MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Docket # 2025 – BCD-25-18

H.A.T., LLC

APPELLANT

v.

GREENLEAF APARTMENTS, LLC

and

MURRAY, PLUMB and MURRAY, LLP

APPELLEES

APPEAL

BUSINESS AND CONSUMER DOCKET

BRIEF FOR APPELLANT

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FACTS OF THE CASE:

Procedural history. The plaintiff, commonly referred to as HAT, commenced this action in late 2019 by filing the initial complaint, which was subsequently replaced by the first amended complaint, naming Greenleaf Apartments, LLC (Greenleaf) as a primary defendant, as well as Portland law firm Murray Plumb and Murray (MPM) and an individual, subsequently voluntarily dismissed, named Estes.

MPM filed a motion to dismiss in advance of filing an answer, invoking a process approved in some federal courts whereby selected factual material, primarily documents, were presented to the court has a basis for supporting dismissal of the claims. Over appellant's objection that the contract specifically alleged that MPM had acted two seize the property from appellant at a time when it knew or should have known that such was improper, the court below dismissed the case against MPM. App 18.

On motion filed by MPM, the matter was transferred to the Business and Consumer Docket and following pretrial proceedings, the matter was tried jury waived during April, 2024. After extensive briefing, the court rendered judgment in September, 2024 and appellant filed a motion pursuant to Civil Rule 52 for findings and conclusions. The court entered orders related to

some matters raised in the Rule 52 filing, and entered final judgment at the end of December, 2024.

Nature Of The Case. The court has before it, in the record, many hundreds of pages of documents arising from the circumstances of the parties and the 8 ½ year history of the parties' dealings. The relationship between the parties arose when long time real estate owners and landlords in the Portland market, Richard and Peggyann Harris determined to sell their remaining holdings to implement a full retirement plan. A series of transactions, the bulk of which were effective as of January 1, 2008, resulted in sale of approximately 150 units of Portland rental housing at a price of approximately $7 ½ million dollars. Record Exh. 206.

HAT, a limited liability company owned by David O'Donnell, his spouse Lori O'Donnell and David's brother, Patrick O'Donnell agreed to purchase 15 units of rental housing located on Greenleaf St. in Portland, which the owners – the Harrises - transferred to Greenleaf Apartments, LLC, a for purpose Maine LLC company. Unfortunately, 2008 and ensuing years, famous for economic conditions called "The Great Recession," doomed the Harris retirement project, as all the properties, which had been sold primarily using bonds for deeds, except HAT's purchase, foundered and were terminated.

David O'Donnell and Dick Harris soon developed a friendly and fairly easy-going operating relationship, as the Harrises were compelled following the multiple bond defaults and terminations to reopen their operating business, re-engaging their daughter Julianne Harris to operate the day to day unit rental business.

The basic documentation of the HAT/Greenleaf transaction is before the court and in the appendix, consisting of

the bond for deed contract, App 118

a corresponding promissory note which provided for a 10 year term with periodic interest rate increases shown in an appended amortization schedule, App 134 and

various collateral documents, including subordinate mortgages on other O'Donnell related properties. App143

A second controversial set of documents, often referred to as the Termination Agreements. App154

These were prepared by MPM in April, 2009, following conversation between Dick Harris and David O'Donnell at that time. MPM was appointed

as escrow agent for these documents, responsible to hold them unless presented with adequate evidence of a HAT default.

The Harrises customarily traveled to Florida in the late fall of each year, remaining there until returning to Maine, usually, during May. In ensuing years, Mr. Harris would propose that for business issues which could not be readily transacted over the phone, resolution sh`ould be delayed until the Harrises had returned from Florida for the year.

In 2009, Harris called O'Donnell asking him to go to MPM to sign documents to protect the transaction from the possibility that creditors would interfere with the parties' agreements. Harris told him he had information suggesting "the shit was going to hit the fan." These documents were subsequently referred to as the termination agreements, essentially placing presigned stipulations of default and contract termination in escrow, to be released only in the event of contract default.

