STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 4, 2017]

AMERICANS UNITED FOR LIFE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2016-2900**
	:	
THE LEGION OF CHRIST OF NORTH AMERICA, INC., OCEAN PASTORAL CENTER, INC. d/b/a THE LEGION OF CHRIST (RI) INCORPORATED, THE LEGION OF CHRIST, INCORPORATED, LEGION OF CHRIST INCORPORATED, MATER ECCLESIAE, INC. (MOTHER OF THE CHURCH, INC.), HOMBRE NUEVO (RI), INC. (NEW MAN (RI), INC.), OVERBROOK, INCORPORATED, PASTORAL SUPPORT SERVICES INC., LEGIONS OF CHRIST, LEGION OF CHRIST AND CONSECRATED REGNUM CHRISTI MEMBERS ASSISTANCE FOUNDATION, and LEGION OF CHRIST COLLEGE, INC.,[1]	:	
	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court is Defendants'—The Legion of Christ North America, Inc., (Legion of Christ) et al. (Defendants)—Motion to Dismiss Plaintiff Americans United for

[1] According to both Defendants and Americans United for Life, this caption contains some minor typographical inconsistencies. Although the caption remains unchanged from that provided in the Complaint, Defendants submit the following corrected list: The Legion of Christ North America, Inc.; Ocean Pastoral Center Inc. f/k/a The Legion of Christ (RI) Incorporated; The Legion of Christ Incorporated; Legion of Christ, Incorporated; Mater Ecclesiae Inc. (Mother of the Church, Inc.) f/k/a Mater Ecclesiae, Inc. (Mother of the Church, Inc.); Hombre Nuevo (RI), Inc. (New Man (RI), Inc.); Overbrook, Incorporated; Pastoral Support Services Inc.; Legion of Christ and Consecrated Regnum Christi Members Assistance Foundation; and Legion of Christ College, Inc.

Life's (Americans United for Life) Complaint pursuant to Rule 12 of the Rhode Island Superior Court Rules of Civil Procedure. Americans United for Life advances several claims against Defendants, including fraud, undue influence, tortious interference with expectation of inheritance, and civil conspiracy. The Court has jurisdiction pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14.

I

Facts and Travel

On May 18, 2008, Mrs. Gabrielle D. Mee, a devout Catholic, passed away. Throughout her lifetime, Mrs. Mee was exceptionally generous, specifically to organizations that she believed were committed to advancing the moral teachings of her faith. Two of those organizations—Americans United for Life and the Legion of Christ—are currently before this Court. Americans United for Life is a pro-life, nonprofit, public interest organization located in Washington, D.C. The Legion of Christ—one of the many named Defendants in this action—is an order of the Catholic Church with which Mrs. Mee became familiar in the late 1980s. In addition to giving substantial gifts to these two organizations during her lifetime, Mrs. Mee also sought to provide for them beyond her death, bequesting different gifts to each as exhibited in the several versions of her will. The apparent changes in Mrs. Mee's testamentary intent, as reflected by the multiple iterations of her will, form the basis of Americans United for Life's claims. To provide context to this lawsuit, the Court will briefly summarize other recent litigation surrounding Mrs. Mee's estate.[2]

[2] Although not wholly necessary to decide the present motion, Americans United for Life's involvement in Mrs. Mee's estate is well-known to the Court. See Americans United for Life v. Estate of Mee, No. PP-16-1451, 2016 WL 5957196 (R.I. Super. Oct. 7, 2016) (hereinafter AUL I). For a detailed account of the factual background of Mrs. Mee's relationship with the Legion

In 1991, Mrs. Mee executed a will in which she directed that ninety percent of her estate go to the Legion of Christ and that the remaining ten percent go to Americans United for Life. Compl. ¶ 44. However, in 1995, Mrs. Mee executed a codicil that revoked her ten percent gift to Americans United for Life and directed that her entire estate go to the Legion of Christ. Id. at ¶ 45. In 2000, Mrs. Mee executed her final will, which revoked the 1991 will and 1995 codicil, named Father Anthony Bannon, a member of the Legion of Christ, as her estate's executor, and directed that her entire estate go to the Legion of Christ.[3] During this period of time, Mrs. Mee also had several trusts, which she used to benefit the Legion of Christ. Id. at ¶¶ 37, 39-42. In 2009, after Mrs. Mee's passing, Father Bannon petitioned the Smithfield Probate Court to admit the 2000 will that named the Legion of Christ as the estate's sole beneficiary. A year later, the Smithfield Probate Court admitted the 2000 will to probate. The probate court's admission of the 2000 will to probate culminated in the Rhode Island Supreme Court's decision in Dauray v. Mee, 109 A.3d 832 (R.I. 2015)—a will contest brought by Mrs. Mee's niece, Mary Lou Dauray, which was dismissed for lack of standing.

In December 2013, while the Dauray case was pending in the Rhode Island Supreme Court, Americans United for Life received a phone call from Ms. Dauray's attorney alerting it to its interest as a ten-percent beneficiary of Mrs. Mee's estate under the 1991 will. AUL I, 2016 WL 5957196, at *2. Based on that phone call, on March 14, 2014, Americans United for Life

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of Christ, see Dauray v. Estate of Mee, Nos. PB-10-1195, PB-11-2640, PB-11-2757, 2012 WL 4043292 (R.I. Super. Sept. 7, 2012).

[3] In 2002, Mrs. Mee executed a codicil naming Father Christopher Bracket of the Legion of Christ as successor executor of her estate. Compl. ¶ 48.

moved to intervene in Ms. Dauray's appeal.[4] Id. However, the Rhode Island Supreme Court denied the motion to intervene on May 21, 2014. Id.

The Rhode Island Supreme Court issued its decision in Dauray on February 6, 2015. On August 19, 2015, Father Bannon filed an affidavit with the Smithfield Probate Court seeking to close Mrs. Mee's Estate. AUL I, 2016 WL 5957196, at *2. Less than one month later, on September 3, 2015, the Smithfield Probate Court closed her estate. Id. Subsequently, in a second effort to contest the validity of Mrs. Mee's 2000 will, Americans United for Life petitioned to reopen Mrs. Mee's estate and probate the 1991 will entitling the organization to ten percent of her estate. Id. at *3. The Smithfield Probate Court denied that petition, a decision with which this Court concurred in a reasoned decision. Id. at *3, *7.

