MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. BCD-24-172

GENERAL HOLDINGS, INC. and PRESERVATION HOLDINGS, LLC,

Plaintiffs - Appellees

v.

U.S.A. METROPOLITAN TAX CREDIT FUND II L.P., U.S.A. INSTITUTIONAL TAX CREDIT FUND IV L.P. and

EIGHT PENN PARTNERS, LP,

Defendant – Appellant

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT

BRIEF OF APPELLEES

James D. Poliquin, Esq. (Bar No. 2474)
Attorney for Appellees
NORMAN, HANSON & DeTROY, LLC
Two Canal Plaza
P. O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
jpoliquin@nhdlaw.com

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13 *Williston on Contracts* § 39:30 (4th Edition) 19

INTRODUCTION

The issues in this case before the Trial Court were quite discrete, and even more so on this appeal. General Holdings devotes this Introduction to making several observations that give proper context to the evaluation of the issues on appeal in this case.

The Record: This matter was tried before the Court without a jury. In order to streamline the trial time, the Court, with the parties' consent, opted for the approach of allowing into evidence each party's exhibits and multiple full deposition transcripts of both testifying and non-testifying witnesses without regard to "relevancy" objections to be made later that normally would have been asserted and ruled upon at trial in a jury case. *See* Trial Tr. at 17-18. The four live witnesses at trial were Pam Gleichman, Karl Norberg, Rosa Scarcelli and Thom Rhoads (by Zoom). Exhibits entered into evidence included the full deposition transcripts of Pam Gleichman, Rosa Scarcelli and Pamela Bower, in addition to approximately eighty other exhibits. This rather expansive record constitutes the universe of evidence upon which the Trial Court could draw in reaching any express or unstated inferences and factual findings in support of its ultimate decision. It also constitutes the record before the appellate court in applying the

standard of review of decisions of a trial court sitting without a jury, which standard is discussed further below.

The Parties: The Defendants in this case were Richman[1] and Eight Penn, an LLC formed in 2018 by Karl Norberg and Pam Gleichman for the specific purpose of acquiring the Richman LP interests. Pam Gleichman was not a party to this case and did not intervene to assert any purported rights she may claim to have had as an alleged general partner at relevant times. Richman chose not to participate in the case, did not answer the complaint, and did not appear at trial, agreeing to be bound by the result. Eight Penn did not file any cross-claim against Richman or otherwise seek relief of any kind from Richman in the event the transfers of the LP interests from Richman were declared a nullity. Eight Penn did not even exist until more than four years after the March 2014 transfer of shares in General Holdings that Eight Penn asserts allegedly gave Richman, not itself, various rights in 2014 that Richman never chose to exercise or assert either before or during this case. No rights of either Richman or Gleichman were ever assigned to Eight Penn.

[1] The limited partners in the various partnerships technically were various tax credit funds owned and controlled by another entity, Richman Asset Management. For that reason, the various limited partner tax funds are collectively referred to herein as "Richman".

Issues on Appeal: Although Eight Penn's statement of issues for review identifies only two separate issues, each of those issues actually subsumes two issues. The issue of whether General Holdings' consent was required for Richman's transfer of limited partner interests to Eight Penn in 2018 involves the threshold question of whether Section 6.01 of the Partnership Agreement applies only to voluntary rather than involuntary transfers. After consideration of extrinsic evidence, the Trial Court found in favor of General Holdings that Section 6.01 did not apply to the 2014 involuntary transfer of shares in General Holdings. *See* Order at 12-13; App. at 18-19. The Trial Court then went on to resolve a second alternative issue of whether Section 6.01, even if applicable to involuntary transfers, effectuated an automatic and instantaneous dissociation at the moment of the foreclosure auction, or whether it merely provided grounds under Section 8.13 for a limited partner to remove a general partner for breach of the Partnership Agreement. The Trial Court held it was the latter and that no such action was ever taken by Richman. *See* Order at 13-14; App. at 19-20.

