

SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW DOCKET NO. BCD-21-205

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CHARLES R. MAPLES. Et al.,

*Plaintiffs-Appellants*

v.

COMPASS HARBOR VILLAGE CONDOMINIUM ASSOCIATION, et al.,

*Defendants-Appellees*

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APPEAL FROM THE MAINE BUSINESS AND CONSUMER COURT  
Docket No. BCD-CV-2022-322

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BRIEF OF THE APPELLEES

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## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

Appellees concur generally with the procedural history and statement of facts set forth by Appellants. This is the fourth time this matter has been before this Court, and this Court is no doubt familiar with the facts. It is important to note that after entry of the original Order Following Bench Trial (the “Underlying Judgment”), and this Court’s first ruling dated April 9, 2020 (Appendix at 119), circumstances changed significantly. The defendant developer/declarant Compass Harbor Village, LLC (the “LLC”), the wrongdoer in the case, whom Appellants expected to pay the amount of the judgment, turned out to be insolvent and unable to pay anything. This caused Appellants to turn their focus to trying to collect from the Compass Harbor Village Condominium Association (the “Association”) instead. This gave rise to the issue of the application of 33 M.R.S.A. §1603-117(a), and Appellants’ filed a second civil action in an attempt to enforce the Underlying Judgment (Appendix at 34, 51).

At the time of trial, the declarant LLC, controlled by Evan Contorakes, still owned a majority of the units, and presumably the Appellants were under the impression that the LLC was solvent and able to pay the damages by virtue of the ownership of those other unsold units. Apparently no thought was given at that time, by anyone involved, about the issue of uncollectibility against the culpable

declarant's LLC, and the application of the Condominium Act judgment lien statute, 33 M.R.S.A. § 1603-117(a), as against the other unit owners who were not parties to the original underlying action, in these unique circumstances (which is the issue before you here).

Shortly after the trial, during the pandemic, Evan Contorakes, who controlled the LLC, died from COVID related issues in Florida. Appellants then came to understand that the LLC was insolvent and that its ownership interest in the unsold condominium units was mortgaged for an amount far in excess of the liquidation value of the units. They were now faced with a collection problem.

Shortly after Appellants filed this civil action seeking enforcement, the bank holding the mortgage in the units owned by the LLC commenced a corporate power of sale foreclosure. Appellee Orono, LLC purchased the mortgaged units at the auction sale, and that statutory foreclosure sale had the effect of extinguishing the judgment lien at issue in this case as to those units. Appellants acknowledge this.

Procedurally, this case involves two separate, yet connected, civil actions. The first underlying action gave rise to the damages and attorney fees order (the Underlying Judgment) against the LLC and the Association that it controlled, in favor of Appellants. The second action, brought by Appellants after the discovery that the LLC was insolvent, sought to enforce the Underlying Judgment against the

Association and the other unit owners, alleging that since the LLC was insolvent and unable to pay, and that the other unit owners, as members of the Association, should pay by being assessed using the provisions of the Maine Condominium Act, or forced to pay through the judgment lien procedure of 33 M.R.S.A. § 1603-117(a).

The appeal involves rulings on two different motions to dismiss were filed by defendants at different points in the case. The first motion was filed by a group of six defendants represented by the one of the two attorneys representing the unit owner defendants. The remaining unit owner defendants, represented by the undersigned, chose for tactical reasons not to file their motion at that time. The Business Court ruled in favor of the six moving defendants and limited its dismissal of the case to those defendants only.

Appellants brought their first appeal as to the ruling on the first motion to dismiss, seeking, with Appellees' consent, an exception to the final judgment rule. In their brief on that first appeal, they abandoned their argument on assessment, focusing only on the application of 33 M.R.S.A. § 1603-117(a). Despite the litigants' request for an exception, this Court determined that no exception applied, and that the appeal was interlocutory and sent the case back to the Business Court.