In the case at bar, Americans United for Life asserts a bevy of allegations against Defendants, which primarily focus on the Legion of Christ's founder and former General

[4] The Court takes notice of certain dates relevant to the current action. Although the Court is generally confined to the four corners of the complaint when reviewing a motion to dismiss, Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008), the Court is also empowered to "consider . . . the 'facts extractable from documentation annexed to or incorporated by reference in the complaint and matters susceptible to judicial notice.'" R.I. Res. Recovery Corp. v. Van Liew Trust Co., No. PC-10-4503, 2011 WL 1936011, at *5 (R.I. Super. May 13, 2011) (quoting Roy v. General Elec. Co., 544 F. Supp. 2d 103, 107 (D.R.I. 2008) (quoting Jorge v. Rumsfeld, 404 F.3d 556, 559 (1st Cir. 2005))). The Court is mindful that it cannot consider documents that were not incorporated into and attached to the complaint. See Bowen Court Assoc. v. Ernst & Young, LLP, 818 A.2d 721, 726 (R.I. 2003). However, the dates and general facts arising from AUL I and Dauray are "matters susceptible to judicial notice." See R.I. Res. Recovery Corp., 2011 WL 1936011, at *5. Pursuant to Rule 201 of the Rhode Island Rules of Evidence, "at any stage of the proceeding" the Court may take notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." R.I. R. Evid. 201 (b), (f). This includes dates from prior court records, as here where the parties are the same, see AUL I, 2016 WL 5957196, at *1, and readily ascertainable dates from the Dauray court records. Cf. Curreri v. Saint, 126 A.3d 482, 485 (R.I. 2015) (stating that "a court may take judicial notice of court records . . . 'that cannot be reasonably disputed'") (quoting In re Michael A., 552 A.2d 368, 370 (R.I. 1989)); see also R.I. R. Evid. 201.

Director, Father Marcial Maciel Delgollado (Father Maciel).[5] Mrs. Mee was introduced to Father Maciel sometime in the late 1980s after her husband passed away. Compl. ¶ 19. After she met Father Maciel, Mrs. Mee began making substantial gifts to the Legion of Christ. Id. at ¶ 22. For example, in 1989 Mrs. Mee gave the Legion of Christ a $1,000,000 gift, followed by a $3,000,000 gift in 1991. Id. at ¶ 22. In 1991—the same year Mrs. Mee executed a will benefitting Americans United for Life—Mrs. Mee expressed to Father Maciel that she wanted to become a consecrated woman in Regnum Christi, an organization under the control of the Legion of Christ. Id. at ¶ 25. One requirement to become a consecrated woman is to take a vow of poverty. Id. at ¶ 26. Regnum Christi specifically required that consecrated women donate half of their assets to the Legion of Christ after fifteen years, with all remaining assets donated after twenty-five years. Id. Moreover, in addition to having set requirements regarding age and years of study, Regnum Christi required consecrated women to promise that all of their future earnings would go to the Legion of Christ. Id. at ¶¶ 26-27.

In November of 1991, Mrs. Mee became a consecrated woman. Id. at ¶ 27. She was able to do so after Father Maciel waived the age and years of study requirements. Id. She then moved to the Regnum Christi facility in Wakefield, Rhode Island. Id. at ¶ 30. In 1996, due in part to Mrs. Mee's donations, the Legion of Christ bought a new facility in Smithfield, Rhode Island, where Mrs. Mee and the other consecrated women moved. Id. at ¶ 32. According to the allegations in Americans United for Life's Complaint, from the late 1980s to the time of her passing in 2008, Father Maciel and Defendants exercised significant influence over Mrs. Mee

[5] These facts reflect a brief recitation of Americans United for Life's allegations. See Palazzo, 944 A.2d at 149 (explaining that when reviewing a motion to dismiss, "th[e] Court examines the allegations contained in the plaintiff's complaint, assumes them to be true, and views them in the light most favorable to the plaintiff").

through a pattern and practice of concealing from her communications from the outside world, including restricting her from access to news media. Id. at ¶ 33.

Father Maciel, who led the Legion of Christ from its founding in the 1940s until 2005, led a sordid life. Id. at ¶¶ 20-21. In the late 1990s, during the time when Mrs. Mee was living in the Regnum Christi facility, a news article and subsequent Vatican-led investigations publically revealed that Father Maciel was, among other things, a serial sexual abuser. Id. at ¶¶ 61-63, 83. In May of 2010, after Father Maciel had died, the Vatican issued a scathing report regarding his gross misconduct. Id. at ¶ 86. Due to the influence of the Legion of Christ and other Defendants, Mrs. Mee was unaware of these allegations. Id. at ¶¶ 33, 76, 89. Based on her varying testamentary wishes, however, had Mrs. Mee known of Father Maciel's behavior, she may have severed ties with the Legion of Christ—including removing the Legion of Christ from the 2000 will. Id. at ¶¶ 87-89.

According to Americans United for Life, Mrs. Mee placed a great deal of trust in Defendants and their members, even giving to Father Bannon power of attorney over her financial affairs. Based on this trusting relationship, Americans United for Life alleges that Mrs. Mee was induced into giving millions of dollars in gifts to Defendants—namely the Legion of Christ—during her lifetime and in her will. For Americans United for Life, Defendants' long-term tortious efforts extinguished Americans United for Life's ten percent interest in Mrs. Mee's estate under the 1991 will and reduced the assets in Mrs. Mee's estate.

On June 22, 2016, Americans United for Life filed the present lawsuit.

