

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DEPT. OF THE  
TRIAL COURT

BSI 254 WESTFIELD, LLC and  
BSI 254 WESTFIELD MEMBER, LLC,

Plaintiffs,

v.

NICHOLAS FIORILLO,

Defendant.

C.A. NO. 2284-CV-0666-BLS *Q*

**COMPLAINT FOR  
JUDICIAL REVIEW**

BSI 254 WESTFIELD LLC, and  
BSI 254 WESTFIELD MEMBER,  
LLC,

Alleged Plaintiffs-in-Civil  
Contempt Proceeding,

v.

NICHOLAS FIORILLO,

Alleged Defendant-in-Civil  
Contempt Proceeding,

## INTRODUCTION

Defendant, Nicholas Fiorillo, seeks review and reversal of the Order(s) Denying Emergency Motion For Recusal of the Honorable Judge Michael D. Ricciuti, issued by Judge Ricciuti on August 22, 2022, and August 23, 2022. (See: "Exhibit A") From the outset of the Civil action Defendant has been a party to for the better part of almost two months, Judge Ricciuti has taken a position clearly in alignment with counsel for Plaintiffs, against pro se Defendant Fiorillo. By virtue of his consistent advocacy for a particular particular position, in this case, the position(s) held by Plaintiffs, a shadow has been invariably cast upon judicial neutrality. While presiding over a case, a judge must be objective and open-minded. The high standards of neutrality to which judges are held requires that they make reasonable accommodations, in order to ensure self-represented litigants are provided the opportunity to have their matters fairly heard. The very basis for this Complaint, is founded in the fact that Judge Ricciuti has not provided Defendant with the opportunity to have his position in the legal matter before him, fairly heard.

Defendant Fiorillo has been held in contempt of an Order which was ambiguous on its face, to the point where the Judge, Plaintiff's counsel and Defendant, each had differing interpretations of what was being required by that Order. This pro se Defendant has been denied discovery by Judge Ricciuti, who has gone on record to state his opinion that discovery is not necessary for this defendant, who should be compelled to trial without such benefit. Judge Ricciuti has declined to rule on Defendant's motions, stating on the record that his declination was by design, so as not to provide Defendant with the opportunity for an appeal. These examples are but two of many, which contravene the importance of judges maintaining both fairness and the appearance of fairness, in every judicial proceeding. Judge Ricciuti has maintained neither, even though the Code of Judicial Conduct makes clear that the appearance of partiality must be avoided. The appearance of justice is the very definition of justice, and Defendant seeks a reversal of the underlying contempt finding and the decisions denying the recusal motions in this case, in order to avoid continuance of the miscarriage of justice, which has characterized this matter from the

outset.

Judge Ricciuti has opted to go on the defensive, in order to justify his denial of Defendant's motions for recusal he previously termed on the record, as being "contemptuous." There is no contempt here, nor is this a "scorched earth" campaign. Instead, it is a necessitated process, due to the conduct of the Court taken as a whole (Judge, clerks, Bailiff, working in concert pursuant to a pattern of active opposition to pro se litigants), to remove judicial impediments, both the "usual" and the highly unusual, and allow for a pro se Defendant to receive fair and equitable treatment under the law.

At best Judge Ricciuti is reaching, in his characterization of the filing of a Motion For Discovery as an "avoidance tactic," since discovery is a prerequisite to any fair trial. As for the public perception of a Court under which a pro se litigant is informed by the presiding judge that "discovery is not needed" (*after* Defendant stated that this was critical to his case), and told by the judge that he *was not going to issue a ruling*, which would then allow Defendant to take it up on appeal, the lone, reasonable conclusion by any member of the public, would be that of a partial, biased court.

To accord respective five minute arguments, which give less time to argue essential motions than to hard-boil an egg, falls nothing short of patronizing. Instead, the motions which are "up for debate," should have compelled instant recusal as a matter of judicial restraint, and are yet other examples of the hampering of a pro-se litigant, by a biased Judge. The strongest of arguments may be made here, that a similarly situated judge would have completed the "inner conscience" test, and summarily disqualified themselves.

Judge Ricciuti contradicts himself at the end of his Memorandum of Decision, dated August 22, 2022. After a recitation of "facts" seemingly taken directly from Plaintiffs' playbook, which repeatedly mischaracterize Defendant's position(s) throughout the underlying circumstances of the case, Judge Ricciuti cites *Birchall* in support of his contempt finding. The very crux of the contempt issue is that the underlying order is ambiguous, and remains so to date, casting grave

doubt upon Defendant's "disobedience," thereby negating a finding of contempt.

Defendant has repeatedly advised the court that he has already provided any and all pertinent information within his care, custody and control, which is required of him, and yet the contempt order still stands. Defendant has demonstrated consistent compliance with the provisions of the June 2nd order from the court, the essence of which required the parties to come to a resolution of all outstanding issues in a series of 9C conferences, to be held within the specific 90-day period for which Defendant's Motion for Stay was previously granted (See: "Exhibit B"). Despite repeated non-compliance by Plaintiffs with 9C provisions of that order, it is Defendant who continues to be held in contempt. For Judge Ricciuti to hold that mere intent to "hold the Plaintiff to its proof" provides sufficient evidence of lack of bias on his part, falls woefully short of the mark. Any disinterested, fully-informed observer, would make an absolute finding of bias by the court, under the present circumstances.

In further support of the information set forth above, as the following verbatim excerpts from the hearing transcript from August 8, 2022 will show, there is a pattern of lack of fairness towards, and bias against pro se Defendant Nicholas Fiorillo (See: Exhibit "C"):

1. On Page 4, line 19, Defendant Fiorillo tells Judge Ricciuti: ***"Your Honor, I'm in fear for my life, I have been threatened with bodily harm multiple times from a plethora of enemies that are involved with the Plaintiff here, Brian Sheehan, and I am not feeling safe and I do not feel that my location is necessary"*** (Defendant was in attendance via Zoom).
2. On Page 5, line 21, Mr. Fiorillo reiterates concern for his safety: ***"Well I don't feel....I do not feel, I do not feel safe to tell you where I'm at, Your Honor. I am here present via Zoom as you allowed."***
3. On Page 6, line 2, Mr. Fiorillo goes on to say: ***"I can't trust the Courthouse, Your Honor, as you know."***

4. On Page 6, line 24, Mr. Fiorillo says: *"I'd actually like to have.....Your Honor, I want to inform you that I am also filing a judicial complaint and grievance with the Boston Superior Court Judges."*

5. On Page 7, line 20, Mr. Fiorillo confirms prior notice that he would not be in attendance at an early August hearing he attended via Zoom: *"I had discussed with Attorney Welnicki and the Court and you directly that I could not appear today because I had this procedure that has been scheduled for many months. I could not cancel as I may in fact have some serious condition."*

6. On Page 8, lines 19, 22-23, Judge Ricciuti states to Mr. Fiorello: *"Let me ask you, what is the prep...what is the prep you are going through now?"* (In violation of Defendant's Protected Health Information under HIPAA)

7. On Page 11, line 19, 23-25, Judge Ricciuti states to Mr. Fiorillo: *"Mr. Fiorillo, if you think threatening the Court with an investigation -- is going to stop this Court from fulfilling its duties, you are wrong."* The Defendant did not threaten, but instead informed the Court of his request for an investigation.

8. On Page 19, line 25 and Page 20, line 1, Judge Ricciuti tells Mr. Fiorillo: *"I'm not giving you -- I'm not staying this trial to give you a right to an appeal. If that's what you're asking for."* The pattern of bias against a pro se Defendant set forth in the small sampling above, is in furtherance of the allegations set forth within this Complaint.

#### JURISDICTION

1. Jurisdiction is conferred on this Court under G.L. c. 30A, § 14(7) and c. 151A, §42.

#### PARTIES

2. Defendant Nicholas Fiorillo is a Massachusetts resident residing at 3 Kales Way Harwich Port, Massachusetts, 02646. At all relevant times, he was a member of W-Lofts Development LLC, and an interested stakeholder in BSI 254 Westfield.

3. Plaintiff BSI 254 Westfield LLC, is a Massachusetts corporation controlled by Defendant Brian Sheehan, who is the repudiated owner of 254 Westfield Street.
4. Plaintiff BSI 254 Westfield Member LLC, is a Massachusetts corporation controlled by Defendant Brian Sheehan, with three stakeholders.

**STATEMENT OF FACTS**

5. Judge Ricciuti, from the very onset of his involvement in Defendants' cases, clearly harbored a direct, proximate, materially prejudicial bias, against Nicholas Fiorillo, a pro se litigant. He systemically enabled Plaintiffs' counsel to violate the Rules of Civil Procedure, both in and out of the courtroom and on multiple occasions, by way of a pattern of capricious, materially prejudicial rulings, which have blocked the basic rights and liberties of Defendant, to present his positions in a true and unbiased deliberation.
6. Judge Ricciuti did not conduct a fair and prudent show cause hearing for contempt. The terms of the underlying June 2<sup>nd</sup> Order were confusing, not only to Defendant, but to opposing counsel and Judge Ricciuti, and this order has become an enigma since then.
7. Judge Ricciuti disavowed Defendant of proper service under the 10/20 provisions of Rule 65.3, and did not provide him a fair and proper allowance of time, to prepare for the show cause hearing. At this hearing, Judge Ricciuti firmly stated that he had thoroughly read through all of the documents, and reviewed the June 2<sup>nd</sup> transcript, which he stated was "crystal clear." However, after being challenged by Defendant during a series of subsequent hearings, Judge Ricciuti conceded that he had not read the transcript of the June 2<sup>nd</sup> in its entirety. He could not, therefore, know what was and was not "clear," when it came to the underlying order, and what it was that Defendant actually did, which put him in contempt.

8. Judge Ricciuti also did not review Defendant's allowed motion from June 2nd, whereby Judge Salinger had allowed Defendant's Motion For a 90 Day Stay. Had he read the transcript, he would have realized that Defendant's alleged failure to comply with the June 2<sup>nd</sup> allowed motion, was based upon a clearly ambiguous ruling. Instead, Judge Ricciuti issued imminent, and to date numerous threats to "jail and punish" Defendant, for failure to comply with an Order it was not possible for him to comply with.
9. Judge Ricciuti failed to uphold the orders placed on Plaintiffs' counsel to follow Rule 9(c) conference requirements, and, with regard to the re-filing of contempt charges, failed to require counsel to strictly follow Rule 65.3.
10. Judge Ricciuti has demanded that Defendant answer the contempt complaint and prepare for trial with less than 72-hours notice, knowing full well that Defendant was not afforded due process of law. He refused to state what the reason or basis for the "shortened time" to trial was, and flat out refused to put on the record, his "balancing of the harms test" at that hearing, to indicate what he claimed would be the negative impact on the Plaintiffs, or any legal basis whatsoever for that matter, for shortening Defendant's time to answer.
11. Judge Ricciuti has threatened Defendant with incarceration on more than ten separate occasions during the course of the hearings on this matter, for failure to comply, without taking into account Defendant's June 2, 2022 allowed motion, for a 90-day stay.
12. The clear and material prejudice outwardly demonstrated by Judge Ricciuti, has consistently left a pro se Defendant in a disadvantageous situation, which continues to prevent him from a fair and proper, full adjudication of his legal position.

**PRIOR PROCEEDINGS**

13. During the first hearing presided over by Judge Ricciuti on July 6, 2022, Defendant was found to be in contempt of an Order that the Judge had not fully reviewed, nor reviewed the transcripts from the date that the underlying Order had been entered, June 2, 2022.

Defendant was not properly noticed for that hearing, was not provided adequate time to prepare, and his First and Fourteenth Rights under the U.S. Constitution and his rights under Article 29 of the Massachusetts Declaration of Rights, namely his rights to free speech by way of oral argument were denied him, when he was threatened with jail should he utter one word.

