

STATE OF MAINE  
CUMBERLAND, SS

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-2021-138

DREW PIERCE and JANICE LARIVIERE, )

Plaintiffs )

v. )

ANTHONY MICHAEL RINALDI and )  
SOUTHERN MAINE CONSTRUCTION, )  
LLC, )

Defendants )

**OPPOSITION TO DEFENDANTS'  
MOTION FOR CONTEMPT**

*Attorney Monteleone doesn't  
provide any evidence proving the  
Def's Allegations wrong!*

**PRELIMINARY STATEMENT**

Defendants' motion for contempt<sup>1</sup> should be denied because it fails to satisfy the basic elements required under M.R. Civ. P. 66(c) or 66(d) and Law Court precedent for a finding of contempt. Defendants' motion fails to show or even suggest that Plaintiff's counsel refused to comply with a court order, which Rule 66(c) and/or 66(d) expressly require. Defendants' motion provides no legal basis for initiating contempt proceedings based on alternate legal theories,<sup>???</sup> such as Plaintiffs' discovery objections or disputed characterizations of facts at issue in the pending matter. Moreover, Defendants' motion is procedurally deficient, lacking any sworn statement under oath as required by Rule 66(d)(2)(A).

Defendants' unfounded motion is apparently based in Mr. Rinaldi's expectation that opposing counsel must either accept and adopt Defendants' position or withdraw from the case. *See Mot. at 2* (Alleging that Plaintiffs' counsel "has had countless opportunities to do the right thing and withdraw from Counsel or correct the record.") Neither is required for counsel to avoid contempt proceedings. Refusal to acquiesce to Defendants' meritless positions cannot give rise to

*wow!!*

<sup>1</sup> Though not styled as such, Plaintiffs will treat the Motion as one to initiate plenary contempt proceedings.

contempt proceedings initiated for <sup>WOW</sup> tactical advantage in the litigation. In turn, Plaintiffs respectfully request that the Court award Plaintiffs' attorney fees incurred in responding to Defendants' unfounded, 43-page motion.

### LEGAL STANDARD

Rule 66 of the Maine Rules of Civil Procedure provides a remedy for either (i) disorderly conduct or action that <sup>A frivolous lawsuit does this</sup> "actually obstructs or hinders the administration of justice or which <sup>They filed a frivolous lawsuit</sup> diminishes the court's authority;" or (ii) the "failure to comply with a lawful judgment, order, writ, subpoena, process, or formal instruction of the court." M.R. Civ. P. 66(a)(2)(A).

Contemptuous conduct is prosecuted through either civil contempt or criminal contempt proceedings. *See Int'l Paper Co. v. United Paperworkers Int'l Union*, 551 A.2d 1356, 1358-59 (Me. 1988). A civil contempt proceeding is a remedial action brought to benefit another party that centers on a party's failure or refusal to comply with a court order. *See id.* (citing *Wells v. State*, 474 A.2d 846, 850 (Me.1984)). Criminal contempt proceedings, on the other hand, are generally initiated by the court "to punish an affront to the dignity and authority of the court." *Int'l Paper Co.*, 551 A.2d at 1359-60.

Maine Rule of Civil Procedure 66 establishes distinct procedures for the two forms of plenary contempt proceedings. M.R. Civ. P. 66(c) governs criminal contempt actions for punitive sanctions; M.R. Civ. P. 66(d) governs civil contempt actions for remedial sanctions. Where both punitive and remedial sanctions are sought, the court "must use procedures for punitive sanctions," vis-à-vis a plenary criminal contempt proceeding. *See* M.R. Civ. P. 66(a)(3).

Plenary criminal contempt proceedings under Rule 66(c) are "initiated by the court on its own motion, or at the suggestion of a party." M.R. Civ. P. 66(c)(2). Plenary civil contempt proceedings under 66(d) may be initiated by a party by filing a motion under oath or with an accompanying affidavit that sets forth the facts that give rise to the motion. The Court, when



acting upon a request or motion for plenary contempt proceedings, may appoint a state attorney to prosecute a Rule 66(c) proceeding or may schedule a contempt hearing on a Rule 66(d) proceeding, but may not enter findings on either of the plenary proceedings without conducting a criminal contempt trial or a civil contempt hearing that gives the alleged contemnor opportunity to be fully heard. *See* M.R. Civ. P. 66(c)(2)(D); (d)(2)(D).

To impose a punitive contempt sanction after taking evidence at trial, the Court must find *beyond a reasonable doubt* that: “(A) the alleged contemnor has intentionally, knowingly or recklessly failed or refused to perform an act required or has done an act prohibited by a court order; and (B) it was within the alleged contemnor’s power to perform the act required or refrain from doing the prohibited act.” M.R. Civ. P. 66(c)(3).

