

State of Maine
Cumberland, SS

Superior Court
Civil Action
Docket No. CV-2021-138

Drew Pierce & Janice Lariviere,
Plaintiff,
vs.
Anthony M Rinaldi & Southern Maine
Construction,
Defendant.

MOTION TO RECUSE

M.R.Civ.P. RULE 63(b)(2)(A)

Pros Se Defendant Anthony Michael Rinaldi & Southern Maine Construction (collectively “Defendants”), hereby Motion the Court to Recuse Justice Billings pursuant to Rule 63(b)(2)(A) of the MRCP.

The actions described herein were not the actions of a confused Justice rather of one acting in a knowing, intelligent and deceptive manner. One of a Justices biggest duties is to protect the integrity and fairness of the legal system as the constitution intended which includes punishing egregious conduct in order to protect, preserve, and vindicate the authority and dignity of the judicial system and to deter future defiance. Furthermore, the Defendant has been deprived Due Process on a monumental scale and Justice Billings picked up right where Justice O’Neil left off and is intentionally ignoring well established case law (EMPHASIS ADDED)

LEGAL STANDARD:

The MRCP Rule 63 (b)(2) states, “On the Motion of a Party. A party may move for a judge to recuse if the party has a good faith basis for requesting recusal. The grounds for requesting a recusal are stated in the Code of Judicial Conduct. When a party moves for a judge to recuse,

the party must include in the motion an assertion of the factual grounds supporting recusal and file with the motion one or more affidavits demonstrating an evidentiary basis for those facts.

The standards for recusal or disqualification are set forth in the Maine Code of Judicial Conduct at Rules 2.11 and 3.11 and the Advisory Notes to those Rules provide guidance for application of the revised Rule 63 and should be consulted when questions arise regarding disqualification and recusal issues. Generally, a judge must recuse on motion made by any party only if (i) the judge's "impartiality might reasonably be questioned" or (ii) the judge has a "personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding." *Charette v. Charette*, 2013 ME 4, ¶ 21, 60 A.3d 1264; *Decambra v. Carson*, 2008 ME 127, ¶ 8, 953 A.2d 1163; see also *Hughes v. Black*, 156 Me. 69, 74-81, 160 A.2d 113, 116-19 (1960) The statute '**forbids not only the reality of partiality but its objective appearance as well.**'" *United States v. Pulido*, 566 F.3d 52, 62 (1st Cir. 2009) (quoting *United States v. Snyder*, 235 F.3d 42, 45 (1st Cir. 2000)); see also *Snyder*, 235 F.3d at 45 As the Supreme Court has pithily characterized '**Quite simply and quite universally, recusal [i]s required whenever "impartiality might reasonably be questioned."**' (quoting *Liteky v United States*, 510 U.S. 540, 548 (1994)). Recusal requires "**that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge.**" *In re United States*, 441 F.3d 44, 68 (1st Cir. 2006)

SUMMARY

The Defendant has the utmost respect for the law and holds no ill will towards Justice Billings but enough is enough. This case is the WORST ABUSE OF THE LEGAL SYSTEM IN MAINE

HISTORY and Justice Billings refuses to hold the Plaintiffs accountable and is intentionally depriving the Defendant Due Process!.

RECENT FILINGS & HEARING

On 1/29/24 the Defendant filed a Motion to Dismiss 12(b)1 because the Court doesn't have Jurisdiction due to the Plaintiffs damages being hypothetical and their inability to prove causation. The Defendant's Motion to Dismiss states the following arguments:

- 1. The Court Lacks Jurisdiction – The Plaintiffs Lack Standing because their alleged damages are hypothetical and speculative not concrete and actual.**
- 2. The Court Lacks Jurisdiction – The Plaintiffs Lack Standing because the Plaintiffs failed to show that the injury is “Fairly traceable to the Defendants actions”**
- 3. The Court Lacks Jurisdiction – The Plaintiffs Lack Standing because the Plaintiffs failed to show that their injury “Will be redressed by a favorable decision”**
- 4. The Court Lacks Jurisdiction – The Plaintiffs Lack Standing because their alleged damages were completely offset by the unpaid upgrades and work done after March 5th therefore the Plaintiffs weren’t damaged.**

It's CRYSTAL CLEAR that the Defendant’s Motion to Dismiss is concerning Standing and the Plaintiffs failure to meet any of the three requirements of standing proves WITHOUT QUESTION THAT THE COURT DOESN’T HAVE JURISDICTION. A Motion to Dismiss text the legal Sufficiency of the Plaintiffs claim which is well established law so Justice Billings is very familiar with it. If a Judge is made aware that the court doesn't have jurisdiction he should dismiss the complaint on his own accord sue sponte. Nonetheless, the following transcript is from the 3/21/24 Motion Hearing: (Exhibit A Full Transcript),

JUSTICE BILLINGS: I mean, generally, motions to dismiss test the legal sufficiency of the complaint. So the plaintiff says A, B, and C, and the motion to dismiss is even if A, B, and C are true, there would be no legal claim here. I mean, you're effectively arguing, I mean, well, first you argue this jurisdictional issue, but there's no question that they argue that the claimed events occurred in the state of Maine, correct?

