STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. BCD-25-18

H.A.T., LLC

Appellant

v.

GREENLEAF APARTMENTS, LLC, et al

Appellees

ON APPEAL FROM
BUSINESS AND CONSUMER DOCKET

BRIEF OF APPELLEE MURRAY, PLUMB & MURRAY, P.A.

June 6, 2025

Russell B. Pierce, Jr., Esq., Bar No. 7322
Norman, Hanson & DeTroy, LLC
220 Middle Street, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000 (rpierce@nhdlaw.com)

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INTRODUCTION

When H.A.T., LLC ("HAT") sued Greenleaf Apartments, LLC ("Greenleaf") for claims arising out of the parties' "bond-for-deed" (or land installment) contract, HAT took an extraordinary additional and unfounded step: it joined Greenleaf's lawyer, Murray, Plumb & Murray, P.A. ("MPM or "the Law Firm"), to the lawsuit.

HAT had no basis in law or fact to do so.

The trial court promptly dismissed the Law Firm from the case. (A 18-25). In the motion to dismiss proceedings, HAT failed to articulate a cognizable legal basis to join its opposing party's lawyer to HAT's case for breach of contract.

Now, after losing its case against Greenleaf after trial, HAT appears to resurrect its desire to pursue the Law Firm but again fails in the Appellant's Brief to state any claim or argue any semblance of a legal theory to support a cause of action against an opponent's lawyer.

HAT's perfunctory arguments for review of the Law Firm's dismissal should be rejected.

STATEMENT OF FACTS

A. Relevant Factual Background

MPM joins in and adopts by reference all parts of Appellee Greenleaf's Brief. M.R. App. P. 7A(h).

MPM emphasizes that, in accordance with the terms of HAT's contract with Greenleaf, and the contract's terms agreeing to recording termination in the registry upon default, MPM gave notice of the filing of the termination to HAT's lawyer, Appellant's present counsel of record. (A. 201-02). From that point forward, for roughly three and a half years, neither HAT nor its lawyer raised issue with the recorded termination or disputed HAT's default that triggered it. (A 96). As Greenleaf emphasizes in its brief, there are judicial admissions by HAT of its default on record. Greenleaf Appellee's Brief at 13-14. After the termination was recorded, HAT and its counsel proceeded affirmatively in their interactions with Greenleaf and MPM without raising objections to the termination or to MPM's conduct in recording the termination for its client, Greenleaf. *See also* Greenleaf Appellee's Brief, Part. I.D. (arguments on waiver and equitable estoppel).

MPM also emphasizes that HAT agreed not to sue MPM in the event MPM undertook on behalf of MPM's client, Greenleaf, to date and record termination of the contract upon HAT's default. By signing the "seen and agreed to" correspondence of April 6, 2009 (A. 164-65), both parties —HAT and Greenleaf—

agreed in writing to hold MPM harmless for release of the document "for dating and recording" in the event of default. (A. 164-65). HAT's default for nonpayment was undisputed when MPM acted to sign and record the termination for its client. The default remained undisputed, was later reflected in judicial admissions by HAT, and has now been finally determined by the trial court against HAT. (A. 26, 47).

B. Relevant Procedural Background

On July 1, 2020, before answering the operative complaint pleading,[1] MPM moved to dismiss the amended complaint under Rule 12(b)(6) of the Maine Rules of Civil Procedure. (A. 90). Rule 12(b)(6) allows and provides a procedure for pre-answer motions to dismiss a pleading when the movant contends that the pleading fails to state a claim upon which relief can be granted. M.R. Civ. P. 12(b)(6). HAT's amended complaint against MPM purported to sue MPM for the same contractual remedies HAT pursued against Greenleaf, including alleged statutory rights of redemption, a misconstrued theory of "promissory or equitable estoppel," statutory alleged "unfair trade practices,"[2] and what appeared as a desultory

[1] HAT amended its complaint before service, a procedure permitted by Rule 15(a) of the Maine Rules of Civil Procedure. A. 6 (03/04/2020 entry). MPM therefore moved to dismiss this Amended Complaint.

