

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 LLC,
Defendant.

MOTION FOR SANCTIONS
Attorney James Monteleone
And BernsteinShur
M.R.Civ.P. RULE 11

Before the Court is the Defendants Motion for Sanctions against Attorney James Monteleone and BernsteinShur pursuant to M.R.Civ.P Rule 11. The actions described by the Defendant herein were not the actions of a confused lawyer rather of one acting in a knowing, intelligent and deceptive manner. Attorney Monteleone, Attorney Shankman, Realtor Andy Lord, Realtor Matt Dibiase and Realtor Derek Ray aided and abetted the Plaintiffs in their attempt to use the legal system as a tool to steal funds from the Defendant. As such, the Court shall find the Defendant has met all elements necessary to justify sanctions and award the Defendant compensatory and punitive damages. Protecting the rights of Pro Se and Indigent litigants and defending against abuse of the legal system are two of the biggest challenges facing the legal system today, therefore it's vitally important to investigate allegations of fraud or misconduct when raised. One of the Judges 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 appearance of impropriety alone can cause irreparable damage to the Judicial system therefore it's imperative that Attorneys are properly reprimanded for unethical and fraudulent conduct. This case warrants severe punishment as it is the WORST ABUSE OF THE LEGAL SYSTEM IN MAINE HISTORY and worse still is the fact that it was perpetrated by the largest law firm in the state.

The Plaintiffs were aware that the Defendant couldn't afford to fight a lengthy litigation so they willfully breached the contract with the intention of using the legal system to defraud the Defendant.

“Lawyers pretty much bank on people not showing up, or not having an attorney to represent them. Consequently, in addition to facing the aggressive lawyer, the misguided and **naïve litigant is likely to encounter an opposing party who refuses to play by the rules because it knows (1) the chances of being caught, sanctioned, or challenged are relatively small and (2) the probability of prevailing in the lawsuit is significantly greater if the rules are not observed. The skilled lawyer, knowing that his opponent is not qualified, is thus encouraged to engage in improper or unsound litigation tactics.**” Scott L. Garland, *Avoiding Goliath's Fate: Defeating a Pro Se Litigant*, 24 LITIG. 45, 46 (1998)

Attorney Monteleone has a threshold obligation to determine a factual basis and a plausible, arguable legal theory before proceeding but he clearly failed to do so. Attorney Monteleone and the Plaintiff's didn't expect the Defendant to be able to represent himself because if they did they would have concocted a more believable story than what was presented to the courts. Regardless, each of the Plaintiffs (4) versions of events are clearly

fabricated and the record proves without question that Attorney Monteleone and the Plaintiffs intentionally deceived the court.

I understand the courts reluctance to punish Attorney Monteleone but Conduct this intentional and malicious can't be allowed. This lawsuit has the potential to impact Pro Se Litigants in a positive way and help level the playing field. Awarding the Defendant with compensatory and punitively damages will send a message to all Attorneys that taking advantage of Pro Se and indigent litigants won't be tolerated and will be punished accordingly.

Furthermore, Attorney Monteleone has had countless opportunities to do the right thing and/or withdraw from Counsel or correct the record but chose to harass, slander and deceive instead. If Attorney Monteleone isn't held accountable for his egregious conduct, then the court is basically incentivizing him to act unethical and break the law.

The Defendant's Motion for Sanctions will provide clear and convincing evidence that Attorney Monteleone conspired with Drew Pierce, Janice Lariviere, Andy Lord and Matt Dibiase, Derek Ray and Attorney Shankman in an attempt to defraud the Defendant. Attorney Monteleone's conduct occurred both inside and outside the presence of court as he repeatedly and intentionally violated the Maine Rules of Professional Conduct. Monteleone intentionally lied to Justice O'Neil during the May 20th, 2021 Motion to Dissolve hearing and has done everything in his power to obstruct Justice. The record will show that Attorney Monteleone filed a frivolous complaint, fabricated evidence, committed perjury, concealed material evidence, abused discovery, and conspired to defraud the Defendant.

The Defendant understands that Pro Se litigants have a history of breaking the rules and/or making baseless allegations but the Defendant isn't like 99.9% of Pro Se litigants. The

Defendant took the time to study the law and prior to filing any Motion he extensively studied similar filings. With that being said, the Defendant has been screaming from the rooftops for almost 3 years asking for Justice. The Plaintiffs Ex Parte Verified Complaint was frivolous as filed, should have never been approved and was the start of a long list of unethical and fraudulent conduct perpetrated by the Plaintiffs, Attorney Monteleone and BernsteinShur.