DEFENDANT RINALDI: That's correct.

JUSTICE BILLINGS: So why wouldn't a Maine court have jurisdiction?

DEFENDANT RINALDI: Because there's no injury. There's no concrete or particular injury. It's all hypothetical.

JUSTICE BILLINGS: Well, the plaintiffs say otherwise, so that's a disputed fact.

DEFENDANT RINALDI: Well, they even state that they never, if they bought, hypothetically, if they purchased another house, they'd be damaged, or hypothetically, if they win, I have to pay attorney fees. So their allegations are, they're stating these are hypothetical injuries, as stated.

JUSTICE BILLINGS: But you also argue that there's no jurisdiction to the court because the plaintiffs are out-of-state litigants, correct?

DEFENDANT RINALDI: I just wanted to point that out. It wasn't an argument.

DEFENDANT RINALDI: when we went for summary judgment, they failed to prove prima facie. We had a hearing. I pointed that out. And then I even, after, when I got the ruling, I then filed a pretrial motion pointing out that they still failed to prove prima facie. And Justice O'Neill said, well, they get to prove it during trial, which isn't your standard. I mean, prima facie is really the basic. It's been three years, and they don't have any evidence. They don't have any witnesses.

JUSTICE BILLINGS: Basically, your motion is asking for trial before the trial. Why wouldn't we just have the trial? If it turns out the plaintiffs have no evidence to support their claims, the court can deal with that. But for me to find, you know, this conspiracy and frivolous, I mean, I'd have to hear evidence. Those are claims that have to be supported by facts. The court would have to find facts before being able to make, to take that action. So why wouldn't we just have a trial?

DEFENDANT RINALDI: So I've looked at countless motions to dismiss as well as motions for sanctions. I mean, I've read a crazy amount because my biggest fear was to file something that wasn't proper. Everything I've filed has been proper, supported by evidence. And I made sure not to file anything I, or allegedly.

JUSTICE BILLINGS: Here's what you're saying. No, I understand. You use terms like supported by evidence. So for, I mean, you know, evidence is not just your arguments.

DEFENDANT RINALDI: I understand So when I filed it, I basically used other ones as a template, and I presented all the evidence. I presented everything I needed to show you that this, what I'm alleging is in fact true. There's all the supporting evidence. There's all the case law. I mean, it is as clear as day. And at the very least, he should have to respond to it considering, you know, it didn't meet any of the, you know, requirements for standing. And the court has very limited resources. Why should we have a trial if they can't prove standing?

JUSTICE BILLINGS: But, well, one could suggest that your motions have taken up more time and judicial resources than a trial would take up. So it's hard to take your concerns about judicial resources seriously. I mean, in your own motion, you listed the multitude of motions you have filed. I would suggest to you that that is fairly unusual for litigation of this kind.

DEFENDANT RINALDI: so I agree this is fairly unusual. This is the worst abuse legal system in history. This lawsuit should never have been filed. It should have been denied when filed. When we went to the motion to dissolve hearing, I had a lawyer at the time. They showed up with all this new evidence and a whole new story. And my lawyer pointed out to the judge, like, how am I supposed to respond to this? I've never even seen this evidence. And he didn't respond to my lawyer. They ruled based on that new evidence. So I did file a lot of motions. But if you look at each one individually, not one of them was filed frivolously. Not one of them was. Every one. It should never have gotten this far. So, like, it just stinks that it's used against me when the whole time all I've been asking for is just for this to be judged on its merits for me to have these pretrial, you know, these motions available to me. I should be able to file something and it taken serious. And, you know, at no point has Justice O'Neill said that my motions were frivolous or anything like that. So when I file them, they just get denied without any explanation. And, yes, I filed a lot of motions. But if you look at each one, every one was filed properly and for good cause. I'm not trying to waste the court's time. I'm trying to bring to the court's attention that this is wrong on so many levels. There's so many bad contractors out there. I'm not one of them. This should never have happened. This should never have been filed. And I should never have had to wait three years to be able to, you know, present anything to the court.

