STATE OF MAINE

SUPREME JUDICIAL COURT

EMERGENCY PETITION FOR REHEARING / MOTION TO RECONSIDER

Docket #: CV-21-138, CUM-23-165, CUM-22-423

Petitioner – Anthony Rinaldi &
Southern Maine Construction
SouthernMaineConstruction@gmail.com

Pros Se Petitioner Anthony Michael Rinaldi & Southern Maine Construction (collectively "Petitioner"), hereby Motion the Court to Reconsider their 12/20/23 Order Dismissing the Petitioners Writ of Mandamus as their order is **CLEARLY CONTRARY TO WELL ESTABLISHED MAINE LAW AND WELL ESTABLISHED SUPREME COURT PRECEDENCE (EMPHASIS ADDED) THE ORDER DISMISSING THE PETITIONERS WRIT FAILED TO DISCUSS THE MERITS OF HIS PETITION, FAILED TO APPLY PROPER CASE LAW AND FAILED THE PETITIONER ON A MONUMENTAL SCALE! THE SUPREME COURTS RESPONSE OR LACK THERE OF IS SIMPLY UNACCEPTABLE (EMPHASIS ADDED) WHETHER THE SUPREME COURT LIKES IT OR NOT THIS CASE WILL END UP IN THE HISTORY BOOKS SO THIS COURT SHOULD PROMPTLY RECONSIDER THEIR ORDER AND <u>ACTUALLY ADDRESS THE MERITS OF THIS CASE.</u>**

"It is the duty of every Court to protect and uphold the State and Federal Constitutions. A single justice of the Supreme Judicial Court, or of the Superior or any other statutory court, has the power to pass upon the constitutionality of a Statute if the question be in issue." Opinion of the Justices, 147 Me. 25, 31, 83 A.2d 213, 216 (1951) It is within the power, and is the duty as well as the function of this Court to safeguard and protect within the borders of this State the fundamental principles of government vouchsafed to us by the State and Federal

Constitutions. **We should be ever alert to exercise our constitutional authority not only to uphold and maintain the Constitution against direct attack, but also to repel so far as lies within our power the first step toward the invasion of its guaranties. This court has always accepted the challenge of this duty.** Morris v. Goss, 147 Me. 89, 106, 83 A.2d 556, 565(1951). "**This court has never hesitated to exercise its power and authority to protect the individual from an unconstitutional invasion of his rights by the legislative [or executive] branch[es] of government.**" Id. at 107, 83 A.2d at 565. We do not denigrate the significance of the oath that all judges take to uphold both Constitutions, but that oath does not confer a roving commission to seek out and correct violations

Judges must also adhere to the constitutional limitations on judicial power. The exercise of that power is not vested in judges, it is vested in courts; and the power of courts must be invoked by appropriate process. See, e.g., Carlson v. Oliver, 372 A.2d 226 (Me. 1977); Duncan v. Ulmer,159 Me. 266, 191 A.2d 617 (1963).

Defendant asks the Court to take judicial notice of the fact that he is without counsel, is not schooled in law and legal procedures, and is not licensed to practice law. Therefore his pleadings must be read and construed liberally. See Haines v. Kerner, 404 US at 520 (1980); Birl v. Estelle, 660 F.2d 592 (1981).

Further Defendant believes that this court has a responsibility and legal duty to protect any and all of Defendants constitutional and statutory rights. See United States v. Lee, 106 US 196,220 [1882

M.R.A.P. Rule 14 (b)(1)(A) states the following:

> "A motion for reconsideration of any decision of the Law Court, together with the fee specified in the Court Fees Schedule, shall be filed with the Clerk of the Law Court within 14 days after the date of that decision. The motion shall state with particularity the points of law or fact that the moving party asserts the Court has overlooked or misapprehended and shall contain such argument in support of the motion as the moving party desires to present".

The Supreme Court Erred as a Matter of Law when they dismissed the Petitioners Writ of Mandamus for the following reasons:

1. **Associate Justice Connors Order Dismissing the Writ of Mandamus was Completely void of any explanation regarding the merits and explanation why the Petitioner failed to meet their burden. Simply Restating Caselaw doesn't suffice**

