

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. YOR-24-205

FAIR FRIEND ENTERPRISE CO., LTD.,

Plaintiff/Appellee

v.

CNC SYSTEMS, INC.

Defendant/Appellant

BRIEF OF APPELLEE

ON APPEAL FROM YORK COUNTY SUPERIOR COURT, CV-22-156

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INTRODUCTION / SUMMARY OF ARGUMENT

This appeal arises out of a successful action by Fair Friend Enterprise Co., Ltd. (“Fair Friend”) to compel the production of corporate books and records against CNC Systems, Inc. (“CNC Systems”) following CNC Systems’ chronic failure to respond and provide access to its majority shareholder. After CNC Systems simply ignored Fair Friend’s demand for access to books and records, Fair Friend was left with no alternative but to enforce its shareholder rights in the Superior Court under 13-C M.R.S. § 1601 *et seq.*

The Superior Court granted Fair Friend’s application seeking compelled production of corporate books and records by CNC Systems (the “Application”). However, at each step of the way, CNC Systems sought to delay or avoid the production of documents to Fair Friend by filing multiple motions to stay the Maine proceedings, a Motion to Dismiss, and, here, a premature appeal apparently aimed at avoiding a status conference scheduled with the Superior Court at which time CNC Systems’ failure to produce the 2022 Financial Statements was to be addressed.

The Superior Court ultimately was required to issue three enforcement orders against CNC Systems to compel the production of corporate books and records to Fair Friend. However, the premature filing of this appeal prevented the Court from addressing pending matters, including pending Subpoenas and CNC Systems’ Second Motion to Stay.

On appeal, CNC Systems argues that the Superior Court abused its discretion by failing to stay the Maine proceedings because a separate multi-party lawsuit is pending in California seeking damages for breach of contract and related claims. Tellingly, no other jurisdiction is presiding over an action addressed to Fair Friend's information rights as a shareholder in CNC Systems. Appellant is a Maine business corporation, governed by, and subject to, the laws of Maine. CNC Systems is legally located in Maine and required to maintain books and records in Maine. Maine is also where CNC Systems' accounting service providers are located. Maine is the proper forum for a court-ordered enforcement action compelling access to corporate books and records against a Maine corporation.

As reflected in the Superior Court's thoughtful March 8, 2023 first order compelling production of books and records, the existence of pending multi-party litigation in California provides no quarter for CNC Systems to argue that majority shareholder Fair Friend's demand was issued without good faith or without a proper purpose. The Superior Court did not abuse its discretion in declining to grant CNC Systems' requests to stay these proceedings.

Separately, CNC Systems also argues that the Superior Court abused its discretion in awarding attorney fees to Fair Friend under 13-C M.R.S. § 1604 and that the Court's findings are clearly erroneous. In support of these arguments, CNC Systems again asserts that Fair Friend's Application was not issued in good faith or

with proper purpose. CNC Systems also argues that the Superior Court abused its discretion or erred because it “*prove[d]* that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.” 13-C M.R.S. § 1604(3) (emphasis added).

CNC Systems did not support its Opposition to the Application or other filings in the Maine Action with any affidavits or evidence. Although the Superior Court repeatedly rejected these legal arguments by CNC Systems, it cannot be said that CNC Systems “proved” anything in this proceeding based on the absence of countervailing evidence. Because CNC Systems did not move for additional findings of fact under M.R. Civ. P. 52(b), this Court may infer that the court made all findings necessary to support its conclusions. Ultimately, the Superior Court’s orders in this proceeding do not constitute an abuse of discretion and its findings in its three enforcement orders are supported by competent evidence in the record. Accordingly, CNC Systems’ premature appeal to the Law Court cannot succeed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

FACTUAL BACKGROUND

This appeal arises out of the refusal of CNC Systems, Inc. (“CNC Systems”) to provide access to its corporate books and records following demand by its majority shareholder, Fair Friend Enterprise Co., Ltd. (“Fair Friend”) on or about July 18, 2022 (the “Demand”). A. 34-46; 66. Since early January, 2019, Fair Friend has owned approximately 51.993 percent of CNC Systems. A. 66 at ¶¶4-6.

CNC Systems is a Maine business corporation with a principal or registered office located in Kennebunk, Maine. A.79 at ¶26; A. 203 (Bylaws noting the offices of the corporation shall be located in the State of Maine in the municipality designated in Articles of Incorporation); A. 203; A. 235 (Articles of Incorporation designating “Kennebunk” as the corporate location); A. 89-99 (Annual Reports of CNC Systems, noting 40 Water St., Kennebunk, ME address).

In April, 2019, Bryan Chen, CFO of CNC Systems, unilaterally appointed himself as CEO and unilaterally demoted CEO David Chu (an individual affiliated with Fair Friend). A. 67-68 at ¶¶11-14. This unauthorized action is reflected in CNC Systems’ Maine Annual Reports, which were modified by self-appointed CEO, Bryan Chen, in April, 2019. A. 92, 89-90 (Fair Friend’s David Chu originally listed as CEO; unilaterally changed by Bryan Chen as “CEO” on April 11, 2019). Such changes were not authorized by Fair Friend, the majority shareholder of CNC

Systems, and did not involve consultation or approval of CNC Systems' directors or shareholders. A. 67-68 at ¶¶11-14.

This mutiny occurred at the same time that CNC Systems was not meeting its obligations as they came due, prompting serious concerns for its majority shareholder. Fair Friend, along with its sister companies, MAG Automotive, LLC of Michigan ("MAG") and FFG DMC Co. Ltd of South Korea ("DMC"), sold and delivered sophisticated "computer numerical control" ("C.N.C.") equipment and parts to CNC Systems, as they had done in the past as manufacturers/vendors of CNC Systems. A. 67 ¶ 9-10. However, after Bryan Chen's unauthorized usurpation of effective control of CNC Systems, CNC Systems abruptly stopped paying Fair Friend, MAG, and DMC for equipment sold and delivered to CNC Systems. A. 68-69, ¶¶15-19. In total, more than \$5.6 million was owed and unpaid to MAG, DMC, and Fair Friend as of April, 2021. A. 69, ¶¶19-23.

In April, 2021, representatives of CNC Systems and Fair Friend, MAG, and DMC sought to restore order and mitigate harms in relation to their fractured business relationship. On or about April 26, 2021, the so-called April Agreement was concluded between Bryan Chen (also known as Chen Bo Yuan) for CNC Systems, and Jimmy Chu (also known as Chu Chih-Yaung) for Fair Friend, MAG, and DMC (the "April Agreement"). A. 15, 69, ¶¶20-23; A. 101-116. The April Agreement sought to constructively address the outstanding obligations owed by

CNC Systems to the three sister companies that each are separate members of the Fair Friend Group. A. 15, 69, ¶¶20-23; A. 101-116 (April Agreement, including translation, list of equipment sold, acknowledgement of sums owed to Fair Friend, DMC, and MAG by CNC Systems at A. 110).