JUSTICE BILLINGS: So, Mr. Monteleone, I'll give you an opportunity to respond to what I've heard about the motion to dismiss and motion for sanctions.

ATTORNEY MONTELEONE: Thank you, Your Honor. I'd echo the motion to dismiss, although it's characterized as a subject matter jurisdictional issue. It, in fact, turns on the question of contract damages. Contract damages are a matter of fact. If a party's failure to perform on a contract gave rise to a hypothetical injury, a non-particularized injury that's not subject to

standing, then enforcing any contract obligation would be impossible. Ultimately, it's the court's interpretation of the facts of the party's conduct and the facts of what the actual values of the contract were in order to determine what the damages are. Those are all on the table. In fact, in this case, defendant's prior counsel has stipulated to the amount of damages for what this property was worth at the time of the breach. So that's already in the record and having been established. To now come back three years later and say, oh, it's hypothetical, not only is reversing the stipulations that are on the record in this case, but also are wholly out of line with something that undercuts the court's subject matter jurisdiction. And for that reason, there's no basis for a dismissal on this motion.

JUSTICE BILLINGS: And obviously the sanctions motion goes directly, you know, allegations of your conduct, and I don't expect you to try to defend yourself here today and don't really want to go into the merits too much. But I assume you agree with me that for the court to decide that motion, the court would have to hear evidence, which frankly would probably be much of the evidence that would be necessary at trial.

DEFENDANT RINALDI: So I've spent several thousand hours studying the law and making sure I'm doing things right. One thing that's very clear is when you file a civil lawsuit, the court just doesn't grant a trial. I mean, there's all these procedures to go through to make sure a trial is warranted. He doesn't have any witnesses. He doesn't have any evidence. In a recent deposition when I deposed him.

JUSTICE BILLINGS: So what you just said. Yeah. I've been a judge about 12 years, and almost every civil case is resolved without the court doing any such thing. And there can be summary judgment, motion to dismiss, but the number of cases that are resolved in that way, at least in main state court, are a small percentage of the cases. And I think this may be an example of a little knowledge being dangerous

DEFENDANT RINALDI: Yes, I filed a summary judgment, but it was denied without any explanation. The judge even acknowledged it. He failed to prove prima facie. I mean, it's been three years. They failed to present any evidence at all, and they have no witnesses. I just don't get how, like, I'm filing these motions exactly as the law states, and at the very least, you should have to respond to them. At the very least, you think you're responding to show. Yes, there is actually evidence. There is actually a case here. There are actual damages. I mean, at the very least, I feel like I deserve that.

DEFENDANT RINALDI: The founders of the Constitution would be proud that I'm standing up for my rights and proud that I'm saying this is wrong. Because it is wrong. What he's doing is wrong. He knows better. He still hasn't presented any evidence. He just says that my actions are bad, but he doesn't say how. He doesn't say anything I've done wrong. I've acted professional. I've

literally studied the law. I've tried to do everything by the book. My intentions have only been good. And if you go on my website, it's just stating the facts, the same facts that are in the record. So he stands up and says, I'm delaying and I don't want to. This whole entire time, when I took over and I tried to get a hold of them, my lawyer, I couldn't afford my lawyer anymore. January 28th is when discovery ended. And July is when my lawyer removed himself. And I'm emailing them, emailing them, and they're not responding. What is going on? He waits to the day that discovery ended and then writes to the court and says that he can't get a hold of me. When the opposite was true. They literally delayed for six months and then told the court that they can't get a hold of me, which was a lie. And so I call him out on it. He immediately removes it. And then he's filed nine motions to enlarge. And I'm not scared to go to trial. I keep asking to get in front of the court to discuss this fraud, to discuss their actions, to discuss the evidence. And I've been denied every turn. So they're the ones who, when I email them and present them with additional evidence over and over again, that refuse to address it. When I have a discovery meeting with him, he refuses to. He just says I mischaracterized. I don't agree with the characterization. I don't agree with the characterization. Never. Literally, the day that closing fell through, I stated four times I have a legal right to walk. I mean, I stated over and over and over again, so there was no question. So, nobody could say, you breached. I mean, I went over the top, because I just had this bad feeling. I recorded everything, documented everything. And so, it's just insane to think that I'm the one delaying. I'm the one who's stopping this. And they're ready to go to trial. They're ready to go to trial with no evidence, no witnesses. I mean, it's kind of confusing that they argue that, but yet he stands up and doesn't present one reason that... One actual action I've done that's frivolous or fraudulent or harassing, I'm just stating facts. I have a right to say you're committing fraud. I have a right to say what you're doing is frivolous. And I'm not saying it in a mean way. I'm not swearing. I'm not yelling at them. I'm not acting inappropriate. I'm exercising my constitutional rights here, and I have the right to this trial. I honestly thought today they'd finally have to show some evidence and show that they don't have it.