Eight Penn's second stated issue for review also blends together two distinct issues. The first issue is whether the Trial Court's grant of a declaratory judgment was "clearly erroneous" based on General Holdings' alleged "unclean hands". The second, and previously unasserted issue, is an alleged deficiency in

the judgment in not requiring Richman to return any payment made by Eight Penn to Richman as part of the relief.

Several issues asserted by Eight Penn below are not pursued on appeal. The first issue that has not been appealed is the Trial Court's finding that General Holdings' withholding of consent would have been reasonable. Order at 14; App. at 20. The majority of the exhibits and testimony actually pertained to that issue given its rather wide open nature and incorporation of significant historical dealings between the parties prior to the 2018 transfers from Richman. Eight Penn also did not appeal the Trial Court's determinations that the 2020 Settlement Agreement did not preclude the action against Eight Penn and that the action was not barred by laches. Order at 9-11; App. at 15-17.

Finally, General Holdings raised several issues before the Trial Court that were mooted by the Trial Court's resolution of other issues determinative of the case. One or more of these issues, identified below, may serve as an independent basis to affirm the judgment below, or at a minimum to warrant further proceedings below rather than a reversal in the event this Court accepts one or more of Eight Penn's arguments.

STATEMENT OF FACT

The parties do not dispute the relevant factual history with respect to the establishment and composition of the projects at issue leading up to the events of 2018. That history is thoroughly and accurately set forth in this Court's Order in Favor of Plaintiffs Following Bench Trial ("Order"), pages 2-8 (App. 8-14), which history will not be reiterated in detail here. However, one point that bears emphasis relates to the origins of "General Holdings". Because Gleichman & Co., Inc., an original general partner, changed its name to General Holdings just weeks prior to the foreclosure auction on the shares, the erroneous assumption often arises that General Holdings was a separate entity that acquired the shares of Gleichman & Co. In fact, Pamela Gleichman changed the name of Gleichman & Co., Inc. to General Holdings, Inc. in advance of the anticipated foreclosure sale in part to discourage other competitive bidders at the foreclosure auction. *See* Order at 4; App. at 10. General Holdings, Inc. is the exact same company as Gleichman & Co., Inc. with a name change, followed by a change in ownership of the shares of the company after the name change. That difference is important to the discussion below of the various provisions of the Partnership Agreement.

Although the events of 2018 are set forth in the Order, some additional detail established in the record further supports the Trial Court's ultimate

decision. *See* Order at 5-6; App. at 11-12. The discussions between Richman and Gleichman regarding a transfer of LP interests began in February 2018 and continued until the documents were executed later that year. The actual transfer documents were executed no earlier than September 2018 and as late as the end of December 2018. *See* Exhibits 10 - 19. Richman had obtained substantial information about the general partner status of Pamela Gleichman and General Holdings from General Holdings and other sources <u>before</u> those transactions were finalized.

The pendency of litigation between General Holdings and Pam Gleichman was disclosed in prior audits provided to Richman. *See, e.g.*, Exhibit 77A, pg. 14 and similar disclosures in Exhibits 77B, 77C, and 77D. In 2018, there were several direct communications between General Holdings/Stanford and Richman specific to those issues while Richman, unbeknownst to General Holdings, was dealing directly with Pam Gleichman regarding the purchase of certain Limited Partnership interests. *See* Exhibits 20, 21, and 22.

On March 14, 2018, an e-mail exchange occurred between Ray Giller at Richman and Thom Rhoads at Stanford Management relating to the status of the general partner issues. Ray Giller was the asset manager for the Pennsylvania properties for Richman. Ray Giller asked Thom Rhoads to "provide some detail on

the pending litigation occurring right now between the GP and Corporate GP as it is affecting all of the deals and noted in all of the audits." *See* Exhibit 20. Thom Rhoads responded by noting that the prior audit notes about pending litigation needed to be updated, stating as follows:

> I do not believe control of the partnerships is any longer at issue in litigation. The individual GP's economic interests in all Partnerships have been foreclosed on by her creditors and were sold at auction in 2017. It is my understanding that once the auction results are verified by an Illinois judge, in a hearing scheduled for April 30, 2018, the individual GP will be formally dissociated from all Partnerships.