To impose a remedial contempt sanction after a hearing on the evidence, the Court must find by *clear and convincing evidence* that “(i) the alleged contemnor has failed or refused to perform an act required or continues to do an act prohibited by court order, and (ii) it is within the alleged contemnor’s power to perform the act required or cease performance of the act prohibited.” M.R. Civ. P. 66(d)(2)(D). *See also Town of Kittery v. Dineen*, 2017 ME 53, ¶ 17, 157 A.3d 788, 793; *Wrenn v. Lewis*, 2003 ME 29, ¶ 26, 818 A.2d 1005, 1012.

Special considerations apply where contempt sanctions are sought against an attorney for representation of a client before the court. In such circumstances, “due regard must be given to [the attorney’s] right to act as a zealous advocate on his client’s behalf” because “[a]ttorneys must be given great latitude in the area of vigorous advocacy.” *State v. Campbell*, 497 A.2d 467, 472 (Me. 1985) (quoting *In re McConnell*, 370 U.S. 230, 236 (1962); *In re Dellinger*, 461 F.2d 389, 398 (7th Cir.1972).

## ARGUMENT

Defendants' motion for contempt against Plaintiff's counsel seeks both punitive and remedial sanctions, either of which require the Defendant to establish, at minimum, that (i) counsel took some action or inaction in disregard of a court order; and (ii) counsel had the power or opportunity to satisfy the disregarded court order. *See* M.R. Civ. P. 66(c)(3); (d)(2)(D).

Preliminarily, Defendants' motion is procedurally deficient. Defendants' motion provides no statement of facts under oath as Rule 66(d)(2)(A) requires for initiation of civil contempt proceedings. Moreover, Defendants motion omits the necessary request under Rule 66(c)(2)(A) for initiation of initiate criminal contempt proceedings through an appointed state attorney. Where a motion for contempt fails to satisfy Rule 66's requirements for initiation of plenary proceedings, the motion is "patently inadequate" and may not be acted upon. *See In re Estate of Lake*, 2016 ME 64, ¶ 9, 138 A.3d 483, 485 ("Because the motion for contempt here was neither verified nor submitted with an accompanying affidavit, the court erred in proceeding on the patently inadequate motion.")

Even if the procedural issue was resolved, Defendants' motion further fails to identify any court order that Plaintiff's counsel has disregarded in litigation of the present action. Defendant's motion instead relies upon four categories of conduct for which Rule 66 offers no remedy: (a) alleged discovery abuses; (b) alleged misstatements of record facts during a May 2021 argument (mischaracterized by Defendants as "perjury"); (c) alleged failures to disclose adverse information in *ex parte* filing; and (d) alleged initiation and maintenance of "frivolous" claims. The inability of each of these categories of conduct to support a finding of contempt is discussed in turn.



#### A. Alleged Discovery Abuses

Defendants allege that counsel's responses and objections to discovery requests should be punished as a contempt of court. See Mot. at 5-8; 23-36.

Defendants contend that contempt proceedings are appropriate for such discovery objections under *Battryn v. Indian Oil Co., Inc.*, 472 A.2d 937 (Me. 1984). But *Battryn* does not support the argument for the contempt findings sought here. *Battryn* related to discovery sanctions issued pursuant to M.R. Civ. P. 37, not contempt proceedings. 472 A.2d at 942. In *Battryn*, the Law Court affirmed an order for discovery sanctions imposed after counsel *refused* to provide responses to interrogatories after the court had ordered responses to be provided before a court-ordered deadline. The *Battryn* Court determined that the Superior Court acted within its discretion to award discovery sanctions because the sanctioned party made the "decision not to respond in any way to the interrogatories," despite the Court's order that counsel provide responses before a set deadline. *Id.* Such discovery conduct was "unjustified obstinacy" that warranted the Rule 37 discovery sanctions awarded. *Id.*

*Battryn*'s counsel *refused* to provide any interrogatory responses despite being under court order to do so and being given an and opportunity to comply. But even then, the *Battryn* action did not escalate to the level of contempt proceedings that Defendants seek here. Here, Plaintiffs' counsel has never *refused* to provide any discovery responses, nor has Plaintiffs' counsel ignored any court order requiring responses given to be amended or supplemented. Plaintiffs have produced 471 pages of discovery material and formally responded to 29 separate requests for production, 45 separate interrogatories, and 36 requests for admission. Although Plaintiffs' preliminary responses were delayed after an agreement with Defendants' prior counsel to delay discovery until after mediation, Plaintiffs' production was completed in February without the

Court's intervention. Moreover, each of Plaintiffs' subsequent discovery responses to Defendants' requests was timely served.

