MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. BCD-24-1172

GENERAL HOLDINGS, INC. and
PRESERVATIONS 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, L.P.

Defendant – Appellant

ON APPEAL FROM BUSINESS AND CONSUMER COURT

REPLY BRIEF OF APPELLANT EIGHT PENN PARTNERS, L.P.

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I. **INTRODUCTION**

The Appellees' brief (hereinafter "Scarcelli's Brief") concedes five vital facts and sets up a strawman argument under which it avoids discussing the important rules of contract interpretation that are central issues on appeal.

Scarcelli's brief fails to dispute the following five vital facts: 1) in March of 2013 Scarcelli's entity - Preservation Holdings, LLC – took control over the entity (Gleichman & Co., Inc.) that had been wholly owned by and founded by Scarcelli's mother, Pam Gleichman, since the 1980's; 2) Scarcelli's entity was the buyer at an auction set up by her lawyers to obtain the stock of the corporate general partner in the four limited partnerships involved in this case[1]; 3) each partnership agreement contained a prohibition against taking control of the corporate general partner without first obtaining the written consent of the individual general partner or the consent of the limited partners – that is, by Gleichman and the two tax credit

[1]Scarcelli's brief does vaguely suggest at page 5 that this transfer occurred with Gleichman's consent, but fails to discuss the pertinent trial testimony establishing that Scarcelli had wrongfully deprived her mother of the funds she was owed which would have satisfied the JMB debt (and deprived her of funds to challenge these abuses in court) and then proceeded to instead buy that debt claim for herself and foreclose on it, betraying an arrangement that she had entered into with Promenade Trust Trustee Chris Coggeshall in regard to protecting her mother's assets. <u>See Trial Transcript</u> Vol 1 at 76:4 to 77:25 and 80:1-19 (Scarcelli testimony) and 225:1 to 227:14 and 237:3 to 238:11 (Gleichman testimony) and Vol 2 at 7:9 to 10:1 and 14:1 to 15:9. <u>See also</u> Attorney Chris Coggeshall deposition testimony at Coggeshall at 123:13-21(family plan to use claims so that "third-party creditors" would have "to think twice" about collecting against Pam); 141:12 to 143:20 (describing joint family efforts to protect Gleichman). (Ex 101).

funds controlled by Richman Asset Management; 4) Scarcelli did not obtain the consent of Gleichman or either of the two limited partners that she could exercise management rights in any of the four limited partnerships and in fact Scarcelli was engaged at that time in hostilely taking over of her mother's assets (for which wrongs she agreed in 2020 to pay millions of dollars in damages); and 5) despite having ignored the consent requirement, Scarcelli shortly after settling with Gleichman filed this lawsuit claiming the right to block the transfers of LP interests to benefit Gleichman's husband (Karl Norberg), two sons (Hillman Norberg and Luigi Scarcelli) and a long-time loyal employee (Gunnar Falk) which she knew had occurred in 2018 – Norberg having paid $13,000 for those interests.

II. ARGUMENT

A. A CORPORATE GENERAL PARTNER THAT IS TAKEN OVER BY A CREDITOR WITHOUT OBTAINING THE CONSENTS OF OTHER PARTNERS AS REQUIRED BY THE PARTNERSHIP AGREEMENTS MAY NOT BLOCK TRANSFERS OF INTERESTS BY A PROPERLY ADMITTED LIMITED PARTNER.

1) PARTNERSHIP AGREEMENT SECTION 6.01 FORBIDS BOTH VOLUNTARY AND INVOLUNTARY TRANSFERS OF CONTROL OVER A CORPORATE GENERAL PARTNER WITHOUT ADVANCED WRITTEN CONSENT FROM THE LIMITED PARTNERS

The Business Court concluded that section 6.01 applied only to voluntary transfers – and not to transfers that are the result of creditor actions – basing its

conclusion not on any extrinsic evidence – but rather on the terms of the partnership agreements.[2]

The Red Brief makes no attempt at a reasoned construction of the contract – ignoring the various arguments in the Blue Brief favoring the "declarative" construction and failing to address any of the cases and statutes cited in the Blue Brief. See discussion at pages 15 and 16 of the Red Brief.