See Exhibit 20. The timing of Richman's inquiry surely was not fortuitous, but likely instigated by the ongoing discussions between Richman and Pam Gleichman about acquiring Richman's limited partnership interests. Richman obviously knew at this point in 2018 that the "Corporate GP", i.e., General Holdings f/k/a Gleichman & Co. was no longer controlled by Pamela Gleichman, the original individual GP, because why would there otherwise be litigation between the two.

In early May of 2018, Jennifer Rohr of Richman inquired about any pending litigation relating to Curwensville Park LP. In his e-mail of May 7, 2018, Thom Rhoads provided the following information in response:

> In 2017, Judgement Creditors of Pamela Gleichman foreclosed on all her personal General Partnership interests, including that in

> Curwensville Park, LP, and sold them at auction. The Promenade Trust purchased the interests. An Illinois Judge recently confirmed the sale. Ms. Gleichman has 30 days from the date of the decision to appeal.
>
> . . .
>
> In Gleichman et al. v. Scarcelli et al., Maine BCD Docket No. BCD-CV-17¬11, Plaintiffs Pamela Gleichman and Karl Norberg seek a declaratory judgment that the auction of General Holdings (formerly known as Gleichman & Company), the co-general partner of Curwensville Park Associates, LP, is a nullity and should be voided. The discovery phase of that lawsuit is complete. The court has not set a trial date.

See Exhibit 21. No one from Richman sought further clarification following the May 7, 2018 e-mail. Order at 6; App. at 12.

On August 28, 2018, Thom Rhoads wrote to both Jennifer Rohr and Ray Giller at Richman, stating in part:

> The General Partner in the below Limited Partnerships, General Holdings, Inc (f/k/a Gleichman & Co., Inc.), has asked me to reach out to Richman Capital to gauge your interest in transferring its LP interests back to them. It has won all the legal challenges brought by the withdrawn individual GP, Pamela Gleichman, and now controls the entire GP Interest -which clears the way for a possible acquisition.

See Exhibit 22. Thom Rhoads received no response to his August 28, 2018 inquiry. Order at 6; App. at 12.

Soon after receipt of the August 28, 2018 e-mail, Richman proceeded to execute documents for the transfer of its limited partnership interests to Eight Penn, the entity formed by Pam Gleichman and Karl Norberg to acquire those interests. Although all of the communications between Thom Rhoads and Richman in 2018 relating to general partnership status occurred while negotiations were ongoing between Pam Gleichman and Richman to acquire the limited partnership interests, Richman never advised General Holdings of those discussions. Order at 6-7; App. at 12-13.

Pam Gleichman acknowledged that she had discussions with Ray Giller in this time frame pertaining to the general partnership issues but professed not to recall the details. *See* Dep. of Gleichman at 103 – 06 (Exhibit 73). Since these transactions were economically trivial to Richman in the big picture, Richman consciously chose to ignore the information provided by General Holdings, as the only downside in closing on the transactions with Gleichman would be the potential invalidity of those transactions. Richman no doubt realized that engaging both Gleichman and General Holdings in an effort to reach agreement by all parties to the transfer to Eight Penn was doomed to fail. Pam Bower testified that Richman's standard approach when transferring limited partnership interests was to leave all consent issues to the buyer, with Richman not taking any

steps to acquire any necessary consents. *See* Dep. of Bower at 54 – 55 (Exhibit 74). Not only was consent to the transfer of the LP interests not sought from General Holdings, the fact that the transactions even occurred was not disclosed to General Holdings until 2019 when tax information was requested. Order at 7; App. at 13.