[2] HAT voluntarily withdrew this particular claim at the hearing on the motion to dismiss. (A. 18).

attempt to plead fraud without required pleading particularities under Rule 9(b) of the Maine Rules of Civil Procedure. M.R. Civ. P. 9(b).

The case was transferred to the Superior Court's Business and Consumer Docket, and on October 21, 2020, the court heard oral argument on the motion to dismiss. (A. 8). The court granted MPM's motion to dismiss, with a decision issued on December 16, 2020. (A. 18).

The court's dismissal of MPM did not become an appealable order until final judgment was entered for all parties on December 30, 2024, following the bench trial, post-trial motions, and final judgment entered in favor of Greenleaf. (A. 16). HAT timely appealed from the order of dismissal on January 16, 2025. (A. 17). But, as noted above and argued in more detail below, HAT has not fully or fairly briefed any grounds for reversal of the MPM dismissal.

ISSUES PRESENTED FOR REVIEW

1. Has HAT waived arguments on appeal of the order dismissing MPM, by briefing the appeal in a perfunctory, undeveloped, and indistinct fashion?

2. Did the Business Court correctly dismiss HAT's attempted pleading against HAT's opposing counsel, MPM?

SUMMARY OF THE ARGUMENT

In Appellant's Brief, HAT does not address any of the bases for the decision of the Business Court dismissing MPM as a defendant in the case. HAT's argument is presented in a perfunctory manner in about two pages towards the end of the brief. Those pages lack the clarity of coherent argument that should form the basis for fair briefing by the parties to lead to considered review by this Court. HAT should be deemed to have waived all arguments in support of its appeal of the order dismissing MPM. *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290.

Further, even if not waived, if this Court affirms the judgment after trial in favor of Greenleaf, this Court need not reach the appeal of the order of dismissal of MPM. There is no independent basis to pursue any claim against MPM if HAT's appeal against Greenleaf is not successful. HAT has not identified or explained any basis for doing so. In essence, an affirmed judgment in favor of Greenleaf moots the appeal as to MPM, *see, e.g., Att'y Gen. v. Pine Tree Council, Inc.*, 2025 ME 2, ¶ 33 n.7, 331 A.3d 258, or alternatively an affirmed judgment for Greenleaf would, on the core facts established by that affirmance, preclude any continued or future HAT claims against MPM under the "issue preclusion" prong of the doctrine of *res judicata*. *Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶ 9, 940 A.2d 1097.

Finally, HAT's complaint against MPM failed to state any claim upon which relief could be granted, for the reasons explained in the Business Court's decision. The court correctly held that Greenleaf, not its lawyer MPM, was the contracting party, so the lawyers cannot be held liable for alleged "breach of contract and related claims." (A. 22). *DiPietro v. Boynton*, 628 A.2d 1019, 1024–25 (Me. 1993) (a lawyer is not liable for the client's breach of contract). The court noted HAT's acknowledgement of "this well-known black letter law." (A. 22) (quoting HAT's Opposition to Defendant's Motion to Dismiss at 1). The court rightly rejected HAT's misplaced reliance on *Progressive Iron Works Realty Corp. v. E. Milling Co.,* 155 Me. 16, 150 A.2d 760 (Me. 1959)—a case not involving a direct claim against an opponent's lawyer and advocate—because there were no allegations that MPM relinquished its role as lawyer and advocate for Greenleaf, and HAT was at all times represented by counsel: Attorney Thomas Jewell for the negotiation and closing of the original contract (A. 20); Attorney Cloutier—present counsel of record for HAT—at the time of HAT's default under the contract, *see, e.g.,* A. 195-96; 201-02 (May 16, 2016 and Aug. 29, 2016 correspondence from MPM to Attorney Cloutier). The court also correctly found that the amended complaint "falls far short of satisfying pleading requirements" for asserting fraud (or aiding and abetting fraud) against Greenleaf's lawyer. There are no grounds to reverse these findings and determinations. HAT does not even fairly address any of them

in its brief, and at most does so in a perfunctory way that should not warrant review. *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290.