14. During a hearing held on July 25, 2022, Judge Ricciuti Judge stated on the record, prior to hearing any testimony from either side, that he had "made up his mind." A statement made by the judge, before he had allowed Defendant to present his position. To the disinterested observer, made privy to all of the circumstances of this, and other like proceedings, there would be more than reasonable belief that the judge's impartiality had been compromised.
15. At a hearing held on August 3, 2022, Judge Ricciuti tried to accelerate Defendant to trial on that day, in order to disallow Defendant discovery, the calling of any witnesses, as well as the proper and prudent time, afforded under the 10/20 rule under 65.3. The court continues to be in direct violation of Rule 4 (g), as Judge Ricciuti continues to threaten jail upon the Defendant at every opportunity, up until the day prior to filing his Order to Deny Defendant's Motion to Recuse. All in an attempt to intimidate him, and silence him from defending his position and filing motions, which are well within his rights to file.
16. When a hearing date was set for August 8, 2022, upon hearing the date, Defendant stated on the record, that he could not be in attendance that day, due to a scheduling conflict which could not be changed. This advisement was disregarded by Judge Ricciuti, who claimed during that hearing, that Defendant's Motion to Attend Via Zoom was the first notification he had received, that Defendant would not be in attendance that day. After opposing counsel confirmed that Defendant had provided prior notice that he would not be in attendance that day, Judge Ricciuti repeatedly asked Defendant about the medical condition which precipitated the preoperative testing and surgical procedure he required.



When Defendant termed the condition as “serious,” and stated that he was not obligated to go into detail about protected health information under HIPAA, Judge Ricciuti ordered him to produce a doctor’s note, a request which would not have been made of a similarly situated attorney, unable to attend a hearing that day under the same circumstances.

17. During the August 8th hearing which Defendant attended via Zoom, when Defendant asked Judge Ricciuti if he intended to rule on his Motion for Recusal, the Judge answered no, and then stated that he wanted to ask counsel for Plaintiffs what they thought about it, after which he told Plaintiffs’ counsel on the record, and in so doing Defendant, that he found this Motion to be “contemptuous,” while Defendant was fighting for his right to a fair and impartial trial. Taking into account the totality of all the circumstances described above, the judge was obligated to disqualify himself, since even the appearance of partiality undermines confidence in the judicial system.

#### CAUSES OF ACTION

18. Defendant repeats and incorporates the allegations contained in paragraphs 1 – 17.
19. Judge Ricciuti’s decision to deny Defendant’s Motion for Recusal is based upon an error in violation of S.J.C. Rule 3:09, Canon 3(E)(1), because the judge failed to sufficiently support a contemporaneous finding in the Fiorillo case that his impartiality could not reasonably be questioned, yet declined to disqualify himself.
20. Judge Ricciuti’s decision to deny Defendant’s Motion for Recusal, is in violation of 28 U.S. Code § 455, which states, in part: *“Whenever a party to any proceeding makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.”*

21. Judge Ricciuti's finding of Contempt against Defendant Nicholas Fiorillo, was in violation of G.L. c. 30A, §14(7)(e), where it ignored substantial and unrefuted evidence in the record, which established that Defendant did not have the requisite state of mind required for contempt. A contempt finding required the judge to find that Defendant "did not act in accordance with a clear and unequivocal order/judgment." The order in this case was neither clear nor unequivocal, and the Court's conclusion that Defendant had the ability to comply and therefore violated the order deliberately and without good cause, was reached in error. It was not possible, therefore, for Defendant to be in compliance, without a full understanding of what compliance under the subject order, required.
22. Judge Ricciuti's decision(s) to deny Defendant's Motion(s) for Recusal are otherwise unsupported by substantial evidence, arbitrary and capricious, and constitute abuse of discretion. Since a reasonable reading of the record fails to support the conclusion that the judge's impartiality *was not subject to question*, an abuse of discretion should be found.

**RELIEF SOUGHT**

WHEREFORE, Defendant prays that this Honorable Court:

1. Reverse the decision of Judge Ricciuti, finding Defendant in default.
2. Reverse the decision of Judge Ricciuti, denying Defendant's Motion for Recusal.
3. Grant such further relief as is equitable and just.

Respectfully submitted,

/s/ Nicholas Fiorillo  
Nicholas Fiorillo  
3 Kales Way  
Harwich Port, MA 02646-1936  
Tel: (508)-776-7219  
metrowestrealty@yahoo.com

Dated: August 25, 2022

**CERTIFICATE OF SERVICE**

The undersigned states that he served a copy of this Complaint for Judicial Review on the copy of the above on counsel of record and the court by email.

/s/Nicholas Fiorillo

**CERTIFICATE OF COMPLIANCE**

On August 24, 2022, based on Rule 9C Certification Requirements completed at 4:45 pm, at which time the Plaintiffs were/were not in attendance, I have fulfilled my duties under these requirements.

/s/ Nicholas Fiorillo  
Nicholas Fiorillo

# **INDEX OF EXHIBITS**

**Exhibit A: Memorandum of Decision and Order Denying Motion to Recuse 8/22**

**Memorandum of Decision and Order Denying Motion to Recuse 8/22**

**Exhibit B: Motion for 90 Day Stay (endorsed) - 6/2/22**

**Exhibit C: Hearing Transcript - August 8, 2022**

8/23

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# NOTIFY

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2284CV00666

**BSI 254 WESTFIELD, LLC and BSI WESTFIELD MEMBER, LLC**

vs.

**NICHOLAS Mr. Fiorillo**

**PRELIMINARY MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S EMERGENCY MOTION TO RECUSE**

A complaint for contempt filed in this case alleges that Defendant Nicholas Fiorillo has failed to abide by an injunction entered in this Court in May ("the Injunction"). In hearings and filings before this court, Mr. Fiorillo has embarked on what appears to be a scorched earth campaign to attack every participant in this case -- his opponent, opposing counsel, the undersigned, the clerk and the court officer. Among those efforts was the instant motion to recuse. Plaintiff has opposed it. Mr. Fiorillo filed another motion to recuse today.

As described below, this Court preliminarily views these motions as part of a concerted effort by Mr. Mr. Fiorillo to avoid complying with the Injunction and concealing evidence of that non-compliance. Nevertheless, motions to recuse are serious matters, as they implicate the public perception of the court, and this one is taken seriously.

The Court's analysis is to deny the motions, but that view is preliminary; to the extent Mr. Mr. Fiorillo wishes to argue this motion, he will be given no more than five minutes at today's hearing to do so. Plaintiff will also be accorded five minutes.

Notice sent  
08.23.22  
ms (3)

Emailed to  
all counsel  
8/23/22  
BWD

## BACKGROUND

### 1. Background to this Case

The complaint in this case was filed on March 28, 2022. In it, plaintiff BSI 254 Westfield, LLC (“BSI”) and BSI Westfield Member, LLC (“BSI Member,” collectively, “BSI Entities”) alleged that it is the owner of real property located at 254 Westfield Street in Dedham (“the Property”), and that BSI Member controls, operates, and manages the Property.

BSI Member hired Mr. Fiorillo as an independent contractor to provide services for the Property pursuant to a written contract (“the Agreement”). Among other things, Mr. Fiorillo, pursuant to the Agreement, collected rental payments for the Property and was to deposit them in a BSI account. Despite repeated requests by BSI and BSI Member, Mr. Fiorillo violated the Agreement by failing to provide an accounting of the Property expenses or the Property rental payments and failed to provide information about Property-related issues despite specific requests by the BSI Entities or the lender holding the mortgage for the Property, Northern Bank. Similarly, despite repeated requests by the BSI Entities, Mr. Fiorillo had not provided all Property rental payments he had received for the Property to BSI.

In part because of the lack of information, BSI claims it defaulted on its mortgage on the Property. Further, despite instructions and directions from the BSI Entities that he refrain from doing so, Mr. Fiorillo apparently continued to market the Property for leasing. The Plaintiffs thus alleged in their complaint counts for breach of contract and breach of the covenant of good faith and fair dealing, and sought injunctive relief. Along with the complaint, Plaintiffs filed an emergency motion for injunctive relief (Docket No. 4). It sought an order that Mr. Fiorillo provide an accounting of all expenses and income, insurance, utilities, and maintenance related to the Property. Plaintiffs alleged that they needed this information for their business records,

taxes, and to evaluate whether there were any outstanding liabilities or maintenance obligations regarding the Property. Plaintiffs also sought income that the Property had generated and that Mr. Fiorillo possessed, and an order that Mr. Fiorillo refrain from listing the Property for rent or accessing the Property without express authorization. Plaintiffs further alleged in their motion that Mr. Fiorillo had repeatedly promised to provide the requested information, but had not done so. Under his Agreement, Mr. Fiorillo was obligated to follow the directions of the BSI Entities, to act at all times in the best interest of the BSI Entities, and to use all funds advanced to him or received by him for Property-related expenses, with the remainder returned to the BSI Entities. The Plaintiffs contended that on several occasions, the BSI Entities, through their manager, Brian Sheehan, requested Mr. Fiorillo provide information about the Property, including information about funds advanced to him and expenses he had incurred, information about rental income derived from the Property, and whether there were any future rental agreements in place, but that Mr. Fiorillo had not provided that information. The BSI Entities also requested information from Mr. Fiorillo about maintenance, repairs, utilities, and insurance. Mr. Fiorillo fail to provide that information.

Plaintiffs allege that on March 15, 2022, the bank holding the mortgage on the Property, Northern Bank, requested documentation regarding the Property, including profit and loss information. Northern Bank indicated that if it did not receive that information by March 22, 2022, it may take steps with regard to a potential default. Mr. Fiorillo promised to provide that information to Northern Bank by March 22nd, but did not.

Plaintiffs also alleged that Mr. Fiorillo was a defendant in two other Suffolk County lawsuits, 21-2894 and 21-2950 (discussed below), and was alleged in those cases to have failed to comply with disclosure obligations.

On March 25, 2022, Sheehan learned from a real estate agent that a different agent retained by Mr. Fiorillo was showing the Property for purposes of leasing it in the fall of 2022, and learned for the first time that the Property had been rented for a week starting March 29 and another week the following month. Plaintiffs thereafter renewed their instructions to Mr. Fiorillo to stop.

On March 29, 2022, Mr. Fiorillo, then represented by Shawn M. Masterson, objected to Plaintiffs' request for injunctive relief in a single-page filing. In relevant part, it states:

Fiorillo states that he will produce the requested documents within 30 days. Mr. Fiorillo states that binding rental contracts are in place and that any disturbance of those contracts would be detrimental to all parties.

Fiorillo states that he is valid defenses and or claims to Plaintiff's complaint and shall file the appropriate responses within the time allowed under the rules of procedure.

Mr. Fiorillo did not produce the document within 30 days, as he promised.

At the first hearing on Plaintiffs' motion, on April 29, Plaintiffs argued that they knew nothing about the contracts Mr. Fiorillo contended were in place. Transcript, 5. In response, Mr. Fiorillo's counsel said he could produce the required documents in less than 30 days (*id.*, 7), that Mr. Fiorillo wanted to purchase the Property (*id.*), and that Mr. Fiorillo had the "right" to rent the Property (*id.*, 8). But Mr. Fiorillo's lawyer recognized that Mr. Fiorillo "has an obligation to give those documents to the plaintiff" and could produce rental contracts "within ten days." *Id.*, 9.

After a break, the parties reported reaching agreement on several points -- that the defendant would disclose all Property-related contracts and agreements, including the rental agreements that were being discussed at the hearing, within 10 days; defendant would produce accounting information within 21 days; defendant would produce all information supporting documents concerning utilities, insurance, taxes and maintenance within 10 days; in that



defendant would produce summary documents regarding upgrades to the Property within 10 days and back up within 30 days. Plaintiffs decided to hold off on seeking an order regarding rentals until it saw the rental agreements allegedly in place and would not press their request that Mr. Fiorillo be barred from accessing the Property. The parties could not agree as to defendant's role in future leasing (*id.*, 13-22); the Court noted that the parties were essentially seeking to re-write the agreement on this point. *Id.*, 23. The parties also did not agree with respect to the handling of rental income. *Id.*, 24-25. The Court suggested the parties draft an order. *Id.*, 25. In the meantime, Mr. Fiorillo was not to make efforts to lease the Property without Plaintiffs' approval but could advertise and communicate with potential lessees. *Id.*, 27. The hearing was continued to May 16.

On May 12, Plaintiffs submitted a report reflecting Mr. Fiorillo's alleged non-compliance with the parties' agreement. Docket No. 11. In it, Plaintiffs alleged that Mr. Fiorillo failed to provide the documents he agreed to produce, failed to provide lease agreements, and failed to deposit recent rental proceeds in the operating account.

At the May 16 hearing, the Court asked Mr. Fiorillo's counsel why he had failed to produce the documents he agreed to produce by May 9. Transcript, 7. Counsel conceded Mr. Fiorillo had not done so, but did not because of other litigation. *Id.*, 8. The Court (Salinger, J.) found that claim unconvincing and asked "why shouldn't I just enter the preliminary injunction." *Id.*, at 8-10. Mr. Fiorillo's counsel claimed doing so "would be detrimental to both parties." *Id.*, 10. The Court addressed that concern by editing the proposed injunction and entering it. Among other things, it required disclosures by May 16 or 21, a complete accounting by May 21; that Mr. Fiorillo not access or enter the Property nor list it for rent or enter into rental or other transactions without Plaintiffs' written permission; that he return the keys by May 21; and that he deposit all

funds into Property bank accounts. Docket No. 12.