A. <u>Undisputed Material Facts</u>.

In summary, key undisputed material facts include:

(1) General Holdings was not informed at any time in 2018 by either Pam Gleichman, Eight Penn or Richman of any negotiations between Richman, Gleichman and/or Eight Penn for the transfer of Richman's limited partnership interests to Eight Penn in 2018. Order at 6-7; App. at 12-13.

(2) At no time in 2018 was General Holdings informed by either Pam Gleichman, Eight Penn or Richman of the actual execution of documents purporting to transfer Richman limited partnership interests to Eight Penn. Order at 7; App. at 13.

(3) General Holdings learned of the purported 2018 transfers of the limited partnership interests from Richman to Eight Penn in early 2019 when provided with correspondence from Attorney Carlucci to CPA John Pettit requesting tax information. *See* Exhibit 52. Order at 7; App. at 13.

(4) General Holdings would not have consented to the 2018 transfers of the limited partnership interests from Richman to Eight Penn had General Holdings' consent been sought. Order at 7; App. at 13.

(5) Richman was informed by General Holdings in 2018 prior to the execution of documents purporting to transfer Richman LP interests to Eight Penn that Pamela Gleichman's economic interest as general partner had been foreclosed upon and that General Holdings no longer considered Pam Gleichman a general partner. *See* Exhibits 20 – 22; Order at 5-6; App. at 11-12.

(6) Prior to Richman's purported transfers of its LP interest to Eight Penn in late 2018, General Holdings provided Richman with whatever information it requested regarding the status of General Holdings and Pam Gleichman as general partners.

(7) At no time did Richman seek the removal of General Holdings as a general partner in any limited partnership for any reason, including as general partner in the four other limited partnerships in which Richman had an interest but that were not involved in the 2018 transfers. Order at 7; App. at 13.

STANDARD OF REVIEW

Eight Penn's sparse explanation of the standard of review applicable to this appeal ignored important criteria when reviewing findings by a court sitting

without a jury. Eight Penn makes no mention of Rule 52 of the Maine Rules of Civil Procedure or established authority. The Trial Court's Order following the bench trial contained certain findings of fact and conclusions of law. Eight Penn did not file a motion under Rule 52(b) requesting the Trial Court to amend its findings or make any additional findings. As provided in Rule 52(c), findings of fact shall not be set aside unless "clearly erroneous". As noted by one respected commentator, "in the absence of a motion for additional findings of fact and conclusions of law, an appellate court will infer that the trial court made any factual inferences needed to support its ultimate conclusion." *See* 3 Harvey & Merritt, *Maine Civil Practice*, Section 52:2 at 139 (3d, 2022-2023). *See also Pelletier v. Pelletier*, 2012 ME 15, 36 A.3d 903; *Weinstein v. Hurlbert*, 2012 ME 84, 45 A.3d 743. If neither party made a request for findings of fact, the appellate court should presume that the trial court found all of the facts necessary to support the decision. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 10, 982 A.2d 339, 342; *Fitzpatrick v. Fitzpatrick*, 2006 ME 140, ¶ 17, 910 A.2d 396, 401. Since the trial court assesses the credibility of witnesses, the appellate court also may infer that the trial court rejected the entire testimony of an uncontradicted witness. *See Maine Civil Practice supra*, Section 52:7 at 145-146. Decisions of a trial court regarding the defense of "unclean hands" are reviewed for an abuse of

discretion. *See The Liberty Group, Inc. v. 73 India Street Ass'ts*, 642 A.2d 1344 (Me. 1994).

Eight Penn's 12-page statement of fact with 8 subcategories A-H completely ignores these principles. That "statement of fact" is no different than a closing argument or post-trial brief laden with factual argument. The only facts relevant to this appeal are the actual facts found by the trial court plus all additional facts and inferences even arguably supported in the record consistent with the Trial Court's ultimate decision. All factual assertions by Eight Penn not expressly found by the Trial Court must be disregarded, even if Eight Penn can point to some record support for that fact. About two thirds of all the facts asserted by Eight Penn fall in this latter category. Neither this Court nor Appellees should be burdened by Eight Penn's lack of a good faith effort to present the facts in a fashion consistent with the applicable standard of review.