ARGUMENT

A. Standard of Review

On appeal of an order granting a motion to dismiss under Rule 12(b)(6) for failure to state a claim, this Court "review[s] the legal sufficiency of a complaint de novo, examining the complaint 'in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.'" *Meridian Med. Sys., LLC v. Epix Therapeutics, Inc.*, 2021 ME 24, ¶ 2, 250 A.3d 122 (quoting in part *Nadeau v. Frydrych*, 2014 ME 154, ¶ 5, 108 A.3d 1254 (quotation marks omitted)). Notably, "the complaint 'must allege facts with sufficient particularity so that, if true, they give rise to a cause of action; merely reciting the elements of a claim is not enough.'" *Id*. (first quoting *America v. Sunspray Condo. Ass'n*, 2013 ME 19, ¶ 13, 61 A.3d 1249; and then citing *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166 ("We are not bound to accept the complaint's legal conclusions.") (quotation marks omitted) (parenthetical in original)).

Moreover, when attempting to plead fraud, "'[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.'" *Deane v. Cent. Me. Power Co.*, 2024 ME 72, ¶ 22, 322 A.3d 1223 (quoting M.R. Civ. P. 9(b)). "To survive a motion to dismiss, a complaint asserting a claim of fraud must meet this heightened pleading requirement." *Id*. (first citing *Bean v. Cummings*, 2008 ME 18, ¶ 8, 939 A.2d 676; and then citing *Picher v. Roman Cath. Bishop of Portland*, 2013 ME 99, ¶ 2, 82 A.3d 101). Any attempt to plead "aiding and abetting" of a tort, like fraud, would also require pleading the "aiding and abetting" elements, including allegations meeting "scienter requirements" and allegations of "substantial" assistance, in addition to pleading the requisite elements of the tort itself. *Meridian*, 2021 ME 24, ¶¶ 22–24. "The same concerns of litigation abuse and capturing ordinary corporate acts that trigger the need for an actual knowledge scienter requirement also support requiring specificity in the allegations upon which liability is being sought against the purported aider and abettor." *Id*. at ¶ 27.

In summary, "'[t]he complaint must describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief.'" *Deane*, 2024 ME 72, ¶ 22, 322 A.3d 1223 (quoting *Meridian*, 2021 ME 24, ¶ 3, 250 A.3d 122).

B. HAT should be deemed to have waived arguments on appeal of the order dismissing MPM, by briefing the appeal in a perfunctory, undeveloped, and indistinct fashion.

Not only did HAT's amended complaint fail to "'describe the essence of the claim and allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief,'" *Id.* HAT's *brief on this appeal* does not even describe the essence of any claim or describe any sufficient facts.

"'[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.'" *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (quoting *U.S. v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990). And *Mehlhorn* emphasized two other aspects of this standard. First, "'[i]t is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones. . . . a litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its peace.'" *Id*. at ¶ 11 n.6 (quoting *Zannino,* 895 F.2d at 17). Second, "[a]n issue that is barely mentioned in a brief is in the same category as an issue not mentioned at all." *Id*. at ¶ 11.

This standard applies to Appellant's Brief to result in a waiver on all of HAT's appeal of the MPM dismissal. HAT does not "'spell out its arguments squarely and distinctly,'" *Zannino*, 895 F.2d at 17, leaving this Court (and

Appellee) to do counsel's work by trying to discern what the arguments are and how to make sense of them.

The brief addressing the MPM appeal consists of just over two pages. (Appellant's Brief at 33-35). HAT begins only by saying that HAT "drew numerous inferences from the interplay of [MPM] and the principle [sic] defendant [Greenleaf]." (Appellant's Brief at 33). HAT never tells us what those "numerous inferences" are or were. The next time MPM is mentioned in the discussion, it is in a sentence fragment: "Greenleaf through MPM." (Appellant's Brief at 34). This vagueness is followed by a vague argument about "the amended contract"—presumably, the "amended complaint"—being dismissed under "what Appellant imagines to be a procedure which should be disfavored in Maine" or the "defensive amplification of Rule 12(b)(6) into an unstructured, somewhat random factually augmented proceeding." (Appellant's Brief at 34). The sentences are frivolous and perfunctory.