Subsequently, the remaining previously non-moving defendants filed a second motion to dismiss which was also granted, resulting in finality as to all

remaining unit owners, and the filing of the previous appeal. That appeal was again dismissed as interlocutory as to the LLC and the Association. Subsequent motions in the Business Court resulted in judgment for the LLC and judgment for the Association. There are, therefore, three separate rulings dismissing the present case as to different groups of defendants (the “Orders”). The first two of these Orders discuss and clarify the trial court’s intent in the crafting of the Underlying Judgment, and the limitations on its enforcement. All three of Orders, taken together, are the subject of this appeal.

The only issue before you is whether the trial court’s limitation on the use of 33 M.R.S.A. § 1603-117(a) so as to protect the other unit owners from having to pay the Underlying Judgment was an error of law, or rather a proper and just exercise of its equitable powers.

### **SUMMARY OF THE ARGUMENT**

The issue in this appeal is about the trial court’s use of its equitable powers to limit enforcement of its money judgment to the culpable defendant in order to protect innocent, non-party condominium unit owners from liability for damages awarded in its original Underlying Judgment.

This limitation was necessary because the Underlying Judgment was entered against both the LLC and the Association. The Association, in this case,

is comprised of all unit owners. It has no assets of its own. It operates on assessments made pursuant to the Maine Condominium Act collected from unit owners to carry out its duties under the Act to maintain and operate the condominium property. The citations to the Condominium Act provisions and requirements regarding owners' associations are set out in the trial court's Underlying Judgment (Appendix at 81).

At the time of first underlying action, the Association was controlled by the LLC, since it had fifteen of the twenty four votes. The other unit owners had no effective say, or involvement, in the operation of the Association at that time. The LLC, controlled by Evan Contorakes, was the declarant and developer of the condominium. At the time of trial, the LLC owned fifteen unsold units of the total of twenty four. It therefore had voting control over the Association, and using that control, operated it in a way that injured Appellants, along with all of the other non-party unit owners.

The trial court recognized that if a judgment was entered against the Association, the LLC (the real culpable party responsible for the injuries to Appellants) had the power to assess the other non-party unit owners and thus force on totally innocent parties (who were themselves, victims) the burden of responding in damages for the LLC's wrongdoing.



No evidence of any kind had been introduced by Appellants at trial to indicate that the other unit owners had any culpability for the harms done to them. Instead, they appeared to be fellow victims, who suffered similar harm that suffered by Appellants. The trial court made it clear in the Underlying Judgment that the other blameless non-party unit owners were not to be assessed to pay the Association's damages to Appellants. Therefore the Underlying Judgment contained express limitations on the Association assessing the other unit owners to pay any portion of the damages owed to Plaintiffs by the Association.

The language used by the trial court seemed adequate to carry out the intent of the Underlying Judgment at the time it was written, when a limitation on assessment by the Association against other unit owners seemed the only protection needed. Appellants did not seek any clarification as to enforcement issues at the time the Underlying Judgment issues, presumably believing that the defendant LLC, that still owned the unsold units, was solvent and would be paying the damages. They did not seek post judgment relief, nor did they appeal the restrictions included by the trial judge in the Underlying Judgment.

Now that it appears that the LLC is insolvent and the Association refuses to make assessments related to paying the Underlying Judgment, the Appellants argue a mechanical and rigid application of 33 MRSA §1603-117(a), the judgment lien statute in the Condominium Act, without regard to the limitations stated in the

Underlying Judgment. Their position on the issue would allow them to foreclose on the other units and apply the proceeds to the judgment, using the provisions of that statute with the result of defeating the clear intent of the Underlying Judgment.

Appellees do not agree with Appellants' position that 33 M.R.S.A. §1603-117(a) permits them to enforce the Underlying Judgment through foreclosure or turnover order against the other unit owners. The Appellants argue that since application of that statute is not technically not an assessment, it does not violate the prohibition in the Underlying Judgment against assessing the remaining unit owners for the damages awarded to Appellants. That argument flies in the face of the clear language and plain meaning of the Underlying Judgment, and is a mechanical and formalist application of the judgment lien statute.

The plain meaning and intent of the Underlying Judgment, and the Orders on appeal clearly indicate the intention of the trial court, and should control. The enforcement limitations created by the trial judge were well within his equitable powers to fashion a just and fair judgment. The attorney fees are part and parcel of the Underlying Judgment, and the attempt to collect those fees through the judgment lien procedure of 33 M.R.S.A. §1603-117(a) must fail as well, for the same reasons.

