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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION.

Appellant "HAT" respectfully submits the within Reply Brief.

Appellee "Greenleaf" has argued various details show the existence of a default as found by the trial court. Greenleaf argues the court's findings are supported by the pertinent rules of appellate deference to the findings, explicit or inferred, of the trier of fact.

Greenleaf complains that HAT makes little reference to the well known details of appellate deference in its filings. The numerous findings made in the extensive court orders before the court are entitled, of course, to the deference applicable to findings, in this case filtered by the requirements of Rule 52. In general, HAT is only before the court challenging trial court conclusions where undisputed evidence shows the court has misapplied undisputed facts .

HAT previously pointed out that there are two classes of issues which would have triggered some possible default analysis. The first is a catalog of negative elaborations of various circumstances which occurred over the eight plus years of the parties' agreements. Greenleaf never followed the default/demand for cure procedure in the contract or in the statute and cannot rely on such.[1]

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[1] The detailed requirements for claim of default (possibly other than non-payment) are found in Exhibit 1, Paragraphs 14 and 20, which require: (see below)

A written notice
Specifying the defaulted obligation and stating

(1) the defaulted performance and
(2) the required cure, including the timeframe

FINANCIAL DEFAULT – INSURANCE PROCEEDS .

Greenleaf relies on the lack of three periodic payments in mid-2016 to establish its right to claim default and contract termination. HAT claims a set off right and claims a right to notice and a cure opportunity. Each parties' claims are basically based on undisputed facts.

HAT relies on undisputed evidence that negatives the existence of default. As well, even in the presence of default, HAT was entitled to notice of default and opportunity to cure under pertinent statutes regulating so-called "bonds for deeds.".[2]

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(3) and details of remedy or cure.

The written notice was required to be sent

(1) to identified persons at specified addresses,
(2) by certified mail with return receipt requested,
(3) as well as via regular mail.

[2] HAT does point to three errors, in particular, which, if material, do not appear to survive this court's deferential analysis.

First, the court's conclusion that the original contract allocated insurance proceeds and rights to Greenleaf is clearly erroneous. App. 45. While the court never specifically ruled on the issue in its Rule 52 order, the court's orders were plain error. It appears to HAT this error pervasively undermines HAT's contract claim, as the undisclosed retention of the funds and the financially challenging terms of the repayment obligation negatived HAT's right of setoff – its defense to claims of default based on nonpayment.

As this undisclosed credit was at the core of HAT's claim that Greenleaf was the breaching party, the court's error was central to its entire analysis rejecting HAT's claim. It is a plain error, and central to Appellant's claims that no contract breach was committed by HAT, meaning the preemptive acts of Greenleaf were unjustified by any analysis.

Second, the court's assertion that allocation of insurance proceeds to HAT (which paid for the pertinent policies) would result in a windfall to HAT, showed the court misunderstood the financial events in the case. In fact, the evidence plainly shows that HAT was charged twice - the full balance of repair expense in money and money's worth, plus the $80,964.00 insurance payment.

Finally, the "inference" that HAT negligence in depriving the "flood" property of heat caused the burst pipe casualty is unfounded speculation, unsupported by evidence and largely contradicted in the record. In fact, the property was always substantially occupied by tenants,

Greenleaf makes various claims to avoid the impact of the undisputed circumstance that Greenleaf settled an insurance claim in 2014 and then charged Appellant, without credit for the settlement, the uncredited balance (plus interest) despite the undisputed terms of the Parties' contract, which allocated all such sums to the credit of HAT. [3]

After denying the existence of any such sums for almost two years, Greenleaf now claims HAT should have given notice that such allegedly non-existent sums should apply as payment credits only if it "opted" to use them as such in order to avoid payment default.[4]

GREENLEAF'S OBJECTIONS TO SETOFF ARE UNAVAILING.
THE CLAIM OF JUDICIAL ADMISSION IS UNSOUND.

In this court, Greenleaf raises the syntax of HAT's complaint to claim it embodies a necessary connotation amounting to a liability stipulation. In fact, of course, the allegation only

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with heat. Mr. Harris later told Mr. Plumb that the freeze was "not David's fault" (App 276.) HAT, on request, had proved heat was supplied to all units. Tr. Day 1, Pg. 109.

As to these issues, the court findings were clearly erroneous, contradicting the natural meaning of the contract and the undisputed facts.

[3] In retrospect, Dick Harris' inaccurate statements to his counsel – that note payments were in arrears, and that no insurance proceeds had yet been received, appear to be an early indication of the cognitive problems he was to soon experience. App 276.

[4] This claim is no avoidance of a straight out breach of contract of high value and long standing. In addition to being quite illogical – that the undisclosed funds should have been allocated by HAT somehow despite the longstanding claim of non-existence – the parties had already resolved the issue of satisfaction of the flood balances.