2. **Associate Justice Connors misinterpreted and misapplied the well established law regarding Writ of Mandamus.**
3. **The Petitioners Right to Mandamus Regarding the Denial of their Constitutional Right to a Jury Trial is well established caselaw.**
4. **The Petitioners Right to Mandamus Regarding Justice O'Neils Refusal to Recuse is well established caselaw.**
5. **Justice O'Neil and Justice Horton Clearly Abused their Discretion and violated the Petitioners Constitutional Right to Due Process.**
6. **Stating that you're an LLC UNDER OATH DOESN'T MAKE IT SO. Under Maine Law a party must abide by statue 31 §1531 Formation of limited liability company; certificate of formation**
7. **Denial of the Petitioners Writ will cause the Petitioner irreparable Harm that can't be undone by Appeal.**
8. **Justice O'Neil's Denial of the Petitioners Summary Judgement wasn't a Discretionary decision but a ministerial decision because he only needed to apply law to facts and is bound by Star Decisis. Justice O'Neil was obligated to Grant the Petitioner's Summary Judgement for each of the following:**

a. **It is a fact that the Plaintiffs didn't present prima facie evidence during Summary Judgement.**
b. **It is a fact that the Plaintiffs didn't cite evidence during Summary Judgement.**
c. **It is a fact that the Plaintiffs didn't present the Required Affidavit during Summary Judgement.**
d. **It is a fact that the Plaintiffs didn’t refute the Petitioners Unclean Hands Defense during Summary Judgement.**
e. **It is a fact that the Plaintiffs didn’t refute the Petitioners Judicial Estoppel Defense during Summary Judgement.**

INTRODUCTION

If the Supreme Courts Order Dismissing the Petitioners Writ of Mandamus stands then it will undermine this courts consistent interpretation of the Mandamus Standard of Review and set a new and dangerous precedent regarding fraud on the court. Furthermore, this order would essentially close the door to the legal system for the Petitioner and endorse Justice O’Neil and Andrew Horton's biased and unconstitutional conduct towards the Petitioner.

The 12 page order issued by the Supreme Court Clearly Erred as a Matter of Law by misstating case law, not addressing the merits and it’s void of a valid

explanation for dismissing the Petition. The Petitioner has spent the past 34 months learning the law and fighting this Frivolous and Fraudulent lawsuit. To date the Petitioner hasn't mailed his complaints against Justice Horton or Justice O'Neil despite having them ready because it was never his intention to get anyone in trouble. It is his hope that this fraud on the court is over soon and everyone can go their separate ways. With that being said, the Order Dismissing the Petitioner's Writ of Mandamus **CLEARLY ERRED ASA MATTER OF LAW, MISSTATED WELL ESTABLISHED CASE LAW, WAS VOID A VALID EXPLANATION AND ALSO VIOLATED THE MAINE RULES OF JUDICIAL CONDUCT 2.15**

The Petitioner filed a Motion to Reconsider the Supreme Courts decision to remove the Petition from Justice Wayne Douglas and assign it to Justice Catherine Connors and for the entire court to review his Petition. Justice Catherine Connors is a graduate of Northwestern University which is the very same University that Attorney James Monteleone graduated from. Furthermore, Justice Connors and Justice O'Neil are neighbors and both live in the town of Kennebunk which is a close knit community. There is only 24 Justices that make up the Supreme Court and Superior Court so each Justice is familiar with each other and I believe it's fair to assume that Justice O'Neil and Justice Connors are closely connected given the fact that they are colleagues, neighbors and Justice Connors drives past Justice

O’Neil house on her way to work everyday. Furthermore, Justice Connors was sworn into the Supreme Court with Justice Andrew Horton and they also share the same law clerk and decide cases together on a regular basis. On top of all that is the fact that Justice Connors was assigned to the Supreme Court directly from Private practice, hasn't issued a single Justice order and she has limited Judicial experience compared to the other members of the Supreme Court. Given the aforementioned facts, the Petitioner doesn't understand why Justice Wayne Douglass wasn't assigned to write the order considering it was already assigned to him per SJC-213 In fact the Petitioner was told by the Supreme Court Clerk that Writs are automatically assigned to a particular Justice per SJC-213 which indicated that his Petition was automatically assigned to Justice Douglas. The Petitioner provided the Court with (8) Copies of his Writ of Mandamus and his order requesting the entire court hear his petition was granted so each Justice had a chance to read the Petition and each would have the ability to respond so the Petitioner doesn't understand why the order was written by Justice Connors considering the Petitioners primary concern with his Motion to Reconsider was Justice Connors’s close ties to the Respondents and Attorney Monteleone. Chief Justice Stanfill could have chosen any of the Justices to write the order and given the fact that Justice Douglas was assigned to Cumberland County makes him the

logical choice. **Furthermore, the Defendant never requested the court to hand pick another Justice versus following their own order which assigned the petition to Justice Douglas the moment the petition was filed. (Emphasis Added) It's extremely concerning that the Order Dismissing the Petitioners Writ was written by Justice Connors and is void of any explanation, misstates caselaw. refuses to address the Massive Fraud Perpetrated by the Plaintiffs and refuses to address Fraud on the Court.**