JUSTICE BILLINGS: See, that's what a trial is about. A trial is when you present evidence. When people bring in witnesses, they're sworn to tell the truth, they testify before the fact finder, they're subject to cross-examination, and the court decides whether the evidence is persuasive or not, whether it believes the evidence, and then ultimately determines whether the party with the burden of proof has met its burden. I mean, that's what a trial is about.

DEFENDANT RINALDI: At a pretrial conference, don't both sides kind of give you a rundown of their case just to make sure it's valid?

JUSTICE BILLINGS: No. No. Even if I agreed with you entirely, like, no. That's not how it works. The evidence is presented at trial. I have no authority to say, plaintiff, it seems like you have a

really weak case, so we're not going to have a trial. That's not the role of the court. You talk about constitutional rights, one of the constitutional rights is the open court doctrine, where assuming people can overcome motions to dismiss and motions for summary judgment, which is what has occurred in this case, they have a right to a trial. Now, what happens at the trial? You know, who knows? But that's where the court considers evidence.

DEFENDANT RINALDI: So, I filed a motion to dismiss based on the fact that they failed standing on all three accounts, causation, particular injury, and redressability. They failed on all accounts. I mean, they legitimately, miserably failed. If that motion was frivolous, why wouldn't he point out what I said that was frivolous? Like, he's saying, oh, I don't want to respond to that until we do the gag or spickler order.

JUSTICE BILLINGS: Well, I mean, first, motions dismissed that have merits are usually brought, frankly, they're usually brought before an answer is even filed, because if the complaint doesn't state a legal claim, usually that is litigated at the beginning of the case, not three years later.

DEFENDANT RINALDI: I understand that. I wish I had noticed that this one was available to me. When I noticed it, I literally laughed and said, wow, I could have filed this three years ago. But this motion puts the burden on him, not me. For the first time, it puts the burden on him with a 12(b)1 The burden is completely on him. And yes, I could have filed before, but there's no timeline. You can file those during trial. You can file those the day before trial. And he should have to respond to that and explain how the court has jurisdiction.

JUSTICE BILLINGS: Well, it looks a little different, and I just counted. Again, this may not even be a complete list, but I just counted on page 8 and 9 of your motion. I mean, when it's in context of 46 separate motions filed by you, it takes a different, it looks different than when someone files a motion to dismiss at the beginning of the case, challenging something like standing or the sufficiency of the complaint.

DEFENDANT RINALDI: So I get 46 motions, but how can it be used against me if he can't even point out one of those motions that was frivolous? Not one. He hasn't pointed out one of them.

JUSTICE BILLINGS: I mean, one he's pointed out, which is, I mean, your interlocutory appeal was frivolous.

DEFENDANT RINALDI: How? Like, how?

JUSTICE BILLINGS: I mean, it was summarily denied without requiring the other party to respond.

DEFENDANT RINALDI: That doesn't mean it's frivolous, though. I mean, at the very least, it's been three years, at the very least he should have to respond to those motions. I don't see how this, I'm sorry, this is just making me a thousand times more upset and just losing faith in the

legal system because I just don't understand. Like, I'm literally trying to do everything by the book. I'm trying to do everything right.

JUSTICE BILLINGS: Well, it seems like you're doing everything to avoid a trial.

DEFENDANT RINALDI: I'm not scared of trial. They just kept threatening to default me because I'm an LLC, even though I'm not. I'm not an LLC. I never claimed to be. And they just kept threatening to default me for that. That's what scared me. I didn't want to get defaulted. I've never been scared of the evidence. I'm proud of the evidence. I'm proud that I'm telling the truth and the facts are clear. Like, I've never shied away from talking. I've never shied away from anything. It literally sent them a gazillion emails trying to work with good faith. So trials, I'm not scared of at all. I mean, I could go to trial right now. I know this evidence really well, and I'm telling the truth. So the only reason, and it wasn't that I wasn't trying to avoid it. I was trying to bring the court's attention. This is kind of crazy that we're even talking about trial when they've told four or five stories, and I've deposed the plaintiff, the only one left, and he says he doesn't know why the closing fell through. And he said, I don't remember to almost every question I asked. So the plaintiff, who, again, brought up the lawsuit, couldn't answer any questions. He doesn't know why the closing fell through. They have no witnesses. They have no evidence. Like, this isn't even a lawsuit. You have to have evidence to have a lawsuit. Like, I just don't get why the court isn't offended by their behavior.