In the April Agreement, CNC Systems and Bryan Chen *acknowledged* that they owed Fair Friend, DMC, and MAG no less than \$5,618,295 and received equipment and parts from them worth far more than this amount. A. 110. The April Agreement breaks out amounts owed by each supplier. A. 115. Fair Friend was owed \$319,135; MAG was owed \$4,201,239; and DMC was owed \$1,387,722. A. 115. Bryan Chen signed the April Agreement as Chen Bo Yuan. A. 115.

The April Agreement called for prompt turnover of equipment to MAG, DMC, and Fair Friend in order to reduce the amounts owed by CNC Systems to each company. A. 110. Among other things, 77 machines listed in the spreadsheets attached to and part of the April Agreement were supposed to be turned over no later than April 30, 2021. A. 110; A. 69-70 at ¶¶20-24. However, CNC Systems inexplicably failed to timely turn over the 77 machines and equipment noted in the April Agreement and instead sold portions of such equipment for its own account. A. 69-70 at ¶¶20-24. Further, the equipment promised for turnover by CNC Systems turned out to be subject to a prior blanket lien in favor of Cathay Bank, despite assurances from Bryan Chen that it was unencumbered. A.70 at ¶24.

Based on CNC Systems' breach and failure to perform under the April Agreement, MAG, DMC, and Fair Friend commenced an enforcement action against CNC Systems in California seeking damages in relation to the April Agreement. A. 70 at ¶25. These three plaintiffs also asserted claims against Bryan Chen based on negligent and fraudulent misrepresentations in relation to his material misstatements and omissions in relation to the April Agreement. A. 70 at ¶ 25. As of the time of the commencement of this California proceeding (the "California Action") on or about February 25, 2022, MAG was owed no less than \$2,610,178;¹ DMC still was owed no less than \$1,097,920; and Fair Friend still was owed no less than \$319,135, resulting in total damages sought of no less than \$4,027,233. A. 70 at ¶ 25. The California Action is ongoing.

The Demand for corporate books and records on CNC Systems was sent by Fair Friend to CNC Systems in Maine approximately four and half months after the commencement of the California Action, on July 18, 2022. A. 34-46; 66. CNC Systems simply ignored the Demand and did not respond to its majority shareholder in any manner. A. 71 at ¶27.

¹ Well after the April 30, 2021 deadline for turnover of machines under the April Agreement, MAG was able to mitigate some of its damages by "repurchasing" selected machines from CNC Systems using "credits" owed to MAG until CNC Systems ceased such mitigation of damages. The amounts owed to DMC and Fair Friend are unchanged from the time of the April Agreement.

The Demand sought “mandatory”² records under 13-C M.R.S. §§ 1602(2), 1601(5), such articles and amendments, notices to shareholders, bylaws and amendments, board resolutions, shareholder meeting minutes and records of actions taken without meetings, communications to shareholders, and a list of the names and business addresses of current directors and officers. A. 34-46; 66. The Demand also sought additional records, including accounting records of the corporation and financial records, available under 13-C M.R.S. §§ 1602 (3), (4), supported by a good faith demand and proper purpose.³ A. 34-46; 66.

The Demand was sent by Fair Friend to CNC Systems in good faith and with a proper purpose. A. 71-72 at ¶¶27-33. The purpose of the Demand was to obtain an accurate understanding of CNC Systems’ business condition, financial and legal obligations, and corporate governing structure, including contractual commitments undertaken through its agents, officers, and employees and contracts where potential liability exceeds \$100,000. A. 71 at ¶28. CNC Systems had ignored the requests for information from its majority shareholder, which prompted serious concerns. A. 71 at ¶29. Fair Friend also had serious good faith concerns about the financial condition

² 13-C M.R.S. § 1602(2) (providing that a shareholder is *entitled* to inspect records described under section 1601(5) on at least 5 business days’ demand).

³ *See* 13-C M.R.S. § 1602 (3) & (4) (providing that a shareholder is *entitled* to inspect records described under this provision on at least 5 business days’ good faith demand and with proper purpose).

of CNC Systems, as well as any actions, including contractual commitments, which may have been undertaken by CNC Systems without notice or involvement of Fair Friend, its majority shareholder, or David Chu, demoted CEO, officer, and director of CNC Systems. A. 71 at ¶¶29, A. 67-68, ¶¶11-14.

Fair Friend's concerns and urgent need for information included that: 1) Bryan Chen, on behalf of CNC Systems, demoted David Chu as President of CNC Systems and unilaterally appointed himself as President of CNC Systems without Fair Friend's involvement or approval; 2) CNC Systems took delivery of significant amounts of goods from Fair Friend and other companies, including sister companies within the Fair Friend Group, but refused to pay Fair Friend and others amounts owed for such goods actually received; 3) CNC Systems did not provide Fair Friend with timely or complete records that CNC Systems are legally required to maintain, including minutes of meetings, records with names addresses of shareholders, accounting records, resolutions, records of actions taken by shareholders without meetings, communications to shareholders, financial statements, a list of current directors and officers, a list of shareholders, and annual reports, as described in 13-C M.R.S. § 1601. A. 71-72 at ¶¶30-32; A. 67-68, ¶¶11-14.

PROCEDURAL BACKGROUND

Application and First Order Compelling Production. CNC Systems’ stonewalling and refusal to respond to the Demand necessitated assistance from the Superior Court to compel access under 13-C M.R.S. § 1604. Fair Friend commenced this proceeding (the “Maine Action”) on or about August 5, 2022, and filed its Application to compel inspection and copying of corporate books and records on or about October 21, 2022.⁴ Under Maine law, such requests may be submitted by application to the Court and “may be advanced on the docket and receive priority over other cases where the court determines that the interests of justice so require.” 13-C M.R.S. § 1604(2).

On or about November 14, 2022, CNC Systems filed an Opposition to the Application plus a contrived “Cross Motion” to Stay the Maine Action within the body of its Opposition to the Application. Fair Friend opposed the “Cross Motion” seeking to stay the Maine Action and filed a separate Reply to CNC Systems’ Opposition to the Application. On December 13, 2022, the Superior Court scheduled a hearing on the Application and Cross Motion to Stay for March 6, 2023.

⁴ From August 5, 2022 through October 21, 2022, CNC Systems could have simply produced some (such as mandatory documents) or all of the requested documents, but it did not do so, instead taking the stark position that majority shareholder Fair Friend was not entitled to any documents in response to the Demand.

On March 8, 2023, the Superior Court granted Fair Friend’s Application to compel the production of corporate books and records by CNC Systems (the “03/08/23 First Order”). A. 10-18. In this Order, the Superior Court also denied CNC Systems’ request to stay the Maine Action because of the pendency of the California Action, rejecting CNC Systems’ arguments that the Demand lacked good faith or a proper purpose and explaining why the Demand was appropriate and reasonable in view of the circumstances. 03/08/23 First Order, A. 10-18.