PLAIN LANGUAGE OF THE CONTRACT. As for applying the plain meaning used in the contract, the Red Brief fails to address the fact that section 6.01 uses broad language which does not limit the consent requirement only to voluntary transfers.[3] The Red Brief does not address the argument that a fair reading of the provision is that a sale of GP interests may occur if the required consents are obtained; that is, it permits a sale to occur if the consents are obtained. The provision would mean the same thing if it were worded as follow: "the sale cannot occur

[2] The Court wrote at page 13 of its decision that it was opting to accept the permissive language contained in the phrase "a General Partner may withdraw.. or transfer or assign …only with" the consents of the other partners – while agreeing that there was a "declarative" interpretation that would require application to all transfers. App. at 19 (emphasis added).

[3]The plain language used states that the individual partner (Gleichman) may not withdraw or sell or transfer "his or its Interest as General Partner" without consent and that the corporate General Partner may not sell or transfer "a controlling interest in the General Partner" without the same consent. These provisions of section 6.01 do not contain any language suggesting they were intended to be limited to voluntary assignments or transfers, but instead use broad language so as to apply to any withdrawal of a general partner and any sale, transfer or assignment of "his or its Interests as General Partner (or a controlling interest in the General Partner)". See App. at 69 and Joint Exhibits 1 - 4 - Sections 6.01(a) of each partnership agreement).

unless the consents are obtained". Those are two methods of articulating the same thing. No significance therefore should be accorded to the fact that the word "may" (used along with the conditional "if" language) has to be used when the proposition is stated in the affirmative – that is, without using the "unless" language. Certainly, that meaningless distinction should not be seen as effectively excluding from the consent requirements all transactions that involve creditor take-overs.

The Red Brief also totally ignores the definitions of the word "transfer" which is the key provision in the contract before the Court. At pages 23 and 24 of the Blue Brief the Appellant set out the non-limiting definition of the word "transfer" as used in various contexts – including as used in the Uniform Limited Partnership Act. In each of those contexts the word "transfer" encompasses both voluntary transfers as well as involuntary transfers.[4] The language involved (when properly considered under these definitions and the rule of construction requiring to make sense of the contract as a whole) simply is not susceptible to more than one reasonable interpretation.

PURPOSE OF THE CONSENT PROVISION. As for the purpose of including consent provisions in partnership agreements, the Red Brief fails to discuss

[4] Most significantly, section 1302(21) of Maine's Uniform Limited Partnership Act provides that the word "transfer" includes a "transfer by operation of law" such as by a creditor auction. 31 M.R.S.A. section 1302(21). See also the definition in Black's Law Dictionary as well as the definition in Maine's Fraudulent Transfer Act that also defines the word "transfer" as including both a voluntary and an involuntary transfer. 14 M.R.S.A. § 3572(12).

the substantial body of case law establishing that these provisions are just as <u>important</u> in involuntary situations (if not more so) as they are when a partner willingly sells his or her economic interests in the partnership. The Red Brief fails to discuss the law cited in the Blue Brief on page 24 and footnote 8, establishing that these consent provisions reflect the statutory and common law entity protection purpose designed to protect the owners of the partnership interests from being invaded by outsiders – particularly by outsiders who are creditors. The Appellees fail to pose any rationale suggesting why those forming a limited partnership would have any reason to allow an unconsented take-over by a creditor while forbidding all unconsented voluntary transfers of management interests.

Scarcelli's brief also ignores the Maine limited partnership statutes that incorporate the "right to choose your own partners" entity protection policy. The Red Brief contains no discussion of the provisions of Maine's Limited Partnership Act prohibiting creditors from obtaining any management interests in limited partnerships. The Red Brief effectively accepted the fact that Maine statutes preclude creditors from assuming control over the management of the limited partnerships. <u>See</u> 31 M.R.S.A. § 1383 and 1302(22) as discussed in Blue Brief at pages 26 through 28. The consent language therefore must be read in harmony with these statutes so as to prevent all parties (and especially creditors) from

interloping and interfering with management of the limited partnership simply because they have a debt owed by a general partner.