## **ARGUMENT**

### **I. The Business Court Properly Dismissed Counts 1 and 3-5 of Appellants' First Amended Verified Complaint**

## **A. The Applicable Legal Standards**

Appellees agree that this Court should review the Business Court's conclusions de novo. Goudreau v. Pine Springs Rd. & Water, LLC, 2012 ME 70. The current action, the subject of this appeal, was brought to determine if, and if so, how, that Appellants could enforce the terms of the Underlying Judgment. Appellants sought authority to force the Association to assess the unit owners to force them to contribute money to the payment of the Underlying Judgment. They also sought authority to foreclose on individual units as provided in 33 MRSA §1603-117(a).

Essentially, Appellants returned to the court that issued the Underlying Judgment (albeit by using a second civil action) seeking enforcement. Much of this Court's precedent in the area of enforcement of money judgments by the trial court (rather than through the usual District Court collection process) arises in the context of divorce cases, as in that area of the law disputes often arise as to the meaning, and enforcement of prior court judgments. Appellants filed their second action in order to have the trial court (in this case, the Business Court) enforce its Underlying Judgment, as is often common in divorce cases. The principles at play in construction and interpretation of judgments in divorce cases are equally applicable to the case before this Court.

The difference in this case when compared to divorce cases is that Appellants now seek enforcement of a money judgment against individual unit owners that were not party to proceeding that gave rise to the Underlying Judgment.

Count 1 is titled “Enforcement of Judgment”, Count 3 is titled “Request for Turnover Order or Sale Order” and Count 4 is titled “Foreclosure”. Count 5 is titled “Contempt” and is not applicable to the issues before you at this time.

In this situation, this Court must first determine, in a de novo review, whether the rulings on appeal (the rulings on the two motions to dismiss) are ambiguous, or unambiguous. If ambiguous, and therefore in need of clarification, this Court would then have to interpret the judgment. In that case this Court would then consider, using an abuse of discretion standard, whether the clarification is consistent with its language read as a whole and is objectively supported by the record. Cianchette v. Cianchette, 2020 ME 101.

An ambiguous judgment is one that has at least two reasonable interpretations of the language. Blanchard v. Sawyer, 2001 ME 18, Hughes v. Morin, 2000 ME 135. The Orders on the motions to dismiss are not ambiguous. It is those Orders on the motions to dismiss that are on appeal here, not the Underlying Judgment. However, that Judgment is inextricably intertwined in the reasoning of those rulings. There is only one possible interpretation of the language in the Orders.

When a judgment is unambiguous, it must be enforced in accordance with the plain meaning of the language in the judgment. Bonner v. Emerson, 2014 ME 135, Burnell v. Burnell, 2012 ME 24.

Here, we have the benefit of having the same judge that conducted the trial, and drafted the Underlying Judgment, deciding the motions to dismiss in an enforcement action of that Underlying Judgment. The trial judge was explicit in the reiteration of his clear meaning and intent in the Underlying Judgment. His Orders on the motions to dismiss make this crystal clear.

Where, as here, the judge who clarified the judgment is also the judge who issued the original judgment, this Court should give particular deference to that clarification because it is the intention of the court that issued the judgment originally that is controlling. Voter v. Voter, 2015 ME 11, Cianchette v. Cianchette, 2020 ME 101.

**B. Appellants Have Not Stated A Claim That They Have A Judgment Lien Pursuant to 33 M.R.S. § 1603-117(a) Against The Units, And Are Not Entitled To A Foreclosure or Turnover Order**

This action is an attempt to auction and sell the units of the other unit owners (with the exception, as Appellants admit, of the units Orono, LLC purchased in a foreclosure sale) using 33 M.R.S.A. §1603-117(a). The real and most important question is since the trial judge had the power to, and in fact did, craft the

Underlying Judgment (from which no appeal was taken) as a restricted or limited money judgment to protect innocent unit owners, what effect does that have on the application of the judgment lien statute?