STATEMENT OF FACTS

451 Cape Rd is a beautiful 4 Bedroom 2.5 Bath 2,200 Sq ft Custom Colonial (Exhibit A at 30) located on 3 acres in the desirable Raymond Cape neighborhood. The Defendant couldn't afford labor so to compensate he slept in his van and worked as much as 18 hrs a day in order to finish the home. Material costs are fixed and the labor cost was far less than normal so the Defendant should have made out extremely well off this build but just before closing he was notified that his bank issued roughly \$90,000 to contractors without his consent or knowledge. (Exhibit A at 26) Come to find out the Plaintiffs Realtor Andy Lord from Landing Real Estate and the Defendants Realtor Matt Dibiase Owner of Landing Real Estate both directed the Defendants bank (Lincoln Capital) to issue checks to a third Landing Realtor Derek Ray and other contractors. (Exhibit A at 26) Worse still, the Plaintiffs Agent requested over \$80,000 in upgrades and the Plaintiffs refused to pay for them. (Exhibit A at 30)

On 4/14/21 the Plaintiffs filed an Ex Parte Verified Complaint and we're represented by Attorney James Monteleone from BernsteinShur. At essentially the same time Derek Ray of Landing Real Estate put a mechanics lien on 451 Cape Rd Raymond, ME 04271 and he was represented by Attorney Conor Shankman of BernsteinShur. (Exhibit D at 1-2) The Plaintiffs

admitted that Derek Ray had spoken with them about hiring an Attorney which proves that the timing wasn't by chance.(Exhibit E at 2) Not only was the Plaintiffs lawsuit fraudulent but Derek Ray's Mechanics lien was as well.

Ex Parte Attachments and Ex Parte Communication are generally discouraged by many judges and are normally only used in exceptional circumstances. The Plaintiffs alleged that the Defendant would attempt to make the house unavailable but the Defendant is unable to pick a house up and run off with it. The Defendant responded to all of the Plaintiff's emails and wasn't evading anyone so there was absolutely no urgency. Nonetheless, a Lis Pendens was the proper use of the law and would have accomplished the same goal without depriving the defendant of their constitutional rights. Luckily, the Defendant had a means to quickly dissolve the frivolous attachment and filed an Emergency Motion to Dissolve. The Plaintiffs entire Verified Complaint is supported by a single text message and they attached a series of text messages as proof of that text. (Fabricated) To make a long story short, there is no text that even comes close to what the Plaintiffs describe and the series of text attached to their complaint clearly indicate the Plaintiffs Breached the contract. (See Lord Aff Ex A) **There were countless text stating that the paving, painting, unpaid upgrades and embezzlement where the reason the closing didn't happen (Exhibit A at 9-26) and yet the Plaintiffs Verified Complaint doesn't mention the paving, painting, unpaid upgrades or escrow a single time.** On top of that, the **Plaintiffs removed important text prior to submitting their complaint where the Defendant states,**

"Out of respect for you I will talk on Monday but you guys treated me like I was stupid and tried to squeeze me for every penny. Unless that HUD has the escrow adjusted I'm not closing today. I'm taking back the power and then will decide what I want to do." **"I**

can legally walk and that's what I'm doing" "I promise I will call you Monday so we can try and figure this out" (Exhibit A at 23)