Harris was explicit with O'Donnell that the purpose of the agreements was simply a method to secure the property from possible claims while Harris had an interest in the transaction, and if ever used, HAT would simply continue as manager of the properties until the purchase price was paid, at which time the property would be transferred to HAT and the matter

concluded. The documentation does not suggest this purpose, reciting that the subordination of an existing Greenleaf position to a replacement senior mortgage was the reason for the agreement. Notably, no counsel other than MPM was involved in the drafting or execution of the agreements and no documentation of HAT company owner approval was involved.

The ensuing years were not uneventful. The parties in the person of David O'Donnell and Dick Harris were obliged to react to three significant casualty losses. As well, Harris had early suggested to O'Donnell that he understood the ups and downs of the rental business and could act as a first choice resource if O'Donnell needed financial assistance from time to time. This evolved into a series of short-term loans, at first well-documented, App 147 and later simply entered on the annual end of year statements Greenleaf would supply to HAT. App 264.

Three casualty events marked the history of the parties' subsequent relationship. First, major wind damage required large roof replacement, and occasion on which Dick Harris suggested to O'Donnell that the size of the copayment and the resulting possible change in the insurance rate made an insurance claim for the cost of the replacement uneconomic. Harris offered to simply loan the replacement cost to HAT and O'Donnell agreed.. App 166.

The next casualty event, occurring in the second week of January, 2014, involved a burst pipe and substantial water damage to a six unit building, often referred to by appellant as "the flood." Harris offered to facilitate reconstruction of the property using tradespeople he had engaged previously, Woody's Works, Brian's Plumbing and Electric and Servpro in Portland. Harris indicated he would arrange for their services, which he did, would pay their invoices as they came due, which largely also occurred, and the parties would true up once insurance coverage payment was received.

Although the construction proceeded as planned, Harris was notified in May, 2014 that the insurance carrier, Seneca Insurance, was investigating several issues, seeking verification that the property was heated and occupied to the extent specified in the policy. HAT provided documentation of these matters. App 220.

As well, the investigation encompassed the applicability of a so-called commercial endorsement, app217, which prohibited subsidized rental tenancies. Unbeknownst to HAT, who was the designated primary beneficiary for all insurances maintained by either party on the property, Harris as the primary insured interest on the policy settled the claim and received $80,964.31 in proceeds in August, 2014. App 252 O'Donnell had previously,

in July, sent Harris a letter reminding him that the Servpro bill had not been paid and that HAT had a lost rents claim of over $50,000 which had been documented. App 175.

In December, 2014, during a telephone call, Harris spoke with Attorney Peter Plumb concerning the HAT/Greenleaf relationship and the financial situation then prevailing in Harris' memory. According to Plumb's notes of the conversation, Harris indicated that the loss was not O'Donnell's fault, but that HAT had never paid five months of mortgage payments while the property was damaged and the parties had not received any insurance proceeds. App 276. In fact, Harrises soon realized after then speaking with O'Donnell by phone that the mortgage payments had been fully current for many months. In January and February, App 179. the parties had correspondence concerning the costs incurred in repairing the flood damage, and a promissory note in the amount of $155,302 (the second note) was executed app 169 by HAT to reimburse Greenleaf for the advances made, without credit for any insurance receipts. The yearend financial statement for 2015 reflects the then current status of the HAT account as fully current. App 274. The balances paid on account of the casualty loss had been received a year and a half earlier.

In October, 2015, fire damaged a three unit building which was part of the project, and Harris and O'Donnell again discussed the circumstances of the project. O'Donnell professed that this capacity for financing repairs without the assistance of insurance proceeds from either the flood or the fire would be limited, and Harris generously agreed that he would duplicate the process that had occurred with the flood, by again engaging his preferred tradespeople, to make necessary repairs to the three unit, abiding the outcome of the insurance adjustment process. App 263.

During these discussions, Harris again assured O'Donnell their insurance was of high quality, negotiations were continuing for the flood and would be fine for the fire, and Greenleaf was willing and well able to fund and manage the interim issues fo reconstruction and finance. O'Donnell testified that he felt like a huge weight had been lifted off his shoulders. See Day 1 Transcript pp. 146-150.

By this time, Harris and O'Donnell had an easy and friendly relationship. Harris, according to O'Donnell, had frequently interjected into the conversations that he "never wanted the buildings back" which had been sold to HAT. In dealings with the insurance companies, even as HAT was directly involved in the casualty evaluations, Harris preferred that the insurance

personnel understand that HAT was the manager of the properties while Harris remained the owner.