JUSTICE BILLINGS: Okay. Thank you. Mr. Monteleone, anything else in regards to your request to have leave to file your motions?

ATTORNEY MONTELEONE: No, nothing further.

JUSTICE BILLINGS: Okay. First, in regards to the plaintiff's request for leave to file motions, I'm going to grant the plaintiff leave to file a motion for a stickler order. I'm going to deny the request for the leave to file for a gag order. I understand the concerns that are raised in the letter have been raised today. But given that this is not a jury trial and given the competing interests here and the fact that, you know, Mr. Monteleone and others who might believe they were damaged by Mr. and all these conduct have other remedies or other ways to seek remedies outside of this action, a gag order which attempts to control the actions and statements of a party outside of the courtroom is an extreme remedy. It may be appropriate in certain actions, but it's not a step that the court should consider lightly. Again, I'm not taking issue with the request. I believe the request was made in good faith, but it is not a road I think we need to go down in this matter, at least at this time. So the court, but the court will allow the plaintiff to file for a stickler order. And as a result of the court allowing the plaintiffs to file for a stickler order, I will also grant the plaintiff's motion to enlarge time to respond to the motion to dismiss and for the motion for sanctions and that the plaintiffs will not be required to respond

to those motions until the court has acted upon their motion for a stickler order. So the court's not going to decide those motions at this point, but the plaintiffs will not be required to respond to those motions until the court decides on the spickler issue?

DEFENDANT RINALDI: If their claims aren't frivolous and fraudulent, it would be the easiest thing in the world to respond to a motion to dismiss . The burden's on them on that one, not me. So I just don't understand why if their claims aren't frivolous and fraudulent, at the very least, they should – and not only that, I told them several weeks in advance that I'm filing that. So they had ample time. They got the motion enlarged. They literally had two months. So, I mean, it's just – I get you're ruling it's fine, but at the very least, the motion to enlarge the sanctions, that's fine. The motion to dismiss, I'm sorry, they should have to respond to that, like, immediately. I just don't see why they – if it's not fraudulent and frivolous, it's easy to do. So at the very least, why should we waste the court's time if they don't have jurisdiction?

JUSTICE BILLINGS: Again, things like alleging fraudulent and frivolous, those are the kind of things, particularly fraudulent, that requires evidence. The court would need to be able to make factual findings, and the court cant – that something is fraudulent, and the court can only make factual findings after it has heard evidence.

DEFENDANT RINALDI: Wouldn't that err on the side of them responding now?

JUSTICE BILLINGS: No, because the only way – I mean, the only way I could find that the plaintiffs have acted fraudulently is to have a trial and to hear all the evidence. That's – I mean, I can't decide based upon, you know, affidavits or motions that something is fraudulent. That is a finding of fact that the law court has made clear. The court can only make findings of fact once it has heard evidence.

DEFENDANT RINALDI: I understand that, but still, forget the fraudulent – at the very least, if they have a valid case, they should have to respond to that. The burden is on them, not me. That's the only motion that the burden is on them. And they've had several – two months already. At the very least –

JUSTICE BILLINGS: You have three years to bring it, and you bring it on the eve of trial once trial has already been continued once. I mean, that's part of the consideration as well.

DEFENDANT RINALDI: again, I – he can't point to one of my motions. And, again, I'm a pro se. I'm doing my best here. I'm really trying not to waste – I get 99 percent of pro se litigants do waste the court's time. I'm not one of them. If you look at every one of my motions, they're supported by evidence and case law. So, I mean, at the very least, it just seems like why wouldn't – if I'm being frivolous and that my motion has no merit – If you're in a program that's supported by evidence,

JUSTICE BILLINGS: your statements in a motion are not evidence.

DEFENDANT RINALDI: Well, I presented, like, the text and recordings and their messages and their words. So the actual – I present stuff from them on the record I don't just say these things.

JUSTICE BILLINGS: And, again, just submitting documents attached to a motion doesn't necessarily make them evidence. Again, there's, you know, before documents get admitted to trial, there has to be testimony to show their admissibility, you know.

DEFENDANT RINALDI: So, again, just – But, again, it would be easy for them to respond to that if it's – you know, they're calling my stuff frivolous. So it would be very easy for them to just explain to the court why it isn't, and then we could save everyone this time. I mean, very easy. And the burden's on them, not me. It's not like the burden was on me on that one.

JUSTICE BILLINGS: Well, the court's ruled on that.