On May 24, Plaintiffs filed an emergency motion for contempt because Mr. Fiorillo failed to comply with the Injunction. Docket No. 13. The Court denied that request without prejudice for failure to comply with Rule 65.3.

On June 2, Mr. Fiorillo filed an emergency motion to stay for 90 days so that Mr. Fiorillo could seek "competent counsel" after he allegedly terminated his counsel, who Mr. Fiorillo contended "perjured himself, took a position adverse to his client[']s best interests and blatantly lied on the record." Docket No. 15. Despite his arguments, that request was not allowed but rather allowed in part, with the proviso "Defendant shall comply with all aspects of the Preliminary Injunction by 6/30/22." At the hearing on June 2, the Court confirmed that Mr. Fiorillo was looking for 30 additional days to provide "certain documentation and information that you've been ordered to provide." Transcript, 14. Mr. Fiorillo replied "Sure. Today, Your Honor." The Court responded, "You're asking for 30 more days to do that?: Mr. Fiorillo replied "Yes." Id. The Court stated "I am going to extend the deadline to June 30<sup>th</sup> to fully comply with the Preliminary Injunction." Id., 22. The Court added with respect to the rental payments, "right now there is a Court order that needs to be complied with in terms of the money obtained from renters going into the property account." Id., 23; 28 ("What I said was I'm going to enter an order that gives Mr. Mr. Fiorillo until June 30, 2022, to come into full compliance with the Preliminary Injunction.").

Fiorillo did not comply with the Court's revised Injunction by June 30.

## 2. Other Cases

In addition to this case, Mr. Fiorillo is involved in multiple lawsuits in this court. See Spitalny v. Mr. Fiorillo, 21CV2894 (BLS1) (reach and apply defendant); Green Trust v.

Delpidio, 21CV2950 (BLS1) (Trustee Nicholas Mr. Fiorillo, Plaintiff); Ocean Vacations Realty v. Green, 22CV1329 (BLS1) (Nicholas Mr. Fiorillo, Defendant); GF Funding v. Ocean Investment, 22CV1064 (BLS1)(Nicholas Mr. Fiorillo, Defendant).

The docket in the Spitalny case shows the chaotic approach Mr. Fiorillo has taken in that case and his attack on the judge there, which is reflective of his approach in this case. He was ordered by the judge there (Krupp, J.) to "submit to a deposition, and conduct himself appropriately" and was "assessed plaintiff's reasonable attorney's fees and costs necessitated with preparing for and attending the deposition of Mr. Mr. Fiorillo on March 22, 2022." On May 24, 2022, a motion to compel production of documents from Mr. Fiorillo was allowed, and the court wrote that "[f]ailure to comply with this order may result in a judgment of default being entered against Mr. Fiorillo."

At a June 28 hearing in that case, the parties discussed a criminal complaint pursued by one lawyer (Kevin Peters) against Mr. Fiorillo for an alleged "attack" waged by Mr. Fiorillo at deposition (a motion was filed regarding this incident). Docket No. 106. Mr. Fiorillo also moved to recuse Judge Krupp. Docket No. 101. At the June 28 hearing, Mr. Fiorillo claimed that the court prejudiced him with its rulings, that he would "clearly" ask for reconsideration of the court's rulings, that the court had "forced" Mr. Fiorillo's lawyer, Mr. Masterman, to remain in the case, and commented to the judge, "I don't need any more trouble with you."

Regarding the motion to recuse, the court had before the hearing denied it without prejudice for failure to comply with Rule 9A. Nevertheless, Mr. Fiorillo claimed the proceedings against him were "incestuous," and asked whether Judge Krupp would remain in the case rather than sending the case to Judge Salinger, whom he claimed was "unbiased." He also wanted a different clerk as he was "no closer to justice" and argued that Attorney Peters had

“gamed” the system. He suggested moving the case to Judge Salinger would “clear your docket up and [you will] not [have to] deal with me running in and out of your courtroom and interrupting other trials.” He added that while he did not “dislike you personally but I am entitled to a fair and unbiased situation.” He claimed that Judge Krupp’s order compelling Mr. Fiorillo’s wife to be deposed on June 6 (Docket Nos. 52, 76, 86) “put my wife into cardiac arrest syndrome” because Judge Krupp noted that “my wife could be jailed” for any noncompliance, and argued “unfortunately Mr. Peters is making you part of the gaming of the system and you’re involved in it.”

Judge Krupp then heard Mr. Fiorillo motion to disqualify Mr. Peters (Docket No. 99) in which Mr. Fiorillo alleged that Mr. Peters was involved in “an ongoing pattern of criminal activity” and a “racketeering” enterprise, and claimed that the court was abusing its powers “and you start wondering what in fact is going on over there in your specific courtroom.” He stated that, “this is insane and you know it” and argued the judge needed to recuse himself because he was a “witness” and his actions toward Mr. Fiorillo’s wife were “despicable.” The judge refuted some of Mr. Fiorillo’s claims and instructed Mr. Fiorillo not to interrupt him. He did not recuse himself.

3. Proceedings before the Undersigned

In this case, Plaintiffs filed a complaint for contempt on July 6. Docket No. 17. The Court held a hearing on it on July 25. At the start of the hearing, the undersigned made clear that monetary penalties were unlikely to result in Mr. Mr. Fiorillo’s compliance with the Injunction (since he has ignored that part of the Injunction that required him to pay over monies) and warned Mr. Fiorello that “I might put you in jail ... until you comply with the order.” July 25, 2022 Transcript, at 5. The defendant had not appeared before me previously, and the warning

came at the very start of the hearing. It was based on the seriousness of the issues addressed in the Injunction (particularly the failure to pay over money) and the manner and length of time during which Mr. Fiorillo had not evidently complied with it.

After the July 25, 2022 hearing before the undersigned, the lawyer who had appeared with Mr. Fiorillo filed a "notice of termination." Docket No. 25. Mr. Fiorillo claimed he was pro se. His counsel, Mr. Signore, who had filed a notice of appearance for Mr. Fiorillo on July 1, stated that he was "in the case as noticing my appearance for Mr. Mr. Fiorillo" (Transcript, 4). The Court did not immediately allow counsel to withdraw.

The Court gave Mr. Fiorillo until July 29 to answer the complaint. Mr. Fiorillo complained he could not answer the complaint for contempt but "could comply with the preliminary injunction." *Id.*, 6-7. He also argued that the June 2 modification of the Injunction gave him a 90 day stay (*id.*, 8-9) -- which it did not -- and complained that he did not have the "resources or the time" for a trial on the complaint the following week, noting "I'll just comply with the preliminary injunction," *id.*, 10,11, reflecting that his non-compliance had been a choice. Mr. Fiorillo's tone with the court was argumentative. *Id.*, 17-18, 21. In the end, Mr. Fiorillo stated that complying with the Injunction was "easy." *Id.*, 21.

After the hearing, Mr. Fiorillo was so abusive to someone outside of court that a normally placid court officer raised his voice at Mr. Fiorillo and told him that if he threatened anyone further, Mr. Fiorillo would be arrested. See August 3, 2022 Transcript, at 23-27.

On July 29, Mr. Fiorillo moved to dismiss the contempt complaint. At and after the hearing on August 3, the Court denied that motion. Mr. Fiorillo also moved to disqualify opposing counsel. The Court denied that motion.

At the August 3 hearing, Mr. Fiorillo appeared late and apologized. The Court accepted

his apology for his tardiness. Transcript, 3-4. Attorney Signore again appeared for Mr. Fiorillo and the court heard his request to withdraw. During that colloquy, Mr. Fiorillo's tone was sarcastic, and the court warned him about that. Id., 7. Mr. Fiorillo replied that "[j]ail is upon me, and you've been very clear." Id., 7. The Court responded, "well, it's not upon you. It's, it's a serious risk. I'm not sentencing you to jail. I'm telling you that that's a remedy that's available to the court that I take very seriously. I don't take any relish in such a remedy. It's not something the court is eager to do, happy to do." Id., 7. The court allowed Mr. Signore's motion to withdraw. Id., 11. Before he left the courtroom, the court confirmed that Plaintiff had served the complaint for contempt on him (id., 13), and Mr. Fiorillo confirmed he had seen it before the hearing and had received it from Mr. Signore. Id., 21.

Fiorillo repeatedly interrupted and challenged the court. See. e.g., 8-10; 29-38. His tone was again argumentative. He claimed the Court was trying to trap him. Id. at 10. Nonetheless, the Court gave Mr. Fiorillo further time to respond to the complaint. Mr. Fiorillo asked "[w]hat happens if I plead the 5<sup>th</sup>?" suggesting that he had engaged in criminal conduct. Id., 33.

Fiorillo moved to dismiss the contempt complaint again on August 5. Docket No. 32. He failed to appear for the scheduled trial on August 8, moving on the 8<sup>th</sup> to appear by Zoom. Despite the lack of notice, the Court allowed that motion, proceeded with the hearing, and ordered Mr. Fiorillo to respond to the complaint by August 12 and appear at trial on August 22. It denied the second motion to dismiss.

On August 8, Mr. Fiorillo filed the instant motion to recuse, claiming the undersigned was trying to "stack the deck" against him "to gain a judicial advantage." Id. at 3. He claimed the undersigned demonstrated prejudice by requiring Mr. Fiorillo to respond promptly to the contempt complaint, and that Judge Salinger had afforded him a "90-day stay." Id., 4. He

accused the undersigned of gamesmanship, collusion, entrapment, and acting without jurisdiction, and that the undersigned is personally biased against him.

Fiorillo answered the complaint and filed a motion for discovery. The Court denied the motion for without prejudice, and ordered the trial to begin as scheduled. Mr. Fiorillo again moved for discovery today. The Court ordered Plaintiff to respond quickly and again ordered trial to begin today, as scheduled.

#### DISCUSSION

I have consulted Supreme Judicial Court Rule 3.09, Canon 2, Rule 2.11(a), which instructs that “[a] judge shall disqualify himself or herself in any proceeding in which . . . the judge's impartiality might reasonably be questioned,” and conducted the two-staged test required under that rule: first, to consult my own emotions and conscience to determine whether I was free from personal bias; and, second, if I subjectively believe I can rule impartially, to objectively appraise whether my impartiality might reasonably be questioned by a fully-informed disinterested observer.

As to the first prong, I subjectively feel free from any personal bias. Prior to the hearings before me, I had not seen Mr. Fiorillo. I made clear at the first hearing before me on this matter that I thought monetary penalties were unlikely to result in Mr. Mr. Fiorillo's compliance with the Injunction based on my review of the facts, not based on any personal bias. While Mr. Mr. Fiorillo seems plainly to be trying to bait the Court by acting discourteously toward the undersigned, as he had done the same before another judge, his doing so has not resulted in personal bias. Further, I do not believe any of my comments to Mr. Fiorillo reflected “a lack of his capacity fairly and impartially to decide the issues in this case.” Haddad v. Gonzalez, 410 Mass. 855, 863 (1991).

On the second, objective prong, I do not believe that the objective facts suggest my impartiality could be questioned by a fully-informed, disinterested observer. The Court has engaged Mr. Fiorillo on the record, which has shown that Mr. Fiorillo has sought to delay these proceedings and ignore the Injunction. As he did with at least one other judge, he has attempted to use his own histrionics to create a record that would support recusal. In point of fact, the court has given Mr. Fiorillo extensions of time, over BSI's strong objections, and recognized at the last hearing that several arguments raised by Mr. Fiorillo -- for instance, that Judge Salinger's order was unclear -- were legitimate defenses that the court would take seriously. See, e.g., Judge Rotenberg Educ. Ctr., Inc. v. Comm'r of the Dep't of Mental Retardation, 424 Mass. 430, 442-443 (1997), abrogated by In re Birchall, 454 Mass. 837 (2009) ("In order to hold a party in contempt, the judge must find 'a clear and undoubted disobedience of a clear and unequivocal command.' ... Where the order is ambiguous or the disobedience is doubtful, there cannot be a finding of contempt."). A disinterested, fully-informed observer would not find me biased, as I intend to hold the Plaintiff to its proof.