HAT then follows with one conclusory sentence that "MPM knew or should have known"[3] that "the release of the escrowed termination documents violate[d]

[3] As an aside, the standard for alleging scienter for aiding and abetting a tort, if one presupposes that this is the theory HAT means to advance, would nonetheless be plainly "knew," not "should have known." *Meridian*, 2021 ME 24, ¶ 23, 250 A.3d 122, 129 ("First, the aider and abettor must have actual—and not merely constructive—knowledge that the principal tortfeasor is engaged in tortious conduct. This scienter requirement is necessary *to avoid 'cast[ing] too wide a net, bringing under it parties involved in nothing more than routine business transactions*.' *Camp v. Dema*, 948 F.2d 455, 459 (8th Cir. 1991); *see Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 95 (5th Cir. 1975)." (emphasis added).

their escrow responsibilities . . . .” (Appellant’s Brief at 34). Even if this kind of allegation appeared in a pleading, the court would have to disregard it without more information, because conclusory allegations are ignored under the motion to dismiss standard. *See Seacoast Hangar Condo. II Ass’n v. Martel*, 2001 ME 112, ¶ 16, 775 A.2d 1166. But, as it appears in a brief, an “issue that is barely mentioned in a brief is in the same category as an issue not mentioned at all.” *Mehlhorn*, 2006 ME 110, ¶ 11, 905 A.2d 290, 293. HAT does not explain this sentence, especially in light of HAT’s default at the time of release of the termination document, and HAT’s counsel’s three-year silence in raising any issue about it during all ensuing communication.

Appellant’s Brief then declines back to vague assertions of the “unwisdom of such preemptive adjudications” (presumably meaning, the court’s decision on the motion to dismiss) without describing any circumstances or grounds that make the court’s decision “unwise” or the age-old procedure on Rule 12(b)(6) motions “unwise.” (Appellant’s Brief at 35). This reads as an attack on Rule 12(b)(6) procedure itself.

But Rule 12(b)(6) procedure derives from the old demurrer procedure, which has existed in Maine courts always: “A motion to dismiss for failure to state a claim upon which relief can be granted serves the purpose of a general demurrer under present practice.” Reporter’s Notes, December 1, 1959 to Rule 12(b)(6) of

the Maine Rules of Civil Procedure; *Champlin v. Ryer*, 151 Me. 415, 422, 120 A.2d 228, 231 (Me. 1956) ("A demurrer is a signed statement in writing filed in a proceeding in court, to the effect that admitting the facts of the proceeding pleading to be true, as stated by the adverse party, *legal cause is not shown why the party demurring should be compelled to proceed further.*") (emphasis added). If this is an argument suggesting there should be a change to the Rule 12(b)(6) procedure or standards that were followed by the Business Court (which is an unpreserved argument in the trial court), the appellate waiver standard should dismiss this suggestion as an undeveloped argument not deserving of any attention. *Estate of Barron v. Shapiro & Morley, LLC*, 2017 ME 51, ¶ 21, 157 A.3d 769; Alexander, *Maine Appellate Practice* § 404 at 316 (5th ed. 2018) ("An issue may be viewed as waived or forfeited for lack of appellate development if it is addressed in briefing only in a perfunctory manner that does not demonstrate some effort to articulate the argument." (citation omitted)). Curiously, in the midst of this undeveloped idea, HAT appears to admit that maybe after "fuller exploration of relevant facts" HAT would "find no actionable issue." (Appellant's Brief at 35).

Appellant ends with just two more sentences: one appears to again launch an objection to "the process that was unregulated and open to a truncated and unregulated factual process." Presumably again, this appears to refer to the Rule 12(b)(6) procedures under which MPM moved to dismiss the complaint—

procedures that draw upon the well-recognized standards of determining the legal sufficiency of complaint pleadings, derived from traditional special and general demurrer tradition of courts from before Maine became a state. Rule 12(b)(6) procedure is not "unregulated." An accusation like this requires *developed* argument, not a sentence or two, and should be accompanied by an explanation of how the Business Court's opinion erred in *principle*, not just in ruling the way HAT wished the court hadn't. The final sentence ends with the one citation to *Progressive Iron Works Realty Corp. v. E. Milling Co.*, 115 Me. 16, 150 A.2d 760, and an undeveloped assertion that the Business Court should have followed the "teachings" of that case, without explication of what those relevant "teachings" are and with no paragraph or pincite citation. (Appellant's Brief at 35). Of course, the court did discuss HAT's misplaced reliance on *Progressive Iron Works*. (A. 22–23). Nothing in this final sentence in Appellant's Brief presents a developed argument about what the court said about the case or the court's reasoning in finding it inapposite to HAT's attempted claims against its opponent's lawyer and advocate. (Appellant's Brief at 35).