Defendants, in a separate M.R. Civ. P. 26(g) motion, have asked the Court to review Plaintiffs' individual discovery responses and objections and order Plaintiffs to supplement their discovery responses. Plaintiffs, however, continue to defend their tailored discovery responses and objections as necessary and appropriate pursuant to the Maine Rules of Civil Procedure. However, should the Court determine that any particular objection or response was overbroad, Plaintiffs will promptly comply with the Court's directive. But, again, no prior court orders regarding discovery responses have entered. Where disregard of a court order is a prerequisite for plenary contempt proceedings, Defendants' demand for punitive and remedial contempt damages based upon discovery issues is premature, at best.

**B. Alleged "Perjury" During Legal Argument**

Defendants alternatively contend that Plaintiffs' alleged misstatements of record facts during a May 2021 argument were "perjury" that would support a finding of contempt. *See* Mot. at 19-22.

The Law Court, however, has established that contempt proceedings are not the proper vehicle for the Court to address acts of perjury. *See Ex parte Holbrook*, 133 Me. 276, 177 A. 418, 423 (1935) (holding that witness perjury is properly enforced through Maine's criminal statute prohibiting perjury, not contempt proceedings). Moreover, 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*, 497 A.2d at 472.

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



WOW - No explanation, NO evidence

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 counsel's 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.

### C. Alleged Failures to Disclose Adverse Information

Defendants also contend that Plaintiff's counsel is liable for contempt because counsel allegedly withheld material adverse information known to counsel during the preliminary *ex parte* motion for attachment. See Mot. at 17-19. Defendants argue the adverse information refutes Plaintiffs' claims and was knowingly withheld by counsel in violation of M.R. Prof. Conduct 3.3(d).

Defendants assert no legal support for the contention that an alleged violation of the Maine Rules of Professional Conduct provides a lawful basis for findings of contempt pursuant to Rule 66(c) or 66(d).

Regardless of their inapplicability to a contempt proceeding, Defendants' allegations are unfounded. M.R. Prof. Conduct 3.3(d) requires: "In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse." 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.

- Appraisal was 9/20/20  
- Text messages between Drew + Andy should have been their best evidence so why conceal them?

- Andy <sup>material</sup> omitted text from the court. That's a big deal!  
- Sheriff's Report proves no illegal Eviction occurred.



Andys Text indicate The Plaintiff Breached and Attorneys are required to Investigate

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.

That's all that he reviewed before filing an Ex Parte

Text

Still concealing Text Between

Drew + Andy

Nonetheless, none of the cited documents present material adverse evidence that would refute Plaintiffs' 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, Defendants 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.

↳ Based on anticipated renovations that were done over several months March - June

Patently false!

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 Pierce's sworn statement that sheriff's deputies were called to the property while he removed his possessions.

#### D. Alleged Filing and Maintenance of Frivolous Claims

Finally, Defendants argue that Plaintiffs' counsel is subject to contempt proceedings because counsel has filed and maintained what Defendants characterize as "frivolous" claims against them. See Mot. at 8-15; 30.



James M. [unclear] actions are way worse than "Aoude"

Defendants' motion for contempt on this basis apparently relies upon *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115 (1st Cir. 1989) to support its contention that pursuit of frivolous claims constitutes contempt. But, like other cases Defendants rely upon, *Aoude* has nothing to do with contempt. In *Aoude*, the Court considered the merits via a motion to dismiss that action, in which the plaintiff had falsified a contract on which his claims were based, and subsequently delayed filing an amended version of his claims after the falsification was documented. 892 F.2d at 1118. The *Aoude* Court did not consider or initiate contempt proceedings. *Id.*

As in *Aoude*, the proper vehicle for addressing purportedly frivolous claims is through a Rule 12(b) motion to dismiss or through summary judgment. Defendants are clearly aware of the necessary procedure, having filed a separate motion for summary judgment in their favor. Defendants' separate motion for contempt improperly seeks to contest the merits of Plaintiffs' claims without the strict procedures imposed by Rule 12 and Rule 56 on proper dispositive motions. The Court's review of the pending Rule 56 motion will confirm that Plaintiffs' claims are not at all frivolous.

Worst explanation ever!!!

#### CONCLUSION

For the aforementioned reasons, Plaintiffs respectfully request that the Court deny Defendants' motion to initiate plenary contempt proceedings. Moreover, Plaintiffs request that the Court award Plaintiffs their attorney fees incurred in responding to the motion, especially since the Court gave Defendants the opportunity during the September 7, 2022 discovery hearing to withdraw or modify the contempt motion, a course that Defendants refused to take.

NO evidence provided disproving the Def's Allegations!!!

Dated at Portland, Maine this 15<sup>th</sup> day of September, 2022

  
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