MEMORANDUM

Given the Motions and Evidence presented to Justice Billings it's UNCONSCIONABLE that he is ignoring the law and allowing the Plaintiffs to do as they please. Nonetheless, Justice Billings clearly erred as a matter of law when he granted the Plaintiffs leave to file a Spickler Order because the Defendant filed a Motion to Dismiss 12(b)1 and the court doesn't have jurisdiction to make any rulings until the Plaintiffs prove otherwise. Furthermore, it's unconscionable that Justice Billings didn't immediately end this frivolous lawsuit when he read the Defendants Motion to Dismiss and Motion for Sanctions. What's even worst still is the fact that the Plaintiffs didn't present any evidence to support their request for leave nor did they cite any case law that supports their position. On top of all that the Plaintiffs recently filed their Motion for Spickler Order which proves that it was simply a delay tactic to avoid responding to the Defendants Motion to Dismiss 12(b)1 because it was void of evidence and frivolous in nature. Their entire 8 page Motion for Spickler Order didn't give a single piece of evidence supporting their request and EXEMPLIFIES how frivolous their request is! (EMPHASIS ADDED)

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) The Defendant recognizes that the vast majority of Pro Se litigants consume valuable court time and are unable to litigate in a proper manner but the Defendant spent thousands of hours researching and study the law only to be deprived Due Process on a monumental scale.

The record shows that there is a **GLARING BIASED AGAINST THE DEFENDANT**. The following arguments support recusal:

ARGUMENTS

- 1. IF A MOTION TO DISMISS 12(b)1 IS FILED THE COURT ASSUMES THEY DON'T HAVE JURISDICTION UNTIL PROVEN OTHERWISE. JUSTICE BILLINGS IS AWARE OF THIS BUT HE'S CHOSEN TO IGNORE WELL ESTABLISHED CASE LAW.**

When a Defendant files a Motion to Dismiss 12(b)1 the court assumes that they don't have jurisdiction until the Plaintiff proves otherwise. It's well established caselaw that 12(b)1 Motions have to be addressed immediately and the court cannot make decisions or orders until the Plaintiffs prove jurisdiction. Justice Billings is aware of the courts position and he has ruled on 12(b)1 motions in the past. In 2017 Justice Billings issued an Order in Emanuel v Town of Bristol stating the following:

The court reviews a motion to dismiss under M.R. Civ. P. 12(b)(1) without making any inferences in favor of the plaintiff. *Persson v. Dep't of Human Servs.*, 2001 ME 124, ¶ 8, 775 A.2d 363. "When a court's jurisdiction is challenged, the plaintiff bears the initial burden of establishing that jurisdiction is proper." *Commerce Bank & Trust Co. v. Dworman*, 2004 ME 142, ¶ 8, 861 A.2d 662. *Emanuel v. Town of Bristol*, SUPERIOR COURT CIVIL ACTION DOCKET NO. AP-17-02 (Me. Super. Oct. 2, 2017)

The Defendant presented a Mountain of evidence to the court with his 12(b)1 Motion . (Def's Motion Dismiss Exhibit A-F) The Defendants evidence was irrefutable and uncontested so it's extremely concerning that Justice Billings ruled the way he did. Not only does the Plaintiff have no evidence and no witnesses but they've also committed perjury on a grand scale, abused discovery and filed frivolous motions so why is the court refusing to address the Plaintiff's egregious conduct and why is the court reprimanding and threatening the Defendant when he's done nothing wrong and deserves Justice. **Nonetheless, both parties agree that the Plaintiffs damages are hypothetical so it's unconscionable that Justice Billings would refuse to rule on the Defendants Motion to Dismiss 12(b)1 considering it would immediately end this frivolous litigation. During the 3/21/24 Hearing Justice Billings and the Defendant had the following exchange:**

DEFENDANT RINALDI: Because there's no injury. There's no concrete or particular injury. It's all hypothetical.

JUSTICE BILLINGS: Well, the plaintiffs say otherwise, so that's a disputed fact.

DEFENDANT RINALDI: Well, they even state that they never, if they bought, hypothetically, if they purchased another house, they'd be damaged, or hypothetically, if they win, I have to pay attorney fees. So their allegations are, they're stating these are hypothetical injuries, as stated.

The Defendant points out that the Plaintiffs lawsuit as stated lists their damages as hypothetical but Justice Billings chose to ignore this glaring fact. Furthermore, Attorney Monteleone conceded that their damages are hypothetical when he stated, “ If a party's failure to perform on a contract gave rise to a hypothetical injury, a non-particularized injury that's not subject to standing, then enforcing any contract obligation would be impossible”

Subject Matter Jurisdiction is a well established principle that Justice Billings understands so he is **CLEARLY** ignoring well established law to help the Plaintiffs.

