

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
LOCATION: PORTLAND
DOCKET NO. BCD-CV-18-27

FREDERICK J. POOR,)
ET AL)
)
Plaintiffs)
)
v.)
)
ROBERT K. LINDELL, JR.,)
ET AL)
Defendants)

ORDER DENYING MOTION TO
RELEASE ATTACHED FUNDS

On May 4, 2018, the District Court granted the Plaintiffs' Motion for Ex Parte Attachment and Trustee Process, and approved attachment and attachment on trustee process against Defendants in the amount of \$3,000,000. On June 12, 2018, Defendant Robert Lindell filed a Motion to Stay. On June 20, 2018, Defendant Barbara Gray filed a Motion to Dissolve Attachment, which included the Affidavit of Barbara Gray. Defendant Robert Lindell did not file any such motion or affidavit seeking dissolution or modification of the attachment. On July 10, 2018, this case was accepted for transfer to the Business and Consumer Docket. A hearing was held on August 24, 2018 (at which Lindell appeared, representing himself), following which the Court denied Lindell's Motion to Stay, and granted Gray's Motion to Dissolve Attachment.

On August 29, 2018, Lindell filed a Motion to Release Attached Funds to Pay for Criminal Defense Attorney. Lindell did not include an affidavit with his Motion.

Plaintiffs timely opposed the Motion, Lindell replied, and Lindell's Motion to Release is now fully briefed.

Lindell has filed what he calls a Motion to "Release," but he has not previously or currently actually moved to dissolve or modify the attachment. Thus the attachment is in full force and effect. M.R. Civ. P. 4A does not provide a mechanism to request or order release of funds properly attached. Since Rule 4A does not contemplate such a proceeding, Lindell is not entitled to a hearing,¹ and his Motion is denied.

Even if Lindell's Motion is construed as a Motion to Dissolve or Modify, the result is no different. In order to be entitled to a hearing under Rule 4A(h), a Defendant must include with his Motion an affidavit challenging the findings of the ex parte attachment order. M.R. Civ. P. 4A(h). A Defendant's failure to challenge by affidavit means the Plaintiff has no burden to justify any finding in the ex parte order, which in turn means there is no reason or purpose for holding a hearing. See Beesley v. Landmark Realty, Inc., 464 A.2d 936, 937 (Me. 1983)(by failing to challenge by affidavit the findings of the ex parte order, defendant was precluded from challenging the findings at the hearing on the motion to dissolve); see also Levine v. Keybank Nat'l Ass'n, 2004 ME 131, ¶¶ 11 & 12, 861 A.2d 678, 682 (defendant failed to challenge by affidavit any of the findings in the ex parte order); Sanders v. Sanders, 1998 ME 100, ¶ 7, 711 A.2d 124, 126-127 (defendant did not challenge the findings by affidavit, therefore plaintiff had no burden to justify them).

¹ The Court may in its discretion rule on a motion without a hearing. M.R. Civ. P. 7(b)(7). Since there are no reasonable grounds for the Court to consider granting Lindell's Motion, the Court decides the motion without a hearing.

Further, even if Lindell's Motion is itself construed to be an affidavit or declaration, which it is not, the result is still no different. The facts alleged in Lindell's Motion to Release are extraneous to the findings justifying the ex parte order of attachment. The legal argument contained in the Motion also fails to address or challenge any of the findings on which the ex parte order is based. For all of these reasons, Lindell is not entitled to a hearing, and his Motion is denied.

So Ordered.

Pursuant to M.R. Civ. P. 79(a), the Clerk is instructed to incorporate this Order by reference on the docket for this case.

October 1, 2018.

_____/s_____
Michael A. Duddy
Judge, Business and Consumer Docket