Most of these conversations did not involve third parties, however shortly before the October fire, one conversation did include Ms. Kelly MacLennan, the HAT bookkeeper and operations contact. O'Donnell had initiated a call rom his car phone to Harris suggesting that the customer service from the insurance company, which had still not, to HATs knowledge, settled the flood issues, even as the property was again up running and fully occupied, warranted exploring other insurance providers. Harris resisted the suggestion, taking the occasion, in Ms. MacLennan's hearing, to emphasize "I want you to trust me. I am a trustworthy person. I trust you and you should trust me. I understand these are your buildings. You can trust me to protect you.. I know what we are doing here." See Transcript, Day 4, page 16.

During the winter, 2015 – 16, Mr. Harris' cognitive abilities, already, at least in retrospect[1], showing clear signs of decline, became substantially impaired. His daughter, the day-to-day operator of the Harris properties

[1] The court is aware of the series of apparent memory miscues related to the early 2014 note payments, the O'Donnell reminder letter = and the July/August casualty claim settlement. Appellant now claims knowledge of this and subsequent dealings meant MPM was not justified in releasing the termination documents since it knew HAT was entitled to thousands of dollars in uncredited funds. Another early sign of distress is the progressive decline in the quality of the annual financial summaries authored by Harris. (APP 264)

enterprise, the of Winter 2015-16 as the time when health decline meant she perceived that her father became noticeably less able to continue in management of the Harris rental business, which included the relationship with HAT. Day 2Transcript 110. As a result, Mrs. Harris was obliged to assume management overall direction of the Harris Enterprises, including its HAT relationship. Ominously, she had been overheard in October to say the Harrises should "get these buidings back" by Patrick O'Donnell, the primary HAT member who maintained the property and worked with the tenants on site. Transcript, Day2, Page 20.

As it developed, the relationship was again experiencing casualty related and insurance related difficulties, including the imposition of a stop work order by the City of Portland in February, 2016. During O'Donnell's discussions with Dick Harris after the fire the previous Fall, Harris had agreed that the payments on the flood reimbursement note would be suspended until the fire loss repairs or the availability of insurance proceeds would justify resuming liquidation of that obligation. The subsequent activities of Mrs. Harris and MPM suggest that they were unaware of this important accommodation.

In early 2016, HAT determined to sell the Greenleaf properties, pay the Harris obligation and successfully negotiated a contract for sale, only to have the contract cancelled, reportedly, because the purchaser learned in visiting Portland City Hall that repair of the three unit had been halted. Later, HAT made another sales agreement that was the subject of the "Closing Agreement " (app) reached after the seizure but which did not result in a sale.

MPM correspondence in January, 2016 App 193 suggested for the first time that "some small amount" may have been received by Greenleaf in relation to insurance claims related to the flood. A few months later, a largely inaccurate financial reconciliation posited a credit of approximately $71,999.00. Discovery litigation would later reveal the actual figure to be $80,964.

HAT contacted Mrs. Harris in July seeking to have Greenleaf request rent loss insurance advances from the casualty carrier, having received no revenue from the three unit 9 months. HAT had already forwarded rental documentation to the assigned adjuster, Paul Dowling. App253

Simultaneously, Dowling had contacted Mrs. Harris to suggest that a rent loss payment could be processed for the preceding months. This information was never conveyed to HAT, the contract beneficiary of a

“confidential relationship for Purchaser, ” under the ;purchase agreement. Mrs. Harris declined the seek the payment. App 255.

Within a month, Greenleaf had mobilized the seizure of the property using the termination agreements, convincing tenants and their agency supporters to transfer financial payments to Greenleaf, changing the locks on the properties and notifying the tenants and the agency payors of the change in ownership. App 160.

HAT immediately protested, indicating that the property was under contract in its damaged condition, which would still enable the full payout of the Greenleaf obligations and enable HAT to realize net proceeds exceeding $500,000. A Closing Agreement App 173 and Ratification Agreement App 176 were both developed, however, the purchaser defaulted on the agreement shortly before the scheduled closing in October, 2016. The following month, HAT notified Greenleaf counsel that HAT had accumulated $300,000 in funding on deposit in trust (record Exh. 215) and was seeking access to the property for appraisal in connection with bank lending to payout the Greenleaf position. Greenleaf refused.