Michael D. Ricciuti  
MICHAEL D. RICCIUTI  
Associate Justice, Superior Court

Dated: August 22, 2022



# NOTIFY

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## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2284CV00666

BSI 254 WESTFIELD, LLC and BSI WESTFIELD MEMBER, LLC

vs.

NICHOLAS FIORILLO

### AMENDED PRELIMINARY MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S EMERGENCY MOTION TO RECUSE

A complaint for contempt filed in this case alleges that Defendant Nicholas Fiorillo has failed to abide by an injunction entered in this Court in May ("the Injunction"). In hearings and filings before this court, Mr. Fiorillo has embarked on what appears to be a scorched earth campaign to attack every participant in this case -- his opponent, opposing counsel, the undersigned, the clerk and the court officer. Among those efforts was the instant motion to recuse. Plaintiff has opposed it. Mr. Fiorillo filed another motion to recuse today.

As described below, this Court preliminarily views these motions as part of a concerted effort by Mr. Fiorillo to avoid complying with the Injunction and concealing evidence of that non-compliance. Nevertheless, motions to recuse are serious matters, as they implicate the public perception of the court, and this one is taken seriously.

The Court's analysis is to deny the motions, but that view is preliminary; to the extent Mr. Fiorillo wishes to argue this motion, he will be given no more than five minutes at today's hearing to do so. Plaintiff will also be accorded five minutes.

## BACKGROUND

### 1. Background to this Case

The complaint in this case was filed on March 28, 2022. In it, plaintiff BSI 254 Westfield, LLC ("BSI") and BSI Westfield Member, LLC ("BSI Member," collectively, "BSI Entities") alleged that it is the owner of real property located at 254 Westfield Street in Dedham ("the Property"), and that BSI Member controls, operates, and manages the Property.

BSI Member hired Mr. Fiorillo as an independent contractor to provide services for the Property pursuant to a written contract ("the Agreement"). Among other things, Mr. Fiorillo, pursuant to the Agreement, collected rental payments for the Property and was to deposit them in a BSI account. Despite repeated requests by BSI and BSI Member, Mr. Fiorillo violated the Agreement by failing to provide an accounting of the Property expenses or the Property rental payments and failed to provide information about Property-related issues despite specific requests by the BSI Entities or the lender holding the mortgage for the Property, Northern Bank. Similarly, despite repeated requests by the BSI Entities, Mr. Fiorillo had not provided all Property rental payments he had received for the Property to BSI.

In part because of the lack of information, BSI claims it defaulted on its mortgage on the Property. Further, despite instructions and directions from the BSI Entities that he refrain from doing so, Mr. Fiorillo apparently continued to market the Property for leasing. The Plaintiffs thus alleged in their complaint counts for breach of contract and breach of the covenant of good faith and fair dealing, and sought injunctive relief. Along with the complaint, Plaintiffs filed an emergency motion for injunctive relief (Docket No. 4). It sought an order that Mr. Fiorillo provide an accounting of all expenses and income, insurance, utilities, and maintenance related to the Property. Plaintiffs alleged that they needed this information for their business records,

taxes, and to evaluate whether there were any outstanding liabilities or maintenance obligations regarding the Property. Plaintiffs also sought income that the Property had generated and that Mr. Fiorillo possessed, and an order that Mr. Fiorillo refrain from listing the Property for rent or accessing the Property without express authorization. Plaintiffs further alleged in their motion that Mr. Fiorillo had repeatedly promised to provide the requested information, but had not done so. Under his Agreement, Mr. Fiorillo was obligated to follow the directions of the BSI Entities, to act at all times in the best interest of the BSI Entities, and to use all funds advanced to him or received by him for Property-related expenses, with the remainder returned to the BSI Entities. The Plaintiffs contended that on several occasions, the BSI Entities, through their manager, Brian Sheehan, requested Mr. Fiorillo provide information about the Property, including information about funds advanced to him and expenses he had incurred, information about rental income derived from the Property, and whether there were any future rental agreements in place, but that Mr. Fiorillo had not provided that information. The BSI Entities also requested information from Mr. Fiorillo about maintenance, repairs, utilities, and insurance. Mr. Fiorillo fail to provide that information.

Plaintiffs allege that on March 15, 2022, the bank holding the mortgage on the Property, Northern Bank, requested documentation regarding the Property, including profit and loss information. Northern Bank indicated that if it did not receive that information by March 22, 2022, it may take steps with regard to a potential default. Mr. Fiorillo promised to provide that information to Northern Bank by March 22nd, but did not.

Plaintiffs also alleged that Mr. Fiorillo was a defendant in two other Suffolk County lawsuits, 21-2894 and 21-2950 (discussed below), and was alleged in those cases to have failed to comply with disclosure obligations.

On March 25, 2022, Sheehan learned from a real estate agent that a different agent retained by Mr. Fiorillo was showing the Property for purposes of leasing it in the fall of 2022, and learned for the first time that the Property had been rented for a week starting March 29 and another week the following month. Plaintiffs thereafter renewed their instructions to Mr. Fiorillo to stop.

On March 29, 2022, Mr. Fiorillo, then represented by Shawn M. Masterson, objected to Plaintiffs' request for injunctive relief in a single-page filing. In relevant part, it states:

Fiorillo states that he will produce the requested documents within 30 days. Mr. Fiorillo states that binding rental contracts are in place and that any disturbance of those contracts would be detrimental to all parties.

Fiorillo states that he is valid defenses and or claims to Plaintiff's complaint and shall file the appropriate responses within the time allowed under the rules of procedure.

Mr. Fiorillo did not produce the document within 30 days, as he promised.

At the first hearing on Plaintiffs' motion, on April 29, Plaintiffs argued that they knew nothing about the contracts Mr. Fiorillo contended were in place. Transcript, 5. In response, Mr. Fiorillo's counsel said he could produce the required documents in less than 30 days (*id.*, 7), that Mr. Fiorillo wanted to purchase the Property (*id.*), and that Mr. Fiorillo had the "right" to rent the Property (*id.*, 8). But Mr. Fiorillo's lawyer recognized that Mr. Fiorillo "has an obligation to give those documents to the plaintiff" and could produce rental contracts "within ten days." *Id.*, 9.

After a break, the parties reported reaching agreement on several points -- that the defendant would disclose all Property-related contracts and agreements, including the rental agreements that were being discussed at the hearing, within 10 days; defendant would produce accounting information within 21 days; defendant would produce all information supporting documents concerning utilities, insurance, taxes and maintenance within 10 days; in that

defendant would produce summary documents regarding upgrades to the Property within 10 days and back up within 30 days. Plaintiffs decided to hold off on seeking an order regarding rentals until it saw the rental agreements allegedly in place and would not press their request that Mr. Fiorillo be barred from accessing the Property. The parties could not agree as to defendant's role in future leasing (id., 13-22); the Court noted that the parties were essentially seeking to re-write the agreement on this point. Id., 23. The parties also did not agree with respect to the handling of rental income. Id., 24-25. The Court suggested the parties draft an order. Id., 25. In the meantime, Mr. Fiorillo was not to make efforts to lease the Property without Plaintiffs' approval but could advertise and communicate with potential lessees. Id., 27. The hearing was continued to May 16.

On May 12, Plaintiffs submitted a report reflecting Mr. Fiorillo's alleged non-compliance with the parties' agreement. Docket No. 11. In it, Plaintiffs alleged that Mr. Fiorillo failed to provide the documents he agreed to produce, failed to provide lease agreements, and failed to deposit recent rental proceeds in the operating account.

At the May 16 hearing, the Court asked Mr. Fiorillo's counsel why he had failed to produce the documents he agreed to produce by May 9. Transcript, 7. Counsel conceded Mr. Fiorillo had not done so, but did not because of other litigation. Id., 8. The Court (Salinger, J.) found that claim unconvincing and asked "why shouldn't I just enter the preliminary injunction." Id., at 8-10. Mr. Fiorillo's counsel claimed doing so "would be detrimental to both parties." Id., 10. The Court addressed that concern by editing the proposed injunction and entering it. Among other things, it required disclosures by May 16 or 21, a complete accounting by May 21; that Mr. Fiorillo not access or enter the Property nor list it for rent or enter into rental or other transactions without Plaintiffs' written permission; that he return the keys by May 21; and that he deposit all

funds into Property bank accounts. Docket No. 12.

On May 24, Plaintiffs filed an emergency motion for contempt because Mr. Fiorillo failed to comply with the Injunction. Docket No. 13. The Court denied that request without prejudice for failure to comply with Rule 65.3.

On June 2, Mr. Fiorillo filed an emergency motion to stay for 90 days so that Mr. Fiorillo could seek "competent counsel" after he allegedly terminated his counsel, who Mr. Fiorillo contended "perjured himself, took a position adverse to his client[']s best interests and blatantly lied on the record." Docket No. 15. Despite his arguments, that request was not allowed but rather allowed in part, with the proviso "Defendant shall comply with all aspects of the Preliminary Injunction by 6/30/22." At the hearing on June 2, the Court confirmed that Mr. Fiorillo was looking for 30 additional days to provide "certain documentation and information that you've been ordered to provide." Transcript, 14. Mr. Fiorillo replied "Sure. Today, Your Honor." The Court responded, "You're asking for 30 more days to do that?: Mr. Fiorillo replied "Yes." Id. The Court stated "I am going to extend the deadline to June 30<sup>th</sup> to fully comply with the Preliminary Injunction." Id., 22. The Court added with respect to the rental payments, "right now there is a Court order that needs to be complied with in terms of the money obtained from renters going into the property account." Id., 23; 28 ("What I said was I'm going to enter an order that gives Mr. Fiorillo until June 30, 2022, to come into full compliance with the Preliminary Injunction.").

Fiorillo did not comply with the Court's revised Injunction by June 30.

## 2. Other Cases

In addition to this case, Mr. Fiorillo is involved in multiple lawsuits in this court. See Spitalny v. Mr. Fiorillo, 21CV2894 (BLS1) (reach and apply defendant); Green Trust v.

Delpidio, 21CV2950 (BLS1) (Trustee Nicholas Mr. Fiorillo, Plaintiff); Ocean Vacations Realty v. Green, 22CV1329 (BLS1) (Nicholas Mr. Fiorillo, Defendant); GF Funding v. Ocean Investment, 22CV1064 (BLS1)(Nicholas Mr. Fiorillo, Defendant).

The docket in the Spitalny case shows the chaotic approach Mr. Fiorillo has taken in that case and his attack on the judge there, which is reflective of his approach in this case. He was ordered by the judge there (Krupp, J.) to “submit to a deposition, and conduct himself appropriately” and was “assessed plaintiff’s reasonable attorney’s fees and costs necessitated with preparing for and attending the deposition of Mr. Fiorillo on March 22, 2022.” On May 24, 2022, a motion to compel production of documents from Mr. Fiorillo was allowed, and the court wrote that “[f]ailure to comply with this order may result in a judgment of default being entered against Mr. Fiorillo.”

At a June 28 hearing in that case, the parties discussed a criminal complaint pursued by one lawyer (Kevin Peters) against Mr. Fiorillo for an alleged “attack” waged by Mr. Fiorillo at deposition (a motion was filed regarding this incident). Docket No. 106. Mr. Fiorillo also moved to recuse Judge Krupp. Docket No. 101. At the June 28 hearing, Mr. Fiorillo claimed that the court prejudiced him with its rulings, that he would “clearly” ask for reconsideration of the court’s rulings, that the court had “forced” Mr. Fiorillo’s lawyer, Mr. Masterman, to remain in the case, and commented to the judge, “I don’t need any more trouble with you.”

Regarding the motion to recuse, the court had before the hearing denied it without prejudice for failure to comply with Rule 9A. Nevertheless, Mr. Fiorillo claimed the proceedings against him were “incestuous,” and asked whether Judge Krupp would remain in the case rather than sending the case to Judge Salinger, whom he claimed was “unbiased.” He also wanted a different clerk as he was “no closer to justice” and argued that Attorney Peters had

“gamed” the system. He suggested moving the case to Judge Salinger would “clear your docket up and [you will] not [have to] deal with me running in and out of your courtroom and interrupting other trials.” He added that while he did not “dislike you personally but I am entitled to a fair and unbiased situation.” He claimed that Judge Krupp’s order compelling Mr. Fiorillo’s wife to be deposed on June 6 (Docket Nos. 52, 76, 86) “put my wife into cardiac arrest syndrome” because Judge Krupp noted that “my wife could be jailed” for any noncompliance, and argued “unfortunately Mr. Peters is making you part of the gaming of the system and you’re involved in it.”