On May 20th, 2021 the court held an **Emergency Motion to Dissolve Hearing but the Plaintiffs "Blindsided" the Defendant by showing up with (4) new affidavits and an entirely new lawsuit that had absolutely nothing to do with their first lawsuit.** This wasn't an attempt to amend their complaint this was literally a brand new story and a completely different set of facts. The Defendant was represented by Jason Theobald from Curtis Thaxter who pleaded with Justice O'Neil to not accept this new evidence but those pleas fell on deaf ears because Justice O'Neil didn't even acknowledge his request. The entire hearing was concerning this new evidence and everything the Plaintiffs presented during this hearing was perjurious. **Most notably, Attorney Monteleone committed perjury when Justice O'Neil asked him, "Is there an affidavit from your client that says I thought the basecoat and paving was blacktop" and Monteleone responded, "There is your honor" (Exhibit C at 5 84-92) Attorney Monteleone intentionally mislead Justice O'Neil because he was well aware that Drew Pierces's affidavit states no such thing nor is there any evidence that supports this claim.** Nonetheless, Motion to Dissolve Attachments attempt to prove that the attachment shouldn't have been approved as filed and the Plaintiffs has to prove the attachment was rightfully granted. Furthermore, Motions to Dissolve Attachments forbid the Plaintiff from presenting evidence to supplement any deficiencies in the original attachment. Justice O'Neil understands the standard of review for attachments as he has approved them on several occasions. The Order issued by Justice O'Neil was issued less than an hour after the hearing concluded even though Justice O'Neil claimed he would take several items under advisement and may not have read the parties motions yet.

Given, the series of event that followed it seems really odd that Justice O'Neil's order denying the Defendants Motion was issued almost immediately after the hearing and worst still, his entire 2 page order was regarding the Plaintiff's new evidence. The new evidence the Plaintiffs presented at the hearing was regarding a March 5th meeting and concerning escrow terms.

Unbeknownst to the Plaintiffs was the fact that the Defendant recorded that meeting (Ex B) and his recording proves that the Affidavits of Andy Lord and Matt Dibiase are perjurious which proves the Plaintiffs 2nd Story is fabricated just like their 1st story. (Exhibit B) The Defendant pleaded with his Attorney to file a Motion to Reconsider and to send the recording to the Plaintiffs but Attorney Theobald refused that request and withdrew as counsel even though the Defendant didn't ask him too.

On 7/7/21 the Defendant sent several emails to Attorney Monteleone calling the Plaintiff out for their fraud (Exhibit F at 1) and attached the recordings of the March 5th meeting and phone conversation between Matt Dibiase and the Defendant. (Exhibit F at 2) This evidence proved both realtors committed perjury but instead of correcting the record and doing the right thing Attorney Monteleone chose to intimidate the Defendant (Exhibit F at 3) and then proceeded to ignore him for six months.(Exhibit F) Discovery was set to end on 1/28/22 and sure enough, the Plaintiffs filed a Motion to Enlarge the same day that Discovery ended but it was signed by another BernsteinShur Attorney Conor Shankman (Landing Agent Derek Rays Attorney). (Exhibit G at 2-3) This Motion claimed the Defendant couldn't be reached even though the opposite was true and asked for very short deadlines. Nonetheless, **the Defendant immediately called out Attorney Monteleone for the perjurious 1/28 Motion (Exhibit G at 4) and he agreed to immediately retract it and offered to file a joint motion** that we both agreed on. (Exhibit G at

5) On 2/22/22 the Plaintiffs filed a Joint Motion to Amend Scheduling Order but the Defendant never signed or agreed to this new motion (Exhibit G at 14-15) and sent Attorney Monteleone an email calling him out for another fraudulent Motion. (Exhibit G at 9-10) Attorney Monteleone agreed to amend the Joint Motion but then refused when asked so the Defendant took matters into his own hands. From the Moment the closing fell through the Defendant had been studying the law and trying to understand how the court system works and functions. On March 14th 2022 the Defendant filed his first two motions, a Motion to Vacate pursuant to Rule 60(b)3 Fraud and a Motion to Amend Scheduling Order. These were the first of many Motions that brought fraud to the court attention. This Motion was denied without explanation as was most of his other 40+ Motions filed after these. The following is a list of Motions filed by the Defendant and Plaintiff.

Defendant's Motions

Defendant's Motion to Dissolve Attachment	DENIED
Defendant's Motion to Vacate Rule 60(b) Fraud.	DENIED
Defendant's Motion to Amend Scheduling Order	
Defendant's Motion for Pre Trial Conference	DENIED
Defendant's Motion to Reconsider Motion to Vacate	DENIED
Defendant's Request for Non Testimonial Hearing	DENIED
Defendant's Motion For Finding of Fact.	DENIED
Defendant's Motion for Summary Judgement.	DENIED
Defendant's Motion to Recuse	DENIED
Defendant's Motion for Contempt..	PENDING
Defendant's Motion to Reconsider Plt's Approved 56(f)	DENIED
Defendant's Request for Summary Judgment Hearing	DENIED
Defendant's Motion to Reconsider Recusal.	DENIED
Defendant's Motion to Reconsider Discovery Order	DENIED
Defendant's Request for Jury Trial.	DENIED
Defendant's Motion to Enlarge Scheduling Order.	DENIED
Defendant's Motion for Contempt.	DENIED
Defendant's Motion to Amend Pleadings. .	DENIED
Defendant's Request for Pre Trial Conference. . .	DENIED
Defendant's Request for Non Testimonial Hearing .	DENIED
Defendant's Request for Discovery Hearing 26(g). .	GRANTED