RELIEF REQUESTED

The Supreme Court should promptly Grant the Petitioners Motion to Reconsider, Grant the Relief Requested in the Writ of Mandamus and end this fraudulent litigation once and for all. Furthermore, the Petitioner didn't receive the court order until after Christmas and has only had a week to write this Motion so the Petitioner was unable to finish this Motion and asks the court to extend the deadline for filing this Motion if they choose not to Approve the Motion to Reconsider so that the Petitioner can file a proper Motion. **The caselaw is so overwhelming and the fact that the Plaintiffs have committed fraud on the court warrants immediate action by this court!**

1. **Associate Justice Connors Order Dismissing the Writ of Mandamus was <u>Completely void of any explanation regarding the merits</u> and reasoning why the Petitioner failed to meet their burden. Simply Restating Caselaw doesn't suffice.**

The following are statements from the (12) page order dismissing the Petitioners Writ of Mandamus.

a. **year earlier, in an "Amended ... Notarized Supplemental Affidavit of Anthony Rinaldi" filed in the trial court on July 18, 2022, however, Rinaldi stated, under oath, that he was "the owner and sole member of Southern Maine Construction LLC ('Souther [n] Maine Construction'), a Maine limited liability company.**

The Petitioner accidentally copies this from the first page of his first affidavit that was written by his previous attorney. His previous attorney got it from the Plaintiffs error so this statement doesn't prove anything and Justice Connors is acting as an advocate of the Respondents. STATING YOU AN LLC UNDER OATH DOESN'T MAKE IT SO! (EMPHASIS ADDED)

b. Rinaldi would prefer that this Court immediately of his challenges to specific rulings of the trial court. But, as noted above, a petition for mandamus is not the appropriate avenue for seeking an immediate interlocutory appeal. While a party may attempt to seek a review of the merits of a trial court ruling prior to a final judgment through a direct appeal (as Rinaldi previously attempted twice), the final judgment rule serves many important purposes.

THIS PARAGRAPH DOESN'T PROVE ANYTHING AND JUSTICE CONNOR'S IS WELL AWARE THAT THE PETITIONERS INTERLOCUTORY APPEALS MET NOT (1) BUT ALL (3) OF THE WELL ESTABLISHED EXCEPTIONS TO THE FINAL JUDGEMENT RULE.

c. For these reasons, even if we treated this petition as a motion for the Court to reconsider Justice Horton's dismissals of Rinaldi's previous interlocutory appeals, and even if we found such a motion timely, and even if we found that such dismissals by Justice Horton were reviewable by the entire court, such a motion would not succeed on the merits because the final Judgment rule would apply.

THIS PARAGRAPH DOESN'T PROVE ANYTHING AND JUSTICE CONNOR'S IS WELL AWARE THAT THE PETITIONERS INTERLOCUTORY APPEALS MET NOT (1) BUT ALL (3) OF THE WELL ESTABLISHED EXCEPTIONS TO THE FINAL JUDGEMENT RULE.

d. Like Rinaldi's other requests to review the substance of the trial court rulings, the request for Justice O'Nell to recuse himself calls for the justice to perform a discretionary act. See In re J.R, 2013 ME 58, 19 16-17, 69 A.3d 406 (holding that motions to recuse call for judges to exercise their discretion and orders on motions to recuse are reviewed for abuse of discretion). Hence, the relief requested is beyond the scope of mandamus relief.

See Young v. Johnson, 161 Me. 64, 69, 207 A.2d 392, 395 (1965). The court is governed by the procedural requirements of M.R.Civ.P. 80B and advised by the common law principles that governed the writ. It is well established that mandamus can be used to compel officials to perform only mandatory; not discretionary, functions, **although it may be used to compel them to exercise their discretion. See id. 161 Me. at 69, 207 A.2d at 395** York Register v. York County Probate Court 2004 Me. stating that when the Maine Supreme Judicial Court sits as a court of law it may hear "all questions arising in cases in which equitable relief is sought"), inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy"); 4 M.R.S.A. § 57 (Supp. 2003) Therefore, unsuccessful petitioners have the right to judicial recourse when they **claim that the municipal officers abused their**

statutory discretion. Id. Such an argument is within the scope of a mandamus action, id., because, presumably, **when a decision is non-discretionary (that is, beyond the bounds of discretion), it is ministerial**. The Maine Supreme Court has the **power to direct any inferior tribunal to cease abusing its power or usurping judicial functions that did not rightly belong to i**t." R. Field V. McKusick, Maine Civil Practice § 81.6, at 617 (1st ed. 1959) Northeast Invest. Co. v. Leisure Liv. Com Socec v. Maine Turnpike Authority, 1957, 152 Me. 326, 129 A.2d 212

e. Similarly, Rinaldi may challenge the denial of the trial Justice's motion to recuse on a direct appeal, rendering relief under the writ unavailable. Of In re Michael M., 2000 MB 204, 1 8, 761 A.2d 865; Yarcheski v. P&K Sand & Gravel, Inc, 2015 ME 71, 1 4, 1.17 A.3d 1047.