The sum of HAT's roughly 2-page argument on appeal relating to MPM is frivolous, perfunctory and undeveloped, or fragmentary. This Court should impose the waiver standard against HAT on its appeal against MPM. *Mehlhorn v. Derby*,

2006 ME 110, ¶ 11 & n.6, 905 A.2d 290 (quoting *U.S. v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990).

C. The Business Court correctly dismissed HAT's attempted pleading against its opposing counsel, MPM.

1. This Court need not reach the appeal as to MPM, if the Court affirms the judgment for Greenleaf.

MPM joins and adopts by reference the brief of Greenleaf. M.R. App. P. 7A(h).

It is not uncommon in appellate proceedings that the Court's disposition of one aspect of the appeal will "moot" other aspects or render it unnecessary for the Court to address other issues raised in the appeal. *See*, *e.g.*, *Pendexter v. Pendexter*, 363 A.2d 743, 747 n.5 (Me. 1976) (not reaching cross-appellant's argument given determination of appellant's claim); *see also Att'y Gen. v. Pine Tree Council, Inc.*, 2025 ME 2, ¶ 33 n.7, 331 A.3d 258 (decision on one aspect of appeal for one appellee [Att'y Gen.] mooted other issues on appeal by second appellee/cross-appellant [plaintiff-intervenors]); *see also Me. Civ. Liberties Union v. City of S. Portland*, 1999 ME 121, ¶ 8, 734 A.2d 191 ("'A dispute loses its controversial vitality when a decision by this court would not provide an appellant any real or effective relief'") (quoting *Int'l Paper Co. v. United Paperworkers Int'l Union,* 551 A.2d 1356, 1360–61 (Me. 1988). Here, there would be no need to reach

HAT's appeal against MPM if this Court affirms the judgment for Greenleaf and upholds the lower court findings that HAT was in default on the contract.

In addition, if this Court affirms the judgment for Greenleaf on the alternative grounds of waiver or equitable estoppel—alternative grounds raised on this appeal by Greenleaf—similarly, there would be no reason to reach the appeal against MPM. If HAT has waived rights, or is estopped to assert rights against the contracting party Greenleaf, then HAT's same acts or omissions giving rise to waiver or estoppel would bar HAT from pursuing claims that arise out of the same transaction or occurrence against the contracting party's lawyer, MPM.

A related argument surfaces under the issue preclusion or "collateral estoppel" prong of the doctrine of *res judicata*. "Issue preclusion, or collateral estoppel, 'prevents the relitigation of factual issues already decided if the identical issue was determined by a prior final judgment, and the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding.'" *Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶ 9, 940 A.2d 1097 (quoting in part *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 22, 834 A.2d 131). Here, there are identical issues, among them whether HAT defaulted and whether Greenleaf was therefore entitled under the contract terms to exercise its pre-agreed rights to terminate the contract (including having its lawyer invoke the agreed-to steps to terminate by dating and recording a preapproved and

pre-signed termination document). These issues would all be decided against HAT if the lower court judgment is upheld. Under this *res judicata* doctrine, HAT would be precluded from relitigating in the Business Court all these factual findings decided against it.

If this Court finds in favor of Greenleaf on appeal—as it should—then there would be no reason for the Court to reach the appeal as to Greenleaf's lawyer, MPM.

2. The Business Court properly granted MPM's Rule 12(b)(6) motion to dismiss.

Although HAT's brief does not "spell out . . . squarely and distinctly," *Zannino*, 895 F.2d at 17, arguments directed to the Business Court's decision granting MPM's motion to dismiss, the decision is sound and correctly applied the law to the facts alleged. M.R. Civ. P. 12(b)(6).