Defendant's Motion For Finding of Fact Summary Judgment .	DENIED
Defendant's Motion For Finding of Fact 56(f).	DENIED
Defendant's Motion for Continuance.	DENIED
Defendant's 1 st Interlocutory Appeal. .	DENIED
Defendant's 1 st Motion in Limine.	PENDING
Defendant's Motion to Reconsider Summary Judgment. .	DENIED
Defendant's Motion to Reconsider Interlocutory Appeal. .	DENIED
Defendant's 2nd Motion in Limine.	PENDING
Defendant's Motion to Strike. .	DENIED
Defendant's 2nd Interlocutory Appeal. .	DENIED
Defendant's Motion for Continuance. .	DENIED
Defendant's 3rd Motion in Limine. .	PENDING
Defendant's Motion to Amend Parties Due to Plaintiff Error. .	DENIED
Defendant's Request for Pre Trial Conference (Prima Facie). .	DENIED
Defendant's Request for Non Testimonial Hearing.	DENIED
Defendant's Motion for Misjoinder	DENIED
Emergency Petition for Writ of Mandamus.	DENIED
Defendant's Motion to Reconsider - Amend Parties Due to Plaintiff Error. .	DENIED
Defendant's Motion to Reconsider - Defendant's Motion for Misjoinder	DENIED
Defendant's Motion to Reconsider – Jury Trial.	DENIED
Defendant's Motion to Reconsider – Writ Mandamus.	DENIED
Defendant's 3rd Interlocutory Appeal.	PENDING
Letter to Court Responding to Recusal Order	PENDING
Motion to Dismiss 12(b)1.	PENDING

Plaintiff's Motions

Plaintiffs Ex Parte Order of Attachment	APPROVED
Plaintiffs Motion to Enlarge.	APPROVED
Plaintiffs Joint Motion to Enlarge.	APPROVED
Plaintiffs Motion to Enlarge 56(f).	APPROVED
Plaintiffs 2nd Motion to Enlarge 56(f).	APPROVED
Plaintiffs Cross Motion for Summary Judgement.	DENIED
Plaintiffs Motion to Enlarge time to take Deposition.	APPROVED
Plaintiffs Motion to Enlarge.	APPROVED
Plaintiffs Request for Status Conference.	PENDING
Plaintiffs Request for Leave to file a Motion for gag and spickler order.	PENDING

ARGUMENT:

1. Attorney Monteleone signed a Frivolous and Fraudulent Ex Parte Verified Complaint in Violation of MRCP Rule 11(a)

Pursuant to Maine Rule of Civil Procedure 11, every pleading must be signed by at least one attorney of record. M.R. Civ. P. 11(a). The signature constitutes a representation that the attorney has read the pleading; that to the best of the attorney's knowledge, information, and belief there are good grounds to support the pleading; and that it is not interposed for delay. Id. If a pleading is signed with intent to defeat the purpose of Rule 11, the court may impose appropriate sanctions upon the attorney, the client, or both. Id. Appropriate sanctions may include an order to pay the other party's expenses and reasonable attorney fees. Id. The purpose of Rule 11 is to impress upon any attorney the seriousness of their obligations. *Paradis v. Webber Hosp.*, 409 A.2d 672, 675 (Me. 1979). Where no good ground exists to support the pleading, Rule 11 allows the court to impose an appropriate sanction. *Pepperell Trust*, 1998ME 46, ¶ 10, 708A.2d 651, 654. The Law Court has upheld awards of sanctions where litigants filed motions solely for the purpose of delaying the proceedings. *Fraser Employees Fed. Credit Union v. Labbe*, 1998 N E 71, ¶ ¶ 8-9, 708 A.2d 1027, 1030. Sanctions have also been upheld when a litigant had no good ground to support its claim of a superior security interest. *Pepperell Trust Co. v. Mountain Heir Fin. Carp.*, 1998 ME