2. DURING THE 3/21/24 MOTION HEARING JUSTICE BILLINGS TOLD THE DEFENDANT THAT HIS MOTION TO DISMISS CANT BE APPROVED BECAUSE HE MUST ACCEPT THAT THE PLAINTIFFS FILINGS ARE ALL TRUE WHICH IS CLEARLY NOT HOW 12(b)1 MOTIONS WORK AND JUSTICE BILLINGS IS AWARE OF THIS.

If the Defendant Filed a 12(b)6 Motion then Justice Billings would be correct but 12(b)1 Motions are very different and Justice Billings knows this. Justice Billings understands that the court doesn't assume the Plaintiffs aren't telling the truth so the Defendant isn't sure why he is claiming such. Furthermore, after three years the Plaintiffs should be able to easily prove they have standing so why is Justice Billings allowing them to not respond? Nonetheless, during the 3/21/24 Hearing Justice Billings stated, “So the plaintiff says A, B, and C, and the motion to dismiss is even if A, B, and C are true, there would be no legal claim here” He then goes on to state that the Defendant is asking for a trial before the trial and they only way he can hear evidence is with a trial. The Defendants argument is whether the Plaintiffs damages are hypothetical or not which is exactly what 12(b)1 Motions are designed for.

**3. JUSTICE BILLINGS GRANTED THE PLAINTIFFS LEAVE TO FILE A SPICKLER ORDER EVEN
THOUGH THEY DIDN'T PRESENT ANY EVIDENCE TO SUPPORT THEIR REQUEST.**

During the 3/21/24 motion hearing Justice Billings refused to address the defendants properly filed motions but he granted the plaintiff request for leave to file a Spickler order even though the Plaintiffs didn't provide evidence to Justify such a bold request. On 5/9/24 the Plaintiffs filed their Motion for Spickler Order which took 3.5 Months to write. Given the fact that a Spickler Order is an extraordinary request and the length of time needed to write it there must have been a ton of evidence proving the Defendant filed Frivolous Motions, right? **The Plaintiffs didn't present any evidence or examples that proved the Defendant did anything wrong so they once again abused the legal system in a monumental way.**

Motion for Rule 11 Sanctions and Motion to Dismiss 12(b)1 are both extremely important Pre Trial Motions that are rarely ignored. Justice Billings chose to ignore the Defendants well written and proper motions that have a mountain of evidence and then approved the Plaintiff's Frivolous request to write a frivolous Motion

**4. DURING THE 3/21/24 MOTION HEARING JUSTICE BILLINGS WAS ACTING LIKE AN
ADVOCATE DURING THE 3/21/24 HEARING**

Judges aren't allowed to take sides and are supposed to be impartial so it's very concerning that Justice Billings took the plaintiff side by calling the defendants motions frivolous, even though he had no idea if it was or not and then told the Plaintiffs that he believes their Gag Order request was in good faith. Justice Billings continued to act as an advocate when he said the following:

Well, the plaintiffs say otherwise, so that's a disputed fact.

one could suggest that your motions have taken up more time and judicial resources than a trial would take up. So it's hard to take your concerns about judicial resources seriously. I mean, in your own motion, you listed the multitude of motions you have filed

And I think this may be an example of a little knowledge being dangerous

Well, I mean, first, motions dismissed that have merits are usually brought, frankly, they're usually brought before an answer is even filed, because if the complaint doesn't state a legal claim, usually that is litigated at the beginning of the case, not three years later.

Well, it looks a little different, and I just counted. Again, this may not even be a complete list, but I just counted on page 8 and 9 of your motion. I mean, when it's in context of 46 separate motions filed by you, it takes a different, it looks different than when someone files a motion to dismiss at the beginning of the case, challenging something like standing or the sufficiency of the complaint.

I mean, one he's pointed out, which is, I mean, your interlocutory appeal was frivolous. I mean, it was summarily denied without requiring the other party to respond.

Well, it seems like you're doing everything to avoid a trial.

You have three years to bring it, and you bring it on the eve of trial once trial has already been continued once. I mean, that's part of the consideration as well.

your statements in a motion are not evidence.

And, again, just submitting documents attached to a motion doesn't necessarily make them evidence. Again, there's, you know, before documents get admitted to trial, there has to be testimony to show their admissibility, you know.

