Residence for below market value, to anyone, and to keep a share of the proceeds after Steven's death, and creating or modifying investment accounts in Steven's name, without regard to the best interests of Steven or any other person, and without regard to the provisions of Steven's will.

Finally, Darby makes the bald assertions that Shawn, Cyntha, and Owen "conspired . . . with the intention of tortiously interfering with Darby['s] . . . expectancy of inheritance" and that they "acted with actual malice . . . or . . . their actions were so outrageous that malice . . . should be implied." These statements are either mere recitals of the elements of claims or legal conclusions, neither of which can survive a motion to dismiss. *Am. v. Sunspray Condo. Ass'n*, 2013 ME 19, ¶ 13, 61 A.3d 124, 125; *Seacoast Hanger Condo. II Ass'n*, 2001 ME 112, ¶ 16, 775 A.2d at 1171. As a result, Darby has not alleged that Shawn breached any non-waivable duties.

B. The POA did not include the waivable, default duties contained in Subsection 5-914(2).

In contrast to the aforesaid non-waivable duties, other statutory duties *can* be waived. Subsection 5-914(2), entitled "Default duties," states that an agent must act in accordance with various duties, such as to act loyally, to avoid conflicts of interest, and to attempt to preserve the principal's estate plan *"[e]xcept as otherwise provided in the power of attorney*." *Id.*, § 5-914(2) (emphasis added).[11] The broad discretion that Steven delegated to Shawn in the POA contradicted and, thus, waived these default duties.

[11] As explained in the statutory comment, these default duties may be modified or omitted by the principal. (18-A M.R.S. § 5-914, at Uniform Cmt.).

IV. The trial court correctly concluded that dismissal of Darby Sabin's tortious interference claim resulted in dismissal of her other, derivative claims.

As the trial court also correctly concluded, Darby's claims against Cynthia and Owen fail because they depend on Darby's expectancy and Shawn's authority to transfer property under the POA. As a result, the trial court correctly dismissed her Complaint on these grounds.[12]

Furthermore, the trial court dismissed Darby's claims for constructive trust, civil conspiracy, and punitive damages, because they were all dependent on her underlying claim for tortious interference with an expected inheritance. (A. 10-11). This result is well established under Maine law. (*Zani v. Zani*, 2023 ME 42, ¶ 16, 299 A.3d 9, 14; *Garey v. Stanford Mgmt., LLC*, 2024 ME 46, ¶ 1 n.1, 319 A.3d 1022, 1025; *Me. Med. Ctr. v. Walgreen Co.*, 2025 ME 10, ¶ 29, 331 A.3d 380, 389).

CONCLUSION

For the foregoing reasons, together with those reasons that the Court may find persuasive, Defendants/Appellees Cynthia Soucy and Owen Soucy respectfully request that the Court affirm the Superior Court's dismissal of

[12] Furthermore, Cynthia and Owen incorporate by reference the arguments they made to the trial court in their respective Motions to Dismiss. (A. 43-64).

Plaintiff/Appellant Darby Sabin's Complaint and grant such further relief as the Court deems just and appropriate.

Dated at Augusta, Maine, this 5th day of May, 2026.

/s/ L. Dennis Carrillo

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