Greenleaf had assigned all its insurance rights to HAT and was obliged to act in a **"confidential relationship for Purchaser**," (app. 124). Mrs. Harris disclaimed knowledge of dealtings with HAT prior to 2016. E.g., Tr. Day 2, 153-157. Even as termination was likely in contemplation, she refused an offer from the insurance adjuster for processing accrued lost rents (BI-business interruption) pp 258 exceeding any recent financial shortfall.

sets the factual precondition for considering HAT's claims under the contract, specifically its setoff rights. The allegations in context are easily understood to mean "due, but not payable."

It cannot be claimed that the defendants or the court were confused by the meaning of these allegations when the set off rights in the contract were explicitly and contemporaneously claimed to obviate the need to tender payment in the circumstances. In fact, the court did not address them and no evidence was generated by them. This court should clearly regard them as inapposite, and waived.

THE ROLE OF BOTH PARTIES IN PROPERTY CHALLENGES, INCLUDING REPAIRS, WAS CONSENSUAL. NO PERFORMANCE DEFAULT WAS EVER CLAIMED.

The orders below and Greenleaf in this court disparage the activities of HAT in prevailing through the numerous challenges posed by the financial crisis of the Great Recession and the follow on difficulties of three separate casualties. In fact, the parties faced the reality of the need to repair casualty loss by agreeing to cooperate in the reconstruction of the affected areas of the property consistently as Richard Harris was able to manage Greenleaf's participation.

Although HAT was responsible for repairs, Greenleaf volunteered TR Day 1, Pg 104-5; 146-140 to underwrite repairs and contracting, using its customary team. This was a completely reasonable arrangement as Greenleaf was a vastly larger than HAT with a huge rental operation and corresponding capacities after its retirement sales were reversed, except in the case of HAT, as the Great Recession turmoil gripped residential housing..[5]

[5] Mrs. Harris testified that after various dispositions, the Harris properties concern continued to own and operate about about 230 housing units. Tr. Day 2, pp118-119.

Greenleaf offers this arrangement as proof of default, even though it never initiated or undertook to claim a default, and even as HAT acceded to the Greenleaf request to use its usual team.

While both the court's orders and the Appellee's brief are filled with various arguable and claimed HAT performance defaults, no argument is made and no evidence exists that Greenleaf ever complied with the default provisions of the contract. Such provisions serve the important function of distinguishing unimportant, arguable or technically possible defaults from real world situational events important to the affected parties.

An event or a status is a default only when the contract says it is and the protocols to make it so are followed. Telescoping eight and a half years of events into a frothy narrative fails the critical element of analysis – the contract itself determines the question of default, and other than the financial matter, no default was ever claimed. Appellant asserts that the erroneous conclusion about insurance rights , including the "windfall" conclusion, even as HAT always retained the property repair obligation distorted the follow on court analyses. It was harmful, reversible error.

WAIVER AND EQUITABLE ESTOPPAL DO NOT APPLY TO RELIEVE GREENLEAF OF LIABILITY.

Greenleaf terminated a valuable contract, where HAT had nurtured the property through the Great Recession – the only project purchaser to do so – and through managing reinvestment through three different casualties, operating it to a point where, even in its damaged condition, it was valued over 50% more than its initial investment. The ratification

App 176 and closing agreements App 173 were attempts to conclude the agreement on an equitable basis.

Far from creating the basis to infer that no further dealings could be fully relied upon, the record evidence shows Greenleaf virtually immediately rejected well funded settlement approaches in late 2016. Tr. Day 3, pg 15, - 18**.**

Greenleaf cites no evidence that HAT agreed or even intimated that it would not pursue remedies except in the presence of a fulfilled settlement agreement accompanied by executed releases of all parties. [6] Greenleaf's invitation for the court to infer, against all other likely possibilities and probabilities, that it was relying on the aftermath failed settlement as comfort that the matter was reliably ended bears no relationship to any evidence before the court.

The only record in evidence basically contradicts Greenleaf's position. Of course, this action was commenced three years before the statute of limitations would expire, hardly convincing proof that the unwarned seizure of a massive asset from a middle class family was blithely going to be disregarded. Absent agreement, the matter remained open.

[6] Following the dramatic cognitive decline of Mr. Harris in the winter 2015-16– Tr. Day 2 Pg 110 (Daughter Julie Harris) Tr. Day 2, 139 (spouse Peggyanne) Mrs. Harris assumed progressively greater role in HAT matters. Richard Harris and David O'Donnell had agreed in the fall, 2015 to suspend the "second note" payments and implement the repair process, using the Greenleaf construction team, to be financed by mortgage advances to supplement insurance proceeds. Through the entire ensuing year, insurance proceeds remained an unsolved mystery.

Counsel had informed HAT that "some small amount" App 193 may have been received related to the flood as of February 2016, acknowledging HAT was entitled for credit of the same.