Ex Parte Attachments are only granted in exceptional circumstances so Attorneys have a heightened standard when requesting such drastic measures. Attorney Monteleone is a self-described legal expert and clearly understands the law so it's unconscionable to think he wasn't well aware that his clients case was frivolous and fraudulent when filed. Attorney Monteleone

didn't make a reasonable inquiry into the facts or law and intentionally tried to deceive the court. The Plaintiffs Opposition to the Defendants Rule 60 Motion states,

“Defendants specifically contend that Plaintiffs' preliminary ex parte motion for attachment omitted four pieces of adverse evidence: (I) a bank appraisal of the property completed in February 2021; (II) text messages between Plaintiff Pierce and Plaintiffs' real estate agent; (III) an omitted page of text messages between Plaintiffs' real estate agent and the Defendant; and (IV) a sheriff's report relating to the eviction incident. **In fact, Plaintiffs' counsel had neither received nor reviewed the bank appraisal, texts between Plaintiff Pierce and Plaintiffs' real estate agent, or the sheriff's report relating to the eviction incident prior to the attachment motion hearing. Counsel did review an incomplete series of texts between Plaintiffs' real estate agent and Defendant, which were cited in the ex parte motion, and immediately supplemented after the inadvertent omission of one page of the text message thread was identified.** To date, Plaintiff's counsel has not received or reviewed text messages between Plaintiffs and their real estate agent because of ongoing difficulty recovering those messages from Plaintiffs mobile device. Nonetheless, none of the cited documents present material adverse evidence that would refute Plaintiff's motion for attachment. The appraisal Defendants reference projected the property's value at \$420,000. At the time Plaintiffs filed their ex parte motion for attachment, Defendants had publicly listed the property for sale for \$475,000, over and above the appraisal price. Moreover, Defendant's subsequently sold the property for an even higher price of \$487,000 and have stipulated that the \$487,000 price accurately reflected the property's value. See Order on the Motion to Dissolve, May 20, 2021. The sheriff's report, which Plaintiffs produced in discovery, does not provide any adverse material evidence that either supports or refutes Plaintiffs' illegal eviction claim. The Sheriff's report does, however, support Plaintiff Pierces sworn statement that sheriff's deputies were called to the property while he removed his possessions.”

Attorney Monteleone concedes that he only reviewed the text messages that were submitted with the Ex Parte Verified Complaint prior to filing which prove he intentionally filed a frivolous and fraudulent claim. The text messages he's referring to indicate that the Plaintiffs breach the contract not the Defendant. (See Lord Aff Exhibit A) Even worse, the Plaintiff's entire complaint is based off a fabricated text message and Andy Lord omitted several important text prior to submitting them to the court. (See Lord Supp Aff) Furthermore, Attorney Monteleone states the Defendant publicly listed the property for \$475,000 prior to filing their Ex Parte so why did

they used an estimated value of \$500,000 - \$550,000 if they knew the listing price and the Plaintiffs were aware that the Defendant did additional work after the March 5th and coupling that with the fact that the Plaintiffs refused to pay for the \$80,000+ in upgrades fully accounts for the increase in price. (Exhibit A at 30) Furthermore, **Attorney Monteleone is a Real Estate Attorney and understands that appraisals are part of closing and are the best reflection of a homes value so it's unconscionable that he claims he didn't even look at it prior to filing the Ex Parte never mind use it as the basis for the properties estimated value.**

The only conclusion a reasonable and competent Attorney could draw from those text is that the Plaintiffs breached the contract so there is no doubt that Attorney Monteleone aided and abetted the Plaintiffs with their attempted fraud. Furthermore, the Defendant has presented Attorney Monteleone with a mountain of evidence further proving how frivolous the Plaintiffs claims are (Exhibit A 1-32) but instead of honoring his duty of candor he continued to pursue the Plaintiffs claim even though it was apparent that their position is devoid of merit.