The Business Court first applied the important principle that a lawyer is not liable for the client's breach of contract. *DiPietro v. Boynton*, 628 A.2d 1019, 1024–25 (Me. 1993). This principle is a subset of the overarching principle in contract law that "[w]hen an agent is not a party to a contract between the principal and a third party, the agent is not liable to the third party for a breach of that contract." *County Forest Products, Inc. v. Green Mountain Agency, Inc.*, 2000 ME 161, ¶ 42, 758 A.2d 59 (citing *Mueller v. Penobscot Valley Hosp.*, 538 A.2d 294,

299 (Me. 1988)) (finding a hospital administrator who was not a party to a contract between a hospital and its employee not liable for the contract's breach). This principle includes, as it must logically, alternative *contractual* legal theories of recovery besides breach of contract—any claims seeking to recover damages for the plaintiff's claimed loss of economic value of the contractual arrangement. *Id*.; *see also Fitzgerald v. Hutchins*, 2009 ME 115, ¶¶ 10–11, 983 A.2d 382. Hence, HAT's claims of a statutory right of redemption of the property, unfair trade practices, "deceptive practices," or promissory or equitable estoppel, are all variations on recovery against the *contracting party*, not its agents individually. The court noted how HAT had conceded this "black letter law." (A. 22). Also, HAT withdrew voluntarily one of the claims ("unfair trade practices") (A.18), leaving the court to weed out the rest that fell under this concept. (A. 25) (dismissing the "statutory right of redemption" claim asserted against MPM).

HAT raises no challenges at all to the court's determination and reasoning for dismissing its attempts to claim "fraud" or "aiding and abetting fraud" against MPM. (A. 24–25). Again, HAT does not even describe *in its brief on this appeal* any array of facts that would be essential to support such accusations. HAT appears to have abandoned that tack on appeal altogether. (Appellant's Brief at 33–35); *see Holland v. Sebunya*, 2000 ME 160, ¶ 9 n.6, 759 A.2d 205 ("Even when an argument is mentioned in a 'statement of points on appeal,' it is nonetheless

abandoned when it 'was not briefed or argued.'" (citing *MacArthur v. Dead River Co.*, 312 A.2d 745, 746 (Me.1973)).

In closing, important policies of the judicial system, lawyers' roles in the system, and lawyers' roles in society underpin the court's decision as well. Parties should be deterred from cavalierly adding their opponent's lawyer to their breach of contract or tort cases, as HAT did here.

All agents have a "fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship." Restatement (Third) of Agency § 8.01 (Am. L. Inst. 2006). As a matter of judicial policy, protection of the fiduciary duty owed by a lawyer to a client is of special concern. That duty is overseen in many facets by the Court itself because lawyers are also officers of the courts, and lawyers are subject to a code of professional conduct which, in comprehensiveness and depth, is markedly unlike any other profession. *See generally* M. Bar R.; M. R. Prof. Conduct.

Therefore, it is said that as a general matter, "'an attorney owes a duty of care to only his or her client.'" *Savell v. Duddy*, 2016 ME 139, ¶ 20, 147 A.3d 1179 (quoting *Estate of Cabatit v. Canders*, 2014 ME 133, ¶ 21, 105 A.3d 439). Additionally, courts have long recognized that "[i]n performing [their] various duties, however, it is essential that a lawyer work with a certain degree of privacy, *free from unnecessary intrusion by opposing parties and their counsel*." *Hickman*

v. Taylor, 329 U.S. 495, 510 (1947) (emphasis added). Thus, no cause of action by the opposing party, whether sounding in tort or in contract, will be permitted to go forward if it conflicts with the lawyer's strict duty of loyalty owed to the lawyer's client. *See Cabatit*, 2014 ME 133, ¶ 21, 105 A.3d 439; *see also DiPietro v. Boynton,* 628 A.2d 1019, 1025 (Me. 1993); *Gerber v. Peters,* 584 A.2d 605, 607 (Me. 1990) (affirming a summary judgment in favor of a law firm defendant on the grounds that no attorney-client relationship existed between the parties); 1 Ronald E. Mallen et al., *Legal Malpractice* § 7:8 & n.1 (2018 ed.) (stating that "[t]here is an abundance of authority . . . for the proposition that only the client can sue the attorney for a negligent act or omission," and compiling cases)).