Justice Billings made all those arguments against the Defendant even though the Plaintiffs didn't present those arguments. He then assumes the Defendant is wasting the courts time when the opposite is true. Nonetheless, Both parties agree that the Plaintiffs damages are hypothetical and yet Justice Billings chose to ignore the fact that he doesn't have Jurisdiction and instead he chose to reprimand the Defendant for filing so many motions and even called his latest interlocutory appeal frivolous because it was denied but the Defendants Motions

were all filed properly and his interlocutory appeals weren't frivolous. The Defendant wouldn't have filed that many motions if the court did its job so shame on them for failing the Defendant. Calling a Motion Frivolous should never be taken lightly and even more so when a Justice makes this claim. In order for a Justice to claim a Motion is Frivolous they would need to read it and explain how and why. Justice Billings chose not to look into the Defendants Interlocutory Appeal and instead he chose to believe the Plaintiffs baseless allegations and when asked how it's frivolous he said because it was denied. It was clear as day that Justice Billings was attempting to reprimand the Defendant any way possible and he had no intentions of treating him fair.

Calling the Defendants Motion frivolous is another clear example of biased because NO IMPARTIAL JUSTICE WOULD DARE CALL A MOTION FRIVOLOUS WITHOUT PROOF.

5. JUSTICE BILLINGS TOOK AN IDENTICAL POSITION TO JUSTICE O'NEIL. THEY BOTH STATED, "THE FAIREST THING TO DO IS GO TO TRIAL SO WE CAN LOOK AT ALL THE EVIDENCE" GIVEN THE FACT THAT THE PLAINTIFFS HAVE NO EVIDENCE OR WITNESSES IT SEEMS INSANE TO MAKE THIS CLAIM.

How is going to trial the fairest thing to do if the Plaintiffs have no evidence and no witnesses? It would be extremely unfair to make the Defendant prepare for and endure a trial when this fraudulent and frivolous lawsuit should never have been approved in the first place. The court system avoids trial at all cost and a plaintiff isn't granted a trial without first surviving pre trial motions but both Justice O'Neil and Justice Billings refuse to address the massive amount of evidence proving fraud and the FACT THAT THE PLAINTIFFS HAVE NO EVIDENCE. During the 3/21/24 motion hearing Justice Billings said multiple times that the only way he can look at

evidence is if we go to trial. This statement is very concerning because Justice Billings rules on pre trial motions that present evidence all the time so it's **CLEAR AS DAY THAT A BIASED EXIST BECAUSE JUSTICE BILLINGS RECORD PROVE THAT STATEMENT TO BE FALSE.**

CONCLUSION

Given the fact that Justice Billings knows that he isn't ruling fair is more than enough evidence to prove a likely biased exists. **The Defendant can prove that a bias exist when he only needs to prove the appearance of a bias so Justice Billings HAS to recuse himself per the law.** As the Supreme Court has properly characterized **'Quite simply and quite universally, recusal [i]s required whenever "impartiality might reasonably be questioned."** (quoting *Liteky v United States*, 510 U.S. 540, 548 (1994)). Recusal requires **"that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge."** In re *United States*, 441 F.3d 44, 68 (1st Cir. 2006). This action is the WORST SBUSE OF THE LEGAL SYSTEM IN MAINE HISTORY so how it's still going on almost 3 years later even though the Plaintiffs admitted their original complaint is all LIES, haven't presented Prima Facie evidence, admitted they don't know why the breach happened and committed fraud. The Plaintiffs are now accusing the Defendant of filing frivolous motions to save face. If the Defendant has been filing frivolous motions for 3 years then why are the Plaintiffs just bringing it up now? It took them 3 years to realize this? The Plaintiffs are well aware that the Defendants Motions aren't frivolous and it's a disgrace to the legal system for them to imply such. Nonetheless, both parties agree that the Plaintiffs damages are hypothetical so it's unconscionable that Justice Billings would ignore the Defendants Motion to Dismiss 12(b)1 considering it would immediately end this frivolous litigation and during the 3/21/24 Hearing the Defendant discussed the fact that the Plaintiffs

lawsuit lists hypothetical damages as written so it's not even up for dispute that their damages aren't real! Subject Matter Jurisdiction is a well established principle that Justice Billings understands so he is CLEARLY ignoring well established law to help the Plaintiffs. Given the fact that Justice Billings knows that he isn't ruling fair is more than enough evidence to prove a likely biased exists. The Defendant can prove that a bias exist when he only needs to prove the appearance of a bias so Justice Billings HAS to recuse himself per the law. As the Supreme Court has properly characterized 'Quite simply and quite universally, recusal [i]s required whenever "impartiality might reasonably be questioned." (quoting Liteky v United States, 510 U.S. 540, 548 (1994). Recusal requires "that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge." In re United States, 441 F.3d 44, 68 (1st Cir. 2006).

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