The problem arises because the Underlying Judgment runs against both the LLC and the Association, and there is a statutory scheme for condominium association judgments that creates a lien on individual units for a judgment against a condominium association.

The members of the Association are the individual unit owners, and the Association has no assets of its own, nor income other than assessments it makes against the unit owners to cover the expenses of operation and maintenance. 33 M.R.S.A. §1603-117(a) provides for enforcement of debts of the Association (generally) by way of liens and foreclosures on individually owned units. However, Appellants' attempt to use that statute to foreclose on the other unit owners in this case clearly conflicts with the intent and plain meaning of the Underlying Judgment, and the Orders on appeal.

Generally, most civil actions brought against condominium associations arise because of breaches of contract for payment for goods or services furnished to the condominium association by third parties. In such cases the benefit conferred by the creditor is usually one enjoyed by the unit owners. Some actions

against condominium associations also arise from negligence in maintenance or operations by an association causing injury to someone.

That individual units should be liable for this would make sense to the extent that the unit owners enjoyed the benefit of the goods or services, or if based on negligence, that they had some culpability for the negligence causing the injury (in that a properly run association provides for unit owners to have decision making power through a vote on how things are run).

This claim however, is fundamentally different. Here, the factual findings made in the Underlying Judgment make it very clear that the breaches of contract and of fiduciary duty were those of Evan Contorakes and his LLC. The Underlying Judgment outlines how they ran the Association in blatant disregard for the requirements of the Condominium Act (Appendix at 98) and the rights of the other unit owners. At the time of the trial court's ruling, the Association was under the complete control of the LLC by virtue of its ownership of a majority of the units allowing it to control voting. (Appendix at 100).

Therefore, judgment was entered against the Association along with the LLC. In fact the trial judge states in discussing the award of attorney fees, (Appendix at pg. 112) that "the Association and the Declarant, *because the Declarant still controls the Association*, (emphasis added), are jointly and severally liable for paying the award of attorney fees".

However, he recognized that the Association and the other unit owners were not one and the same. He realized that the LLC could have the Association (still under its control) assess the other units for the damages and costs, and thereby simply pass some of the financial burden of the damages on to the other innocent unit owners. Accordingly, he made special note of this in the Underlying Judgment (Appendix at pg. 114) with the following language:

“Defendants must not impose or attempt to impose or collect any special assessment to pay for their attorney fees and litigation costs, or for the damages awarded in this action”.

Prohibiting any assessment by the Association (then controlled by the LLC) would have appeared at that time to effectively protect the other unit owners (who were innocent of any wrongdoing, and had been just as victimized as the Appellants) from ending up paying the Appellants for the injuries caused by Contorakes and his LLC.

The probable reason that the trial judge didn't expressly restrict use of the judgment lien statute along with assessment against the unit owners in the Underlying Judgment was that he was unaware that the LLC was insolvent. He mentions in his Order on the first motion to dismiss that he was unaware of the fact that the fifteen units owned by the Declarant LLC were significantly underwater, as it was never brought up in the underlying action. (Appendix at pg. 26).



He would therefore have been unaware that the application of the judgment lien statute to the detriment of the unit owners would become the focus of collection efforts. That is the likely reason he did not discuss it in the Underlying Judgment. The trial judge made it clear throughout the text of the Underlying Judgment, and the Orders on appeal (Appendix at 26), that the wrongs suffered and damages incurred by Appellants were the result of flagrant breaches of contract and of fiduciary duty by Evan Contorakes and his LLC, *not the other unit owners*. (emphasis added).

The trial judge in his first Order, also discusses the Appellants' argument that they were entitled to "appropriate equitable relief" which would allow them to foreclose upon the other unit owners. He clearly and unequivocally determined that allowing Appellants to collect from the innocent unit owners the damages caused by the Contorakes and his LLC was inappropriate given the unique circumstances of the case.

He explained his reasoning and intent in his Order in the first motion to dismiss in the case before you. Here we have the unusual situation where the trial court had another opportunity to further clarify its intent in its second Order, specifically as it related to the issue on appeal, the application of §1603-117(a) in these unique circumstances. That second ruling explained that the trial court was exercising its equitable powers, and that Appellants' efforts to apply the

“mechanical” provisions of 33 MRSA §1603-117(a) flew in the face of the clear intent of the Underlying Judgment (Appendix at 14).