II

Standard of Review

"The 'sole function of a motion to dismiss is to test the sufficiency of the complaint.'" Martin v. Howard, 784 A.2d 291, 297 (R.I. 2001) (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). In testing the sufficiency of the complaint, the "'Court assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.'" Id. at 297-98 (quoting St. James Condo. Ass'n. v. Lokey, 676 A.2d 1343, 1346 (R.I. 1996)); see also Palazzo, 944 A.2d at 149. Our Supreme Court has long adhered to the rule that "no complaint will be deemed insufficient unless it is clear beyond a reasonable doubt that the plaintiff will be unable to prove his right to relief [.]" Bragg v. Warwick Shoppers World, Inc., 102 R.I. 8, 12, 227 A.2d 582, 584 (1967). Accordingly, a motion to dismiss "should not be granted 'unless it appears to a certainty that [the plaintiff[]] will not be entitled to relief under any set of facts which might be proved in support of [its] claim.'" Martin, 784 A.2d at 298 (quoting St. James Condo. Ass'n, 676 A.2d at 1346).

III

Discussion

In its Complaint, Americans United for Life, as a prior beneficiary under Mrs. Mee's 1991 will, asserts claims of fraud, undue influence, tortious interference with expectation of inheritance, and civil conspiracy against Defendants. Americans United for Life also requests injunctive relief in the form of a constructive trust. Much of the argument in this case has centered on Americans United for Life's third count, tortious interference with expectation of inheritance. Although the Rhode Island Supreme Court has not yet addressed whether such a claim is cognizable under Rhode Island law, see Henry v. Sheffield, 856 F. Supp. 2d 345, 350

(D.R.I. 2012), Americans United for Life argues that the Legion of Christ and other Defendants tortuously interfered with its expected ten percent inheritance through means of fraud and undue influence. Americans United for Life includes those same means of fraud and undue influence as separate causes of action in its Complaint. In addition, Americans United for Life asserts that Defendants engaged in a civil conspiracy to tortiously remove Americans United for Life from Mrs. Mee's 1991 will and divert financial assets from Mrs. Mee to Defendants during her lifetime.

In moving to dismiss each of those claims, Defendants argue that: (1) tortious interference is not a cognizable cause of action under Rhode Island law; (2) even if this Court were to recognize it, Americans United for Life has not pled or alleged that it lacked an adequate remedy in the Probate Court—a required showing by many courts that have recognized this claim; (3) any claim of fraud against Defendants fails as a matter of law because such a claim belonged to Mrs. Mee not to Americans United for Life; (4) undue influence, without more, is not an independent cause of action; and (5) because each of those allegations fail to state a claim for which the law provides relief, there is no tortious conduct on which Americans United for Life can base its civil conspiracy claim. In addition, Defendants ask this Court to dismiss Americans United for Life's claim for injunctive relief, because they argue that too does not assert an independent cause of action.

The Court will address each of Americans United for Life's claims in turn.

A

Fraud

Americans United for Life alleges that Father Maciel and other representatives of Defendants engaged in knowing and intentional fraudulent behavior to induce Mrs. Mee to give

millions of dollars in gifts, both in life and after her death. Compl. ¶¶ 90-96 (Count I). Defendants argue that any claim of fraud relating to Mrs. Mee and the Legion of Christ belonged to Mrs. Mee or her estate, not to Americans United for Life. Under Rhode Island law, "[t]o establish a prima facie fraud claim, 'the plaintiff must prove that the defendant made a false representation intending thereby to induce [the] plaintiff to rely thereon and that the plaintiff justifiably relied thereon to his or her damage.'" McNulty v. Chip, 116 A.3d 173, 182-83 (R.I. 2015) (alteration in original) (quoting Parker v. Byrne, 996 A.2d 627, 634 (R.I. 2010)); see also Women's Dev. Corp. v. City of Cent. Falls, 764 A.2d 151, 160 (R.I. 2001). "[I]t is well-established that claims such as fraud or duress must be 'brought by the one imposed upon or by some duly appointed person acting on his behalf.'" R.I. Hosp. Trust Nat'l Bank v. Boiteau, 119 R.I. 64, 68, 376 A.2d 323, 326 (1977) (quoting Dolan v. Dolan, 78 R.I. 12, 20, 78 A.2d 367, 371 (1951)).

Here, Americans United for Life's fraud claim, as alleged, is not brought by Mrs. Mee—the person on whom the fraud was allegedly committed. See Compl. ¶¶ 91-92. Nor is the claim brought by a "duly appointed person acting on [her] behalf," such as the executor of her estate. See R.I. Hosp. Trust Nat'l Bank, 119 R.I. at 68, 376 A.2d at 326. In other words, the fraud claim alleged in this Complaint belonged to Mrs. Mee or the representative of her estate, not to Americans United for Life. See id.; Compl. ¶¶ 90-96. Americans United for Life does not allege that Defendants made any false representation to it or its members; rather, Americans United for Life alleges that Father Maciel and other members of the Legion of Christ made fraudulent representations to and concealed facts from Mrs. Mee. See Compl. ¶¶ 91-92. Moreover, Americans United for Life is not a duly authorized representative of Mrs. Mee or her estate. Based on the allegations contained in the Complaint, Americans United for Life does not have a

cognizable fraud claim against Defendants. See R.I. Hosp. Trust Nat'l Bank, 119 R.I. at 68, 376 A.2d at 326.

Accordingly, the Court dismisses Count I of Americans United for Life's Complaint for failure to state a claim for which the law provides relief. See Martin, 784 A.2d at 298; R.I. Hosp. Trust Nat'l Bank, 119 R.I. at 68, 376 A.2d at 326; Super. R. Civ. P. 12(b)(6).

B

Undue Influence

In Count II of its Complaint, Americans United for Life sets forth a claim for undue influence. Compl. ¶¶ 97-104. Americans United for Life argues that Defendants—primarily through Father Maciel and other members of the Legion of Christ—unduly influenced Mrs. Mee into (1) altering the 1991 will to revoke her gift to Americans United for Life, and (2) gifting millions of dollars to the Legion of Christ. According to Americans United for Life, Defendants were able to unlawfully exert control over Mrs. Mee based on the confidential and trusting nature of her relationship with Father Maciel.