Rather than addressing the plain language of section 6.01 or the purpose of the consent provisions, the Red Brief's sole argument on this issue is its claim on page 16 that the conduct of the parties suggests that the parties did not think that the provision applied to involuntary taking of control. But that is not supported by the evidence and in any event would not justify by-passing normal rules of contract interpretation. The trial testimony from all witnesses was that the prior consent provisions were foundational provisions that governed whenever there was any change in control occurred – voluntary or involuntary.[5]

The referenced testimony had to do with the entirely separate issue of whether Richman should be estopped from invoking the consent provision as to the change in control. That position was not adopted by the Business Court – but is suggested as being an alternative ground for upholding the judgment below.[6] That

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[5]Only Gleichman was qualified to testify in regard to the drafting of the partnership agreements and the application of the consent provisions over the decades before the Richman sale, and she testified that she had never consented to her daughter taking over her entity or to her daughter becoming "in essence, a new general partner" in the projects and that neither she nor the Richman entities had consented to the takeover of the corporate general partner and that the agreements "absolutely require consent" to any change in control. Trial Transcript at 225:19 to 229:4. See also footnote 7 below.

[6] See Red Brief at 4 and footnote 2 on page 19. Such an alternative basis to support the judgment below must be briefed in the Red Brief. See Tominsky v. Town of Ogunquit, 2023 ME 30 P17, citing Matter of Sims, 994 F.2d 210, 214 (5th Cir. 1993) ("Such arguments should, instead, be included in the appellee's answering brief." (citation omitted)).

argument is so perfunctorily addressed in footnote 2 of the Appellees' brief so that it should be deemed waived. See discussion of perfunctory briefing at footnote 7 below. In any event, there was no evidence to support a finding of a waiver of rights nor evidence giving rise to an estoppel under the applicable legal principles.[7] The Business Court in fact found that Richman proceeded with the sale shortly after being first informed of the change in control and did so because of its long standing reliance on such consent provisions as governing limited partnerships and requiring written consent before any change would be recognized by the limited partner as being valid.[8]

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[7] To support such a claim the Appellees had to present evidence of an intentional relinquishment or abandonment of a known contractual right. See Interstate Industrial Uniform Rental Serv., Inc. v. Couri Pontiac, Inc., 355 A.2d 913, 919 (Me. 1976)("A waiver is a voluntary or intentional relinquishment of a known right...").

[8] The record in fact was clear that there was no intentional relinquishment of known rights by Richman. In fact, just the opposite is reflected in the writings – including the fact that in response to Scarcelli's request to buy Richman's LP interests, Richman proceeded to sell them instead to Eight Penn because no consent had been given by Richman to changing control away from Gleichman. The Business Court made the following pertinent findings: A) that in May of 2018 Scarcelli's husband told a Richman employee that there was pending litigation challenging whether the stock in General Holdings had effectively been transferred to Scarcelli and B) that later in 2018 Richman rejected an offer by General Holdings to buy the LP interests and instead went forward selling its interests to Eight Penn Partners because Richman knew that it had never provided any consent to a change in control over the entity Gleichman & Co, Inc. a/k/a General Holdings. See App. 12 - 13. There was no evidence that Richman acquiesced and accepted the change in control and no evidence that Richman knowingly misled Scarcelli or anyone into believing that it had accepted the change in control. Richman instead relied upon the integrity of its original designations as to who represented both managing partners, and it did so – repeatedly asking Scarcelli for any evidence of a written consent.

The testimony at trial also established that Scarcelli had hidden from her mother for years the fact that Scarcelli had informed Rural Development that she was assuming control as sole general partner of the projects. Trial Transcript Vol 2 at 19:9 to 20:1. Richman was not on notice

2) THE GENERAL PROHIBITION AGAINST UNCONSENTED CHANGES OF THE GENERAL PARTNERS PREVAILS OVER THE PROVISIONS IN SECTION 8.13 REGARDING THE REMOVAL OF PROPERLY ADMITTED GENERAL PARTNERS

Rather than forthrightly addressing and construing the contract as a whole so as to give meaning to the basic common law and statutory protections intended to guaranty general partners the right to choose with whom they wish to be associated in business[9], the Red Brief trivializes those clear and fundamental goals and obfuscates the analysis with a straw man argument – framing its argument so as to avoid addressing the real issue and then refuting the contrived argument.[10]

Instead of addressing the arguments set out in the Blue Brief so as to be reasonable as a whole, reconciling the "partner admission protections" of section 6.01 with the separate and independent "partner removal provisions" of section 8.13,

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of any changes since Scarcelli had in any event been managing the businesses through Stanford Management – See Order Following Bench Trial at 4 (App. at 10)

[9]The Red Brief avoids discussing in any way the various decisions cited in the Blue Brief – including this Court's decision in Am. Prot. Ins. Co. v. Acadia Ins. Co., 2003 ME 6, ¶ ¶ 11- 15, 814 A.2d 989 ("when interpreting a contract, a court needs to look at the whole instrument … and a contract should "be construed to give force and effect to all of its provisions" and not in a way that renders any of its provisions meaningless"; after construing all provisions of the contract with its exhibits so as to determine its intent - give meaning to it as a whole in a way that gives effect to all provisions, the provisions at issue were deemed to be unambiguous).