Motion to Enforce and Motion to Dismiss. After the entry of the 03/08/23 First Order, CNC Systems conspicuously did not produce all documents required to be produced by the Superior Court. As a result, Fair Friend filed a Motion to Enforce the 03/08/23 First Order (the “Motion to Enforce”) on or about April 18, 2023. Fair Friend also issued and served Subpoenas on CNC Systems’ accounting service providers on or about May 3, 2023.

CNC Systems filed an Opposition to the Motion to Enforce on or about May 8, 2023. On May 8, 2023, CNC Systems also filed a Motion to Dismiss the Maine Action, stating, incorrectly, that it has produced all required documents ordered by the Superior Court, rendering the Maine Action moot. On or about May 18, 2023, CNC Systems also sought to quash the Subpoenas served on its accounting service providers in Maine. On July 21, 2023, the Superior Court scheduled a hearing for September 1, 2023 concerning the Motion to Enforce and the Motion to Dismiss.

Second Motion to Stay Maine Action. On or about September 7, 2023, CNC Systems filed a *second* Motion to Stay the Maine Action (the “Second Motion to Stay”). In the Second Motion to Stay, CNC Systems sought relitigate the issue of whether the Demand was submitted by Fair Friend in “good faith” and for “proper purpose” under 13-C M.R.S. § 1604. Second Motion to Stay at 2. CNC Systems argued that the intervention (in 2023) in the California Action of two shareholders of CNC Systems provided new prudential reasons to stay the Maine Action and not enforce the Demand until the California Action concluded. On or about September 8, 2023, Fair Friend opposed the Second Motion to Stay.

Denial of Motion to Dismiss and Second Order Compelling Production. On September 27, 2023, the Superior Court granted Fair Friend’s Motion to Enforce the 03/08/23 First Order (the “09/27/23 Second Order”), A. 19-21. In the 09/27/23 Second Order, the Superior Court compelled the production of a large quantity of documents described below and also denied CNC Systems’ Motion to Dismiss. A. 20. The Court also continued proceedings addressed to the Motion to Quash Subpoenas for CNC Systems’ accounting service providers “until further notice by the Court.” A. 20.

The 09/27/23 Second Order called for the scheduling of a status conference in October, 2023 to assess the status of the matter (including documents ordered to be produced by October 17, 2023). A. 21. The 09/27/23 Second Order also arguably

or implicitly denied the Second Motion to Stay by denying the Motion to Dismiss, but also noted that the October status conference could be used to “assess the status of the matter and determine whether additional action is needed or if the matter should be stayed pending adjudication of a separate action between the parties in California.” A. 21. The Docket does not reflect any orders that quash or enforce the Subpoenas issued to CNC Systems’ accounting service providers, or any Order explicitly denying the Second Motion to Stay. A. 1-9 (Docket).

In the 09/27/23 Second Order, the Superior Court identified and ordered production of voluminous documents that had not been produced by CNC Systems in response to its 03/08/23 First Order. Such documents included so-called “Open Items” comprised of officer and director lists, state tax returns, all 1099 forms or similar tax forms, accounting records, including financial statements and the general ledger used for creating the annual balance sheet, and contracts with liability in excess of \$100,000. A. 19-20. The Court also ordered that CNC Systems produce key records from 2022 (which had not been produced by CNC Systems, as 2022 documents had been omitted). A. 20. Production was ordered to take place by October 17, 2023. A. 20. This directive explicitly included the 2022 Financial Statement prepared by CNC Systems’ accounting service providers. A. 20.

On November 18, 2023, CNC Systems filed a “Statement of Compliance,” describing the additional documents that it had produced to Fair Friend in response

to the 09/27/23 Second Order (the “Statement of Compliance”). A. 279-282. The Statement of Compliance also conceded *non-compliance* in so much as CNC Systems admitted that “the complete, finalized 2022 financial statement is currently unavailable for production or inspection[.]” A. 281.

Third Order Compelling Production. On November 28, 2023, the Superior Court again ordered CNC Systems to produce the finalized 2022 Financial Statement from its accounting service provider that had been omitted from prior productions and ordered Fair Friend to file a motion seeking attorney fees within four weeks of the date of this Order. A. 22.

On February 12, 2024, Fair Friend filed its Motion for Attorney Fees. On or about March 4, 2024, the Superior Court held a conference addressed to the status of the matter, CNC Systems’ failure to produce the 2022 Financial Statement, as well as briefing concerning Fair Friend’s request for attorney fees. At this conference, counsel for CNC Systems acknowledged that CNC Systems still had not yet produced the 2022 Financial Statement and stated that it did not object to Fair Friend’s Motion for Attorney Fees based on the issue of timeliness, including based on the November 28, 2023 Order.

On April 26, 2024, the Superior Court entered an Order granting Fair Friend’s Motion for Attorney Fees and Ancillary Relief (the “04/26/24 Attorney Fee Order”). A. 23-24. The Superior Court scheduled a status conference for July 1, 2024 to

address the status of CNC Systems’ ongoing failure to produce the 2022 Financial Statement prepared by CNC Systems’ accountants. A. 284. However, on May 20, 2024, A.8, CNC Systems filed a Notice of Appeal, shifting the mandate for this action to the Law Court and suspending enforcement efforts before the Superior Court to obtain the 2022 Financial Statement prepared by CNC Systems’ accountants and address open issues. A. 284. After the filing of this appeal, on September 27, 2024, CNC Systems provided a link to Fair Friend for the 2022 Financial Statement prepared by CNC Systems’ accountant.

STANDARD OF REVIEW

The Law Court reviews a trial court’s grant of an application to compel inspection and copying of corporate books and records and an award of attorney fees under an abuse of discretion standard.⁵ *Holdsworth v. Goodall-Sanford, Inc.*, 55 A.2d 130, 133 (1947); *Pratt v. Dunham*, 140 A. 606, 607 (1928) (holding that the granting of mandamus to compel access to corporate books and records is “a discretionary power and exceptions do not lie to its issuance or refusal, unless it is a clear abuse of discretion[.]”); *see also Tiger v. Boast Apparel, Inc.*, 214 A.3d 933, 936–37 (Del.

⁵ “Review for an abuse of discretion involves resolution of three questions: (1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court's weighing of the applicable facts and choices within the bounds of reasonableness.” *McLeod v. Macul*, 2016 ME 76, ¶ 6, 139 A.3d 920 (quotation marks omitted). *Flagg v. Bartlett*, 2024 ME 63, ¶ 19, 320 A.3d 455, 461.

2019) (holding that the scope of relief granted by a trial court in compelling access to corporate books and records is subject to an abuse of discretion standard, which is “highly deferential[.]”).