Judge Krupp then heard Mr. Fiorillo motion to disqualify Mr. Peters (Docket No. 99) in which Mr. Fiorillo alleged that Mr. Peters was involved in “an ongoing pattern of criminal activity” and a “racketeering” enterprise, and claimed that the court was abusing its powers “and you start wondering what in fact is going on over there in your specific courtroom.” He stated that, “this is insane and you know it” and argued the judge needed to recuse himself because he was a “witness” and his actions toward Mr. Fiorillo’s wife were “despicable.” The judge refuted some of Mr. Fiorillo’s claims and instructed Mr. Fiorillo not to interrupt him. He did not recuse himself.

### 3. Proceedings before the Undersigned

In this case, Plaintiffs filed a complaint for contempt on July 6. Docket No. 17. The Court held a hearing on it on July 25. At the start of the hearing, the undersigned made clear that monetary penalties were unlikely to result in Mr. Fiorillo’s compliance with the Injunction (since he has ignored that part of the Injunction that required him to pay over monies) and warned Mr. Fiorillo that “I might put you in jail ... until you comply with the order.” July 25, 2022 Transcript, at 5. The defendant had not appeared before me previously, and the warning came at



the very start of the hearing. It was based on the seriousness of the issues addressed in the Injunction (particularly the failure to pay over money) and the manner and length of time during which Mr. Fiorillo had not evidently complied with it.

After the July 25, 2022 hearing before the undersigned, the lawyer who had appeared with Mr. Fiorillo filed a "notice of termination." Docket No. 25. Mr. Fiorillo claimed he was pro se. His counsel, Mr. Signore, who had filed a notice of appearance for Mr. Fiorillo on July 1, stated that he was "in the case as noticing my appearance for Mr. Fiorillo" (Transcript, 4). The Court did not immediately allow counsel to withdraw.

The Court gave Mr. Fiorillo until July 29 to answer the complaint. Mr. Fiorillo complained he could not answer the complaint for contempt but "could comply with the preliminary injunction." Id., 6-7. He also argued that the June 2 modification of the Injunction gave him a 90 day stay (id., 8-9) -- which it did not -- and complained that he did not have the "resources or the time" for a trial on the complaint the following week, noting "I'll just comply with the preliminary injunction," id., 10,11, reflecting that his non-compliance had been a choice. Mr. Fiorillo's tone with the court was argumentative. Id., 17-18, 21. In the end, Mr. Fiorillo stated that complying with the Injunction was "easy." Id., 21.

After the hearing, Mr. Fiorillo was so abusive to someone outside of court that a normally placid court officer raised his voice at Mr. Fiorillo and told him that if he threatened anyone further, Mr. Fiorillo would be arrested. See August 3, 2022 Transcript, at 23-27.

On July 29, Mr. Fiorillo moved to dismiss the contempt complaint. At and after the hearing on August 3, the Court denied that motion. Mr. Fiorillo also moved to disqualify opposing counsel. The Court denied that motion.

At the August 3 hearing, Mr. Fiorillo appeared late and apologized. The Court accepted

his apology for his tardiness. Transcript, 3-4. Attorney Signore again appeared for Mr. Fiorillo and the court heard his request to withdraw. During that colloquy, Mr. Fiorillo's tone was sarcastic, and the court warned him about that. *Id.*, 7. Mr. Fiorillo replied that "[j]ail is upon me, and you've been very clear." *Id.*, 7. The Court responded, "well, it's not upon you. It's, it's a serious risk. I'm not sentencing you to jail. I'm telling you that that's a remedy that's available to the court that I take very seriously. I don't take any relish in such a remedy. It's not something the court is eager to do, happy to do." *Id.*, 7. The court allowed Mr. Signore's motion to withdraw. *Id.*, 11. Before he left the courtroom, the court confirmed that Plaintiff had served the complaint for contempt on him (*id.*, 13), and Mr. Fiorillo confirmed he had seen it before the hearing and had received it from Mr. Signore. *Id.*, 21.

Fiorillo repeatedly interrupted and challenged the court. See. e.g., 8-10; 29-38. His tone was again argumentative. He claimed the Court was trying to trap him. *Id.* at 10. Nonetheless, the Court gave Mr. Fiorillo further time to respond to the complaint. Mr. Fiorillo asked "[w]hat happens if I plead the 5<sup>th</sup>?" suggesting that he had engaged in criminal conduct. *Id.*, 33.

Fiorillo moved to dismiss the contempt complaint again on August 5. Docket No. 32. He failed to appear for the scheduled trial on August 8, moving on the 8<sup>th</sup> to appear by Zoom. Despite the lack of notice, the Court allowed that motion, proceeded with the hearing, and ordered Mr. Fiorillo to respond to the complaint by August 12 and appear at trial on August 22. It denied the second motion to dismiss.

On August 8, Mr. Fiorillo filed the instant motion to recuse, claiming the undersigned was trying to "stack the deck" against him "to gain a judicial advantage." *Id.* at 3. He claimed the undersigned demonstrated prejudice by requiring Mr. Fiorillo to respond promptly to the contempt complaint, and that Judge Salinger had afforded him a "90-day stay." *Id.*, 4. He

accused the undersigned of gamesmanship, collusion, entrapment, and acting without jurisdiction, and that the undersigned is personally biased against him.

Fiorillo answered the complaint and filed a motion for discovery. The Court denied the motion for without prejudice, and ordered the trial to begin as scheduled. Mr. Fiorillo again moved for discovery today. The Court ordered Plaintiff to respond quickly and again ordered trial to begin today, as scheduled.

### DISCUSSION

I have consulted Supreme Judicial Court Rule 3.09, Canon 2, Rule 2.11(a), which instructs that “[a] judge shall disqualify himself or herself in any proceeding in which . . . the judge's impartiality might reasonably be questioned,” and conducted the two-staged test required under that rule: first, to consult my own emotions and conscience to determine whether I was free from personal bias; and, second, if I subjectively believe I can rule impartially, to objectively appraise whether my impartiality might reasonably be questioned by a fully-informed disinterested observer.

As to the first prong, I subjectively feel free from any personal bias. Prior to the hearings before me, I had not seen Mr. Fiorillo. I made clear at the first hearing before me on this matter that I thought monetary penalties were unlikely to result in Mr. Fiorillo's compliance with the Injunction based on my review of the facts, not based on any personal bias. While Mr. Fiorillo seems plainly to be trying to bait the Court by acting discourteously toward the undersigned, as he had done the same before another judge, his doing so has not resulted in personal bias. Further, I do not believe any of my comments to Mr. Fiorillo reflected “a lack of his capacity fairly and impartially to decide the issues in this case.” Haddad v. Gonzalez, 410 Mass. 855, 863 (1991).

On the second, objective prong, I do not believe that the objective facts suggest my impartiality could be questioned by a fully-informed, disinterested observer. The Court has engaged Mr. Fiorillo on the record, which has shown that Mr. Fiorillo has sought to delay these proceedings and ignore the Injunction. As he did with at least one other judge, he has attempted to use his own histrionics to create a record that would support recusal. In point of fact, the court has given Mr. Fiorillo extensions of time, over BSI's strong objections, and recognized at the last hearing that several arguments raised by Mr. Fiorillo -- for instance, that Judge Salinger's order was unclear -- were legitimate defenses that the court would take seriously. See, e.g., Judge Rotenberg Educ. Ctr., Inc. v. Comm'r of the Dep't of Mental Retardation, 424 Mass. 430, 442--443 (1997), abrogated by In re Birchall, 454 Mass. 837 (2009) ("In order to hold a party in contempt, the judge must find 'a clear and undoubted disobedience of a clear and unequivocal command.' ... Where the order is ambiguous or the disobedience is doubtful, there cannot be a finding of contempt."). A disinterested, fully-informed observer would not find me biased, as I intend to hold the Plaintiff to its proof.

Michael D. Ricciuti  
MICHAEL D. RICCIUTI  
Associate Justice, Superior Court

Dated: August 22, 2022

# NOTIFY

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## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2284CV00666

**BSI 254 WESTFIELD, LLC and BSI WESTFIELD MEMBER, LLC**

vs.

**NICHOLAS FIORILLO**

### ORDER

Yesterday, August 22, 2022 at 2 PM, was the day and time at which the court had scheduled for a trial on Plaintiff's complaint for contempt filed in this case, which alleges that Defendant Nicholas Fiorillo has failed to abide by an injunction entered in this Court in May ("the Injunction"). Mr. Fiorillo did not appear at that time, claiming traffic issues in emails (and evidently phone calls) to the clerk. The court instructed the court to issues a capias for Mr. Fiorillo's arrest if he failed to appear later in the day. Mr. Fiorillo arrived at court close to 4 PM; well after the hearing was scheduled and near the time the court closes. A capias did not issue.

The evidence demonstrates plainly that this was another attempt by Mr. Fiorillo to avoid this trial. Trial was scheduled to commence on the contempt complaint on August 3, but Mr. Fiorillo filed a meritless motion to dismiss -- and appeared late for the hearing -- thus engineering a continuance. The court rescheduled trial for August 8. Mr. Fiorillo did not answer the complaint for contempt, but again filed, inter alia, another meritless motion to dismiss and then failed to appear at all, filing a last-minute motion on the day of the hearing claiming a medical issue and requesting to appear by Zoom. The facts show that there was no reason that motion could not have been filed earlier, and that Mr. Fiorillo's non-appearance was another stratagem to avoid trial. His failure to appear at the rescheduled trial date yesterday is part of

this pattern. Indeed, Mr. Fiorillo has demonstrated his contempt for this court and its orders with these tactics, with his evident noncompliance with the Injunction, with his refusal to abide by our rules, and with his inappropriate actions, statements and tone during hearings. In addition, Mr. Fiorillo began yesterday to directly email the undersigned and at least one other judge of this court, which is highly inappropriate. He also filed or attempted to file a number of motions which, at a minimum, do not comply with Rule 9A.

Following Mr. Fiorillo's non-appearance, Plaintiff yesterday filed an emergency motion for a default.

Accordingly, the Court **ORDERS** as follows:

1. Mr. Fiorillo shall **IMMEDIATELY CEASE** emailing or making any effort to directly contact the undersigned or any other judge of this court, and shall only communicate with judges of this court in properly-made filings or while court is in session.
2. Mr. Fiorillo shall fully comply with all rules of this court, including Rules 9A and 9C.
3. The motions filed by Mr. Fiorillo and docketed or received on August 22 do not comply with the rules, including Rule 9A, and are **DENIED**.
4. Mr. Fiorillo shall respond to the Plaintiff's motion for a default by 4:00 PM today. That response shall be complete and shall include a separate affidavit as required under Rule 9A (a) (4) which Mr. Fiorillo shall include the exact location from which he started in his alleged journey to court, the exact time of departure, and the exact details of travel, and shall state whether Mr. Fiorillo had any intention or expectation of arriving to court late or made any oral or

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<sup>1</sup> He has also cast aspersions on the court. For instance, following the July 25 hearing, the court conferred with the clerk and court officer, a conversation that may or may not have been recorded on the FTR system. As no party has a right to such communications, the court sealed that part of the FTR record. Mr. Fiorillo has no right of access to those discussions.

written statements that he intended or expected to arrive late.

5. The Court shall commence the contempt trial or hearing on remedies on Thursday, August 25, 2022 at 9:00 a.m. The proceeding shall commence precisely at that time. In the event the Court does not default Mr. Fiorillo, Plaintiff shall be prepared to demonstrate, by clear and convincing evidence, that Mr. Fiorillo has failed to comply with the Injunction. The Court expects the Plaintiff to begin with evidence that Mr. Fiorillo failed to “[d]eposit funds generated from the Property or held by Defendant into a dedicated Property account,” Injunction, ¶ 10, and specifically show the amounts Mr. Fiorillo has received and the amounts not deposited into the account since June 30, 2022.

**SO ORDERED.**

Michael D. Ricciuti  
MICHAEL D. RICCIUTI  
Associate Justice, Superior Court

Dated: August 23, 2022

NOTICE SENT (2)  
06-07-22

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# NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL ACTION NO. 2284-CV-0666-BLS

BSI 254 WESTFIELD, LLC AND  
BSI 254 WESTFIELD MEMBER, LLC

Plaintiffs

v.