There is a mountain of case law the supports Mandamus to address Recusal.

f. We note that Rinaldi's petition relies heavily on facts, arguing that the plaintiffs lack evidence to support their case against him and that in the summary judgment process, Rinaldi presented substantial amounts of evidence that the plaintiffs failed to refute. (Petition at 9.) As noted above,

the need for extensive factual review is a reason to confirm the applicability of the final judgment rule rejecting an interlocutory appeal.

WOW, IN OTHER WORDS THE COURT IS SAYING, "YES, THE PLAINTIFFS HAVE NO EVIDENCE AND MADE A MOCKERY OF THE COURT SYSTEM BUT SINCE YOUR EVIDENCE IS SO OVERWHELMING AND CLEAR WE MUST DENY YOUR PETITION! THIS STATEMENT ISN'T SUPPORTED BY CASE LAW AND THE FINAL JUDGEMENT RULE CLEARLY DOESN'T APPLY CONSIDERING ALL THREE EXCEPTIONS ARE MET! (EMPHASIS ADDED)

g. Additionally, mandamus does not lie when the law requires a court to make a "decision of a question of fact." Young v. Johnson, 161 Me. 64, 70, 207 A.2d 392, 395 (1965).

See Young v. Johnson, 161 Me. 64, 69, 207 A.2d 392, 395 (1965). The court is governed by the procedural requirements of M.R.Civ.P. 80B and advised by the common law principles that governed the writ. It is well established that mandamus can be used to compel officials to perform only mandatory; not discretionary, functions, **although it may be used to compel them to exercise their discretion. See id. 161 Me. at 69, 207 A.2d at 395** York Register v. York County Probate Court 2004 Me. stating that when the Maine Supreme Judicial

Court sits as a court of law it may hear "all questions arising in cases in which equitable relief is sought"), inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy"); 4 M.R.S.A. § 57 (Supp. 2003) Therefore, unsuccessful petitioners have the right to judicial recourse when they **claim that the municipal officers abused their statutory discretion**. Id. Such an argument is within the scope of a mandamus action, id., because, presumably, **when a decision is non-discretionary (that is, beyond the bounds of discretion), it is ministerial**. The Maine Supreme Court has the **power to direct any inferior tribunal to cease abusing its power or usurping judicial functions that did not rightly belong to i**t." R. Field V. McKusick, Maine Civil Practice § 81.6, at 617 (1st ed. 1959) Northeast Invest. Co. v. Leisure Liv. Com Socec v. Maine Turnpike Authority, 1957, 152 Me. 326, 129 A.2d 212

h. Even accepting all of Rinaldi's factual assertions as true, the Court cannot compel the Superior Court to make a particular ruling on summary judgment or dismissal.

I'M SPEECHLESS!! WOW

i. **The requests that this Court "report Justice O'Nell and Attorney James Monteleone to the appropriate conduct boards]" are dismissed because the complaint he has regarding the conduct of a judge to the Committee on Judicial Conduct and any complaint regarding an attorney to the Board of Overseers of the Bar. With respect to Judges, the Maine Supreme Judicial Court has constitutional and statutory authority to regulate the professional conduct of judges. Me. Const. art. VI, § 1; In re Nadeau, 2007 ME 21, 1 9, 914 A.2d 714. Under this authority, the Court has established the Committee on Judicial Conduct. Nadeau, 2007 ME 21, T 8, 914 A.2d 714. The Committee hears Initial complaints and assesses them… Thus, the Committee hears complaints in the first instance via a report by the complainant. Hence, should he conclude that there is a basis for a report under the Rules of Judicial Conduct, Rinald's avenue for rellef Is to file a complaint with the Committee on Judical Conduct. He may make a complaint to the Committee and follow the procedure established through this Court's**

RULE 2.15 IS CLEAR THAT A JUSTICE MUST REPORT UNETHICAL CONDUCT. IT DOESN'T SAY IT MAY OR SHOULD BUT IT MUST REPORT UNETHICAL CONDUCT. FURTHERMORE, <u>THE SUPREME COURT ORDER ESSENTIAL DOES THE OPPOSITE BECAUSE THE ARE NOW AIDING AND ABETTING THE RESPONDENTS.</u>