Only in very "limited and rare situations" will the court find that an attorney owes a duty of care to a "limited class of nonclients." *Cabatit*, 2014 ME 133, ¶ 21, 105 A.3d 439. "Specifically, the Court may find a duty where that attorney's services are intended to benefit a third-party *and public policy considerations support that finding*." *Gleichman v. Scarcelli*, No. BCD-CV-17-11, 2017 WL 4765032, at *2 (Me. B.C.D. Sept. 26, 2017) (emphasis added). Yet, because of the heightened nature of the attorney's duty of care and loyalty to the client, "an attorney will never owe a duty to a non-client 'if that duty would conflict with the attorney's obligations to his or her clients.'" *Id*. (first quoting *Cabatit*, 2014 ME

133, ¶ 21, 105 A.3d 439; then citing *Ramsey v. Baxter Title Co*., 2012 ME 113, ¶ 11, 54 A.3d 710).

MPM was not HAT's lawyer. MPM owed no duty to protect HAT. The Agreement for Termination and terms upon which termination would come into play were part of HAT's contract with Greenleaf. MPM's holding the unsigned termination document was not for the benefit of HAT, it was for the benefit of MPM's client in the event of a default by HAT according to the terms of the HAT-Greenleaf contract. Any conduct—such as dating and recording the Agreement for Termination in August of 2016 upon satisfactory (and in material respects, undisputed and admitted) evidence of default—cannot give rise to a cause of action against MPM for that conduct. "An attorney will never owe a duty of care to a nonclient, however, if that duty would conflict with the attorney's obligations to his or her clients." *Cabatit*, 2014 ME 133, ¶ 21, 105 A.3d 439.[4] The court properly recognized these principles in holding that MPM cannot be held liable for an alleged breach of contract by its client, Greenleaf, and that HAT had its own lawyers acting to protect HAT's interests at all times. (A. 23).

Ultimately, these principles of agency and contract law, the standards of heightened pleading or pleading "aiding and abetting" as discussed above, and the

[4] In addition, HAT separately agreed in writing to hold MPM harmless if the Agreement for Termination of the contract ever had to be signed and recorded. A. 164-65.

standards and procedures for reviewing the legal sufficiency of complaints under Rule 12(b)(6), should be sufficient safeguards against, as here, this kind of litigation abuse of suing an opposing lawyer. When those standards are ignored on briefing on appeal—again, as here—the rule of appellate waiver should be imposed against the party submitting claims in court against the opposing lawyer. *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11 & n.6, 905 A.2d 290 (quoting *U.S. v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990)).

CONCLUSION

For the foregoing reasons, together with the reasons set forth in Appellee Greenleaf's brief, this Court should affirm the final judgments in Greenleaf's and MPM's favors.

Dated at Portland, Maine this 6th day of June, 2025.

NORMAN, HANSON & DeTROY, LLC

/s/ Russell B. Pierce, Jr.
Russell B. Pierce, Jr., Esq. – Bar No. 7322
Attorney for Appellee Murray, Plumb & Murray, P.A.

Norman, Hanson & DeTroy, LLC
220 Middle Street, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000

CERTIFICATE OF SERVICE

I, Russell B. Pierce, Jr., Esq., Attorney for Defendant-Appellee Murray, Plumb and Murray, P.A., hereby certify that I have served two copies of the Brief of Appellee upon all counsel of record, via email and by depositing same in the United States Mail, postage prepaid, as follows:

James F. Cloutier, Esq.
Cloutier, Conley & Duffett, P.A.
15 Franklin Street
Portland, ME 04101
(Counsel for Plaintiff-Appellant)
cloutier@ccdpa.com

Kurt E. Olafsen, Esq.
Meredith C. Eilers, Esq.
Olafsen & Eilers, LLC
75 Pearl Street, 2nd Floor
Portland, ME 04101
kolafsen@olafseneilers.com
meilers@olafseneilers.com

Dated at Portland, Maine this 6th day of June, 2025.

NORMAN, HANSON & DeTROY, LLC

/s/ Russell B. Pierce, Jr.
Russell B. Pierce, Jr., Esq. – Bar No. 7322
Attorney for Appellee Murray, Plumb & Murray, P.A.

Norman, Hanson & DeTroy, LLC
220 Middle Street, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
rpierce@nhdlaw.com