Mr. Harris never recovered and is since deceased.

Simultaneously with the events of 2015 and 2016, attorney Kelly McDonald, an attorney at MPM, was representing the individual who held a judgment against David O'Donnell arising from business dealings that were entangled with financial difficulties during the Great Recession.

The record on appeal includes voluminous exhibits related to the litigation which involved a receiver appointment and ultimately proceedings in a Chapter 13 Bankruptcy, which resulted in an agreement the required that the David O'Donnell obtain his wife's interest in HAT for the purpose of pledging the same to the MPM client and authorizing a guarantee by HAT of the O'Donnell payment obligations to that creditor. The voluminous financial records include the O'Donnell 1040 tax returns which, in Schedule E, had detailed the taxation results of HAT operations during the pertinent years. An enormous increase in interest payments in 2015 corresponds with the settlement payments required by the Chapter 13 settlement order. This appears to Appellant to be a disorderly arrangement in light of subsequent events and MPM's unique dual responsibility under the document escrow.

The trial court in rejecting equitable claims and related contractual and due process objections to the seizure made note of the activities of David O'Donnell related to gambling. The court appeared to decry the activity as

inconsistent, especially in 2016, with O'Donnell's mounting financial obligations. This court has in the record on appeal the voluminous exhibits of the David and Lori O'Donnell 1040s **(**Exh. 103-113), including Schedule E, where years gambling income was required to be reported when gambling income exceeded expense. In 2016, Schedule E showed gambling net income exceeding $72,000, and previous years, showed net income from this activity quite consistently.

ISSUES PRESENTED

ISSUE ONE: DID THE COURT ERR IN DETERMINING THAT APPELLANT HAD BREACHED THE CONTRACT OF THE PARTIES.?

ISSUE TWO: DID THE COURT ERR IN FAILING TO REQUJIRE APPELLANT BE AFFORDED NOTICE AND OPPORTUNITY TO CURE ALLEGED DEFAULTS.?

ISSUE THREE: DID THE COURT ERR IN CONCLUDING APPELLANT WAS NOT ENTITLED TO EQUITABLE OR OTHER RELIEF ?

ISSUE FOUR: DID THE COURT ERR IN GRANTING THE MOTION TO DISMISS OF APPELLEE MURRAY, PLUMB AND MURRAY?

ARGUMENT

ISSUE ONE: THE COURT ERRED IN FINDING DEFAULT EXISTED UNDER THE TERMS OF THE CONTRACT OF THE PARTIES JUSTIFYING TERMINATION OF THE BOND FOR DEED CONTRACT.

In the instant matter, appellant challenges the trial court's interpretation of the contract of the parties, which is fully before the court. In the circumstances, appellant believes that the standard of review of this court related to interpretation of a contract is primarily a legal issue appropriately reviewed de novo. To the extent the existence and sufficiency of proven facts is also an issue, Appellant believes the pertinent standard is sufficiency of the evidence, with the supporting record limited by the Rule 52 Motion by Appellant and the limiting responses to the same in the Rule 52 Order.

The "Bond for Deed" - Exhibit 1 - is a 19 page document, which includes three paragraphs of direct importance to appellant's claim that no actionable default justified the seizure of the subject property, which occurred in late August, 2016. Absent such, Appellee breached the contract of the parties and is subject to a proper remedy. Appellant seeks enforcement of the contract through a conveyance of the affected premises and reconciliation of the financial status of the parties under the agreement.

Those provisions are these:

DEFAULT BY PURCHASER: Paragraph 14, App 126 defines "Performance Default" in two ways – for other than non payment a detailed notice with cure provisions and timeframe provisions for cure is specified. as defined in Alyssa falls other than nonpayment required notice, opportunity to cure, a description of both the alleged default and the steps and timeframe considered reasonable for cure, after which it defaulted termination would justify contract termination.

This particular provision required a detailed written communication with various failsafe provisions, including notice provisions obviously designed to assure that the required notice was received, including by counsel. The second provision related to non—payment required no notice, no opportunity for cure . The contract itself envisions the parties creating two financial accounts and enabling an automatic drafting of required contract payments each month. This procedure was never implemented by the parties.