2. Associate Justice Connors misinterpreted and misapplied the well established law regarding Writ of Mandamus.

See Young v. Johnson, 161 Me. 64, 69, 207 A.2d 392, 395 (1965). The court is governed by the procedural requirements of M.R.Civ.P. 80B and advised by the common law principles that governed the writ. It is well established that mandamus can be used to compel officials to perform only mandatory; not discretionary, functions, **although it may be used to compel them to exercise their discretion. See id. 161 Me. at 69, 207 A.2d at 395** York Register v. York County Probate Court 2004 Me. stating that when the Maine Supreme Judicial Court sits as a court of law it may hear "all questions arising in cases in which equitable relief is sought"), inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy"); 4 M.R.S.A. § 57 (Supp. 2003) Therefore, unsuccessful petitioners have the right to judicial recourse when they **claim that the municipal officers abused their statutory discretion**. Id. Such an argument is within the scope of a mandamus action, id., because, presumably, **when a decision is non-discretionary (that is, beyond the bounds of discretion), it is ministerial**. The Maine Supreme Court has the **power to direct any inferior tribunal to cease abusing its power or usurping judicial functions that did not rightly belong to i**t." R. Field V. McKusick, Maine

Civil Practice § 81.6, at 617 (1st ed. 1959) Northeast Invest. Co. v. Leisure Liv. Com Socec v. Maine Turnpike Authority, 1957, 152 Me. 326, 129 A.2d 212 (interlocutory issue — whether the proceeding was in equity or at law with the right to jury trial involved); Northland Industries, Inc. v. Kennebec Mills Corporation, 1965, 161 Me.455, 214 A.2d 100 (ruling that assignee was not a party in interest because of purportedly invalid assignment); Loyal Erectors, Inc. v. Hamilton Son, Inc., 1973, Me., 312 A.2d 748 (discharge of trustee); Cranston v. Commercial Chemical Corp., 1974, Me., 324 A.2d 301 (dissolution of attachment of real estate). In Penobscot Bar v. Kimball, 64 Me. 140, the attorney had been convicted of forging a deposition used by him in a suit against his wife for a divorce; and though pardoned for the crime, the fraud upon the court remained, and for that and for other disreputable practices and professional misconduct, rendering him "unfit and unsafe to be intrusted with the powers, duties, and responsibilities of the legal profession," he was disbarred. (absent a special factor of manifest injustice) Chequinn Corporation v. Mullen et al., 159 Me. 375, 193 A.2d 432 (1963)

The All Writs Act, 28 U.S.C. § 1651(a), confers the power of mandamus on federal appellate courts. LaBuy v. Howes Leather Co., supra. Mandamus may be appropriately issued to confine an inferior court to a lawful exercise of prescribed

jurisdiction, or when there is an usurpation of judicial power. See Schlagenhauf v. Holder, 379 U.S. 104 (1964). First, the petitioner must show that there are "no other adequate means to attain the relief he desires." Cheney v. U.S. Dist. Court, 542 U.S. 367, 380, 124 S. Ct. 2576, 159 L.Ed.2d 459 (2004). Second, the court "must be satisfied that the writ is appropriate under the circumstances." Id. at 381, 124 S. Ct. 2576. And third, the petitioner must show a "clear and indisputable right to the writ." Id. Before this court are "issues that implicate not only the parties' interests but those of the judicial system itself." United States v. Bertoli, 994 F.2d 1002, 1014 (3d Cir. 1993). Preeminent are questions about the abridgment of the Petitioners Constitutional Right to a Jury Trial. Also critical, however, are tactics suggesting the abusive manipulation of Maine court procedures in order to delay or altogether avoid meaningful merits consideration of Petitioners claims. "A district court by definition abuses its discretion when it makes an error of law." Koon v. United States, 518 U.S. 81, 100, 116 S. Ct. 2035, 2047 (1996) (citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 2461 (1990) ("a district court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law")). Where the right was clear and indisputable, mandamus issued to compel a lower court to release a boat under an assertion of the immunity of a foreign sovereign. Spacil v. Crowe, 489 F.2d 614

(5th Cir. 1974). It has been utilized to compel the issuance of a bench warrant. Ex parte United States, 287 U.S. 241, 248 (1932). Mandamus may be appropriately issued to confine an inferior court to a lawful exercise of prescribed jurisdiction, or when there is an usurpation of judicial power. See Schlagenhauf v. Holder, 379 U.S. 104 (1964).