NICHOLAS FIORILLO

Defendant

Filed: 6/2/22

Asst. Clerk

Notice sent  
6/7/22  
(2) X

**EMERGENCY MOTION TO STAY FOR 90 DAYS AND LEAVE TO FIND  
COMPETENT LEGAL COUNSEL**

COMES NOW Defendant, Nicholas Fiorillo, pro se . Wherein his individual capacity hereby request the Court for a 90 day continuance to seek competent litigation counsel and to stay the discovery and depositions of Defendants for 90 days and allow time for the Defendants to complete a full accounting and offset of their out of pocket investment of upwards of \$550,000 and balance the books, to provide the court with a true and accurate accounting of the renovation costs, continued operational costs and rental revenue that has come in. Whereas the Plaintiffs are fully secured in a \$12,000,000 asset and have no risk or harm for such a brief continuance to allow the Defendants to obtain new counsel and report to court the accounting and set off monies due. Nicholas Fiorillo terminated such legal representation on May 15<sup>th</sup> 2022, of Shawn Masterson and reaffirmed such termination of his representation in the related cases Spitalny v Gotspace Data et al and Ray Green v Ocean Development et al, that where in front of Judge Krupp and now in front of Judge Salinger. At the May 23<sup>rd</sup> hearing in front of the court, Attorney Masterson perjured himself, took a position adverse to his clients best interests and blatantly lied on the record. Whereas he stated that their was a

Allowed in part. Defendant shall comply with all aspects of the Preliminary Injunction by June 30, 2022.

2 June 2022



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VOLUME: I  
PAGES: 1-38  
EXHIBITS: NONE

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
NO. 2284CV00666BLS2

\* \* \* \* \*  
BSI 254 WESTFIELD, LLC,  
Plaintiff  
v.  
NICHOLAS FIORILLO,  
Defendant  
\* \* \* \* \*

MOTION HEARING  
BEFORE THE HONORABLE KENNETH W. SALINGER

Suffolk Superior Court  
3 Pemberton Square  
Boston, Massachusetts 02108  
Courtroom 12  
Thursday, June 2, 2022  
3:02 - 3:37

Mary E. Phillips  
Registered Professional Reporter

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APPEARANCES:

FOR THE PLAINTIFF:

Matthew C. Welnicki, Esq.  
Kenney and Sams, P.C.  
144 Turnpike Road  
Southborough, MA 01772  
Work phone: 508.490.8500

FOR THE DEFENDANT:

Nicholas Fiorillo, pro se  
3 Kales Way  
Harwich Port, MA 02646

ALSO PRESENT:

Shawn Michael Masterson, Esq.

1 (Court in session 3:02 p.m.)

2 THE COURT: All right.

3 THE CLERK: Counsel, if I could have you approach please,  
4 both counsel. Do you want --

5 THE COURT: Mr. Fiorillo should come up as well.

6 THE CLERK: Mr. Fiorillo as well. You will sit at the back  
7 table with your current counsel. And Plaintiff's counsel, please  
8 step up.

9 Your Honor, before you this afternoon is Suffolk Superior  
10 Court Civil Action 2284CV666. This is in the matter of BSI 254  
11 Westfield, LLC versus Nicholas Fiorillo.

12 Counsel, please identify yourselves to the Court and for the  
13 record beginning with Plaintiff's counsel.

14 MR. WELNICKI: Good afternoon, Your Honor, Matthew Welnicki,  
15 on behalf of the Plaintiffs BSI 254 Westfield, LLC and BSI 254  
16 Westfield Member, LLC.

17 THE COURT: Good afternoon.

18 MR. MASTERSON: Good afternoon, Judge, Shawn Masterson.  
19 Your Honor, before you is a motion and stuff that I don't know --

20 THE COURT: Let me have Mr. Fiorillo introduce himself as  
21 well.

22 MR. FIORILLO: Good afternoon, Judge. This is Nicholas  
23 Fiorillo. I appear in front of you today and filed --

24 THE COURT: I think I keep mispronouncing your last name.  
25 How do I say it properly?

1 MR. FIORILLO: Fiorillo, means --

2 THE COURT: Fiorillo.

3 MR. FIORILLO: Fiorillo.

4 THE COURT: Fiorillo.

5 MR. FIORILLO: Means little flower in Italian.

6 THE COURT: All right. I just saw your -- let's take them  
7 separately. First of all, your Notice of Termination of  
8 Representation, which Mr. Masterson was letting me make sure that  
9 I hadn't lost sight of that I was aware of.

10 You, I take it, Mr. Fiorillo are firing your lawyer and  
11 representing yourself going forward or at least representing  
12 yourself for now and want to find a new lawyer.

13 MR. FIORILLO: Yes. I'd like to inform --

14 THE COURT: Please.

15 MR. FIORILLO: -- the Court earlier before the hearing  
16 started, Attorney Welnicki had consented to Mr. Masterson's  
17 withdrawal.

18 And I'd like to have leave from the Court to find competent  
19 counsel to help me navigate my way through the court here with  
20 other related cases I'm sure you're familiar with.

21 It's important to note that Brian Sheehan, the principal of  
22 BSI Incorporated, LLC, is also a party of interest and a  
23 defendant in three other actions in front of this Court, where he  
24 was an investor and a loan broker for upwards of \$50 million in  
25 other loans.

1 And, unfortunately, I think Attorney Welnicki wasn't really  
2 clear to the overall aspects of his client when he took it on.  
3 And it's important that we get on the record what is truly going  
4 on. And I'll just take a brief moment to explain.

5 I haven't had an opportunity to address the Court. And at  
6 the time that Mr. Masterson was engaged, we were inundated with  
7 over seven different pieces of litigation, four of which BSI's  
8 principal, Brian Sheehan, was involved on the opposite side of  
9 them forcing me to liquidate a \$50 million asset and pay upwards  
10 of -- if you're familiar with some of the papers -- \$20 million  
11 that none of the now Defendants-in-Counterclaim or thereabout  
12 were entitled to.

13 I have been unable to lean forward and have been pushed back  
14 on my heels with this onslaught of litigation in front of this  
15 Court and in front of Judge Krupp, in front of the court in  
16 Connecticut and in front of the bankruptcy court.

17 I'd like to explain a little bit about Westfield to give you  
18 some general understanding and give you both sides. Basically  
19 what happened was is Ocean Development is a company that I own  
20 and operate went after to purchase, acquire, reposition the  
21 Westfield estate, the former founder of EMC, Roger Marino's home.

22 THE COURT: Okay.

23 MR. FIORILLO: Very beautiful estate. He very nicely took  
24 me under his wing in our introduction, Northeastern grad myself  
25 and such. And he presented us with an unbelievable opportunity

1 for my company to buy this property from him in a very tumultuous  
2 divorce with his wife for \$3.3 million.

3 Brian Sheehan, principal at BSI, was working as a loan  
4 broker on placing over \$150 million in loans for my companies,  
5 including Gotspace Data, Gotspace Development, Gotspace  
6 Self-storage and also this Westfield estate acquisition, and  
7 another \$50 million in vacation rental properties that I manage,  
8 operate and own similar to Westfield Street.

9 Unfortunately, I was duped into entering into a loan  
10 brokerage agreement where Brian promised to provide me such  
11 financing for a purchase of it and would be paid a brokerage fee  
12 to simply provide a loan like he had done in the other  
13 opportunities that he was acting as a loan brokerage.

14 Lo and behold, on the day of closing, he had me assign the  
15 right, title and interest that I possessed in the contract to  
16 purchase the home for such a great price to BSI in exchange for  
17 consideration that I have yet to receive.

18 We went into this idea with Brian looking to obtain a  
19 conventional loan. And he failed to do that at step one. And I  
20 was left with no other choice with deposits at risk. And I ended  
21 up -- you may be familiar with Raymond C. Green. And this is  
22 right before COVID happened.

23 I ended up closing on a loan, 1. That I didn't need Mr.  
24 Sheehan to participate in. 2. I had already had a \$10 million  
25 credit line with Raymond C. Green Companies. And I ended up

1 acquiring this property.

2 In the interim of that, Brian, in order to get conventional  
3 financing, induced me to sign this operating agreement, this BSI  
4 operating agreement and basically gaslit his inability to get me  
5 financing unless I gave the right, title, interest to the  
6 property to BSI. Well, it is a multifaceted narrative of what  
7 happened next.

8 Sometime between when COVID happened, in the midst of COVID,  
9 Mr. Sheehan failed to provide us any loan documents well after I  
10 invested, repositioned and renovated this beautiful estate with  
11 upwards of \$550,000 of capital, materials, labor, staff of dozens  
12 of people, repositioning this as best we could during COVID and  
13 on through it.

14 We ended up at Northern Bank and Trust, a relationship that  
15 Brian Sheehan has had for over 22 years, where he's an insider of  
16 Northern Bank. And as an insider, he receives profit share and a  
17 percentage of the interest that he would facilitate in these type  
18 of loans.

19 Lo and behold, between Mr. Ray Green, not respecting the  
20 COVID restrictions and the financial markets being in turmoil and  
21 being upended, a profiteer of Brian Sheehan and Ray Green. By  
22 the time I ended up at Northern Bank, Mr. Green and Mr. Sheehan  
23 split an additional \$1.1 million by the time we could get a  
24 refinancing done with Brian's second insider bank.

25 Lo and behold, fast forward to where we're at now, we owe



1 upwards -- or I do because I'm the one that's the primary  
2 sponsor. I'm the one with the net worth. I don't mean to say I  
3 or me, but I'm just trying to explain it better.

4 I am now obligated to a \$5 million encumbrance on the  
5 property, which is approximately almost \$2 million in default,  
6 interest and fees that blend somewhere around 18 percent between  
7 Northern Bank's 14 percent default interest, because Mr. Sheehan  
8 could not or would not or conveniently failed to refinance by  
9 simply sending an email to Northern Bank.

10 It cost us a half million dollars, because we had the right  
11 to extend the loan and he failed to do so, to where I'm at now  
12 with out-of-pocket expenses being the only responsible party  
13 managing the property.

14 In electric and utility bills alone over the course of the  
15 management of the property, over \$120,000 out-of-pocket in  
16 interest that I paid when they conveniently said the interesters  
17 were ran out in the last eight months an additional \$60,000 that  
18 I paid, with the out of pockets from the original investment,  
19 with the promise of Brian Sheehan just as a loan broker.

20 And now for them to come in here and file this frivolous  
21 lawsuit for me to turn over documents because they say that I'm  
22 impeding Northern Bank from refinancing -- Northern Bank has all  
23 my tax returns. Northern Bank has my personal financial  
24 statements.

25 And it's really just a ruse to put pressure on me in the

1 global conspiracy to take and strip away tens of millions of  
2 dollars in property and cash that Mr. Sheehan is directly  
3 involved with Raymond C. Green, is directly involved with S&Q  
4 (ph) Data and the Spitali (ph) families.

5 I'm either telling you this wild movie script that you  
6 haven't watched on Netflix yet or everything I'm telling you, so  
7 help me God, is the truth.

8 I come to you in this awful situation that came to a head  
9 last week in front of Judge Krupp with the obvious gaming of the  
10 system by the Gesmer law firm, the docket and over 11 motions  
11 that I had filed throughout the course of litigation that never  
12 were acted on, that never were ruled on and magically they would  
13 get precedence or preference over us as what we file to do what?  
14 Get them to pay me to turn over \$23.5 million in cash and sign a  
15 deed -- if you had a chance to read, which I think is now in  
16 front of you -- a \$50 million asset that Brian Sheehan himself is  
17 invested in? That he stands to get back a million eight on a  
18 \$200,000 investment?

19 These gentlemen are trying to kill the unicorn, the golden  
20 egg layer that has brought these eggs to the table for all to  
21 share. And they just need to give me a moment so I can transact  
22 and close and pay off any monies, if they're due, or pay in to  
23 court, tens of millions of dollars in proceeds that are in  
24 varying litigation that are all inter-related directly connected  
25 to the same cast of characters.

1 Brian Sheehan is the loan broker that put me in front of the  
2 deal on Westfield Street that promised me he was going to provide  
3 services. And now I'm in here as the bad guy, the one that's  
4 been carrying the property, the one that has been managing it,  
5 cutting the lawn, servicing it. My poor wife cleans the home.  
6 My kids are out there skimming pools.

7 It's costing \$15,000 to open the pool up this year. It cost  
8 \$12,000 to do a spring cleaning. All this is being expensed and  
9 paid out-of-pocket by me to just protect the original investment  
10 I've never even gotten back yet.