[10]The technique of argument known as the "straw man" fallacy leads to irrelevancies and "precludes the development and resolution of the true issues of contention." Canesi Ex Rel Canesi v. Wilson, "158 N.J. 490, 730 A.2d 805 (1999)(O'Hearn, J. concurring).

the Red Brief resorts to its straw man argument – i.e. its argument that Eight Penn has contended (and is contending) that the 100% change in ownership of the corporate general partner should have been addressed under the "partner removal provisions" in section 8.13.[11]

Eight Penn has never argued that there had been an automatic dissociation – although the Appellees have repeatedly mischaracterized Eight Penn's position in that way.[12] In fact, Eight Penn agrees with the Red Brief assertion at page 19 that a change in ownership of the corporate general partner could not satisfy the conditions for removal under section 8.13. That is in fact a central reason that section 6.01

[11] At pages 17 through 20 of the Red Brief the Appellees argued erroneously that the Appellants are claiming that there was an "automatic dissociation" of General Holdings due to the take-over of its stock by Scarcelli. The brief sets up this red herring that the Appellant should have sought to remove General Holdings under section 8.13, then proceeds down the road with a discussion of irrelevancies and a pre-determined favorable result - avoiding all of the pertinent contract construction principles. It points out that Richman A) failed to seek removal under section 8.13 and B) in any event had no evidence by which it could have obtained automatic removal since a change in ownership is not among the listed violations for automatic removal and since it would have to prove that the takeover had a "material adverse effect on the partnership or the limited partner. The Red Brief at page 19 refers to the takeover of the corporate general partner by a creditor (i.e. Preservation Trust) as a "mere change in control of a general partner" and points out that the partnership agreement does not provide for such a change to constitute a ground for an "automatic" withdrawal". See Red Brief at 19 -20.

[12] See Defendant Eight Penn Partners, L.P.'s Post Trial Brief dated 3/8/24 at 21-26. See also Trial Transcript at 13:11 to 17:5 and Eight Penn's Reply Brief in Support of Motion for Summary Judgment at 5 – 7 and footnotes 8-10 (dated February 7, 2022) ("The argument in Plaintiffs' brief is structured so as to avoid addressing the real issue – instead, setting up an argument that was not made and then refuting that argument … [S]ection 8.13 does not incorporate (or even refer to) section 6.01).

cannot be construed as being enforceable only through the procedures in section 8.13.

The Business Court decision was premised upon its view that the "partner admission protections" are subordinate to, or only enforceable through, the "partner removal provisions." App. at 13-14 (Order Following Bench Trial at 13-14). Without using any extrinsic evidence, the Court interpreted the removal provision as being the exclusive means of enforcing the provisions that govern who can be admitted and what must proceed such an admission. It concluded that the removal provisions govern both as to general partners who were the initial partners as well as persons claiming to be partners by virtue of their taking over (or by virtue of their having assuming control over) one of the initial partners. The Business Court's decision imposed the burden not upon the interloping creditor, but rather upon the Tax Credit Funds to undertake various affirmative actions as set out in section 8.13, failing which they were bound to accept the decisions of the interloper – including the interloper's decision to veto a transfer of the LP's interests to the family of the individual partner who had developed the projects in the first place. The limited partner under that construction is in essence required to recognize (and be governed by) an entity that was entirely taken over by a creditor – and to treat that entity as if it were an original partner – despite having 100% of its stock sold to an outsider.

Under the Business Court's interpretation, the limited partners were required to accept the veto power of that interloping creditor even though if they had undertaken an attempt to remove that entity, it would have been a fruitless task as an additional element would be imposed under section 8.13 – that is, the requirement of proving that the involvement of the Scarcelli-run entity would be materially and adversely affect partnership. See Blue Brief at 33-34.

The Appellant's position was that the consent provisions in section 6.01 are not subordinate to (or subject to) the provisions in section 8.13, the latter provisions governing only as to efforts to remove a partner that was an original partner or that has been properly admitted. Section 8.13 does not govern as to an interloping "partner" that never gained proper admission to the partnership. Thus, there is no need to dissociate that unadmitted party.