Factual findings may be found “clearly erroneous” if: (1) there is no competent evidence in the record to support it, or (2) it is based on a clear misapprehension by the trial court of the meaning of the evidence, or (3) the force and effect of the evidence, taken as a total entity, rationally persuades to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case. *Remick v. Martin*, 2014 ME 120, ¶ 7, 103 A.3d 552, 555. Where no party has moved for additional findings of fact pursuant to M.R. Civ. P. 52(b), the Law Court “will infer that the court made all findings necessary to support its conclusions.” *Weeks v. Krysa*, 2008 ME 120, ¶ 11, 955 A.2d 234; *Carter v. Voncannon*, 2024 ME 65, ¶ 30, ___ A.3d ___.

ISSUES PRESENTED

- 1) Whether a majority shareholder in a Maine business corporation waives its statutory right to inspect books and records if litigation is pending in a different jurisdiction among multiple parties that include the majority shareholder and the business corporation;
- 2) Whether the trial court abused its discretion in declining to stay the Maine Action addressed to court-ordered inspection of corporate books and records when a separate action involving multiple parties was pending in a different jurisdiction;
- 3) Whether the trial court abused its discretion when it awarded reasonable attorney fees to Fair Friend under 13-C M.R.S. § 1604;
- 4) Whether the trial court's findings in support of its award of attorney fees were clearly erroneous; and
- 5) Whether CNC Systems has appealed from a final judgment.

LEGAL ARGUMENT

I. Fair Friend Did Not Waive Its Shareholder Inspection Rights In Maine By Participating In A Separate Damages Action Involving Multiple Parties, Including CNC Systems In California.

CNC Systems' premature appeal and resistance to produce corporate books and records to its majority shareholder are informed by a faulty premise that should be highlighted at the outset. CNC Systems essentially argues that shareholder information rights arising under Maine law are contingent upon the lack of any litigation involving the corporation and requesting shareholder in another jurisdiction. CNC Systems is wrong and a review of applicable law, 13-C M.R.S. 1601 *et seq.*, confirms that CNC Systems' obligations arising under Maine law are not so limited.

Maine's version of the Model Business Corporation Act (the "MBCA") delineates different categories of documents that shareholders may obtain from a company on at least 5 business days' notice. First, under 13-C M.R.S. § 1602(2), a shareholder may inspect and copy any of the records of the corporation described in 13-C M.R.S. § 1601(5).⁶ These documents are "mandatory" documents, which

⁶ Such mandatory corporate books and records under 13-C M.R.S. § 1601(5) include:
A. Its articles or restated articles of incorporation, all amendments to them currently in effect and any notices to shareholders referred to in section 121, subsection 10, paragraph E regarding facts on which a filed document is dependent;
B. Its bylaws or restated bylaws and all amendments to them currently in effect;

leading treatise describes as a “nearly unqualified Statutory Right for shareholders to inspect the documents listed in Section 1601(5).” *Maine Corp. Law & Prac.*, James Zimpritch, §16.2[b] at p. 606-07 (also noting that shareholders seeking these mandatory documents do not need to establish a “proper purpose” or meet any requirements described in 13-C M.R.S. § 1602(4) for other documents).

Separately, under 13-C M.R.S. § 1602(3), a shareholder may inspect and copy any of the records of the corporation described therein, namely:

- A.** Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders and records of action taken by the shareholders, the board of directors or a committee of the board without a meeting, to the extent not subject to inspection under subsection 2;
- B.** Accounting records of the corporation; and
- C.** The record of shareholders.

13-C M.R.S. § 1602(3).⁷

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- C.** Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;
 - D.** The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years;
 - E.** All written communications to shareholders generally within the past 3 years, including any financial statements furnished for the past 3 years under section 1620;
 - F.** A list of the names and business addresses of its current directors and officers; and
 - G.** Its most recent annual report delivered to the Secretary of State under section 1621.

⁷ Under 13-C M.R.S. § 1601(1)-(4), a Maine corporation is required to maintain: minutes of shareholder and board of director meetings and documents reflecting action without meetings; “appropriate accounting records”; records of shareholders, including names and addresses, class of shares, and number; and records in a form

A shareholder is “entitled” to inspect and copy these additional books and records when the shareholder’s demand is made in good faith, and for a proper purpose, with reasonable particularity as to purpose and records, where there is direct connection between the purpose and the request. 13-C M.R.S. § 1602(4). Nothing in Maine’s version of the MBCA makes shareholder information rights contingent upon the absence of litigation in other jurisdictions.

In the 03/08/23 First Order compelling production of documents and denying CNC Systems’ first request to stay the Maine Action, the Superior Court correctly noted that “CNC has allegedly taken actions that would cause any majority shareholder legitimate concern – namely, demoting its CEO without shareholder approval, refusing to honor millions of dollars’ worth of contractual obligations over the course of multiple years, and failing to respond to shareholders’ requests for information.” 03/08/23 First Order at p. 8, A. 17.

As a Maine business corporation, CNC Systems necessarily operates as a creature of, and subject to, the laws of the State of Maine, including statutes that require access to corporate books and records on five business days’ notice, 13-C M.R.S. §§ 1602, 1601. Where, as here, a Maine corporation simply ignores a

capable of conversion into paper form within a reasonable time, such as electronic documents.

majority shareholder's request for books and records, a "court ordered inspection" under 13-C M.R.S. § 1604 is entirely foreseeable and appropriate.

Indeed, the delayed, additional production of the Open Items in response to the 09/27/23 Second Order and the admissions contained in the October 2023 Statement of Compliance demonstrate that the action of a Maine court with jurisdiction over a Maine corporation was entirely necessary to obtain CNC Systems' production of corporate books and records to its majority shareholder. Fair Friend's information rights as majority shareholder of CNC Systems are no less valid or effective just because Fair Friend, along with two other parties (MAG and DMC) have filed suit against CNC Systems seeking damages related to breach of contractual obligations related to the failure to pay for equipment and parts sold by three plaintiffs to CNC Systems. In this manner, CNC Systems' faulty premise, that Fair Friend's shareholder rights were contingent upon the absence of litigation elsewhere, should be rejected.

II. The Superior Court Did Not Abuse Its Discretion When It Declined To Stay The Maine Action.

CNC Systems argues that the Superior Court abused its discretion by failing to grant its requests to stay the Maine Action. Brief at 12-17. Although it properly concedes that a trial court's decision to grant a stay of proceedings is a matter of grace, and not a right, CNC Systems asserts that the Superior Court abused its discretion by entering "erroneous findings." Brief at 14.

In support of its decision to deny the request for stay in the 03/08/23 First Order, the Superior Court first compared the Maine Action and the California Action and then found that parties in these actions were not identical; the issues in these actions were not an exact match; the Maine Action was not designed to harass an adverse party; and that the Maine Action was not designed to gain advantage in the California Action. 03/08/23 First Order at 8-9, A. 17-18. Because competent evidence exists to support the Court’s findings and determinations, this Court should hold that the Superior Court did not abuse its discretion and that its findings were not clearly erroneous or unsupported by competent evidence.