ARGUMENT

I. GENERAL HOLDINGS REMAINED AS A GENERAL PARTNER IN THE LIMITED PARTNERSHIPS AFTER THE MARCH 2014 FORECLOSURE AUCTION OF THE SHARES OF GENERAL HOLDINGS.

A. Section 6.01 Of The LP Agreements Does Not Apply To Involuntary Transfers, And Even If Applicable, Does Not Effectuate An Automatic Withdrawal Of A General Partner, But At Most Provides Possible Grounds For The Removal Of A General Partner Using The

Procedures Set Forth In Section 8.13, Which Were Never Invoked By Richman.

Eight Penn relies upon Section 6.01(a) in support of its contention that General Holdings automatically and immediately ceased being a general partner on the day of the foreclosure in March of 2014 because Richman was not informed of that share transfer prior to its occurrence. Section 6.01(a) reads as follows:

> 6.01 Withdrawal of a General Partner.
>
> (a) A General Partner may withdraw from the Partnership or sell, transfer or assign his or its Interest as General Partner (or a controlling interest in the General Partner) only with the prior Consent of the Investment Partnership, and of the Agency and/or the Lender, if required, and only after being given written approval by the necessary parties as provided in Section 6.02 of the General Partner(s) to be substituted for him or it or to receive all or part of his or its interest as General Partner.

See Exhibits 1 - 4. This section does not state that a sale, transfer, or assignment of a general partner interest or controlling interest in a general partner constitutes a "withdrawal." Rather, it plainly states that a general partner may withdraw or sell, transfer, or assign its interest only with the prior consent of the limited partner and of the agency if required. The Trial Court determined that the permissive language suggested its application was more consistent with voluntary transactions than involuntary transactions.

The Trial Court held that Section 6.01(a) was ambiguous with respect to its applicability to only voluntary transfers or to both voluntary and involuntary transfers. *See* Order at 12-13; App. at 18-19. In light of that ambiguity, the Court appropriately considered extrinsic evidence, stating in part as follows:

> After considering the language of Section 6.01(a) <u>in context with the evidence presented at trial</u>, the Court is convinced that the section applies only to voluntary transfers, as evidenced by the use of the permissive "may" in "[a] a General Partner may withdraw from the Partnership or sell, transfer or assign his or its Interest as General Partner (or a controlling interest in the General Partner) only with [the relevant prior consents and approvals].

Order at 13; App. at 19 (emphasis added). Eight Penn did not make any request for additional findings or submit any proposed findings under Rule 52 addressed to the Court's conclusion that the extrinsic evidence supported the Trial Court determination that Section 6.01(a) applied to voluntary and not involuntary transfers. Therefore, the Appellate Court should infer that the Trial Court made any and all necessary factual findings and/or inferences consistent with that determination.

The conduct of the parties to a contract is the best evidence as to the meaning of any ambiguous provision. *See Barbour v. Knecht*, 296 A.D.2d 218, 224, 743 N.Y.S.2d 483, 488-89 (2002). Substantial evidence in the record supports the Trial Court's resolution of the issue of the applicability of Section 6.01(a) to

involuntary transfers. The Trial Court could have concluded that Richman knew of the 2014 change in control of General Holdings for years prior to the 2018 transfers of the LP interests to Eight Penn and at no time took the position that General Holdings had become dissociated as a result of Section 6.01(a), and at no time made any effort to remove General Holdings if any dissociation was not automatic. Obviously Pam Gleichman knew of the 2014 foreclosure on her shares the moment it happened, and yet knew that General Holdings continued to act as the general partner for years thereafter, never contending or taking any action consistent with the belief that Section 6.01(a) applied or that General Holdings had become automatically dissociated. In fact, Gleichman brought a separate civil action seeking to invalidate the foreclosure sale, raising a host of claims, but not any suggestion or assertion that General Holdings' status as a general partner was somehow impacted. *See* Order at 4-5; App. at 10-11. In short, not a single partner in these partnerships took the position for several years after 2014, <u>during a time Eight Penn did not even exist</u>, that Section 6.01(a) was implicated by the 2014 foreclosure sale or questioning the ongoing status of General Holdings as a general partner. Ample extrinsic evidence supports the Trial Court's conclusion that Section 6.01(a) does not apply to involuntary transactions.