However, as the Rhode Island Supreme Court has explained, "'there is no tort of undue influence, and there is no right to damages . . . because of such influence.'" Lavoie v. N. E. Knitting, Inc., 918 A.2d 225, 229 (R.I. 2007) (quoting 2 Dan B. Dobbs, Dobbs Law of Remedies § 10.3 at 658 (2d ed. 1993)) (citing Cyr v. Cote, 396 A.2d 1013, 1019 n. 7 (Me. 1979)) ("[U]ndue influence . . . [is] simply the means by which the alleged interference occurred"). Applying this clear-cut rule, the Court dismisses Count II of Americans United for Life's Complaint because undue influence is not an independent claim upon which relief can be granted. See Lavoie, 918 A.2d at 229; Super. R. Civ. P. 12(b)(6).

C

Tortious Interference with Expectation of Inheritance[6]

At the heart of Americans United for Life's lawsuit is its claim of tortious interference with expectation of inheritance. Compl. ¶¶ 105-111 (Count III). Indeed, the parties have spilled much ink and dedicated many pages to this thought-provoking area of law. The crux of Americans United for Life's case is that Defendants used means of fraud and undue influence to cause Mrs. Mee to amend the 1991 will, revoke the gift to Americans United for Life, and make the Legion of Christ her estate's sole beneficiary. According to Americans United for Life, by engaging in such conduct, Defendants tortiously interfered with its expectation of inheritance—ten percent of Mrs. Mee's estate. However, the Rhode Island Supreme Court has yet to address whether a cause of action exists for tortious interference with expectation of inheritance. This Court now takes up the mantle to determine for the first time whether such a claim is cognizable under Rhode Island law.

As a threshold matter, the Court must address whether recognizing tortious interference with expectation of inheritance is merely a natural extension of the common law or is the creation of an entirely novel cause of action. It is well-understood that Rhode Island's legal system is based on the common law. See State v. Lead Indus. Ass'n, Inc., 951 A.2d 428, 445-46 (R.I. 2008); Gorman v. Budlong, 23 R.I. 169, 49 A. 704, 707 (1901) (recognizing that the "common law is the foundation of our system"), overruled on other grounds by Sylvia v. Gobeille, 101 R.I. 76, 79, 220 A.2d 222, 224 (1966). As the Rhode Island Supreme Court has stated: "Law consists not only of legislative enactments, but also of certain principles, norms,

[6] For purposes of clarity, although this tort is referred to in slightly different ways throughout the jurisdictions that recognize it, the Court will refer to the tort as "tortious interference with expectation of inheritance." Other iterations include "tortious interference with inheritance" or "tortious interference with expectancy of inheritance."

and causes of action that have evolved over centuries as 'the common law.'" Lead Indus. Ass'n, Inc., 951 A.2d at 436 n.4. As such, the common law jurisprudence in this state is subject to incremental changes, rooted in reason and judgment, informed by precedent and public interest. See id. at 445; 15A Am. Jur. 2d Common Law § 2; see also Matarese v. Matarese, 47 R.I. 131, 131, 131 A. 198, 200 (1925). However, the Court's flexibility to mold and incrementally advance the natural evolution of the common law is not unbounded. See Lead Indus. Ass'n, Inc., 951 A.2d at 436.

When considering the slow-changing contours of the common law, the Court must exercise restraint to avoid stepping beyond its powers and into the legislative realm. See id. Although the Rhode Island Supreme Court "recognize[s] the need for such incremental changes, like most courts, [it] [is] 'particularly loath to indulge in the abrupt abandonment of settled principles and distinctions that have been carefully developed over the years.'" Id. at 445-46 (citation omitted). The "Court is bound by the law and can provide justice only to the extent that the law allows"—a restraint that prevents a judge from "'roaming at will in pursuit of his own ideal of beauty or of goodness.'" Id. (quoting Benjamin N. Cardozo, The Nature of the Judicial Process 141 (1921)). Therefore, "[i]n recognition of this philosophy," id., the Rhode Island Supreme Court has "consistently [] adhered to 'principles of judicial restraint [that] prevent [courts] from creating a cause of action for damages in all but the most extreme circumstances.'" Id. (quoting Bandoni v. State, 715 A.2d 580, 595 (R.I. 1998)). "After all, the judiciary's 'duty [is] to determine the law, not to make the law." Id. (quoting City of Pawtucket v. Sundlun, 662 A.2d 40, 57 (R.I. 1995)).

Thus, there are essentially two options that Americans United for Life's claim for tortious interference with expectation of inheritance presents. On one hand, if the Court determines that

recognizing tortious interference with expectation of inheritance would create an entirely new cause of action—one requiring a legislative remedy—it should only do so if these facts present "the most extreme circumstances." See Lead Indus. Ass'n, Inc., 951 A.2d at 436. On the other hand, if the Court finds that this tort is merely an extension of the common law, the Court is empowered to recognize the tort without a finding of extreme circumstances or dismissal for want of a legislative remedy. See id.; see, e.g., Mallette v. Children's Friend & Serv., 661 A.2d 67, 71 (R.I. 1995) (extending common law principles to recognize negligent misrepresentation in the adoption context).

Here, the Court finds that recognizing tortious interference with expectation of inheritance is a natural extension of the common law, not a creation of an entirely new cause of action. Tracing our Supreme Court precedent with respect to tortious interference generally, this Court finds compelling the law of jurisdictions in surrounding states coupled with our own approach to tortious interference and the common law. In 1934, the Rhode Island Supreme Court, for the first time, recognized tortious interference with contractual relations. See Local Dairymen's Coop. Ass'n, Inc. v. Potvin, 54 R.I. 430, 173 A. 535, 536 (1934) (holding that "[i]t is unquestioned that it is an actionable tort for an outsider to deliberately and maliciously interfere with the contractual relations of another"); Smith Dev. Corp. v. Bilow Enters., Inc., 112 R.I. 203, 208, 308 A.2d 477, 480 (1973). In recognizing tortious interference with contractual relations as a valid claim for relief, the Rhode Island Supreme Court cited case law from surrounding jurisdictions. See Potvin, 54 R.I. at 430, 173 A. at 536 (collecting cases). Since then, the Rhode Island Supreme Court has repeatedly affirmed tortious interference with contractual relations as a viable cause of action. See, e.g, Belliveau Bldg. Corp. v. O'Coin, 763 A.2d 622, 627 (R.I.