DEFAULT BY SELLER. In paragraph 17, App 131 the second critical provision, a default by the seller creates a right of setoff for the purchaser

allowing a reduction in "amounts due hereunder to seller ...(Including) amounts due under the promissory note."

INSURANCE PROVISIONS, The final critical issue is found in paragraph 11, App 124 the insurance provisions of the agreement. Corollary to the obligation of the purchaser to maintain the property, the provisions of paragraph 11 required the purchaser be named as an additional insured on all policies of the bond property, all of seller's rights under any insurance policy were assigned to the purchaser, including all loss proceeds, and further, the seller "**shall act in all respects in a confidential relationship for purchaser with respect to any such policy.**"

In simple terms, following a casualty loss which flooded one of the three buildings involved in this bond purchase, the seller advanced approximately $176,000 pending insurance settlement for cost of rehabilitation after the casualty. Faced with a claim that the insurance was void by virtue of a commercial endorsement, App 217 the appellee settled the matter for slightly less than half of the proceeds expended for reconstruction, without the knowledge or consent of appellant, and thereafter consistently advised David O'Donnell, manager of the appellant, that the matter was still under

negotiation and would be favorably settled when the negotiation process concluded.

In the initial complaint, appellant claimed contract breach, fraud and deceit, and implicated Murray Plumb and Murray on the belief that counsel had been engaged to address the settlement of the insurance claim. Discovery revealed that no known counsel had been engaged in the matter, and that the entire claim was released in late July, 2014. Payment was directly made into the account of the appellee in August, 2014 in the amount of $81,964 App252.

The simple analysis is that, putting aside the intricacies of claims of fraud or deceit, the contact standard is a "confidential relationship." Ominously, in late 2014, Mr. Harris told counsel that HAT was five months in payment arrears, having never made good the note payments due while the property was being reconstructed, and that no insurance proceeds had been received App 276.

Shortly thereafter, perpetuating the assertion that no insurance was received, the Appellee proposed a second promissory note to repay $155,302, the cash advance balance less a reallocation of extra principal payments made in 2014.

As noted, in both of its original filings post hearing, and again in its Rule 52 filings and argument, appellant urged that the above circumstances compel the conclusion that the seller was in substantial breach no later than the date on which it demanded that appellant reimburse for the full cost of repair, despite being in possession already of $80,964 in casualty insurance payments. The simple math, which the court never addressed and which it may have misconstrued, was that there was a cash balance of outlay as described in exhibit 52, App 235, totaling $176,000, that $20,000 and prepaid promissory note payments made by HAT was transferred from credit to the main promissory note to afford a $20,000 reduction in the amount to be repaid by HAT with new lending, resulting in the so – called "second note" to total $155,302.

The court misread the provisions of the original additional collateral mortgage and provided by HAT in January, 2008, and in particular, the allocation of casualty insurance on that collateral to the benefit of the secured party, in this instance, appellee, as a provision that allocated insurance on the Greenleaf Apartments property to the appellee. App 45.

In fact, the plain language of those mortgage documents make clear that the reference to this assignment of insurance proceeds refers to the

additional collateral properties, not the Greenleaf Street location App 146.. As well, even if the court's construction had been correct, that circumstance posed a ticklish contract construction problem, which appellant assumes the canons of construction would resolve in appellant's favor, concerning whether generic assignments contained in the collateral mortgages negatived the effectiveness of the extensive and detailed insurance provisions contained in the bond for deed App 124.

In the court's order related to appellant's Rule 52 motion, the court made additional direct findings that appellant caused the casualty, sometimes referred to as the flood, by failing to pay heating of the temporarily vacant units in the property. In so doing, it appears the court compressed the timeframe involved in heating payments and availability in the evidence in the case., as the financial heating monies shortfall prevailed in the previous year, addressed then in part by a $20,000 loan from Mr. Harris,.

It is undisputed and irrelevant evidence that during the winter of 2012 – 2013, HAT borrowed $20,000 from Richard Harris, using much of the funds to bring current billing for natural gas. There is no evidence that HAT was short of funds to pay utility charges the following year.