The Petitioner presented an overwhelming amounts of evidence proving a Writ of Mandamus was warranted but regardless the Supreme Court has an obligation to address the merits of the Petition and didn't present any reasoning or logic for their denial of the Petitioners Writ. Misstating caselaw does nothing to prove or disprove the Writ. <u>The Supreme Court doesn't have the right to deny this writ because the evidence is clear and overwhelming and they are bound by law!! (EMPHASIS ADDED)</u>

3. The Petitioners Right to Mandamus Regarding the Denial of their Constitutional Right to a Jury Trial is well established caselaw.

Preeminent are questions about the abridgment of the Petitioners Constitutional Right to a Jury Trial. Also critical, however, are tactics suggesting the abusive manipulation of Maine court procedures in order to delay or altogether avoid meaningful merits consideration of Petitioners claims. “A district court by

definition abuses its discretion when it makes an error of law." Koon v. United States, 518 U.S. 81, 100, 116 S. Ct. 2035, 2047 (1996) (citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S. Ct. 2447, 2461 (1990) ("a district court would necessarily

The law is well settled on the Petitooners right to a Jury Trial and his right to mandamus regarding the denial of a Jury Trial so it's Unconscionable that the Supreme Court would cite two non binding cases as justification for denying the Petitioners Right to Mandamus. Furthermore, the Petitioner has a right to mandamus if his only claim was regarding the denial to a Jury Trial <u>but if you couple that with Justice O'Neil and Justice Horton's refusal to address the Merits, refusal to recuse themselves, refusal to address fraud on the court and erring as a matter of law over (40) times it's insane to think the Petitioner doesn't have a right to a Writ of Mandamus. (EMPHASIS ADDED)</u>

4. **The Petitioners Right to Mandamus Regarding Justice O'Neils Refusal to Recuse is well established caselaw.**

In Liljeberg v. Health Serv. Acquisition Corp., 486 U.S. 847, 862-64 (1988), the Supreme Court discusses whether or not a violation warranted recusal and whether a Writ of Mandamus is a remedy to force recusal by court order, stating,

"A conclusion that a [Section(s) 455(a)] violation occurred does not, however, end our inquiry. As in other areas of the law, there is surely room for harmless error committed by busy judges who inadvertently overlook a disqualifying circumstance. There need not be a draconian remedy for every violation of 455(a) . . . . We conclude that in determining whether a judgment should be vacated for a violation of Section(s) 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process.

*****See Writ of Mandamus, Motion to Recuse, Motion to Reconsider Recusal and the mountain and mountains of case law that allow a Writ of Mandamus to address a Justice Refusal to Recuse themselves. <u>The appearance of bias is the only thing for recusal to be required so it's unconscionable that Justice O'Neil is refusing to recuse himself given that fact that "ACTUAL BIAS HAS BEEN PROVEN"</u>**

5. **Justice O'Neil and Justice Horton Clearly Abused their Discretion and violated the Petitioners Constitutional Right to Due Process.**

Robbins v. Bangor Ry. Elec. Co., 100 Me. 496, 503, 62 A. 136, 139 (1905) (mandamus "does not lie at the suit of an individual . . . [unless] his personal and particular rights have been invaded beyond those that he enjoys as a part of the public, and that are common to everyone"). "What process is due" a Petitioner under the due process clause of the Fifth and Fourteenth amendments requires the court to weigh: (1) "the private interest that will be affected by the official action" and (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards];]" against (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 333-35 (1976). Northeast Invest. Co. v. Leisure Liv. Com questions of law of such importance as to require review before any further proceedings are taken in the action. This expansion of the statute was made at the time of the adoption of the new rules of civil procedure in 1959. See Public Laws, 1959, c. 317, s. 69. This new procedure was intended to be additional to the numerous exceptions to the final judgment rule, which our Court has long recognized in those instances in which the peculiar character of the question involved hardly admits of postponement, if any benefit is to be derived from it by the aggrieved party. See Stevens v. Shaw, 1885, 77 Me. 566, 1 A. 743

6. **Stating that you're an LLC UNDER OATH DOESN'T MAKE IT SO. Under Maine Law a party must file abide by statue 31 §1531 Formation of limited liability company; certificate of formation**

7. **Denial of the Petitioners Writ will cause the Petitioner irreparable Harm that can't be undone by Appeal.**