2000); Smith Dev. Corp., 112 R.I. at 208, 308 A.2d at 480. However, the evolution of tortious interference continued.

In 1982, the Rhode Island Supreme Court recognized the existence of tortious interference with prospective contractual relations. See Fed. Auto Body Works, Inc. v. Aetna Cas. & Sure. Co., 447 A.2d 377, 380 (R.I. 1982). When the Court acknowledged the existence of "a right to recover for interference with a prospective contractual relation," it did so in recognition of the fact that it had not yet adopted such a remedy. Id. Although the Court declined to find that the elements of that tort had been satisfied on the facts before it, the Court cited with approval to the Restatement (Second) of Torts § 766B. Id. at 380 n.4. In 1986, the Rhode Island Supreme Court went one step further, adopting tortious interference with prospective contractual relations in full. See Mesolella v. City of Providence, 508 A.2d 661, 669-70 (R.I. 1986). Stating that it "ha[d] previously recognized the existence of this tort in Federal Auto Body Works, Inc. v. Aetna Casualty & Sure. Co., 447 A.2d 377 (R.I. 1982) [,]" our Supreme Court clarified the elements of the tort, and noted that they were "identical to those required to state a claim based on tortious interference with contractual relations, except for the requirement in the latter than an actual contract exist." Id. Thus, for a second time, the Rhode Island Supreme Court incrementally extended the common law—this time providing a broader remedy for plaintiffs with prospective, not just actual, contractual relations. See id.

Nearly half of the states across the country have adopted some form of the tort of tortious interference with expectation of inheritance. See Umsted v. Umsted, 446 F.3d 17, 20 (1st Cir. 2006) (stating that "at least 23 states have recognized some form of the tort") (citing Diane J. Klein, A Disappointed Yankee in Connecticut (or Nearby) Probate Court: Tortious Interference With Expectation of Inheritance—A Survey With Analysis of State Approaches in the First,

Second, and Third Circuits, 66 U. Pitt. L. Rev. 235, 240 n.10 (2004)). The United States Supreme Court has noted that the tort is "widely recognized." Marshall v. Marshall, 547 U.S. 293, 312 (2006). Within the First Circuit, both Massachusetts, see Lewis v. Corbin, 195 Mass. 520, 526-27, 81 N.E. 248, 249-50 (1907), and Maine, see Cyr, 396 A.2d at 1018, recognize tortious interference with expectation of inheritance. Maine takes what is perhaps the most expansive view of the tort, while Massachusetts follows a more limited approach. See Klein, supra at 264-65. As noted above, Rhode Island has not yet had occasion to consider the tort. Henry, 856 F. Supp. 2d at 350.

According to the Restatement (Second) of Torts § 774B, "[o]ne who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift." The notes following § 774B provide that tortious interference with expectation of inheritance "represents an extension to a type of noncontractual relation of the principle found in the liability for intentional interference with prospective contracts stated in § 766B." Restatement (Second) of Torts, § 774B, cmt. a. Indeed, the Rhode Island Supreme Court has cited § 766B—the common law theory on which tortious interference with expectation of inheritance lies—with approval. See Fed. Auto Body Works, Inc., 447 A.2d at 380; see Restatement (Second) of Torts, § 774B, cmt. a. Based on the natural evolution of tortious interference throughout Rhode Island's last century of jurisprudence coupled with the tort's "widely recognized" nature, see Marshall, 547 U.S. at 312, this Court finds that tortious interference with expectation of inheritance is a natural extension of the common law, now ripe for recognition in Rhode Island.

In recognizing tortious interference with expectation of inheritance under Rhode Island law, the Court is aware that Rhode Island's probate structure is "a comprehensive statutory scheme designed to secure the expeditious and conclusive settlement of estates and quieting of titles." Umsted, 446 F.3d at 21 (citing Lind v. McSoley, 419 A.2d 247, 249 (R.I. 1980); Thompson v. Hoxsie, 25 R.I. 377, 55 A. 930, 931 (R.I. 1903)). Although the Rhode Island Supreme Court has cautioned against the adoption of entirely new causes of action unless presented with "the most extreme circumstances," see Lead Indus. Ass'n, Inc., 951 A.2d at 436, this tort is a mere reflection of common law principles recognized in neighboring jurisdictions—not the novel creation of a judicial remedy. See, e.g., Allen v. Hall, 974 P.2d 199, 205 (Or. 1999) (explaining that tortious interference with expectation of inheritance is an "appropriate extension of the tort of intentional interference with economic relations"); see also Restatement (Second) Torts § 774B, cmt. a. In other words, recognizing tortious interference with expectation of inheritance is not the creation of an entirely new cause of action, nor is it an "enormous leap"; instead, it is "[]consistent with the widely recognized principle that the evolution of the common law should occur gradually, predictably, and incrementally." Cf. Lead Indus. Assoc., Inc., 951 A.2d at 454; see, e.g., Allen, 974 P.2d at 205.

Nor is tortious interference with expectation of inheritance in direct conflict with Rhode Island's compressive probate statutory scheme. "A tort claim does not become a will contest simply because it arises out of facts relating to the making or unmaking of a will." Allen, 974 P.2d at 204. As one court has explained:

> "A successful tort action results in a judgment against the defendant for money damages, not a determination of the validity of a particular will or other testamentary result. The legal differences between a will contest and the tort are far-reaching. The tort, an action at law, allows compensatory and punitive damages.

> "[I]n addition to the differing focus of the proceedings and the testator's intent versus the plaintiff's injury[,][i]n a tort action[ ] the plaintiff . . . files an in personam action against the alleged tortfeasor. In probate, even in a will contest involving proponents and opponents of a particular testamentary plan, the proceeding to determine the proper distribution of the testator's probate property is in rem. A tort action can result in a judgment against the defendant, as the alleged tortfeasor, to be paid from his personal assets. A probate proceeding determines what will happen to the assets in the testator's probate estate." Munn v. Briggs, 185 Cal. App. 4th 578, 586-87, 110 Cal. Rptr. 3d 783, 789 (2010) (alterations in original) (citations omitted) (internal quotation marks omitted).