The undisputed record also shows that, during the night that the burst pipe caused extensive damage to the property, the property had three fully occupied units, while tenants had vacated two other units at the end of December, 2013, and HAT had already scheduled use of the units for rental inspections the following week. **(Trans)**

The adjuster for the carrier requested, and received verification that all units were heated, a fact provable because the heat for all units was metered so fuel consumption could be and was verified. Transcript Day 1, p. 187.

The court below, in the Rule 52 findings, asserted that HAT was not entitled to the benefit of the insurance proceeds because such would create a windfall in HAT's favor, a follow on conclusion from the erroneous conclusion that the contract awarded casualty losses dollars to Appellee. In fact, of course, the windfall flowed to appellee as repayments of $155,302 plus the casualty loss proceeds of $80,964.31 had already afforded the appellee a windfall not recognized by the court and not envisioned by the agreements of the parties.

The court's ruling again ignored the contract protocols which required notice and opportunity to cure prior to any default other than nonpayment. The parties had agreed on payment for the flood casualty loss in the form of

the promissory note, and Harris and David O'Donnell had additionally agreed on a similar arrangement to complete the repairs of a three unit loss which occurred in October, 2015. Appellant infers that the parties are today before the court because the arrangements for completing the contract between Mr. Harris and Mr. O'Donnell resulted from Dick Harris' cognitive decline as it deepened substantially during the winter of 2015 – 16. Mrs. Harris was defaulted to assume the management responsibilities of the entire family holdings, of which the HAT agreement was a minor part.

Records before the court do not contain any vast information concerning the normal repetitive challenges and requirements that arise in the management and operation of old central city multifamily properties. The court has before the detailed appraisal of many dozen pages, outlining both the property itself and typical manner in which such properties operate. The record is uncontradicted that these particular properties were annually inspected by the city of Portland and also by contracting agencies, like Catholic Charities, to assure safety and suitability for the clientele which would not be able to respond to needs for maintenance or repair.

There is a clear danger that the intensity of neighborhood activities including typical urban issues such as graffiti or surreptitious overuse of the

property trash disposal facilities. When appellee interposed copies of inspection records from the city of Portland related to HAT in 2016, appellant introduced more extensive documentation of property inspection deficiencies from a year post seizure, while the properties were under the Harris company's management.

Appellant's point is not to suggest that either the HAT operation or the subsequent Harris Properties operation are of the quality which falls outside the range of quality, affordable housing.

It simply points out that the best judges of what falls within the parameters of proper maintenance and operation are the parties themselves, who raise deficiencies beyond the scope of dated day issues to resolve by triggering the notice of right to cure provisions of the contract. It is undisputed that Greenleaf never invoked the contractual notice of default related to maintenance or performance issues.

Appellant respectfully suggests that this again, in the courts original judgment and in the Rule 52 ruling, ignores both the letter of the contract itself in asserting that maintenance was a default in the current controversy, but possibly more importantly evidences a failure to appreciate that it is the parties themselves who best evaluate the adequacy of maintenance

responses and the regularity of the tenant operations. In this respect, appellant asserts that, absent a notice and opportunity to cure required under the strictures of the contract itself, there is no default possible under the agreement, other than a payment default. Any payment default is definitively disproved in the present case, by the fact that the appellee had had in its possession for over two years, approximately $81,000 of money which was owed to or allocated to the credit of HAT. As proved by the financial reports prepared b y Appellee each year, understanding the proper allocation of insurance recovery funds in light of the monies worth arrangement of the "second note," it is mathematically inconceivable that HAT was in default of the contract due to its right of setoff.

As well, the failure to involve HAT in the insurance dealings on at least an informational basis constitutes a further, unliquidated liability, it being established that HAT never received any credit for lost rent from two casualties despite being the benefitted party of a "confidential relationship."

ISSUE TWO: THE COURT ERRED IN FAILING TO REQUIRE APPELLANT BE AFFORDED STATUTORY NOTICE AND OPPORTUNITY TO CURE ALLEGED DEFAULTS.

In the instant matter, appellant challenges the trial court's interpretation of Maine statutory law. In the circumstances, appellant believes that the standard of review of this court related to such interpretation is a legal issue appropriately reviewed de novo.