By "framing" the issues in this way and ignoring Eight Penn's reasoning, the Red Brief attempts to side-step compelling arguments. Therefore, the Court will find no portion of the Red Brief addressing any of the important points made in the Blue Brief,[13] and any argument to the contrary should be considered waived. See Mehlhorn v. Derby, 2006 ME 110 P1 quoting Holland v. Sebunya, 2000 ME 160, P9 n.6, 759 A.2d 205, 209.

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[13] These include the following points:

The Red Brief's assertion as to the limited situations in which a partner may be removed under the provisions of section 8.13(b) only serves to bolster Appellant's position.[14] Certainly, there has to be a method of enforcing the clear and explicit contract provisions designed to keep out interloping parties. Such an important provision must be enforceable – and not just when one can prove that the interloping party materially and adversely affects the partnership as would be required under section 8.13. Since the removal provisions would be entirely ineffectual in

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1- Partnership section 6.01 makes no reference to section 8.1, and conversely section 8.13 makes no reference to section 6.01; there are no provisions of the partnership agreements suggesting that removal of the general partner is the proper or the only method for enforcing the partnership consent provisions and in fact section 8.13(d) states that the remedies under that section are non-exclusive;

2- Requiring a limited partner to take various affirmative actions in order to remove an interloping general partner would render meaningless the prior consent requirements of section 6.01 which are designed to keep creditors out of the management of limited partnerships;

3- By treating the provisions of section 6.01 as being subject to - or subordinate to - the provisions requiring a limited partner to successfully remove a creditor under section 8.13, the Business Court in effect allowed a creditor to hostilely take control over the partnership entity – a result entirely at odds with the plain meaning of the "partner admission protections" designed to protect the entity from becoming managed by creditors that are not wanted as partners; and

4- Interpreting the contract in a manner which allows an interloping creditor to interfere with actions agreed to between the initial owners of these four partnerships contravenes the contract construction principle that all portions of agreements must be considered together as a meaningful whole as well as the principle that provisions specific to an aspect of a contract (i.e. the admission of new or replacement partners) must govern over general provisions such as those governing the removal of properly admitted general partners.

[14]The Red Brief stated at page 19 that the "change in control of a general partner" "could never" constitute grounds to remove the changed entity. See Red Brief at 19 -20. Red Brief at 20 ("Richman could never demonstrate … that a change in share ownership … had a "material adverse effect " on the partnership or its limited partner as required by Section 8.13(a)(B)).

preventing interference by creditors, the construction that treats section 6.01 as wholly independent from section 8.13 is compelling.

B. THE SUPERIOR COURT WAS CLEARLY IN ERROR IN GRANTING A DECLARATORY JUDGMENT VOIDING A SALE THAT OCCURRED SIX YEARS AGO IN VIEW OF THE UNCLEAN HANDS AND INEQUITABLE CONDUCT BY THE APPELLEES AND THE FAILURE TO PROVIDE REIMBURSEMENT TO THE BUYER OF THE SUMS THAT THE APPELLANT HAD PAID FOR THE INTERESTS DECLARED TO HAVE NOT BEEN CONVEYED

In regard to the facts pointed out in the Blue Brief supporting a conclusion that there was clear error in voiding the sale at the behest of Scarcelli, the Red Brief erroneously suggests that these facts cannot be challenged.[15] Its failure to address them (see Red Brief pages 21 - 23) is tantamount to admitting the following facts: 1) that Scarcelli after being gifted control over the property management company used that position to deprive her mother of resources – leading to Scarcelli purchasing a debt claim which she in turn used to auction her mother's stock in (and gain control over) her mother's entity (Gleichman & Co), ultimately agreeing to pay her mother and step-father $3.95 million, see Blue Brief at 8-9 and 14 and 38

[15]Contrary to the argument at page 13 of the Red Brief, an appellant is entitled to point all of the facts to support its clear error argument and need not seek further findings after the trial judge wrote a 15 page decision. See Pongonis v. Pongonis, 606 A.2d 1055, 1057-58 (Me. 1992)(reverse a finding of fact for "clear error" when there is no competent evidence in the record to support the finding or a "finding is based on a clear misapprehension of the meaning of the evidence or the force and effect of the evidence, taken as a whole, such that it is "so against the great preponderance of the believable evidence that it does not represent the truth and right of the case.")