Therefore, a claim for tortious interference with expected inheritance is distinct from a will contest. See id.

Tortious interference with expectation of inheritance is merely a natural extension of Rhode Island law with respect to tortious interference with actual and prospective contractual relations. See Mesolella, 508 A.2d at 669-70; Fed. Auto Body Works, Inc., 447 A.2d at 380; Smith Dev. Corp., 112 R.I. at 208, 308 A.2d at 480; Potvin, 54 R.I. at 430, 173 A. at 536; see also Allen, 974 P.2d at 204. Therefore, while mindful of its role in our system of government and cautious of overstepping its bounds in light of principles of judicial restraint, the Court now holds that tortious interference with expectation of inheritance is a cognizable claim under Rhode Island law.

However, though such a cause of action is cognizable under Rhode Island law, two courts that have commented on this issue—the First Circuit and the United States District Court for the District of Rhode Island—have found that if "'Rhode Island [] adopt[ed] . . . a cause of action for tortious interference with an expectancy of inheritance, . . . [it] would not lie where an adequate statutory remedy is available but has not been pursued.'" Henry, 856 F. Supp. 2d at 350 (quoting Umsted, 446 F.3d at 22). In Umsted, the plaintiff grandchildren sued their uncle for "tortiously

inducing [their grandmother] to make [an] inter vivos conveyance of [] ocean-front property and depleting the size of her estate." 446 F.3d at 19. In Henry, the plaintiff grandchildren sued their uncle and lawyer for tortiously interfering with their inheritance by omitting their father, and thus their inheritance, out of their grandfather's trust. 856 F. Supp. 2d at 348-50. In both cases the courts concluded that G.L. 1956 § 33-18-17 provided the plaintiffs with an adequate statutory remedy, thus barring their respective claims of tortious interference with expectation of inheritance. Umsted, 446 F.3d at 24; Henry, 856 F. Supp. 2d at 351.

Section 33-18-17 provides, in pertinent part:

> "If an administrator, executor, or guardian shall be requested by any person legally interested in the estate of a deceased person . . . to commence an action or proceeding to recover any property, personal or real, which the legally interested person may have reason to believe should be recovered for the benefit of the estate, and if the administrator, executor, or guardian shall, for fifteen (15) days after written notice so to do . . . refuse, neglect or for any reason be incompetent, to commence the action or proceeding, the legally interested person may institute proceedings in the name of the estate of the deceased person . . . in the same manner and to the same extent as the administrator, executor, or guardian may do in the case of personal property, and in the case of real estate in the same manner as a guardian, devisee, or heir at law may do, to recover the property."

"This provision creates an express right for 'any person legally interested in the estate of a deceased person' to 'recover any property, personal or real . . . [that] should be recovered for the benefit of the estate.'" Umsted, 446 F.3d at 23 (alteration in original) (quoting § 33-18-17). As the First Circuit has explained, even if Rhode Island's probate courts lack the power to hear a § 33-18-17 action, "[n]othing in §33-18-17 limits the forum within which a legally interested person may bring an action to recover real or personal property." Id. "Moreover, '[w]hile R.I. Gen. Laws § 33-18-17 permits an interested beneficiary to sue 'in the name of' an estate, it does not convert such a suit into a suit by the estate.'" Henry, 856 F. Supp. 2d at 351 (alteration in

original) (quoting Haffenreffer v. Coleman, C.A. No. 06-299T, 2007 WL 2972575, at *4 (D.R.I. Oct. 10, 2007)).

This Court concurs with the First Circuit's reasoning in Umsted and holds that a claim for tortious interference with expectation of inheritance is unavailable when an adequate statutory remedy was available but not pursued. See Umsted, 446 F.3d at 22. Such a holding is consistent with the position of courts across the country. See Garruto v. Cannici, 936 A.2d 1015, 1022 (N.J. Super. Dec. 21, 2007) (listing myriad cases that hold that tortious interference with expectation of inheritance "is unavailable when an adequate probate remedy exists"). Furthermore, the Court's position is in keeping with the well-settled "public policy of this state [that] favors the prompt settlement of decedents' estates." In re Tetreault, 11 A.3d 635, 644 (R.I. 2011) (citing Ranalli v. Edwards, 98 R.I. 394, 399, 202 A.2d 516, 519 (1964)). Thus, although a claim for tortious interference with expectation of inheritance is cognizable under Rhode Island law, such a claim is unavailable to plaintiffs who had an adequate statutory remedy but failed to pursue it. See Umsted, 446 F.3d at 24; Henry, 856 F. Supp. 2d at 351.

Here, Americans United for Life does not fall within that category of potential plaintiffs who had an adequate statutory remedy available in the probate court yet failed to pursue it. See Umsted, 446 F.3d at 24; Henry, 856 F. Supp. 2d at 351. Other courts which have considered tortious interference with expectation of inheritance have concluded that the tort should only be recognized where the facts make it necessary. See, e.g., Munn, 185 Cal. App. 4th at 582, 110 Cal. Rptr. 3d at 785. On this basis, Defendants have argued that Americans United for Life had an adequate remedy by way of a will contest to challenge the validity of the 2000 will and admit the 1991 will followed by an action under § 33-18-17 to recover property for the benefit of the estate. However, for the reasons discussed below, this remedial path was inadequate for

Americans United for Life and the facts as alleged compel this Court to recognize its claim for tortious interference with expectation of inheritance.