Being deprived the Constitutional Right to a Jury Trial can't be undone after a bench trial therefore the Defendant will be irreparably harmed if the Supreme Court doesn't intervene. Furthermore, the Petitioner requested 6 days to present his case and is being given 1.5 days which will also include (2) Motion in Limine, Motion for Contempt and Several other undecided orders. Given the fact that all those things need to be addressed in such a small amount of time means the Petitioner will be unable to present a complete defense which is a violation of Due Process. Justice O'Neil is also threatening to default the Petitioner for not having counsel due to Plaintiffs LLC Error would severely deprive the Defendant of Due Process. Justice O'Neil issued an order stating that if the Petitioner objects at trial and is overruled then he will be sanctioned. This is likely to limit objections and therefore limit the record

presented to the court. The Defendants Appeal will likely be denied due to the LLC rule therefore the Defendants will be irreparably harmed if the Supreme Court doesn't Intervene. The Plaintiffs refuse to turn over text messages between the Plaintiff and his Realtor even though Justice O'Neil demanded them to which can't be undone on appeal. Furthermore, Justice O'Neil erred as a matter of law over (40) times, has allowed a massive fraud and frivolous lawsuit to clog the judicial machinery so it's highly unlikely that the Petitioner will be given a fair trial. THE AMOUNT OF EGREGIOUS CONDUCT IN THIS LITIGATION IS SO UNCONSCIONABLE THAT IT WOULD SHOCK THE SENSE OF ANY PERSON.

8. **Justice O'Neil's Denial of the Petitioners Summary Judgement wasn't a Discretionary decision but a ministerial decision because he only needed to apply law to facts and is bound by Star Decisis. Justice O'Neil was obligated to Grant the Petitioner's Summary Judgement.**

An official action is **not ministerial unless "the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command.**" Wilbur v. United States, supra; See United States ex rel. McLennan v.

Wilbur, 283 U.S. 414, 420 (1931); ICC v. New York, N.H. & H.R. Co., 287 U.S. 178, 204 (1932); United States ex rel. Girard Trust Co. v. Helvering, supra; Will v. United States, 389 U.S. 90 (1967); Donnelly v. Parker, 486 F.2d 402 (D.C. Cir. 1973). York Register v. York County Probate Court 2004 Me. stating that when the Maine Supreme Judicial Court sits as a court of law it may hear "all questions arising in cases in which equitable relief is sought"), inferior courts for the prevention and correction of errors and abuses where the law does not expressly provide a remedy"); 4 M.R.S.A. § 57 (Supp. 2003) Therefore, unsuccessful petitioners have the right to judicial recourse when they claim that the municipal officers abused their statutory discretion. Id. Such an argument is within the scope of a mandamus action, id., **because, presumably, when a decision is non-discretionary (that is, beyond the bounds of discretion), it is ministerial.**

The Law Court has held that "[j]udicial review of agency inaction or failure to act. . . [is] available to the same extent that the writ of mandamus was available at common law." Annable v. Bd. of Envtl. Prot, 507 A.2d 592, 593-94 (Me. 1986). "**Mandamus was appropriate to compel an agency to take action that the agency was legally bound to take**." Id. at 594.

A. It is a fact that the Plaintiffs didn't present prima facie evidence during Summary Judgement.

It is a fact that the Plaintiffs failed to present Prima Facie Evidence during Summary Judgement. Not only does the law require Justice O'Neil to Grant the Petitioners Summary Judgement but it's unconscionable that it's almost been (3) years and the Plaintiffs don't have any evidence or witnesses.

B. It is a fact that the Plaintiffs didn't cite evidence during Summary Judgement.

C. It is a fact that the Plaintiffs didn't present the Required Affidavit during Summary Judgement.

D. It is a fact that the Plaintiffs didn't refute the Petitioners Unclean Hands Defense during Summary Judgement.

E. It is a fact that the Plaintiffs didn't refute the Petitioners Judicial Estoppel Defense during Summary Judgement.

CONCLUSION

THIS IS THE WORST ABUSE OF THE LEGAL SYSTEM IN MAINE HISTORY and the Defendants has **CRYSTAL CLEAR PROOF** that Justice John O'Neil is intentionally

depriving the Defendant of Due Process and Attorney Monteleone has blatantly disregarding the law.

The Petitioner's attempts to obtain relief, on merits, have been exhausted and proven to be unobtainable in the lower courts, given the conflict of interest, fraud on the court and biased judicial process. **See AUDIO Exhibits HHH – UUU** There is no other forum, recourse, other than this court, to seek justice. Petitioner simply wants the same rights as every other litigant and wants Justice to be served (EMPHASIS ADDED) Both lower courts, the Superior Court, and the Law Court have obstructed justice by shutting petitioner out, despite petitioner, doing everything necessary to obtain justice on the merits. Both courts summarily dismissed the claims, for no good cause, simply to avoid addressing them on its merits.