Even assuming that Section 6.01(a) applies to involuntary transfers as a matter of law and is unambiguous on that point, the failure to obtain prior consent does not effectuate an immediate dissociation, but at best provides a limited partner with grounds for removal. Significantly, the general partner in these Limited Partnerships did not change with either the name change to General Holdings, Inc. or the change in ownership of the shares of that entity. Therefore, the issue is not whether a new general partner (whether a "successor" or "additional" general partner) could become a general partner without the consent of Richman. General Holdings was already a general partner, leaving only the issue of whether the share ownership change gave Richman the right to seek removal of General Holdings if it believed cause for removal existed and Richman actually wanted removal. In fact, the record contains no evidence that Richman actually wanted to remove General Holdings even if it was entitled to take such action.

The removal of a general partner is addressed in Section 8.13(a). That section explains that the Investment Partnership, i.e., Richman, has the right to remove a general partner for a number of specifically stated reasons, including the following:

> (B) The General Partner shall have violated any provision of this Agreement, including without limitation the provisions of Sections 4.01 and/or 4.02 which would have a material adverse effect on the Partnership, the Project or the Investment Partnership, or violated any provision of applicable law.

See Exhibits 1 - 4. Section 8.13(b) then sets forth the procedure to seek the removal of a general partner if the limited partner believes grounds exist.

At no point did Richman ever seek the removal of General Holdings as a general partner for any reason, not only in the four partnerships in which it attempted to transfer its limited partner interest to Eight Penn in 2018, but also the other four in which Richman continued as a limited partner until the recent transfers to the Promenade Trust facilitated and approved by General Holdings.

The Partnership Agreements draw a clear distinction between various events or conduct that may entitle a limited partner to seek removal if appropriate and other events or actions which <u>automatically</u> terminate the partnership status without needing to invoke the removal provisions. For example, Section 6.03(b) provides in relevant part as follows:

> (b) Upon the Bankruptcy, death, dissolution or adjudication of incompetence of a General Partner, such General Partner shall <u>immediately</u> <u>cease</u> to be a General Partner and his Interest shall without further action be converted to a Limited Partner Interest; provided, however, that the converted Partnership Interest of such former General Partner shall ratably be reduced to the extent necessary to insure that the remaining or

substitute General Partner holds a 1% Percentage Interest (as set forth in Section 5.01).

See Exhibits 1 - 4. (emphasis added). The term "Bankruptcy" is defined in Article II broadly to include not just the filing of a typical bankruptcy petition, but other insolvency or similar proceedings.

The mere change in control of a general partner is not even arguably a change of circumstance that effectuates an "immediate" or "automatic" withdrawal. Only matters such as death, adjudication of incompetence, or bankruptcy/insolvency situations where the general partner loses all economic interest in the partnership cause an immediate dissociation of a general partner.