The Law Court has stated that a request to stay litigation proceedings “is not a matter of right but a matter of grace [and that] ...[t]he grant or denial of the stay rests in the sound discretion of the court.” *Soc’y of Lloyd’s v. Baker*, 673 A.2d 1336, 1340–41 (Me. 1996) (citing and quoting *Cutler Associates, Inc. v. Merrill Trust Co.*, 395 A.2d 453, 456 (Me.1978) (citations omitted)). A stay will only be granted if a court is satisfied that justice will be promoted. *Id.* (finding no abuse of discretion in denying stay request where the requesting party could not identify any purpose other than delay). The doctrine of comity, in appropriate circumstances, may apply where there is concurrent jurisdiction over competing claims between the same parties, but this doctrine “does not establish an imperative rule of law of unbending rigor, but

rather one to be applied to promote justice and equity.” *Jones v. York*, 444 A.2d 382, 384–85 (Me. 1982).

The Superior Court did not abuse its discretion or err in relation to its determinations and findings in support of its denial of CNC Systems’ request to stay the Maine Action. At its base, the California Action is a damages action by creditors seeking approximately \$4.2 million from CNC Systems, and its self-appointed CEO, Bryan Chen [See A. 89-92, 93-98]. These claims arise out of breach of the April Agreement, which required the turnover of equipment to reduce significant *acknowledged* amounts owed by CNC Systems to MAG, DMC, and Fair Friend. A. 70, A. 66-73 (Affidavit of Paul Chen (“P. Chen Aff.”) in support of Fair Friend’s Application, describing usurpation of corporate role by Byan Chen, ¶¶11-14, failure to pay obligations when due, ¶¶15-19, failure to provide corporate information, ¶¶2, 14, 26, 27, and good faith purpose to seek information by a majority shareholder of CNC Systems, ¶¶28-33). The Court was entitled to credit this evidence and did so.⁸

03/08/23 First Order at 8-9, A. 17-18.

⁸ Addressing the Superior Court’s findings, the parties to the Maine Action are limited to Fair Friend and CNC Systems, a Maine business corporation that is majority owned by Fair Friend. A. 25-32. The Maine Action does not seek damages and instead seeks court-ordered inspection of corporate books and records of a Maine corporation under Maine law. A. 25-32. The Maine Action represents the exercise of Fair Friend’s shareholder information rights that exist under Maine’s version of the MBCA. A. 29. Fair Friend’s Application was issued in good faith and had a proper purpose. A. 67-73. It was not harassing or vexatious in nature, and instead was fully warranted in light of Fair Friend’s justified concerns, including

Importantly, Maine is the proper forum, if not the sole forum, for an action seeking to compel access to the books and records of a Maine business corporation. CNC Systems is a Maine business corporation that according to its Bylaws, “shall be located in the State of Maine.” A. 70, A. 203 (Bylaws noting “[t]he office of the corporation shall be located in the State of Maine in the municipality designated in the Articles of Incorporation”). A. 235 (Articles, noting “Kennebunk” location for

CNC Systems’ stonewalling, the breakdown in corporate governance, and failure to pay creditors. A. 67-73. The Maine Action was not designed to gain advantage in California, as it instead represented the justified invocation of statutory rights aimed at obtaining information concerning the CNC Systems’ business condition, financial and legal obligations, and corporate governance in view of the concerns noted in the P. Chen Aff. A. 67-73. Tellingly, the Superior Court determined that “Fair Friend’s stated purpose for seeking the records – to obtain an accurate understanding of CNC’s business condition, financial and legal obligations, and corporate governing structure – comports with what courts have found to be proper purposes for shareholders to seek access to corporate records.” 03/08/23 First Order at 7, A. 16.

In contrast, the California Action was commenced against CNC Systems and Bryan Chen by MAG (owed \$2,610,178 by CNC Systems); DMC (owed \$1,097,920 by CNC Systems); and Fair Friend (owed \$319,135 by CNC Systems). A. 70. The California Action sought damages based on breach of an Agreement concluded with CNC Systems on April 26, 2021, the “April Agreement.” In the April Agreement, CNC Systems acknowledged the financial obligations owed to the three companies, but failed to promptly turnover equipment (including equipment held in California) to reduce its obligations owed to the Plaintiffs in the California Action. A. 69-70. Bryan Chen, also known as Chen Bo Yuan, participated and executed the April Agreement as representative for CNC Systems. A. 101-115. Bryan Chen is a California resident, A. 258, also is a party-defendant in the California Action. A. 70. The Superior Court correctly determined that the parties to these two separate actions are not identical, the issues in these separate actions are not an exact match, and that the Maine Action was not designed to harass CNC Systems or gain advantage in the California Action. 03/08/23 First Order at 8-9, A. 17-18.

CNC Systems, Inc.). The Maine Secretary of State’s website, which this Court may take judicial notice, lists the physical and mailing address of CNC Systems as 40 Water Street, Kennebunk, ME 04043, and the Company’s jurisdiction as “Maine.” See <https://apps3.web.maine.gov/nei-sos-icrs/ICRS?CorpSumm=19871254+D>.

CNC Systems is a creature of Maine law and is governed by Maine law. CNC Systems cannot selectively invoke and ignore the requirements of Maine law, including with respect to information rights of majority shareholders.

Under applicable law, CNC Systems was legally required to maintain books and records in Maine at its registered office, 13-C M.R.S. § 1601(5), and to have such records available for production on as little as five business days’ notice. 13-C M.R.S. § 1602. There is no competing action in any other jurisdiction against this Maine business corporation addressed to CNC Systems’ obligation to provide access to books and records under Maine law. As such, the doctrine of comity has no application. Although CNC Systems concedes that it does not possess any *right* to force the Superior Court to suspend or shut down the Maine Action, it still assigns error or abuse of discretion. Yet, it would hardly serve justice if Fair Friend were forced to suspend its information rights addressed to 2022 records (and earlier) until the conclusion of the California Action, as boldly requested by CNC Systems.

This Court should also reject CNC Systems’ related contention that the Superior Court incorrectly weighed the so-called *Fitch* considerations⁹ relevant to whether the Court should grant a stay of litigation. Here, CNC Systems argues that the Court’s decision to deny a stay was “not within the bounds of reasonableness” in view of the existence of the California Action. Brief at 17, 03/08/23 First Order at 8, A. 17. This Court should reject this argument because application of *Fitch* does not yield CNC Systems’ desired outcome and the Superior Court did not abuse its discretion in declining to stay the Maine Action.