The trial court also explained, in the Order on the second motion to dismiss, that in light of the equitable considerations, the Underlying Judgment was a “limited, or restricted money judgment” which could not therefore serve as a basis of a judgment lien on the non-party units of the condominium pursuant to §1603-117(a). (Appendix at 25). (It did not, as argued by Appellants on page 13 of their brief, state the Underlying Judgment was not a money judgment.)

It seems a bit ironic that Appellants argue that equitable considerations require the trial court to let them foreclose on the other unit owners, when it was equitable considerations, well explained by the trial court in its Orders on appeal, that caused him to limit those remedies as to the other unit owners in the first place. Appellants do not explain what equitable considerations would require the trial court to require the other unit owners, who were not only blameless, but were also victims of the Contorakes LLC wrongdoing, to pay the damages.

When a judgment is unambiguous it must be enforced in accordance with the plain meaning of the language in the judgment. The language of the two Orders is quite plain. Here, the judge who issued the judgment on enforcement is also the judge who initially issued the Underlying Judgment. This Court should

give particular deference to his Orders on enforcement as they are based on his own equitable considerations that gave rise to the Underlying Judgment.

All of this read together makes it very clear that the intent of the Underlying Judgment, and the Orders on appeal, was to require only the LLC, and the Association, *to the extent it was under the control of the other defendants* (emphasis added), to pay the damages. It is clear that the trial judge intended to protect the other non-party unit owners, who were innocent of wrongdoing and who suffered the same injuries as the Appellants, from having to be liable for the damages.

The trial judge's language on this, on page 6 of his first Order (Appendix at pg. 14) is abundantly clear:

“Plaintiffs now seek now seek enforcement of that judgment, which prohibits the exact remedy they seek. The unfortunate situation Plaintiffs find themselves in is not lost on the Court. At the time the order was issued, Mr. Contorakes was alive and the LLC he controlled maintained ownership of the 15 units that have since been foreclosed on by First, N.A. and purchased by Orono, LLC. The fact that the 15 units were significantly underwater was never brought up in the Underlying Action. *The Court disagrees with Plaintiffs that the equitable solution is to now disregard the plain language of its prior Order and enforce the judgment in a manner contrary to the express terms on which it was entered*” (emphasis added).

This appeal is an attempt to do exactly the same thing, using a convoluted theory that it would be acceptable to foreclose on the innocent unit owners to pay the Underlying Judgment damages to Appellants. They argue that although the Underlying Judgment prohibited “assessments” for damages against unit owners, it

didn't prohibit statutory enforcement of the judgment lien through foreclosure or turnover and sale against them.

This outcome would simply deprive their innocent fellow unit owners of the value of their units by another method, and would require this Court to ignore to plain meaning of the Underlying Judgment and the Orders on appeal. This Court's statement of the law is that "when a judgment is unambiguous, it must be enforced in accordance with the plain meaning of the language in the judgment" Bonner v. Emerson, 2014 ME 135 ¶13, citing Burnell v. Burnell, 2012 ME 24 ¶15. The Orders on appeal are not ambiguous. Enforcing the Underlying Judgment as proposed by Appellants would fly in the face of that long established holding. The trial court's exercise of its equity power is not an error of law.

An examination of the basic law of damages also supports Appellees' position on the equities involved. There are three general prerequisites to recovering compensatory damages: (1) proof that the damages were caused in fact by the defendants' conduct; (2) proof of the amount of damage to a given degree of certainty; (3) proof that defendants' conduct was the legal or proximate cause of the damages. Maine Civil Remedies, Horton and McGehee, Third Ed., §4-3(b). None of the facts here support a result that would have innocent parties, who did not cause any harm to Appellants, responsible for paying a judgment.