11 But Mr. Welnicki hasn't bothered to tell you the other side  
12 of the story. And I've been so busy battling the same group of  
13 individuals, I haven't been able to, 1. To come in here and tell  
14 my side of the story. 2. Unfortunately, on the day I terminated  
15 Shawn Masterson is the day that he was in Barnstable Court where  
16 I thought I could trust him. And he informed the Court that I  
17 had my refinance done at Rockland Trust, which broke all  
18 confidences. Because all of a sudden magically, Kevin Peters  
19 called Rockland Trust, someone on the board, and my loan  
20 vaporized to pay off, to save my family home from auction from  
21 Ray Green on the 18th of this month. This is insanity.

22 The whole court -- not you, but these guys on this side of  
23 the bench are out of order. They all know they are. And all  
24 they need to do is just give me a moment, let me -- like Judge  
25 Krupp did -- take a breath, as he said. Get competent counsel

1 that is unrelated to what has transpired. And I can come in here  
2 and escrow \$20 million, if I so choose to this Court within 30  
3 days.

4 And we could work out some sort of agreement with Mr.  
5 Welnicki and Mr. Sheehan on the home that they've equity stripped  
6 \$2 million.'

7 They say I don't own it. And now they're trying to sell it  
8 out from underneath me? Haven't paid me my investment back and  
9 they're attempting to sell it for \$8 million.

10 Nowhere in any of his papers does it say, 1. I'm the  
11 rightful owner of it. 2. I'm merely just a groundskeeper.  
12 3. I invested monthly tens of thousands of dollars. 4. I'm  
13 still out-of-pocket upwards of a half million dollars from when I  
14 got it over from Mr. Marino, older in life, neglected the home,  
15 because his wife and him were battling a horrible divorce, like  
16 The War of the Roses for seven years.

17 I'm still out-of-pocket all that money. And I'm the one  
18 that's liable on the mortgage. Unfortunately, this is just a  
19 small segment of what is happening.

20 What I'm asking of the Court is a brief stay, a moment to  
21 catch my breath and an opportunity, because I want to show the  
22 Court the truth. The real matter of what happened is an offset  
23 of my investments based upon income that was brought in based  
24 upon out-of-pocket that I spend every week and not have to deal  
25 with the \$190,000 -- unfortunately, I'm calling it a smash and

1 grab to do what? Put further pressure on my neck? To further  
2 bankrupt me so I can't financially pay these people off?

3 We all know what's going on here. He knows what's going on.  
4 He talks with Kevin Peters every day. He talks with Aaron Fox  
5 all the time. They tell me they do. This is out of control.

6 So I'm asking, Your Honor, I beg of you -- with my house  
7 being at auction next week.

8 Masterson told you about Rockland Trust. Peters called a  
9 board member. And now my mortgage isn't there. So I can't save  
10 my house. A brief continuance, allow me to put the proper  
11 paperwork forward.

12 I complied with what I could to give you the numbers, the  
13 leases, a schedule of income that has come in. And I didn't even  
14 begin to net down my out-of-pockets.

15 I put it in front of him. He never bothered to call us --  
16 me to discuss the documents. He went off and filed a motion to  
17 say that I'm in contempt on \$190,000, because he said so? And  
18 now I'm faced in front of you with a contempt that I'm not  
19 complying.

20 I didn't comply on Saturday, because you had said I think in  
21 this motion that I needed five days whenever it was. It fell on  
22 a Saturday.

23 I told Shawn, who obviously either -- they've been  
24 conferencing for two weeks without my knowledge or authority,  
25 when Shawn was terminated, never bothered to tell him, Mr.

1 Welnicki. And he filed this scathing motion that I'm in  
2 contempt.

3 When I had time to take a breath, I gave all the documents I  
4 could get my hands on being that I'm competing in seven different  
5 lawsuits with four different law firms, resources, 30, 40 deep at  
6 each firm and it's just me.

7 And if they just let the golden goose lay one more egg, with  
8 your help, we'll get to trial some day. I'll let \$20 million sit  
9 in this courtroom. And I'll tell the world what really happened  
10 how they took advantage of a kid trying to bring digital  
11 infrastructure to New England. That's a \$7 billion deal is why  
12 they're all fighting like this to bankrupt me so they can get  
13 this land in Connecticut.

14 THE COURT: Mr. Fiorillo, part of what you're asking is that  
15 I give you more time to comply with the parts of this existing  
16 Preliminary Injunction --

17 MR. FIORILLO: Any help, Your Honor.

18 THE COURT: -- that require you to provide information. I  
19 gather you've provided some information. Please be concrete.

20 You're asking to have until when to finish providing the  
21 rest of the documentation and information?

22 MR. FIORILLO: If you allow me -- and I'll keep it short.  
23 Judge Krupp heard a similar situation -- but not about Mr.  
24 Marino's home. He heard it about the other businesses we're  
25 involved in.

1 And in looking at the totality of it, I asked for 30. He  
2 said 60 and then he said, Would 90 work for you? And we reset  
3 the schedule of the case.

4 And he said, I'm not giving you -- and don't have counsel  
5 come in and ask for any more than that, pushed out the discovery  
6 and the depo, and the orders, I think, to the end of June, and  
7 pushed the tracking forward by 90 days total.

8 I work diligently to put the stuff together, because I want  
9 you to know the truth.

10 THE COURT: At the moment we're not talking about the  
11 overall schedule of this case.

12 MR. FIORILLO: Yes.

13 THE COURT: We are talking about --

14 MR. FIORILLO: Yes.

15 THE COURT: -- certain documentation and information that  
16 you've been ordered to provide.

17 MR. FIORILLO: Sure. 30 days, Your Honor.

18 THE COURT: You're asking for 30 more days to do that.

19 MR. FIORILLO: Yes.

20 THE COURT: And with respect to the payment into the  
21 dedicated property bank account of funds generated by the  
22 property, what is it that you have done and what are you asking  
23 for?

24 MR. FIORILLO: Yes, Your Honor, so in putting together what  
25 I could, I would work with Attorney Welnicki and I would provide

1 him offsets and set-offs. I'll work, unfortunately, with Mr.  
2 Sheehan. And I'll talk about my offsets and my out-of-pockets.  
3 And we will move forward to escrow monies.

4 But, again, if they're asking me to make mortgage payments  
5 in a home that they claim that I don't own, I'll pay it in to the  
6 Court under protest before I'll pay it to them. Unless, of  
7 course, they can let me just refinance the property like Brian  
8 had promised me to do. And I'll be the rightful owner I always  
9 have been.

10 But I'm willing to do anything and everything, full  
11 transparent and disclosure to tell the truth and stop these  
12 attorneys from selling false narratives that I'm a financial  
13 embezzler, my name is Ponzi, and I defrauded all these people,  
14 when I'm the guy with the \$20 million asset, that the Court well  
15 knows that if they just left me alone, I would take the \$20  
16 million in equity and put it in the Court. And we'll have the  
17 trial of the century some day soon, I hope.

18 THE COURT: All right. Thank you, Mr. Fiorillo. Mr.  
19 Welnicki.

20 MR. WELNICKI: I think it makes sense to take one step at a  
21 time here. First, on the Motion to Withdraw, I have no objection  
22 to Mr. --

23 THE COURT: There's not even a Motion to Withdraw. There's  
24 just a notification to me that Mr. Masterson no longer represents  
25 Mr. Fiorillo.



1 MR. WELNICKI: Correct. And Mr. Masterson --

2 MR. MASTERSON: And I would -- I'm sorry.

3 MR. WELNICKI: Mr. Masterson will have to speak to that  
4 because --

5 MR. MASTERSON: Yes, I'd like to address that, Judge.

6 THE COURT: Well, then let's pause. Mr. Masterson, you want  
7 to be heard on whether your client can fire you?

8 MR. MASTERSON: Yes -- well, not whether he can fire me,  
9 Judge. But I want to make clear for the record, because what Mr.  
10 Fiorillo filed today, which he didn't copy me on and I'm only  
11 looking at it on my phone because I assume he was unable to copy  
12 me, are misrepresentations.

13 THE COURT: I'm going to stop you right there. I don't  
14 think it's in your interest -- I don't think it's relevant to me  
15 that you air in public whatever disagreement you have with your  
16 now former client.

17 MR. MASTERSON: Well, I just want to make, Judge, that it  
18 does have a bearing on everything. And the only thing I'm  
19 saying, Judge, is I don't agree with what was in there.

20 However, Mr. Fiorillo was informed by me back at the early  
21 part of May that I was leaving my firm and going to another firm.

22 THE COURT: Mr. Masterson, again, I'm going to interrupt  
23 here.

24 MR. MASTERSON: And --

25 THE COURT: Mr. Masterson, let me interrupt please. I don't

1 understand how you have standing to be heard about your former  
2 client. I'm concerned about your ethical obligations to your  
3 former client. You seem to be wanting on the record to take a  
4 position adverse to your client.

5 MR. MASTERSON: No, I don't, Judge.

6 THE COURT: I don't understand why you would be trying to do  
7 that. And I don't see how it's relevant to anything that I need  
8 to address today.

9 MR. MASTERSON: The only thing I want to address, Judge, is  
10 that we were in the process of filing a Motion to Withdraw under  
11 Rule 9, which I had served -- I talked to Mr. Welnicki about  
12 under a 9C conference. I had served him that motion I think  
13 yesterday or the day before. So this was in process.

14 I have no objection to Mr. Fiorillo's termination. I just  
15 want to have it put on the record that we were following  
16 procedure. It wasn't -- I didn't want to not show up today.

17 THE COURT: And you're here and now it's clear on the record  
18 you're no longer representing Mr. Fiorillo in this matter.

19 MR. MASTERSON: Okay.

20 MR. WELNICKI: And, Your Honor, from my perspective, the  
21 only thing I would point out -- I obviously have no objection to  
22 the withdrawal.

23 What's contained in what Mr. Fiorillo filed today is a  
24 timing of when his counsel was fired. And that is relevant, I  
25 think, to what he's claiming now for an additional 90 days or

1 whether it's now 30 days for additional time on these documents.  
2 Because Mr. Fiorillo was represented by counsel as far as I was  
3 concerned at the very first hearing before Your Honor and the  
4 second --

5 THE COURT: I'm aware of that. I'm sorry, what point are  
6 you making, Mr. Welnicki?

7 MR. WELNICKI: What -- excuse me?

8 THE COURT: I'm aware of it. What point are you making?  
9 Cut to the chase please.

10 MR. WELNICKI: I'm just making -- I'm agreeing that Mr.  
11 Masterson resigned. But I'm not agreeing with the allegations  
12 Mr. Fiorillo makes about when he terminated Mr. Masterson.

13 THE COURT: And what difference does that make?

14 MR. WELNICKI: Well, it makes a difference if Mr. Fiorillo  
15 is claiming he needs additional time because Mr. Masterson was  
16 acting outside of his authority when we reached the agreement at  
17 some point that he would produce the documents.

18 THE COURT: What substantive response, if any, do you want  
19 to make to Mr. Fiorillo's request that I give him more time to  
20 comply with the Preliminary Injunction?

21 MR. WELNICKI: Sure, Your Honor. Your Honor, I do feel the  
22 need to correct some things on the record that he said, because  
23 it forms the background for why he's requesting additional  
24 information. The court dockets don't lie. The bank documents  
25 don't lie. The deeds don't lie here.

1 Mr. Sheehan is not a party in the other litigation matters  
2 that are going on. Mr. Fiorillo at one point attempted to bring  
3 Mr. Sheehan in and then withdrew the claims against Mr. Sheehan  
4 and everyone else.

5 With respect to the mortgage documents, the ownership  
6 documents, BSI 254 Westfield is the owner of this property. We  
7 don't have an affidavit before us. We don't have any other  
8 information that comports with what Mr. Fiorillo is saying about  
9 the ownership.

10 Mr. Fiorillo had a contract that required him to comply with  
11 the BSI's directives.

12 THE COURT: With respect, we have been through that in prior  
13 hearings.

14 MR. WELNICKI: Yeah. And as far as --

15 THE COURT: And that forms the basis for the Preliminary  
16 Injunction so --

17 MR. WELNICKI: Correct, Your Honor. And there's not a  
18 motion to undo the Preliminary Injunction or --

19 THE COURT: Not at this point, there is not. That's true.

20 MR. WELNICKI: -- or limit it.

21 THE COURT: That's why I've been asking you to get to  
22 address what's before me, the request that I give Mr. Fiorillo  
23 more time.

24 MR. WELNICKI: We have been giving Mr. Fiorillo more time  
25 and more time and more time. And the documents that he needs to

1 produce are critical to my clients. They're documents that  
2 relate to what the Bank needs. They're documents so we know what  
3 is going on.