The Superior Court expressly considered the *Fitch* factors, 03/08/23 First Order at 8-9 (A. 17-18), and determined that a stay was not needed to provide complete justice. *See supra* note 8 (addressing record support for Superior Court’s determinations in relation to the Maine Action and the California Action). Stated in

⁹ In *Fitch v. Whaples*, 220 A.2d 170, 172-73 (Me. 1966), the Law Court stated:

Multiple considerations may serve the trial court in a judicial exercise of its discretion in granting or denying a stay, such as whether the subsequent action was designed solely to harass the adverse party; the nature of the respective actions, especially with a view as to which appears to provide complete justice; also, where did the cause of action arise and which law will be applicable; will there be great and unnecessary expense and inconvenience; the availability of witnesses; the stage at which the proceedings in the other court have already progressed; the delay in obtaining trial. Each case must perforce present its own variety of circumstances which may necessitate different results.

terms of the *Fitch* considerations, the Maine Action was not designed “solely to harass the adverse party;” it was limited in nature, seeking only to enforce statutory rights against a Maine business corporation and supported by a proper purpose; it was maintained in the sole forum that can provide complete relief against a Maine business corporation in relation to compelled production of corporate books and records; and it otherwise would be highly prejudicial to suspend or deny information rights to a majority shareholder until after a separate litigation involving multiple parties in another jurisdiction concludes.¹⁰

In sum, CNC Systems’ disagreement with the exercise of discretion by the Superior Court does not mean the Court’s decisions is an abuse of discretion. *See*

¹⁰ To the extent that CNC Systems argues that the Superior Court abused its discretion in not granting its *Second* Motion to Stay dated September 7, 2023, that contention is conclusively rebutted by the 09/27/23 Second Order, which affirmed CNC Systems’ obligation to produce books and records to Fair Friend and determined that CNC Systems failed to produce key 2022 data, as well as a host of “Open Items.” CNC Systems’ “Statement of Compliance” dated October 18, 2023 acknowledges the extensive quantity of documents that it failed to produce and even admitted a continuing failure to produce a 2022 Financial Statement prepared by accountants, A. 279-283. The Statement of Compliance from October 2023 amounts to a judicial admission that a stay of the Maine Action should not have been granted in March, 2023 or in September, 2023. On November 28, 2023, for the *third* time, the Superior Court ordered CNC Systems to produce the 2022 Financial Statement prepared by CNC’s accountants. A. 22; *see also* A. 20 (requiring production by October 17, 2023); A. 18 (requiring production of current financial statements). Indeed, as of the date of its filing of its Appellants’ Brief, CNC Systems admitted that it still had not produced the 2022 Financial Statement. A. 281. CNC Systems provided access to this document only after the filing of this appeal, on September 27, 2024.

Kapler v. Kapler, 2000 ME 131, ¶ 9, 755 A.2d 502, 507 (“The District Court is not bound to accept any evidence as fact and must determine the weight and credibility of all the evidence.”). Because the Superior Court’s findings are supported by competent evidence, they are not clearly erroneous. *Efstathiou v. The Aspinquid, Inc.*, 2008 ME 145, ¶¶ 35-36, 956 A.2d 110, 121; *Remick*, 2014 ME 120, ¶ 7, 103 A.3d 552; *Carter*, 2024 ME 65, ¶ 30, ___ A.3d ___ (“In cases like the one before us, where no party has moved for additional findings of fact pursuant to M.R. Civ. P. 52(b), ‘we will infer that the court made all findings necessary to support its conclusions.’”) (quoting *Weeks*, 2008 ME 120, ¶ 11, 955 A.2d 234). Based on CNC Systems’ failure to meet its burdens and failure to move for additional findings of fact under M.R. Civ. P. 52(b), the Court should reject CNC Systems’ arguments and affirm the determinations and findings of the Superior Court in relation to CNC Systems’ requests to stay the Maine Action.

III. The Superior Court Did Not Abuse Its Discretion When It Awarded Attorney Fees To Fair Friend Under 13-C M.R.S. § 1604.

CNC Systems apparently does not appeal from the 03/08/23 First Order and 09/27/23 Second Order as they relate to the compelled production of books and records themselves. Rather, CNC Systems contends that the Superior Court abused its discretion in awarding attorney fees to Fair Friend under 13-C M.R.S. § 1604(3) after compelling production. Brief at 17-21. CNC Systems contends that attorney fees “shall” be awarded to the requesting party *unless* the responding corporation

“proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.” Brief at 18; 13-C M.R.S. § 1604(3). Based on this provision, CNC Systems argues that it had a reasonable basis to doubt Fair Friend’s right to inspect its books and records because the request assertedly was not conducted in good faith and assertedly was done only for purposes of aiding litigation in California. Brief at 19-20.

In relevant part, 13-C M.R.S. § 1604(3) provides:

3. Refuse inspection; good faith. If the court orders inspection and copying of the records demanded under subsection 1 or 2 [of Section 1602], the court shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

13-C M.R.S. § 1604(3).¹¹

CNC Systems arguments should be rejected because CNC Systems has not challenged the findings and determinations of the 03/08/23 First Order and 09/27/23 Second Order, and also failed to support its Opposition to Fair Friend’s Application with any evidence. Fair Friend’s Application is contained in the record at A. 52-125. In response, CNC Systems filed its Opposition to the Application and “Cross-

¹¹ Under 13-C M.R.S. § 102(11-A), “expenses” are defined as “reasonable expenses of any kind that are incurred in connection with a matter, including, but not limited to, attorney fees.”

Motion” for Stay of the Maine Action (the “CNC Opposition”). *See* A. 126-141. In opposition to the Application, CNC Systems did not submit any evidence or “proof” of reasonable doubt. On repeated occasions, CNC Systems *argued* to the Superior Court that it had a good faith basis to ignore the July 18, 2022 Demand and refuse access to books and records because of its asserted doubt over Fair Friend’s right, as majority shareholder in CNC Systems, to inspect its books and records.

In the CNC Opposition, CNC Systems specifically argues that the existence of the California Action provided good cause to deny Fair Friend’s demand and continue to resist production. A. 132 (existence of California Action); A. 133-135 (asserting bad faith request for inspection of books and records and lack of proper purpose); A. 137-138 (asserting good faith basis to ignore July 18, 2022 Demand, asserting that the request was issued only in aid of the California Action).

However, the CNC Opposition, which in “as filed” form totaled 192 pages, was not supported by any countervailing evidence or affidavits sufficient to create contested facts. A. 126-141 (Appendix version). The CNC Opposition rests on legal arguments and documents from the California Action to advance its core argument that it should not need to allow inspection of books and records because of the existence of the California Action.