The Trial Court's determination that General Holdings remained a general partner in these Limited Partnerships obviated the need to address a host of alternative grounds as to why General Holdings continued as a general partner throughout, and continues to be a general partner to this day.[2] In addition, the

[2] The Trial Court did not need to reach General Holdings' alternative argument that Richman's acquiescence and acceptance of General Holdings as a general partner after being fully informed of the facts constitutes a waiver or estoppel to rely upon a technical requirement of prior consent. *See, e.g., Eureka VIII LLC v. Niagara Falls Holdings LLC*, 899 A.2d 95 (Del. Ch. 2006); *Weyerhaeuser Co. v. Domtar Corp.*, 2004 F.Supp.3d 731, 738 (D. Del. 2016, subsequently aff'd, 721 Fed. Appx. 186, 3rd Cir. 2018). Contractual provisions requiring written modification, written consent or a written waiver can be modified by subsequent oral communications or a course of dealing or course of performance. *See generally* 13 *Williston on Contracts* § 39:30 (4th Edition). Even if Richman in this case was challenging General Holdings' status as a GP, which it is not, it would not have been entitled to sit on knowledge of the change of ownership and raise it in the future only when desirable. Since the "change in control" at the center of this issue occurred in 2014, years before Eight Penn even existed, Eight Penn cannot resurrect a right once possessed but never exercised by Richman.

change in equity ownership of General Holdings in March of 2014 did not effectuate any actual change in control given the continuation of Stanford Management and the 2008 Unanimous Consent vesting authority in Rosa Scarcelli as Vice President of Gleichman & Co. *See* Exhibit 23. Richman also could never demonstrate and has never alleged that a change in share ownership to General Holdings somehow had a "material adverse effect" on the partnership or the limited partner as required by Section 8.13(a)(B). The mere change in control of a general partner, to be distinguished from an actual transfer of a general partnership interest, has no effect on the status as a general partner unless a limited partner is entitled to and actually takes action to remove the general partner <u>with the approval of Rural Development</u>. Finally, the change in control in March of 2014 was disclosed to Rural Development and Rural Development has accepted that change in control. *See* Exhibit 45. A general partner cannot withdraw or be removed by a limited partner without the consent of RD.

II. THE TRIAL COURT'S GRANTING OF EQUITABLE RELIEF INVALIDATING THE TRANSFER OF THE LIMITED PARTNERSHIP INTERESTS DID NOT CONSTITUTE AN ABUSE OF DISCRETION BECAUSE OF THE ALLEGED "UNCLEAN HANDS AND INEQUITABLE CONDUCT" BY GENERAL HOLDINGS.

Although Eight Penn has not appealed the Trial Court determination that the 2020 Settlement Agreement in no way bars General Holdings' action to invalidate the limited partnership interest transfers to Eight Penn, Eight Penn seeks to end run that determination by arguing that the pursuit of the claim constitutes "unclean hands and inequitable conduct" in light of the 2020 Settlement Agreement. After a brief review of the evidence, the Court rejected Eight Penn's argument:

> The Court determines that Eight Penn is not entitled to the equitable relief it seeks on the evidence presented in this matter. On balance of the equities, the Court concludes that around the time of the settlement agreement in 2020 the participants were crab-walking around questions surrounding the Pennsylvania projects and conducted themselves in ways that were cagey. The mutual conduct of the parties does not support Eight Penn's equitable defenses.

Order at 11; App. at 17. This decision by the Trial Court must be upheld unless it constituted an abuse of discretion. The Trial Court's determination is fully supported by certain facts expressly found by the Trial Court, as well as facts appropriately inferred from the record evidence.

The Trial Court found that the negotiations and execution of the documents transferring the limited partnership interests were kept secret from General Holdings throughout 2018. General Holdings only learned of the alleged transactions in early 2019. After learning of the alleged transactions, General Holdings requested the documentation establishing that those transfers in fact had occurred, as well as the terms of those alleged transfers. The Trial Court found, which is not disputed by Eight Penn, that "[a]s of the date Scarcelli and Preservation Holdings entered into the settlement agreement, February 11, 2020, General Holdings still had not received the requested documents. (Dep. Ex. 4, at 38-39 (Letter dated Feb. 25, 2020 to Counsel for Eight Penn from Counsel for General Holdings requesting transfer documents).)" *See* Order at 10-11; App. at 16-17. Since General Holdings (a non-party to the 2020 Settlement Agreement) had not even received proof of the alleged transfers of the limited partnership interests, let alone the specifics, it is absurd for Eight Penn (also a non-party to the 2020 Settlement Agreement) to argue that Karl Norberg and/or Pam Gleichman somehow were inappropriately led to believe that General Holdings had forfeited any right to pursue appropriate relief once it had the opportunity to review the actual 2018 transaction documents. Applying the appropriate standard of review, this Court must assume that the Trial Court rejected any