and Trial Transcript at 206:5 to 213:12 and 223:12 to 226:15; 2) that the transfers to Eight Penn were completed five years ago when the tax credit funds were being terminated,[16] see Blue Brief at 14 and 39; 3) that shortly before the sale to Eight Penn, Scarcelli's husband wrote to Richman seeking to instead obtain those interests for Scarcelli's entity, see Trial Exs. 22 and 53; Trial Transcript at 132:9 to 133:12; Order Following Bench Trial at 12; and Blue Brief at 13; and 4) that just two weeks after the 2020 settlement Scarcelli through her attorney demanded that Eight Penn "walk back" the purchases of the LP positions, accompanied by a threat to terminate all of the future payments that remained owing under the settlement ($2.75 million), see Blue Brief at 15-16 and 38. Scarcelli contested none of these facts[17].

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[16] The Appellees erroneously argued in section III of the Red Brief (pages 23 and 24) that Eight Penn failed to raise before the Business Court the contention that complete equity could not be done in view of the fact that the Court could not effectively provide for the return of the funds paid by Eight Penn. The Appellant did assert at trial that the tax credit funds were out of existence and that the Court could not effectively provide for these tax credit funds to pay back to Eight Penn the purchase amounts since they were defunct entities. See Trial Transcript at 16:19 to 17:5.

[17] The Red Brief did partially address the fact that this case was commenced shortly after Scarcelli entered into an agreement that she would cease all litigation against her mother and step-father. See Blue Brief at 14-15 and 38 and Red Brief at pages 21-23, but the argument does not address the fact that Scarcelli should at a minimum be seen as violating the spirit of the settlement since she did know at the time of settlement that Richman had sold its interests to Eight Penn – and that the parties had included Eight Penn in a list of entities that were not to be used to interfere with Stanford's management activities. See also Trial Transcript at Vol 2 at 20:11 to 25:15.

The Red Brief attempts to trivialize the unfairness of demanding a "walk-back" just two weeks after settling by invoking a finding made by the settlement judge/trial judge about how he believed that the parties had acted during those confidential proceedings – statements about "crab walking" and that the parties had acted in a "cagey" manner. App at 17. These statements should not be considered since they reflect impressions the trial judge gained during settlement

III. CONCLUSION

Since the interloping entity controlled by Scarcelli had no lawful veto authority over the limited partner, the Tax Credit Funds was free to sell their interests to Appellant, and the Judgment of the Business Court should be reversed.

Dated this 24th day of September, 2024, at Portland, Maine.

Respectfully submitted,

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negotiations (not in evidence in the record or subject to cross examination). If it were proferred by any party, it would be excluded under the rules governing the confidentiality of such proceedings (see ME. R. Evid. 408) as well as under Maine Rules of Judicial Conduct. Maine's Judicial Code does not preclude a judge from trying a case after conducting a settlement conference, but makes clear that the Court must take precautions to address the substantial risk that impressions made or hearsay communicated during such settlement conferences can color findings at trial. See Maine Code of Judicial Conduct Rule 2.6(B). Commentary as to Model Rule 2.6 cautions that special attention should be paid to make sure that hearsay communications heard during the settlement conference (or views developed there) are not considered in rulings at or after a subsequent trial. See Comment 3 to A.B.A. Model Code of Judicial Conduct 2.6 (Judges must be mindful of the effect that settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality). Comment 3 to the Model Rule also states that the trial judge "should consider whether disqualification may be appropriate" if it appears that despite his or her "best efforts," information obtained during settlement discussions is influencing the judge's decision during trial. That Comment refers to Rule 2.11(A)(1) prohibiting judges from presiding when "the judge's impartiality might reasonably be questioned" based on "a personal bias or prejudice concerning a party or a party's lawyer" or on the fact that "the judge has personal knowledge of facts that are in dispute in the proceeding".

CERTIFICATE OF SERVICE

I hereby certify two copies of the above brief were hand delivered on September 24, 2024 to James D. Poliquin, Esq. at Two Canal Plaza, Portland, Maine, and by agreement digitally upon Kevin P. Polansky, Esq. at kevin.polansky@nelsonmullins.com. In addition, a digital copy was emailed to Attorney Poliquin on the same date to jpoliquin@nhdlaw.com.

September 24, 2024

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