With respect to the adequacy of a will contest, Americans United for Life took two distinct actions to challenge the validity of the 2000 will. As this Court has previously explained, Americans United for Life did not have actual notice of its interest in Mrs. Mee's 1991 will until December of 2013. AUL I, 2016 WL 5957196, at *6. Shortly thereafter, Americans United for Life moved to intervene in the Dauray litigation challenging the validity of the 2000 will and the designation of the Legion of Christ as the estate's sole beneficiary. Id. at 2. However, that motion was denied. Id. Later, albeit after the Smithfield Probate Court closed Mrs. Mee's estate in September of 2015, Americans United for Life petitioned to reopen the estate for the specific purpose of challenging the validity of the 2000 will. Id. at *3. That attempt was also denied, this time on the grounds that Americans United for Life had constructive notice of the probate proceedings and the time to assert its rights in Mrs. Mee's estate had passed. Id. at *6. But, unlike a will contest, a claim for tortious interference does not close with the closing of an estate—it is a separate action, aimed not at recovery from the estate but from the tortfeasors. See Munn, 185 Cal. App. 4th at 586-87, 110 Cal. Rptr. 3d at 789. Americans United for Life—in moving to intervene in the Dauray litigation and petitioning the Smithfield Probate Court to reopen the estate—attempted to contest the 2000 will with the intent of thereafter probating the 1991 will. AUL I, 2016 WL 5957196, at *2-3. Therefore, even if a will contest provided Americans United for Life with an adequate remedy,[7] Americans United

[7] To successfully contest the 2000 will's validity and establish its ten percent interest under the 1991 will, Americans United for Life would have had to follow a rather circuitous path. Indeed, to succeed on a will contest, it appears that Americans United for Life would have needed to dispute the validity of three documents—the 2002 codicil, the 2000 will, and the 1995 codicil—in addition to successfully getting the 1991 will admitted to probate.

for Life pursued it prior to suing for tortious interference with expectation of inheritance. See Umsted, 446 F.3d at 24; Henry, 856 F. Supp. 2d at 351.

Moreover, § 33-18-17 did not provide an adequate statutory remedy for Americans United for Life. First, Americans United for Life's interest in Mrs. Mee's estate is too remote to be considered a legal interest under §33-18-17. Rhode Island law does not provide a statutory definition of "legally interested person" under § 33-18-17, and only a few cases have addressed the statute. However, in each of those cases the court found that the plaintiffs had clear legal interests in the respective estates. See Umsted, 446 F.3d at 23 (legatees under the operative will); Henry, 856 F. Supp. 2d at 350 (legatees under the operative will as well as status as intestate heirs); Haffenreffer, 2007 WL 2972575, at *3-4 (principal beneficiary of the estate). Unlike those plaintiffs, Americans United for Life has no direct interest in Mrs. Mee's estate.[8] Because it was not a legally interested person in Mrs. Mee's estate, Americans United for Life could not properly bring a § 33-18-17 action. Importantly, even if this Court held otherwise, any property Americans United for Life recovered under § 33-18-17 would go to the Legion of Christ as the sole beneficiary of Mrs. Mee's estate, not to Americans United for Life. Thus, § 33-18-17 would leave Americans United for Life perpetually trapped in a renvoi-like cycle, whereby it could not assert itself as an interested party in Mrs. Mee's estate to recover wrongfully removed property, and even if it could, any recovery of that property would go to the alleged wrongdoer, not to Americans United for Life. Thus, while § 33-18-17 may have provided prior plaintiffs in the aforementioned cases with an adequate statutory remedy, it did not provide one for Americans United for Life.

[8] Americans United for Life's interest is thrice-removed from Mrs. Mee's operative will. For Americans United for Life to establish a direct legal interest in Mrs. Mee's estate under § 33-18-17, it would have had to follow the circuitous path described supra in footnote 7, beginning with the very will contest it was twice-denied the opportunity to pursue.

Next, Defendants argue that, even if the Court recognized tortious interference with expectation of inheritance as a valid cause of action—which the Court now does—Americans United for Life has not properly pled such a claim. As stated above, tortious interference with expectation of inheritance occurs when "[o]ne who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received is subject to liability to the other for loss of the inheritance or gift." Restatement (Second) Torts § 774B. While the Court leaves for another day a discussion of the precise elements required to prove a claim of tortious interference with expectation of inheritance, in this case the Court finds that Americans United for Life has alleged a prima facie claim for the tort. See Compl. ¶¶ 105-11. In its Complaint, Americans United for Life alleges that it had an expected inheritance under the 1991 will that was diminished and thereafter eliminated due to Defendants'—namely the Legion of Christ and its officials—tortious interference by means of fraud and undue influence. See id.; see also Pl.'s Mem. of Law in Supp. of Obj. to Defs.' Mot. to Dismiss 29 ("Defendants fraud and undue influence was the means by which they tortiously interfered with [Americans United for Life's] expected inheritance"). Americans United for Life asserts that Defendants' tortious interference not only resulted in its removal from the 1991 will, but also in the diversion of money from Mrs. Mee during her lifetime. Such allegations are in line with language of the Restatement (Second) of Torts § 774B, which lays out the essence of a claim for tortious interference of expectation of inheritance.[9]

[9] Defendants further contend that Americans United for Life's Complaint is insufficient because it does not include an allegation that Americans United for Life exhausted its adequate remedy in the probate proceedings. However, the Court determines that based on the liberal notice-pleading standards under Rhode Island law, no such pleading requirement is needed to survive a Rule 12 motion to dismiss. See Chhun v. Mortg. Elec. Registration Sys., Inc., 84 A.3d 419, 422-

For these reasons, the Court holds that tortious interference with expectation of inheritance is a cognizable claim under Rhode Island law. In this case, neither a will contest nor an action under § 33-18-17 provided Americans United for Life with an adequate remedy that it failed to pursue in the probate court.[10] Accordingly, the Court denies Defendants' Motion to Dismiss with respect to Count III.

D

Civil Conspiracy

Americans United for Life also asserts that Defendants engaged in a civil conspiracy to tortiously interfere with its inheritance under Mrs. Mee's 1991 will. Compl. ¶¶ 112-116 (Count IV). Although Rhode Island law recognizes civil conspiracy as a valid claim for relief, "civil conspiracy is not an independent basis of liability. It is a means for establishing joint liability for other tortious conduct; therefore, it 'requires a valid underlying intentional tort theory.'" Read &

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23 (R.I. 2014); see also Super. R. Civ. P. 8(f) (stating that the Court is instructed that "[a]ll pleadings shall be [] construed as to do substantial justice"). Although the Court has determined that a party cannot succeed on a claim for tortious interference with expectation of inheritance where that party had an adequate statutory remedy but failed to pursue it, Americans United for Life did not have to plead that it lacked an adequate remedy in its Complaint. Such a requirement is more analogous to a defense that party has failed to comport with the exhaustion requirement in the context of administrative appeals, rather than it is an essential element of a claim for tortious interference with expectation of inheritance. Cf. Simpson v. CMS, 559 F. Supp. 2d 481, 483 (D. Del. 2008) (explaining that failure to exhaust administrative remedies is an affirmative defense meaning that the plaintiff was "not required to specially plead or demonstrate exhaustion in her complaint").