2. Attorney Monteleone committed Perjury during the 5/20/21 Motion to Dissolve Hearing

On May 20th, 2021 the court held an Emergency Motion to Dissolve Hearing but the Plaintiffs “Blindsided” the Defendant by showing up with (4) new affidavits and an entirely new lawsuit that had absolutely nothing to do what their first lawsuit. This wasn't an attempt to amend their complaint this was literally a brand new story and a completely different set of facts. **During this hearing Attorney Monteleone committed perjury when Justice O’Neil asked him, “Is there an affidavit from your client that says I thought the basecoat and paving was blacktop” and Monteleone responded, “There is your honor” (Exhibit B at 84-92) Attorney**

Monteleone intentionally mislead Justice O’Neil because he was well aware that Drew Pierces’s affidavit states no such thing nor is there any evidence that supports this claim. (See Pierce Aff) Furthermore, the Plaintiffs admitted in a recent deposition that they didn't know why the closing fell through stating,

“I don't remember. I thought you were upset about something that wasn't shared with me. I'm not entirely sure.” (Exhibit A at 1)

Attorney Monteleone addressed their misconduct during the Plaintiffs Opposition to the Defendants Motion to Vacate 60(b)3 Fraud stating,

“Defendants alternatively contend that Plaintiffs' alleged misstatements of record facts during a May 2021 argument were "perjury" that would support a finding of contempt. Se Mot. at 19-22.....the Court has recognized the need to provide attorneys representing a client before the Court "great latitude in the area of vigorous advocacy" when considering statements of counsel as a basis for a contempt finding. State .v Campbell, 497A.2d at472. Even then, the disputed statements by Plaintiff's counsel were the characterization and application of facts in evidence, argued in opposition to Defendants' motion to vacate the attachment. Such argument was not evidence, nor was it testimony under oath. Rather, counsel sought to explain the record evidence in the context of Plaintiffs' legal position. Regardless, even if counsels statements were testimony under oath, counsel stands behind the representations made to the Court during the May 2021 attachment hearing as fair and accurate characterizations of the record evidence. Just because Defendants disagree with them doesn't make these statements perjurious.”

Not only is this response inadequate but it's also perjurious as well. Stating that there is an Affidavit from the Plaintiffs stating they thought the paving and base-coat was blacktop is patently false and not Attorney Monteleone simply explaining record evidence. Furthermore, Attorney Monteleone states that he stands by the representations that he made in court even though the record clearly shows that his entire argument was perjurious. Attorney Monteleone also stated that the Defendant prepared, signed and sent the Plaintiffs an updated spec sheet and brings it up multiple times as justification for the Plaintiffs failure to compensate the

Defendant for upgrades and to justify the Plaintiffs failure to remove funds from escrow. (Exhibit C at 8, 11, 20, 50, 123, 124) After the Defendant provided Attorney Monteleone proof that he never prepared, signed or sent this spec sheet the Plaintiffs suddenly changed their position. During the Plaintiffs Cross Motion for Summary Judgement Attorney Monteleone states that the updated spec sheet is immaterial to the Plaintiffs claim even though it was part and parcel to their claim during the Motion to Dissolve hearing. Attorney Monteleone also stated that the Plaintiffs provided the Defendant everything he asked for and essentially bent over backwards for the Defendant but the record evidence prove that is a lie as well. **On March 3rd, 2021 the Plaintiffs reduced their RMS Rate Lock by \$2,767 in an attempt to compensate the Defendant for the upgrades (Exhibit A at 2-4, 14-16) but on March 5th Lincoln Capital illegally increased the Defendants loan amount in an attempt to escrow additional funds for the Plaintiffs.(Exhibit B at 14 ¶ 248)** So on March 3rd 2021 the Plaintiffs offered \$2,767 to the Defendant and then on March 5th they increased the Defendants payoff by \$3,359 which makes a total increase of \$592. Refusing to pay for \$80,000+ in upgrades, refusing to remove paving from escrow, refusing to remove the painting from escrow, coercing the Defendant into an RMS rate lock and intentionally breaching the contract is the exact opposite of bending over backwards for the Defendant.

3. Attorney Monteleone filed a Frivolous Cross Motion for Summary Judgement that warrants Sanctions pursuant to Rule 56

The Plaintiffs filed a frivolous Cross Motion for Summary Judgment because they didn't citing evidence, failed to refute evidence, didn't provide an affidavit, didn't have any witnesses, failed to refute Unclean Hands, failed to refute Judicial Estoppel, failed to present a Prima Facie

Evidence, their position was based of speculation alone, failed to cite case law supporting their position, their damages are hypothetical and they failed to refute Anticipatory Repudiation.