The trial judge recognized, in the Underlying Judgment, and his Orders on appeal, that the requirements of the first and third prerequisites are simply not present (the second is not at issue). There was no evidence that the other unit owners caused the injuries to Appellants (in fact they were subject to the same injuries themselves). They were not even parties to the underlying action. In a causation of damages analysis, Appellants must establish that their loss or injury would not have occurred in the absence of defendants' wrongful conduct. Appellants would have the burden of establishing by a preponderance of the evidence that the causation in fact requirement is met. Maine Civil Remedies, id., at §4-3(b)(1).

The injuries and damages suffered by Appellants were a result of breach of contract and breach of a fiduciary duty. The other unit owners had no contractual obligations to Appellants, nor did they owe Appellants a fiduciary duty. The breaches of contract and fiduciary duty that injured Appellants were on the part of the Contorakes and his LLC, and the Association to the extent it was controlled by the LLC. Therefore there is no legal support in the general law of damages (or equity) for the unit owners having their units subject to foreclosure or turnover to answer in damages for the actions of Contorakes and his LLC on these facts.

As the trial judge noted in his second Order, he exercised his equitable powers in the Underlying Judgment, and he was exercising them again in this

pending case. The trial court noted that it was given the necessary equitable power to make all appropriate orders, citing the Enforcement of Money Judgment statute, 14 M.R.S.A. §3132, as well as the broad grant of equity power codified in 14 M.R.S.A. §6051 (13). That latter section provides that the trial court has “full equity jurisdiction according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law”.

The trial court has the power to apply the judgment lien provisions in an equitable manner. It need not allow a mechanical application of the lien statute which would lead to an illogical and unfair result. The judgment lien can attach only to the extent of the reach of the judgment. This Underlying Judgment is a limited or restricted money judgment, as explained in the orders on appeal, which limits the effect of the judgment lien accordingly. That is what the Orders clearly indicate (especially the second Order). They are unambiguous and should be upheld.

### **CONCLUSION**

That Appellants’ argument in this matter flies in the face of the clear language and plain meaning of the Underlying Judgment, and more importantly, the clear intent of the unambiguous Orders on appeal. The other individual unit owners were in the same position as Appellants as far as the injuries they suffered as a result of the conduct of Contorakes and his LLC. They were all technically

members of the Association, but were powerless to induce the Contorakes to operate the Association as required by statute. They received no benefit from, nor bore any responsibilities for, the conduct of the Contorakes and his LLC, or the Association controlled by them.

The Underlying Judgment, and the Orders on appeal as to its enforcement, make it clear that the trial judge recognized and appreciated this issue as regards the damages awarded against the Association. His crafted limiting language intended to protect those unit owners from being forced to pay the damages he had awarded against the responsible defendant. His written opinions in the Orders on appeal confirm this.

The trial court had the power (and responsibility) to craft a unique form of judgment given the unusual nature of the facts and circumstances of the case. It makes no sense for the trial judge to so expressly limit the Association from assessing these costs against their fellow unit owners, but then allow Appellants to mechanically apply a lien statute that would defeat that purpose. Appellants make much of their claim that this approach isn't an assessment, and so isn't barred by the Underlying Judgment, but it provides exactly the same result with the same ill effects on the other unit owners.

Basically, what the Appellants are asking of you, is that since the real culpable wrongdoers (Contorakes and the LLC) are not able to pay the nearly half million

dollars in damages, that it is only fair for you to make their fellow unit owners pay instead. Those owners bear no responsibility for Appellants' injuries, but Appellants seem willing to disregard this if they can get paid.

This is a clear example of the trial court exercising its equitable powers authorized in 14 M.R.S.A §6051 (13), to fashion an equitable limitation on the collection of the judgment where there is not a plain, adequate and complete remedy at law to otherwise protect the unit owners. Equity does not favor the wrongdoer, but it should protect the blameless. Principles of equity and the general entitlement to damages in common law should operate to defeat Appellants' position.

The appeal should be denied.

Dated: July 10, 2024

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**CERTIFICATE OF SERVICE**

I, Richard Silver, attorney of record for Appellees, hereby certify that I have, this 10<sup>th</sup> day of July, 2024, caused two copies of the foregoing Brief of Appellees to be served by depositing the same in the United States mail, pre-paid, first class mail, addressed to:

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Dated: July 10, 2024

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