As discussed above, the Superior Court in the 03/08/23 First Order rejected all of CNC Systems’ arguments. In this First Order, the Superior Court determined

that Fair Friend’s stated purpose “comports with what courts have found to be proper purposes for shareholders to seek access to corporate records.” 03/08/23 First Order at 7, A .16. The Superior Court also expressly rejected CNC Systems’ argument that the July 18, 2022 Demand assertedly was not made in good faith, assertedly was aimed at annoying the company, or assertedly was aimed at assisting the requesting party in litigation elsewhere. 03/08/23 First Order at p. 8, A. 17. Rejecting CNC Systems’ contentions, the Superior Court unambiguously stated that “[T]hat is not the case here[,]” noting that “CNC has allegedly taken actions that would cause any majority shareholder legitimate concerns – namely, demoting its CEO without shareholder approval [A. 48-51, 67-68], refusing to honor millions of dollars’ worth of contractual obligations over the course of multiple years [A. 68-70, 102 (acknowledging total AR \$5,618,295); A 115 (breaking out components owed to MAG, DMC, and Fair Friend, signature by Bryan Chen, also known as Chen Bo Yuan), and failing to respond to shareholders’ requests for information [A.70, 34-46]. 03/08/23 First Order at p. 8, A. 17 (with record citations added here by Fair Friend and placed in brackets).

Finally, in the same First Order, the Superior Court noted that Fair Friend’s action was “not designed solely to harass the adverse party,” nor to gain an edge in the California Action. Rather, the Court determined that “Fair Friend seeks to ascertain CNC’s business condition as a majority shareholder entitled to do so under

the Maine Business Corporations Act.” 03/08/23 First Order at p. 9, A.18; *see* A. 71-72 at ¶¶27-33 (addressing proper purpose for Demand).

Setting aside that CNC Systems did not support its Opposition with any evidence or supporting affidavits, the Superior Court rejected CNC Systems’ contention that the July 18, 2022 Demand was undertaken without authority or in bad faith. The grant of Fair Friend’s Application and denial of the first request for a stay should have made clear to CNC Systems that there was no reasonable basis to doubt that *majority* shareholder Fair Friend had a right to inspect its books and records.

However, CNC Systems consistently wheeled out its rejected arguments whenever when faced with requests to fully comply with the 03/08/23 First Order. Such arguments were repeated by CNC Systems in support of its Motion to Dismiss dated May 9, 2023 (asserting mootness, incorrectly asserting it had fully complied with the 03/08/23 First Order while conspicuously omitting any 2022 data); its Opposition to Fair Friend’s Motion to Enforce the 03/08/23 First Order dated May 9, 2023 (incorrectly and improperly asserting full compliance with the 03/08/23 First Order while conspicuously omitting 2022 data); its Second Motion to Stay dated September 7, 2023 (repeating same arguments concerning lack of good faith, lack of proper purpose, existence of California Action, despite Court’s rejection of such

arguments in 03/08/23 First Order *and* again failing to support its second request with evidence).

As reflected in the 09/27/23 Second Order, the Superior Court denied CNC Systems' request to dismiss the Maine Action. Instead, the Superior Court ordered CNC Systems to produce the documents that it had omitted from production, rejecting CNC Systems' strident assertions that it already had fully complied with the directives contained in the 03/08/23 First Order. Among other things, the 09/27/23 Second Order directed CNC Systems to produce 2022 records, including tax returns and financial statements prepared by accountants no later than October 17, 2023. 09/27/23 Second Order at p. 2, A. 20. The Superior Court also ordered CNC Systems to produce the list of "Open Items" that were contained on the July 18, 2022 Demand but had not been produced by CNC Systems well after the 03/08/23 First Order. *See* 09/27/23 Second Order at p. 1-2, A. 19-20. This Second Order also stated that the Motions to Quash the subpoenas issued to Swanson Group, LLC (Maine accounting and tax service providers of CNC Systems) "shall be continued until further notice by the Court." 09/27/23 Second Order at p. 2, A. 20.

Simply put, the Superior Court's findings and relief granted in the 03/08/23 First Order demonstrate that CNC Systems did not refuse inspection in good faith because of a reasonable basis to doubt the rights of Fair Friend, its majority shareholder, to inspect its books and records. Further, before and after the entry of

the 03/08/23 First Order, it was not open to CNC Systems to resist producing all documents requested in the July 18, 2022 Demand and further ordered by the Superior Court. It was not open to CNC Systems to assert full compliance and production of documents while also omitting 2022 documents and the Open Items, or seek to shut down the Maine Action, all based on prior rejected arguments concerning the California Action.

Indeed, CNC Systems' failure to properly support the CNC Opposition to the Application with any evidence necessarily means that it did not and could not “*prove[]* that it refused inspection in good faith because it had a reasonable basis to doubt about the right of the shareholder to inspect the records demanded.” 13-C M.R.S. § 1604(3) (emphasis). CNC Systems' failure to appeal from the 03/08/23 First Order and 09/27/23 Second Order also mean that the findings and determinations contained therein are conclusively established.

Because CNC Systems failed to meet its burden, this Court should reject its argument that the Superior Court abused its discretion or entered findings that were clearly erroneous in relation to the award of attorney fees to Fair Friend. *Efstathiou*, 2008 ME 145, ¶¶ 35-36, 956 A.2d 110, 121 (holding that factual findings are reviewed for clear error to determine whether the findings are supported by competent evidence in the record); *Remick*, 2014 ME 120, ¶ 7, 103 A.3d 552. The failure to move for additional findings of fact means that the Law Court will infer

that the Superior Court made all findings necessary to support its conclusions. *Carter*, 2024 ME 65, ¶ 30, ___ A.3d ___ ; M.R. Civ. P. 52(b).

IV. The Superior Court’s April 30, 2024 Order Awarding Attorney Fees Is Fully Supported By The Record.

CNC Systems lastly argues that the Superior Court’s Order of April 30, 2024 awarding Fair Friend its attorney fees included findings that were unsupported by the record. Brief at 21-22. In particular, CNC Systems asserts that the 04/30/24 Order does not contain factual findings sufficient to demonstrate that CNC Systems did not “prove that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded” within the meaning of 13-C M.R.S. § 1604(3).

In support of its “good faith refusal” argument, CNC Systems again cites to the existence of the California Action. Brief at 21. These arguments, already rejected by the Court in the 03/08/23 First Order and 09/27/23 Second Order, were not credited by the Court in relation to Fair Friend’s request for an award of attorney fees. Further, CNC Systems did not provide the Court with any evidence seeking to “prove” a reasonable basis to doubt Fair Friend’s right to inspect corporate books and records under 13-C M.R.S. § 1604(3), nor could it effectively do so after the 03/08/23 First Order and 09/27/23 Second Order.

In its 04/30/24 Order, the Superior Court ordered an award of attorney fees to Fair Friend under 13-C M.R.S. § 1604(3) after entering in its prior orders compelling

access to corporate books and records by CNC Systems. 04/30/24 Attorney Fee Order. A. 23-24. In particular, the Court found and concluded that an award of attorney fees and costs were reasonable and necessary in view of the manner in which CNC Systems “resisted production of document, filed serial motions to delay or avoid production of documents to Fair Friend (CNC’s majority shareholder), and based on applicable law.” 04/30/24 Attorney Fee Order, A. 24.