[10] Defendants also argue that the recognition of tortious interference with expectation of inheritance would vitiate Rhode Island's public policy of the prompt settlement of estates. According to Defendants, allowing Americans United for Life to pursue this cause of action would allow it to circumvent Rhode Island's comprehensive probate statutes. However, while the Court finds that such a claim is both cognizable under Rhode Island law and available to Americans United for Life, the Court notes that tortious interference with expectation of inheritance is unlikely to cause the disruption Defendants assert. Indeed, there is likely a rather small group of potential plaintiffs for whom § 33-18-17 will not provide an adequate statutory remedy. See, e.g., Umsted, 446 F.3d at 23; Henry, 856 F. Supp. 2d at 350; Haffenreffer, 2007 WL 2972575, at *3-4.

Lundy, Inc. v. Washington Trust Co. of Westerly, 840 A.2d 1099, 1102 (R.I. 2004) (quoting Guilbeault v. R.J. Reynolds Tobacco Co., 84 F. Supp. 2d 263, 268 (D.R.I. 2000)). Therefore, to survive a motion to dismiss, a plaintiff's complaint must set forth some underlying intentional tort theory onto which a claim for civil conspiracy can stand. See id.

Based on the Court's findings above, Americans United for Life's civil conspiracy claim must survive a motion to dismiss for failure to state a claim upon which relief can be granted. See id.; Super. R. Civ. P. 12(b)(6). While Americans United for Life lacks a stand-alone claim for fraud or undue influence, it has properly alleged a claim for tortious interference with expectation of inheritance—an intentional tort onto which a civil conspiracy claim may latch. Cf. Read & Lundy, Inc., 840 A.2d at 1102. Accordingly, the Court denies Defendants' Motion to Dismiss with respect to Count IV of Americans United for Life's Complaint. See Read & Lundy, Inc., 840 A.2d at 1102; Martin, 784 A.2d at 298; Super. R. Civ. P. 12(b)(6).

E

Injunctive Relief

Finally, Americans United for Life asserts a claim for injunctive relief, specifically asking this Court to impose a constructive trust on all money and property Defendants have obtained from Mrs. Mee. Compl. ¶¶ 117-122 (Count V). "[A] constructive trust is a relationship imposed by operation of law as a remedy to redress a wrong or prevent an unjust enrichment." Simpson v. Dailey, 496 A.2d 126, 128 (R.I. 1985). "Generally speaking, a constructive trust is an equitable remedy which compels one who unfairly holds a property interest to convey that interest to another to whom it justly belongs." Umsted v. Umsted, No. 1:03-CV-219S, 2004 WL 5308782, at *9 (D.R.I. Nov. 30, 2004), report and recommendation adopted, No. 03-CV-219-S,

2005 WL 5438379 (D.R.I. Feb. 18, 2005), aff'd, 446 F.3d 17 (1st Cir. 2006) (citation omitted). As our Supreme Court has explained,

> "The underlying principle of a constructive trust is the equitable prevention of unjust enrichment of one party at the expense of another in situations in which legal title to property was obtained (1) by fraud, (2) in violation of a fiduciary or confidential relationship, or (3) by testamentary devise or intestate succession in exchange for a promise to hold in trust." Simpson, 496 A.2d at 128.

Moreover, "[c]onstructive trusts are not substantive rights that confer a cause of action; they are remedial devices employed by courts once liability is found and where equity requires." In re Handy, 624 F.3d 19, 22 (1st Cir. 2010).

Here, Americans United for Life's request for a constructive trust, while asserted in the form of a cause of action, states a remedy within the power of this Court to grant. See Simpson, 496 A.2d at 128. Generally, "[a] constructive trust will not be imposed unless the complaint makes specific allegations of wrongdoing, such as fraud, breach of fiduciary duty, duress, coercion, or mistake." 76 Am. Jur. 2d Trusts § 615. However, the Court has not been presented with any persuasive reason why a constructive trust is not an equitable remedy available to Americans United for Life if it prevails on its claim of tortious interference with expectation of inheritance. Just as such a remedy would be available if Americans United for Life had a viable fraud claim, so too is the remedy available for tortious interference with expectation of inheritance. Indeed, fraud and undue influence are the means by which Defendants allegedly tortiously interfered with Americans United for Life's expectation of inheritance. Accordingly, while noting that a constructive trust is a remedy, not a cause of action, the Court denies Defendants' Motion to Dismiss with respect to Count V of the Complaint.

IV

Conclusion

Therefore, after considering "'the allegations contained in the complaint to be true and view[ing] the facts in the light most favorable to [Americans United for Life],'" Martin, 784 A.2d at 297-98 (quoting St. James Condo. Ass'n, 676 A.2d at 1346), the Court grants Defendants' Motion to Dismiss with respect to Counts I and Count II, but denies Defendants' Motion to Dismiss as to Counts III, IV, and V. With respect to Counts I and II, Americans United for Life has not alleged stand-alone claims for which the law provides relief. With respect to Counts III and IV, Americans United for Life has alleged claims upon which relief can be granted. The Court also denies Defendants' Motion to Dismiss with respect to Count V.

Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Americans United For Life v. The Legion of Christ of North America, Inc., et al.
CASE NO:	PC-2016-2900
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 4, 2017
JUSTICE/MAGISTRATE:	Silverstein, J.
ATTORNEYS:	
For Plaintiff:	Bernard A. Jackvony, Esq.; Samantha McCoy Clarke, Esq.; Rebecca M. Murphy, Esq.
For Defendant:	Joseph Avanzato, Esq.; Nicole J. Benjamin, Esq.