4 Mr. Fiorillo says that he's been paying the utilities. My  
5 clients just got a notice from the water department that there's  
6 a \$10,000 overdue water bill. My clients were the ones that  
7 actually just paid \$8,000 to put propane in the pool tank so the  
8 pool could be heated.

9 MR. FIORILLO: Sorry.

10 MR. WELNICKI: This is stuff, Your Honor, I can back up.  
11 But this is, you know, hearing that he has put all this money in  
12 in the spreadsheets that he has provided, there's no back-up.  
13 There is no support. It's all stories that he's telling.

14 If there are supports, if he does have evidence that he's  
15 put \$550,000 worth of work into the property, this is something  
16 someone that manages property or deals with real estate should  
17 have at their fingertips.

18 On top of that, Your Honor, what we did receive from Mr.  
19 Fiorillo was a spreadsheet listing about 13 upcoming renters.  
20 And as Your Honor knows from the prior hearings, who's on the  
21 property, who's renting the property is a concern for our  
22 clients.

23 The property is currently listed for sale. Income is  
24 obviously coming in to the property going to Mr. Fiorillo but not  
25 being put in the Northern Bank operating account so the mortgage

1 can be paid. So things like insurance can be paid. My clients  
2 are paying the insurance on the property.

3 Of those, Your Honor, you ordered that he produce all the  
4 rental agreements. Of those 13 renters that are listed on the  
5 spreadsheet, only eight of them do we have copies of the rental  
6 agreements. So we don't even have that information.

7 We have not seen any money going to the Northern Bank  
8 operating account. We have not seen the property delisted off  
9 Mr. Fiorillo's personal and Vrbo websites. The keys have not  
10 been returned.

11 All these things that Your Honor ordered, you ordered after  
12 Mr. Fiorillo agreed to do them and then failed to do them.

13 Now, Your Honor ordered them. He still hasn't complied.  
14 And he's asking for some time because he's involved in other  
15 lawsuits and there's this giant conspiracy against him.

16 Enough is enough, Your Honor. There's got to be some  
17 compliance. There's got to be something to get him to comply  
18 with his obligations, with his promises, with your Court's  
19 orders.

20 So we're saying no additional time is needed. There should  
21 be some sanction on a daily basis until he complies. And I think  
22 we need to make clear that the money that should have been going  
23 into the operating account should be now paid into the operating  
24 account so we have some security, so the mortgagee -- because  
25 that bank operating account is in the name of the mortgagee -- so

1 the mortgagee knows that they're secured as well.

2 THE COURT: All right. So you mentioned the request for  
3 sanction of a fine on a daily basis.

4 First, I guess I need to make something clear. The  
5 Emergency Motion for Contempt under the Rules of Civil Procedure,  
6 contempt cannot be sought by a motion.

7 Rule 65.3 lays out the process. There has to be a  
8 complaint. The Court has to decide whether a summons should or  
9 should not issue. There's a 20-day period to answer. Eventually  
10 there's a trial. So contempt-type sanctions can't be sought any  
11 other way.

12 Rule 37 sanctions for violating a discovery order could be  
13 sought if there were a discovery order. But you haven't issued  
14 discovery. This is a Preliminary Injunction.

15 Here's what I think makes sense. First, everybody in this  
16 room, calm down. There is clearly an adversarial relationship  
17 between Mr. Fiorillo and Mr. Sheehan. That shouldn't be personal  
18 as for the lawyer who represents an entity controlled by Mr.  
19 Sheehan.

20 Before you two leave today, I want you to talk. And I am  
21 going to extend the deadline to June 30th to fully comply with  
22 the Preliminary Injunction.

23 But I want you to talk, because I think there are certain  
24 things that the Plaintiff in this case, not dealing with other  
25 cases right now, just BSI 254 Westfield, LLC, as the current

1 owner of the property is legitimately entitled to. And some of  
2 them, now that Mr. Fiorillo has had more time, he can probably  
3 produce fairly quickly, won't need until June 30th.

4 And so please, I want to request as strongly as possible,  
5 I'm going to try to refrain from ordering that you can use this  
6 room or the hallway might even be more private, frankly, figure  
7 out the key things that are in the Preliminary Injunction that  
8 the Plaintiff wants to be prioritized and you all can have a  
9 conversation about it, how Mr. Fiorillo can make that happen.  
10 And let's get it done.

11 MR. WELNICKI: Your Honor, a couple -- just a few points of  
12 clarification on that, because there are some things in the  
13 Preliminary Injunction Order that go beyond just documents.

14 It's having the money deposited into the operating account.  
15 We need to make that crystal clear that as rental income is  
16 coming in, money needs to go into that operating account to  
17 secure the Bank.

18 THE COURT: And that is the current order, Mr. Fiorillo. I  
19 understand once you get counsel, you may be asking me to  
20 reconsider the Preliminary Injunction based on a more fulsome  
21 record.

22 But right now there is a Court order that needs to be  
23 complied with in terms of the money obtained from renters going  
24 into the property account.

25 MR. FIORILLO: Your Honor, with you allowing me a little bit



1 of opportunity to give you a better background on the other side  
2 of the story, I think I can appease Attorney Welnicki.

3 But, again, he mentioned the Bank. I'm the obligor on the  
4 Note. They're claiming I don't own the property. I'm  
5 out-of-pocket when I give you the accounting that I have the  
6 moment's breath to turn over to you.

7 He mentions the heating bill of the pool. We don't heat the  
8 pool at the Dedham estate. It's a beautiful dark rimmed pool.  
9 The electric bills alone are 6 to \$7,000 a month that I pay.

10 The insurance and the interest carry has a reserve. But  
11 when this whole piece of litigation started, Northern Bank  
12 magically -- because they're an insider to Brian Sheehan -- shut  
13 off the interest reserve to carry the interest payments and then  
14 extorted me to pay, which I did.

15 I'm not here to do anything other than let the justice  
16 system know I am not who they proclaim that I am. And I'll work  
17 with Welnicki to put in front of you a fair and reasonable  
18 package between now and the 30th that will involve monies.

19 But in no way, shape or form would I put those monies into  
20 the bank that I'm the obligor that they say I don't own the  
21 property. I'll pay it to the Court.

22 And I think that's prudent, because, obviously, I have  
23 counterclaims. I have offsets. And I need time to get my, no  
24 pun intended, house in order to bring those. And just hearing a  
25 little bit of the side story, he's there now. We bought the

1 property, I did, for 3.3 million. Now it's listed for 8 million.

2 Can we ask Mr. Welnicki if he's aware of the beautiful  
3 renovations that took place in the property? Did they magically  
4 happen? Did his client prove to him that he spent the money to  
5 do it?

6 The granite alone was 28,000 in one kitchen. I paid all  
7 that. I just haven't had a chance to come in and tell my side of  
8 the story yet.

9 But I want to work with these guys. I want to be honest and  
10 truthful, because it will set me free and hopefully bring to  
11 justice the other guys that are against me.

12 So I'm asking that within the 30 days I will work with him.  
13 I am a reasonable person. I'm an obligor on a mortgage of a  
14 property I don't currently own. And I'm here full transparency  
15 to try to work this out.

16 I want to make reference, he said that I turned over eight  
17 contracts. There's a little discrepancy. Sometimes there are no  
18 physical contracts because of how revenue has been booked and  
19 it's done online. I don't have access to that. That comes out  
20 every quarter.

21 So I didn't mean to misrepresent or provide him something  
22 that wasn't necessarily transparent.

23 He never bothered to call me. He never had any efforts to  
24 do anything other than run in and try to put a knee on my neck  
25 for 200 grand, because I filed on Monday opposed to Saturday,

1 which would push over anyways. He never even bothered to  
2 confront or discuss what I was providing.

3 So I ask just for leave. I'll work with him. We'll talk  
4 with the Bank.

5 THE COURT: I think if you can find new counsel, that would  
6 be a good thing for you.

7 MR. FIORILLO: That would be wonderful, Your Honor. I don't  
8 want to --

9 THE COURT: But for now you're representing yourself and so  
10 passions aside, let's start the conversation out in the hallway  
11 to kind of fix this.

12 MR. FIORILLO: Thank you, Your Honor.

13 MR. WELNICKI: The money does need to be put in the Bank  
14 operating account. My clients are the primary mortgagor --  
15 mortgagee -- sorry, mortgagor on the property.

16 THE COURT: Are they making monthly payments?

17 MR. WELNICKI: They are making monthly payments now. They  
18 are making substantial monthly payments of the interest only  
19 default rate that's on it.

20 Mr. Fiorillo is a guarantor on the mortgage. And he's a  
21 guarantor for the very purpose of if something were to happen,  
22 property burned down or money goes missing, that's why he's  
23 involved with the mortgage.

24 THE COURT: As counsel knows, there is a Superior Court rule  
25 that requires conferring with the opposing party before filing

1 any motion.

2 MR. WELNICKI: Correct. And, Your Honor, I conferred with  
3 Mr. Masterson about all the motions.

4 THE COURT: And Mr. Masterson is no longer representing Mr.  
5 Fiorillo so --

6 MR. WELNICKI: That is correct, Your Honor.

7 THE COURT: So another reason why you're conferring is  
8 you're going to all work in good faith to try to solve the  
9 problem as opposed to having a judge solve the problem.

10 And if there's a need to come back, one side or the other or  
11 both will come forward with an appropriate motion.

12 MR. WELNICKI: Your Honor, final thing I would like to say  
13 is that, you know, I do not appreciate and I do feel the need to  
14 mention when there are accusations that I'm part of the  
15 conspiracy speaking with attorneys who I've never spoken with in  
16 my life, including Attorney Peters, I think it was mentioned.  
17 That's not helpful to the conversation.

18 If Mr. Fiorillo and I are going to have a meaningful  
19 dialogue, the emails where he threatens to go to the BBO against  
20 me have to stop.

21 If this were an attorney that I was dealing with, that would  
22 be something that would be unethical. I think it would be  
23 important -- I haven't sent any high rhetoric emails to Mr.  
24 Fiorillo or his counsel. I just think if we're going to take a  
25 step back and cool off a little bit, it has to be --

1 THE COURT: That means everybody needs to take a step back  
2 and cool off.

3 MR. WELNICKI: Your expectations I would hope would be that  
4 Mr. Fiorillo, although he's not an attorney, would adhere to the  
5 general principles of the ethical rules about not making baseless  
6 accusations or trumpeting up the rhetoric in communications.

7 THE COURT: Let's all stay focused on substance, all right.

8 MR. WELNICKI: And so then to recap, the Injunctive Relief  
9 Order is still in place with the exception of the timeframes only  
10 as far as the additional documents.

11 THE COURT: What I said was I'm going to enter an order that  
12 gives Mr. Fiorillo until June 30, 2022, to come into full  
13 compliance with the Preliminary Injunction.

14 And it is my expectation that you're going to work together  
15 so that Mr. Fiorillo can get there in increments and not save  
16 everything.

17 There may be some monies that have come in that he agrees  
18 can be put into the account to be paid -- used to pay property  
19 expenses, basically money that he would be using to pay property  
20 expenses anyway.

21 If a current title owner wants to have that run through an  
22 account where they then make the payment, I'm sure you all can  
23 reach agreement about that.

24 MR. WELNICKI: And, Your Honor, with respect to having the  
25 property listed on Vrbo and his personal website for rent for

1 future rentals or for entering into agreements concerning the  
2 property, we had gone over this the last few times.

3 I just want to make sure there's not going to be any future  
4 rentals of the property that are going to cause us to run back in  
5 on multiple occasions.

6 THE COURT: So you need to confer with Mr. Fiorillo, who is  
7 now representing himself, consistent with your obligations under  
8 Rule 9C and endeavor to reach an agreement on all of this. This  
9 I trust you can. All right.

10 MR. FIORILLO: Thank you, Your Honor.

11 MR. WELNICKI: Thank you, Your Honor.

12 THE COURT: Thank you all.

13 MR. MASTERSON: Thank you, Judge.

14 THE CLERK: Court stands in recess.

15 (Court recessed at 3:37.)

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C E R T I F I C A T I O N

I, Mary E. Phillips, a Registered Professional Reporter, do hereby certify that the foregoing is a true and accurate transcript to the best of my ability from the audio recording provided to me of the Suffolk Superior Court proceedings in the matter of BSI Westfield, LLC v Nicholas Fiorillo, held on Thursday, June 2, 2022.

I, Mary E. Phillips, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Mary E. Phillips, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

  
\_\_\_\_\_  
Mary E. Phillips  
Registered Professional Reporter  
Approved transcriber

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Date: July 25, 2022

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