Appellant brings to this court what it believes to be a novel question of Maine law, specifically, whether the requirements of title 33, section 6304 – F can be waived prior to default by contract in the case of residential property. The court has before it the contract, which expressly waives the statutory requirements ***ab initio***, notably prior to default. The trial court approved this construction, ruling that the HAT transaction was essentially free of the statutory requirements as a commercial venture. The undisputed facts cannot sustain this ruling unless the court ingrafts a new subparagraph on the statutes.

The court below rejected the claim that the statutory protections contained in the foreclosure provisions related to bonds for deeds applied in the instant case. Appellant urges this court to hold that these minimal standards of due process cannot be waived prior to default under the statute.

The court is well aware of the provisions of the Maine Long-Term Purchase and Sales Agreement statute, which sets forth minimum

requirements for such agreements. **33 MRSA 482.** That statute, among these provisions, requires that the written agreements include a description of the right to cure or provisions of **14 MRSA 6203– F**. The syntax is directory. Subsection L. requires "**A statement of the rights of the buyer established by Title 14, section 6111 to cure a default by the buyer;**"

A subsequent subsection, **6203-P** related to prepayment rights, specifies a mandatory provision, **"unless agreed to the contrary"** a plain indication that the Legislature can craft options for contractual exceptions of requirements when it chooses.

The structure of the statute already now has additional protective provisions for homeowners occupying smaller properties, related to mediation. The structure to protect all residential properties, the apparent plain meaning of the statute for many years, is undisturbed.

Reviewing the holding in **Thurston v. Galvin**, 94 A.3d 16 (ME. 2014), the court left open the Due Process issues, focusing on the narrow rights being preserved. The dissent of Justice Alexander suggested a broader equitable remedy. In contrast the majority – which pointedly observed that all rights of redemption had already been observed and **"As to those there is no dispute." Id. Para. 15.**

Appellant urges that the proposed dichotomy proposed by Appellee and adopted by the court, of a "commercial" undertaking, therefore supposedly of a nature to enable dispensing with required regulation, is simply a false dichotomy. Given the meager nature of the requirements, adequate notice and opportunity for cure are rudimentary requirements. The supposition that foreclosure would be obviated by means of an FED was dismissed by the Thurston court as just that – a supposition.

The court did not fully address issues of due process, a substantial issue where the extra judicial apparently unlimited authority to determine valuable property rights is involved. The plain fact is that a minimal statutory requirement of notice and opportunity to cure, approved by the court for then current issues in **Thurston,** seems unlikely to suffice in many circumstances.

Appellant will dispense with a parade of horribles possible when a predefault equivalent to a confession of judgment becomes the basic manner for resolution of disputes over valuable, longstanding rights. However, the requirements of minimal due process – sufficient for Appellant's claims – are unlikely to be the final threshold for constitutional approval.

Due Process requires notice and an opportunity to be heard when substantial rights are affected. In **WILLIAM D. HAMILL v. BAY BRIDGE**

ASSOCIATES et al., 1998 ME 181, 714 A.2d 829 (1998) the court noted: "**It is essential to a party's right to procedural due process that he be given notice of and an opportunity to be heard at any proceeding in which such property rights are at stake.**" ***Senty v. Board of Osteopathic Examination & Registration***, 594 A.2d 1068, 1072 (Me. 1991). "**Although specific requirements of due process may vary according to circumstances, at a minimum, notice must be afforded at a meaningful time in the proceedings.**" ***Michaud v. Mutual Fire, Marine & Inland Ins. Co.***, 505 A.2d 786, 789-90 (Me. 1986) (citations omitted)

Even As the Appellee never activated the default provisions of the contract, as descried above, and could never claim payment default under the contract, having retained the insurance proceeds of two casualties without consultation, it is additionally true that the hair trigger, legally overaggressive provisions of the original agreement – which purported to dispense with all Maine regulation of practices, and the Termination Agreement, which purported to eliminate all meaningful judicial supervision of any kind entitle Appellant to relief.

ISSUE THREE: THE COURT ERRED IN CONCLUDING APPELLANT WAS NOT ENTITLED TO EQUITABLE OR OTHER RELIEF.

The court's standard of review appears to Appellant to be mixed, applying established legal doctrine de novo to found facts, and integrating, as a necessary matter of legal interpretation, the effect of interpretation errors, including the effects of the trial court's erroneous contract and statutory constructions reviewed above. This claim seems to involve a mixed evaluation of fact, which includes matters confined by the Rule 52 process claim limiting process and undoubtedly some findings that may be examined for be evaluated concerning whether the findings are supported by competent evidence on the whole record.