4. **Attorney Monteleone abused Discovery to the fullest extent possible that warrants Sanctions pursuant to Rule 26 and 37**
5. **Attorney Monteleone committed the torts of Slander, Wrongful Use of Civil Procedure and Abuse of Process**
6. **BernsteinShur Attorneys James Monteleone, Paul McDonald, Joan Fortin and Conor Shankman all Violated the Code of Professional Conduct**

STANDARD OF REVIEW

Pursuant to Maine Rule of Civil Procedure 11, every pleading must be signed by at least one attorney of record. M.R. Civ. P. 11(a). The signature constitutes a representation that the attorney has read the pleading; that to the best of the attorney's knowledge, information, and belief there are good grounds to support the pleading; and that it is not interposed for delay. Id. If a pleading is signed with intent to defeat the purpose of Rule 11 , the court may impose appropriate sanctions upon the attorney, the client, or both. Id. Appropriate sanctions may include an order to pay the other party's expenses and reasonable attorney fees. Id. The purpose of Rule 11 is to impress upon any attorney the seriousness of their obligations. Paradis v. Webber Hosp., 409 A.2d 672, 675 (Me. 1979). Where no good ground exists to support the pleading, Rule 11 allows the court to impose an appropriate sanction. Pepperell Trust, 1998ME 46, ¶ 10, 708A.2d 651, 654. The Law Court has upheld awards of sanctions where litigants filed motions solely for the purpose of delaying the proceedings. Fraser Employees Fed. Credit Union v. Labbe, 1998 N E 71, ¶ ¶ 8-9, 708 A.2d 1027,1030 The court's equitable powers assume an

especially broad and flexible character when . . . the public interest is involved." DeCoster, 653 A.2d at 895 (quoting *State v. Bob Chambers Ford, Inc.*, 522 A.2d 362, 366-67 (Me.1987)). Significant sanctions may be appropriate to compel compliance with court orders and to protect the public. See *Town of Bar Harbor v. Evans*, 499 A.2d 157, 158 (Me.1985). The trial court does possess inherent authority to sanction parties and attorneys for abuse of the litigation process." *Chiappetta v. LeBlond*, 544 A.2d 759, 760 (Me. 1988) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 31, 82 S.Ct. 1386, 1388-89, 8 L.Ed.2d 734 (1962));

Under Maine law, punitive damages may be awarded for tortious conduct only if the defendant acted with malice. *Shrader-Miller v. Miller*, [2004 ME 117](#), ¶ 20, [855 A.2d 1139, 1145](#). The plaintiff has the burden of proving by clear and convincing evidence that the defendant was motivated by ill will toward the plaintiff, or acted so outrageously that malice could be implied. *Tuttle v. Raymond*, [494 A.2d 1353, 1361, 1363](#) (Me. 1985). In *Harris*, we affirmed a \$1,000,000 punitive damages award — based on the "severe" reprehensible conduct of a landlord which caused both mental distress and property damages to tenants — of a ratio of sixteen to one (comparing the punitive damages award to the actual harm, as measured in compensatory damages). *Harris*, 2000 ME 150, ¶¶ 31-33 n. 21, 756 A.2d at 508-09 (surveying punitive awards in other jurisdictions in which awards as high as 100 to one were upheld). [¶ 59] In *Shrader-Miller*, we affirmed a ratio of seven to one (a \$10,000 punitive damages award and a \$1500 compensatory damage award), noting that the defendants' conduct was not as reprehensible as the conduct in *Harris*. *Shrader- Miller*, 2004 ME 117, ¶ 24, 855 A.2d at 114

"[T]he most important indium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538

U.S. 408, 419 (2003) Factors relevant to that analysis include whether “the harm caused was physical as opposed to economic; the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” Id.

DAMAGES:

The Defendant will never get these three years back and his income isn't linear so even at a modest gain per year his actual damages are likely to be in the millions. The Defendant makes \$75 an hour at his normal job and far more on his government bids and he has grown in size so it's likely that his damages estimate is a drop in a bucket even when including punitive damages. Furthermore, the Defendants damage request doesn't even account for emotional stress and damage to reputation. The Defendant estimates that he's spent roughly 3,000 hours on this lawsuit and that figure is most likely understated as well. In all likelihood the Defendant spent far more hours on this case than estimated because he's been consumed by it and I'm sure any Attorney can relate. Nonetheless, the consequential damages and punitive damages might seem like a large number but the reality of it is that it's not likely to make the Defendant whole again and may need to be increased to act as a deterrent.