It's been over 2.5 years and the Plaintiff's haven't presented a single piece of evidence to support their frivolous claims. Their only remaining witness is the Plaintiff and during a recent deposition they stated under oath that they don't know why the closing fell through Ex BB at 35 ¶ 3-7 and answered "I don't remember" to the vast majority of questions.

The Supreme Court has a Legal Obligation to take this serious. **This Writ of Mandamus satisfies the requirements set out in Dennett v. Mfg. Co.**

Furthermore, the court has the authority to do as it wants if Justice so requires so it would be Unconscionable to not take this Writ serious given the NOTABLE FACTS below. (EMPHASIS ADDED)

NOTABLE FACTS

1. PLAINTIFFS ADMITTED THEIR ORIGINAL LAWSUIT IS ALL FALSE

99.9% of the time a party gets in big trouble if they are caught red handed intentionally lying and deceiving the court.

2. THE PLAINTIFFS AND ATTORNEY MONTELEONE HAVE TOLD OVER (30) LIES

(1) lies is too many so it's a disgrace to the legal system for Justice O'Neil to allow this conduct and for Unethical BernsteinShur Attorney James Monteleone to intentionally deceive the court.

3. JUSTICE JOHN O'NEIL HAS BLATANTLY DISREGARDED THE LAW AND DUE PROCESS

Justice O'Neil has erred as a matter of law over (40) times, affirmed multiple boilerplate objections, deprived the Defendant's right to be heard, has threaten

to unfairly default the Defendant and refuses to address the Plaintiffs egregious conduct.

Justice O'Neil denied the Defendants request for a jury trial, isn't allowing oral opening and closing statements at trial and continues to threaten the Defendant with Default because he doesn't have an Attorney even though Sole Proprietors can represent themselves Pro Se. **This case is a textbook example of what not to do as an Attorney or Judge**

4. THE PLAINTIFFS DON'T HAVE A SINGLE PIECE OF EVIDENCE SUPPORTING THEIR CASE

The Defendant presented a mountain of evidence during summary judgment and the Plaintiffs were unable to refute any of it, failed to present any evidence, failed to cite evidence, failed to submit an affidavit and failed to present a Prima Facie Case. The Defendant brought this to Justice O'Neil's attention during a Motion Hearing on April 11th, 2023 but Justice O'Neil responded by stating, "Due to the Celotex Doctrine the Plaintiffs don't need to do anything but Object, Deny and Cite Evidence" Justice O'Neil also stated that the Plaintiffs don't need to present Prima Facie evidence to survive summary judgment and that unclean

hands and judicial estoppel are inappropriate during Summary Judgment. See Exhibit Audio Files

5. THE DEFENDANT'S STORY HASN'T CHANGED

The Defendant has a mountain of evidence which proves without question exactly who breached the contract. This evidence is crystal clear and unambiguous!!

6. JUSTICE O'NEIL ALMOST ALWAYS RULES AGAINST PRO SE LITIGANTS

7. PLAINTIFFS EVIDENCE:

(0) Texts or Emails supporting their position.

(0) Recordings

(0) Affidavits Submitted during Summary Judgment

(4) Perjurious Affidavits

(5) Different Stories told (All Lies)

****PLAINTIFFS ADMITTED ORIGINAL FILING IS ALL FALSE.**

8. DEFENDANTS EVIDENCE:

- **(20+) Text indicating that the Buyers Willfully Breached the Contract.**
- **(2) Recordings containing multiple statements by the Plaintiffs Star Witness that indicate the Plaintiffs Willfully Breached the Contract.**
- **The Defendants story hasn't changed**
- **The Defendant stated (4) times that he has the legal right to walk on the day of closing and nobody refuted him or gave any indication that he was wrong.**
- **The Plaintiffs have conceded that they mislead the Defendant into thinking he was LEGALLY terminating the contract based off their Repudiation but Attorney Monteleone believes that's ok.**
- **Evidence from text and recordings show that the Defendant and the Plaintiffs Star Witnesses all agreed regarding the interpretation of the paving.**
- **The Plaintiffs asked for $80,000 plus in upgrades and REFUSED TO PAY and is now suing because they want the proceeds from the upgrades.**

9. AFFIRMATIVE DEFENSES:

- **Judicial Estoppel**
- **Unclean Hands Doctrine**

- **Undue Influence**
- **Duress**
- **Failure of Consideration**
- **Anticipatory Repudiation**
- **No Evidence by Plaintiffs**
- **Fraud**
- **Failure to Mitigate**
- **Waiver**
- **Offset**
- **Material Misrepresentation**