These determinations also are fully reflected in the Court’s prior Orders compelling production, including the 03/08/23 First Order, its denial of two Motions to Stay the Maine Action, and its denial of a Motion to Dismiss filed by CNC Systems guided by the wholly incorrect assertion to the Court on May 9, 2023 that “nothing remains for Fair Friend to ‘enforce’ – Fair Friend is in receipt of all corporate documents it sought to inspect.” CNC Opposition to Motion to Enforce dated *May 9, 2023* at 2; *see also* Motion to Dismiss dated *May 9, 2023* asserting mootness because “Fair Friend has received all corporate documents that it sought for purposes of inspection.” Motion to Dismiss at 1.¹²

As the 09/27/23 Second Order makes clear, CNC Systems was flatly wrong about its own production of documents in this proceeding and was further ordered

¹² CNC Systems’ May 9, 2023 filings, namely the Motion to Dismiss and the CNC Opposition to Fair Friend’s Motion to Enforce the 03/08/23 First Order are part of the record, but have not been included in the Appendix by CNC Systems. A. 4 (Docket Entries).

to produce 2022 data, as well as an extensive list of Open Items. A. 19-21. CNC Systems' Statement of Compliance dated *October* 18, 2023 judicially admits that CNC Systems, in fact, omitted significant categories of documents from its production to Fair Friend, while also conceding that "the complete, finalized 2022 financial statement is currently unavailable for production or inspection." A. 281; 279-283. Indeed, as of the filing of CNC Systems' Appellate brief, that 2022 statement had not been produced. On September 27, 2024, counsel for CNC Systems provided a link to this document.

In sum, this Court should reject CNC Systems' argument that the Court's Orders, including the 04/30/24 Attorney Fee Order, did not contain sufficient support for CNC Systems' "reasonable doubt" concerning Fair Friend's shareholder rights. These arguments already were rejected by the Court in the 03/08/23 First Order and 09/27/23 Second Order, which have not been further challenged. Because CNC Systems did not challenge Fair Friend's Application and requests through submission of any countervailing evidence, it failed to "prove" its rejected legal arguments. CNC Systems' failure to move for additional findings of fact under M.R. Civ. P. 52(b) allows this Court to "infer that the court made all findings necessary to support its conclusions." *Carter*, 2024 ME 65, ¶ 30, ___ A.3d ____ . The Superior Court did not abuse its discretion or err in awarding reasonable attorney fees to Fair Friend after entering multiple orders compelling production of books and records.

V. CNC Systems Did Not Appeal From A Final Judgment.

CNC Systems' appeal from the Superior Court's 04/30/24 Attorney Fee Order was premature and presumably aimed at having to account for its failure to produce 2022 Financial Statements at the status conference scheduled for July 1, 2024. A. 20-21 (09/27/23 Second Order noting open issues, including future status conference addressed to Subpoena enforcement, status of production, whether stay or additional action is after Second Order).

In order for an appeal to be legally cognizable, it must be from a final judgment. *Bruesewitz v. Grant*, 2007 ME 13, ¶ 5, 912 A.2d 1255, 1257. "A judgment is final only if it disposes of all the pending claims in the action, leaving no questions for the future consideration of the court." *Bank of New York v. Richardson*, 2011 ME 38, ¶ 7, 15 A.3d 756, 759 (quoting *E. Perry Iron & Metal Co. v. City of Portland*, 2006 ME 52, ¶ 5, 896 A.2d 956, 958).¹³

The docket does not reflect any conclusive written disposition of the open Subpoenas addressed to CNC Systems' Maine service providers, or the Second Motion to Stay. Although a status conference was scheduled for July 1, 2024 to

¹³ Although CNC Systems has not argued any exception to the Final Judgment Rule, the "judicial economy exception" the only potentially applicable exception. The judicial economy exception "is available in those rare cases in which appellate review of a non-final order can establish a final, or practically final, disposition of the entire litigation." *Fiber Materials, Inc. v. Subilia*, 2009 ME 71, ¶ 26, 974 A.2d 918, 927 (quotations and citations omitted). It applies "only when a decision on the appeal ... regardless of what it is, would effectively dispose of the entire case." *Id.*

address open issues, including the 2022 Financial Statement dispute, CNC Systems filed a Notice of Appeal on May 20, 2024. A. 8. As a result, the Status Conference with the Superior Court scheduled for July 1, 2024 was continued. A. 284 (Notice of Continued Status Conference).

CNC Systems may argue that it produced the 2022 Financial Statement to Fair Friend *after* the filing of this appeal, and therefore, the Court now has nothing left to address in relation to this matter. Yet, it is equally true that at the time of the filing of its appeal, CNC Systems still had not produced the 2022 Financial Statement created by its Maine accounting service provider. (That document curiously is *dated July 30, 2024 by the provider*, but was produced much later, on September 27, 2024). Fair Friend has prevailed on its books and records claim, but not all questions pending before the Court were finally addressed by the Court.¹⁴

To the extent that any of the orders referenced herein constitute a final judgment susceptible to appellate review, the Superior Court did not err, abuse its discretion, or enter findings unsupported by competent evidence. The failure to move for additional findings under M.R. Civ. P. 52(b) also allows the Court to infer that the Superior Court made all findings necessary to support its conclusions.

¹⁴ Fair Friend concedes that the production of the 2022 Financial Statement in September, 2024 (after the Superior Court lost the mandate) closes out CNC Systems' production of books and records under the July 18, 2022 Demand and the Court's Orders. This has the effect of rendering moot the Subpoenas and Second Motion to Stay.

Alternatively, if such orders are not final, or nearly final, the Law Court could elect to reach substantive issues (if timely and properly raised) under the judicial economy exception. Again, the Superior Court did not err, abuse its discretion, or enter findings unsupported by competent evidence, while the failure to move for additional findings allows the Court to infer that the Superior Court made all findings necessary to support its conclusions. M.R. Civ. P. 52(b). Finally, if the Court is not inclined to reach the merits of this appeal, the Law Court should remand to the Superior Court to address open issues, and also award Fair Friend its attorney fees incurred before the Law Court in addressing CNC Systems' interlocutory appeal.

CONCLUSION

For the foregoing reasons, the Court should deny the appeal of Defendant CNC Systems, Inc., award Plaintiff Fair Friend Enterprise Co., Ltd. its attorney fees and costs incurred in relation to CNC Systems' appeal before the Law Court, and grant such other and further relief as the Court deems just.

Dated: October 22, 2024

Respectfully submitted,

/s/ Daniel J. Murphy

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CERTIFICATE OF SERVICE

Counsel for Appellee hereby certifies that this Brief, in the required quantity and manner, have been filed with the Law Court (1 original and 9 copies to the Law Court, plus electronic copy) and served on counsel for the Appellant (2 copies, plus electronic copy) in accordance with the Maine Rules of Appellate Procedure.

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Dated: October 22, 2024

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