Also lacking is proof of reliance. The record most easily supports the conclusion that Greenleaf simply bolted on the relatively small addition to its operations and continued forward.

Greenleaf terminated discussions, as was its right. It remains responsible for the consequences of doing so.

A PRE-DEFAULT WAIVER OF THE STATUTORY REQUIREMENT IS INEFFECTIVE TO ELIMINATE THE OBLIGATION TO PROVIDE NOTICE AND AN OPPORTUNITY TO CURE A CLAIMED DEFAULT.

Greenleaf urges that it may avoid the obligations of 14 MRSA 6203-F (2) by agreement. HAT suggests that the current and preceding "bond for deed" statutes arose to assure fairness and reliability in important real property agreements, particularly affecting residential properties, - an evolving process now decades old. HAT will not repeat the statutory analysis previously offered, however Greenleaf challenges the applicability based on whether the property is residential – physically it is only that and whether HAT was the possessor – a status acknowledged in the contract. In the presence of those two conditions the hardly onerous statute applies.

Notably, public policy as expressed in 14 MRSA 6203-F appears to mandate the inclusion of statutory rights – and the protected classes, limited to residential properties possessed by the buyer negative any logical right to waive statutory obligations in advance only exists if public policy considerations permit. Authorities agree that notice and opportunity to cure are such countervailing public policy, and the directory language of the statute support that conclusion.

The closest corollary is perhaps the residential mortgage, and Appellant images it unthinkable that any American court would approve closing purchase transaction that included a waiver of such rights, confession of judgment or escrowed deed.

Greenleaf's claim that such was simply inapplicable due to a "commercial" characteristic of the agreement fails. The requirement screens molehills before they become mountains.

APPELLEE "MPM" MISCONSTRUES HAT'S ARGUMENTS CONCERNING THE CONDUCT MAKING MPM LIABLE.

'In exhibit 10, (Appendix 164) MPM addresses correspondence related to the Termination Agreements to both Greenleaf and HAT. It details the documents in its possession and states:

> "We will hold the documents **in escrow** and not release them **until satisfactory evidence is provided to us of a default** in the underlying Conditional Contract For Sale of Land and Buildings…You both agree to save and **hold … (MPM) harmless from any claim in its capacity as escrow agent** as long as it acts in accordance with the provisions of the above documents, **and this paragraph**. (emphasis added.)

The amended complaint asserts in paragraph 44 that MPM engaged in breach of agreement by the unjustified release of escrow, when it knew or should have known that the conditions for release did not justify doing so, a plain claim for a breach of contract.

HAT believes Maine law is crystal clear concerning this issue. HAT cited the *Progressive* case, which appears to describe the duties of counsel. [7] Here the multiple representation cannot be squared with the controversy concerning the insurance funds..[8]

HAT additionally reiterates its objection to the Rule 12(b)6 procedure used by the trial court at MPM's urging. MPM cites, *inter alia,* the longstanding advisory notes about converting a 12(b)6 motion to a summary judgment procedure, a procedure not attempted in this case.

It appears to HAT that the possible resort by the parties and court to use of the conversion feature, cited by MPM, requires the development of a procedure to achieve the essential outcomes of a summary judgment proceeding, a truly burdensome and unnecessarily burdensome undertakings far more daunting today than when the provisions of Rule 12(b)6 existed in 1959.

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[7] At 150 A.2d 760,762, the court carefully outlined its analysis of the escrow issue, which included the possibility that delivery to the attorney for a party with no other obligations might constitute a delivery to the party without restriction. "(a)lhough the escrow agent ...was attorney for one of them, he nevertheless acted throughout as an independent and neutral stakeholder....(W)hen it became apparent that there might be a conflict of interest ... he very properly and promptly withdrew as attorney."

See also Opinion #106. **Professional Ethics Commission:** Rule 3.4(d) permits representation in circumstances otherwise violative of Rule 3.4(c), but only when two conditions are met. First, it must be "obvious" that the attorney can adequately represent the interests of each party within the context of the multiple representation. Second, each party must consent to the representation after full disclosure.

The rule provides:that when additional matters in support of a dismissal motion are received by the court, its responsibility extends to conversion of the motion – and adequate proceedings for factual and legal discovery related to the same - as a motion for summary judgment.

As the motion came as a completely preliminary moment in the case and did not result in entry of a judgment, clearly the court did not act on the conversion, and just as clearly, HAT had no reasonable opportunity to prepare for the complexities of the matter had it been invoked. Nstead the plain allegations of paragraph 44 of the Amended Complaint and the numerous factual claims of MPM involvement throughout the amended complaint .should not have been dismissed and should be reinstated.

CONCLUSION:

Appellant respectfully represents that the judgment be reversed and remanded to the Superior Court for further proceedings

Respectfully submitted on July 1, 2025.

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