BernsteinShur is the largest firm in the state and James Monteleone is one of their Star Attorneys so it's not likely this is an isolated incident. Not only that but multiple Attorneys are involved and it goes all the way to the top. BernsteinShur Attorney Conor Shankman filed a fraudulent Mechanics Lien and signed a Perjurious Motion. CEO Joan Fortin and Chief Counsel

Paul McDonald have been aware of the Defendants accusations for a year and a half but failed to supervise and report this egregious conduct. Chief Counsel Paul McDonald reviewed the entire record and told the Defendant his claims were meritless and attempted to frame the Defendant as being aggressive and unethical without justification.

Clearly, this behavior at BernsteinShur is systemic therefore punitive damages are essential to deter them from praying on indigent litigants. Not only that but the punitive damages aren't likely to make the Defendant whole anyways and could technically be considered compensatory as well. If there was ever a time to award damages of this nature it's now. Medical cases and others regularly award millions and this case is an attack on the system itself so those cases pale in comparison. Fraud on the court erodes public confidence and undermines the rule of law.

When determining the award of damages we look to Harris v Soley for guidance. We consider the reprehensibility of the conduct; the amount awarded in relationship to the harm; and the amount compared with sanctions imposed for similar behavior. Harris v. Soley, 2000 ME 150, ¶ 31, 756 A.2d 499, 508. Further, we consider mitigating circumstances, such as the financial situation of the liable party. Hanover Ins. Co. v. Hayward, 464 A.2d 156, 158 (Me. 1983).

This litigation is the Worst Abuse of the Legal System in Maine History and Harris v Soley pales in comparison. The Court considered the public interest in Harris v Soley because evictions happen all too often but the Public Interest in this case is of the utmost importance. **Protecting the rights of Pro Se and Indigent litigants is currently being discussed by the Maine Legislature and the Due Process Clause of the Constitution requires it. Furthermore, deterring abuse of the legal system insured public confidence and supports a free and just society.** Given the

aforementioned facts, the Defendant is requesting Compensatory Damages of \$256,031 and Punitive Damages of \$2,304,279 (SEE ATTACHED CALCULATION OF DAMAGES) which is a ratio of 9 to 1 as compared to 16 to 1 in Harris. TOTAL DAMAGES - \$2,560,310

CONCLUSION

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 has written so many motions and studied for so long that he is burnt out to the max. The Defendant could have easily spent another 50-100 hrs working on this Motion but didn't have the time and energy to do so. The Defendant wanted to elaborate on Arguments 3-6 but he believes the record speaks for itself and asks the court to review the record when deciding this Motion. Attached to this Motion as Exhibit F are a series of emails between BernsteinShur Attorneys Paul McDonald, James Monteleone and the Defendant. The Defendant presents them with overwhelming evidence on countless occasions and gave them the opportunity to correct the record and litigate fair but they chose to violate their duty of Candor at every turn. Attorney James Monteleone is highly intelligent and he's an extremely talented litigator so it's troubling that he approaches cases with a "scorch the earth" mentality when he could be successful and ethical at the same time. Attorney Monteleone is willing to win at all cost and didn't think twice about committing fraud on the court countless times. If this type of conduct is to go unchecked then the Maine Judicial

System is likely to be plagued with fraud and corruption especially considering the largest Law Firm in the state supports unethical behavior. Defendant seek an award of sanctions pursuant to M.R. Civ. P. 11, 26, 37, 56 and the courts inherent power based on Plaintiffs knowingly and willingly filing a frivolous lawsuit and continuously filing frivolous, slanderous and vexatious filings over the course of nearly 3 years. Specifically, Plaintiffs didn't have a good faith basis for filing their complaint and the record shows that they attempted to use the legal system as a means to defraud the Defendant.

The foregoing instrument was acknowledged before me this _____ day of _____, 20____,

X

Anthony Michael Rinaldi

NOTICE:

Pursuant to Rule 7 of the Maine Rules of Civil Procedure, opposition to this Motion must be filed no later than 21 days after the filing of the motion, unless another time is provided by the Rules of the Court. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.