suggestion by Karl Norberg and/or Pam Gleichman that they somehow reasonably believed that the 2020 Settlement Agreement was foreclosing any future action by General Holdings to invalidate the alleged 2018 transfer of limited partnership interests from Richman to Eight Penn.

III. THE TRIAL COURT DID NOT ERR IN GRANTING A DECLARATORY JUDGMENT INVALIDATING THE TRANSFER OF THE LIMITED PARTNERSHIP INTEREST TO EIGHT PENN WITHOUT INCLUDING SPECIFIC PROVISIONS FOR PAYMENT BY RICHMAN TO EIGHT PENN.

Eight Penn argues for the first time on appeal that any declaratory judgment needed to include specific provisions requiring Richman to reimburse Eight Penn for the relatively modest amount paid by Richman for the limited partnership interests. This ground for appeal should be rejected for several reasons. First, at no point below, either before or after the Order granting declaratory relief, did Eight Penn seek as any part of any declaratory judgment a reimbursement from Richman. Eight Penn did not file any cross-claim against Richman seeking that relief, which no doubt would have been contested by Richman given Eight Penn's contractual assumption of all responsibility to obtain necessary consents and the multiple misrepresentations by Eight Penn in the transaction documents. Eight Penn had good reasons, both tactical and otherwise, not to assert such a claim against Richman. Eight Penn, through Pam

Gleichman, obviously persuaded Richman to consummate the transactions in 2018 despite Richman having received multiple communications from General Holdings raising substantial questions regarding Pam Gleichman's capacity and asserting the rights of General Holdings. Although the actual status of the tax funds has not been established, reinstating a limited partnership to accomplish a transaction is a ministerial matter. Richman has not complained about having to do what is necessary to effectuate the Order below because it can be accomplished with minimal effort. Eight Penn has no standing to assert Richman issues and concerns, assuming it had any.

CONCLUSION

For the reasons stated above, this Court should affirm the Judgment below in all respects.

DATED at Portland, Maine, this 11th day of September 2024.

<u>/s/ James D. Poliquin</u>
James D. Poliquin (Bar No. 2474)
Attorney for Appellees General Holdings, Inc. and
Preservation Holdings, LLC

NORMAN, HANSON & DETROY, LLC
Two Canal Plaza
P. O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
jpoliquin@nhdlaw.com

CERTIFICATE OF SERVICE

I, James D. Poliquin, Esq., hereby certify that I have caused to have served two copies of the Brief of Appellees General Holdings, Inc. and Preservation Holdings, LLC on counsel for all parties by placing said documents in the United States mail, postage prepaid, addressed as indicated below. An electronic copy has also been sent to the e-mail addresses listed below.

John S. Campbell, Esq.
Campbell & Associates, P.A.
60 Mabel Street
Portland, ME 04103
John@mainestatelegal.com
Attorney for Appellant Eight Penn Partners, L.P.

Kevin P. Polansky, Esq.
Nelson Mullins
One Financial Center, Suite 3500
Boston, MA 02111
Kevin.polansky@nelsonmullins.com
Attorney for U.S.A. Metropolitan Tax Credit Fund II L.P. and U.S.A. Institutional Tax Credit Fund IV L.P.

DATED at Portland, Maine, this 11th day of September 2024.

/s/ James D. Poliquin
James D. Poliquin, Esq. (Bar No. 2474)
Attorney for Appellees General Holdings, Inc. and Preservation Holdings, LLC

NORMAN, HANSON & DeTROY, LLC
Two Canal Plaza
P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
jpoliquin@nhdlaw.com