In essence, the contract and termination provisions create one sided provisions, allowing the forfeiture without notice of hundreds of thousands of dollars of family property without recourse. It shocks the conscience.

Plaintiff also contends that the laws prohibiting unconscionability, and specifically substantive unconscionability, prevent the enforcement of the default claims by the defendant in the instant matter. Substantively, the circumstances simply shocked the shock the conscience by permitting the

seizure of valuable property rights without notice or opportunity to cure any claimed deficiencies in performance by a purchaser.

"Substantive unconscionability or unfairness focuses on the terms of the agreement and whether those terms are so one-sided as to shock the conscience" *Barrett v McDonald Invs., Inc.,* 2005 ME 43, ¶ 36, 870 A.2d 146 (Alexander, J, concurring)

As the only relief sought by Appellant is the application of basic due process rights, a court of equity disturbs little and accomplishes much by adherence to minimal due process standards. Substantive unconscionability – the shocking secret overnight forfeiture of hundreds of thousands of dollars of property rights, and its corollary legal proscriptions of adhesive penalty contract provisions underscore the remedy imperative in the instant matter.

ISSUE FOUR: THE COURT ERRED IN GRANTING THE MOTION TO DISMISS OF APPELLEE MURRAY, PLUMB AND MURRAY.

In the First Amended Complaint, Appellant drew numerous inferences from the interplay of the Appellee Murray Plumb and Murray (MPM) and the principal defendant, Greenleaf Apartments, LLC. Later, discovery showed that much of the eventual failure of the transaction flowed from the

progressive and ultimately acute cognitive problems encountered by Dick Harris and the ensuing chaos in the operations of Greenleaf, at a moment of considerable stress from reconstruction problems with HAT, property and the unwelcome responsibilities of assuming management of the Harris enterprises. .

Ultimately, Greenleaf determined that a multi tens of thousands of monies credit was, and had been due to HAT. App. 192. Greenleaf through MPM. The amended contract was dismissed under what Appellant imagines to be a procedure which should be disfavored in Maine, allowing augmentation of initial filings to attempt to show a conclusive right to dismissal. This amounts to allowing the defensive amplification of a Rule 12(b)6 into an unstructured, somewhat random factually augmented proceeding.

Plainly, the allegations which complain that **MPM knew or should have known** that the release of the escrowed termination documents violates their escrow responsibilities is sufficient to squarely raise the issues noted in the previous issues briefed in this filing. HAT clearly suffered damages by the premature ending f its sales undertakings, at a loss of in excess of $500,000.

Indeed, the knowledge of the financial values hanging in the balance e would often be an irresistible inducement to sharp practice or worse.

As well, the circumstances of this case demonstrate the unwisdom of such preemptive adjudications. Much of the record before the court was uncovered through discovery, often consisting of oral undertakings or unforeseen mishaps which affected the understandings of the parties. MPM was called upon as escrow agent to determine the existence of grounds for termination according to a contract it negotiated, and involving a party under enforcement proceedings which had easily imaginable issues of possible interest conflicts.

Its escrow based relationship to the Appellant might be contractual with a duty owed to Appellant – which appears to be the basic decided authority in Maine, or it may be that developments required MPM to recuse. Or perhaps fuller exploration of relevant facts would find no actionable issue.

Appellant's objection is that the process was unregulated and open to a truncated and unregulated factual process. It also, in Appellant's view, failed to follow the teachings of **Progressive Iron Works Realty Corporation v. Eastern Milling Company**, 155 Me. 16, 150 A.2d 760.

RELIEF REQUESTED.

Appellant respectfully represents that the proper mandate in this matter is a remand to the Superior Court or the Business and Consumer Docket for proceedings consistent with the contractual obligations of the parties. Appellant believes that an independent evaluation of the present financial status of the parties is justified by the passage of time and rhe costs and incomes related to the property operations in the past nine years. Appellant also believes an opportunity to elect a jury trial in either the Superior Court of BC Docket is appropriate and desirable. Appellant prefers a remand to the Superior Court sitting in Cumberland County.

Respectfully submitted on April 18, 2025.

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