

STATE OF MAINE
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET
Location: West Bath
Docket No. BCD-WB-CV-07-12

Mortgage Solutions of Maine, Inc., et al.,

Plaintiffs

v.

Nancy Keniston, et al.,

Defendants

DECISION AND ORDER
(Motions for Summary Judgment)

This matter was heard on July 2, 2009, on Defendants' motions for summary judgment. Attorney Jeffrey Bennett represented the Plaintiffs. Attorney Charles Rimmel represented Defendants Nancy Keniston and Keniston Mortgage Services, Inc. (KMS or Kennebec Mortgage Services). Attorney John Whitman represented Defendants Roderick Rovzar and Norman, Hanson & DeTroy, LLC.

Factual Background

Plaintiffs James Cummings (Mr. Cummings) and Plaintiff Mark Floor (Mr. Floor) are real estate developers, and have been business partners for several years. For more than 20 years prior to the formation of Plaintiff Mortgage Solutions of Maine, Inc. (MSM or Mortgage Solutions), Defendant Nancy Keniston (Ms. Keniston) worked in the mortgage service industry, which included various credit unions and mortgage loan brokerage companies. During her employment, Ms. Keniston gained experience in the business of residential mortgage lending, including loan standards, state and federal compliance requirements, and placement of residential mortgage loans with lenders.

In December of 2004, Mr. Cummings asked Ms. Keniston, a long-time family friend, whether she was interested in establishing a residential mortgage brokerage business in the Standish area. Mr.

Cummings explained that he was willing to provide some initial capital,¹ and that Mr. Floor had an office location available. Mr. Cummings also proposed that he, Mr. Floor and Ms. Keniston would each own one third of the business.

Ms. Keniston expressed interest in the proposal, and agreed to meet with Mr. Floor and Mr. Cummings to explore the possibility of establishing a mortgage business. Ms. Keniston produced at the meeting a written projection of income and expenses, which showed net annual revenues of \$311,582, based on ten (10) monthly loan closings.

The parties agreed to establish a business known as "Mortgage Solutions of Maine, Inc.", and further agreed that Ms. Keniston would serve as president of the business. As president, Ms. Keniston would be responsible for the day-to-day operations of the mortgage company, including loan origination and processing. Ms. Keniston's employment agreement was not reduced to writing, and her employment could be terminated at will.

The parties dispute the amount of income that Ms. Keniston was to earn with Mortgage Solutions. Just prior to the formation of the business, Ms. Keniston worked at Creative Lending Solutions, Inc. as a loan officer. In that capacity, Ms. Keniston was paid on a commission basis equal to 40% of the gross profit realized by each closed residential mortgage. Defendants maintain that she was to be paid "on the same commission basis of 40% of the gross profit received by the company that she was receiving at Creative Lending Solutions, with a guaranteed base of a minimum of \$60,000 per year." Plaintiffs contend, however, that Ms. Keniston "would be paid a weekly salary of \$1,000.00 for her daily operational services and management" and that along with Plaintiffs Floor and Cummings, she would receive an annual distribution equal to one-third of the net profits.

When they formed the business, the parties agreed that Mr. Cummings would be the treasurer of the company. In addition to their role as officers of the company, Ms. Keniston and Mr. Cummings would serve on the company's Board of Directors. Because Mr. Floor owned and operated an active

¹ Mr. Cummings advanced \$68,256.11 for initial expenses and operating capital.

real estate business, the parties agreed that he would not be an officer of the company, but would act as more of a silent business partner.

Mortgage Solutions was officially incorporated on January 12, 2005. The business leased office space from Mr. Floor to whom the business paid a monthly rental fee of \$2000. Mortgage Solutions' residential mortgage business proved to be successful. In fact, the company hired additional employees, including another mortgage loan processor.

Because of the success of the residential mortgage business, in October or November of 2005, Ms. Keniston and Mr. Cummings discussed the possibility of Mortgage Solutions raising capital, and obtaining authorization to make direct residential loans. While Defendants maintain that Ms. Keniston suggested the retention of the law firm of Norman, Hanson & DeTroy (NHD) to assist in exploring this option and that Ms. Keniston in fact hired NHD for that purpose, Plaintiffs deny that Ms. Keniston ever informed them that she was hiring NHD for that purpose.

Although NHD investigated the possibility of Mortgage Solutions becoming a lender, Mortgage Solutions did not pursue the direct loan business. Plaintiffs contend that Ms. Keniston did not share with them the results of NHD's research into the direct loan business.

In December 2005, Ms. Keniston consulted with NHD on a matter involving one of the company's former employees. Ms. Keniston did so with the knowledge of Mr. Cummings, but she did not inform Mr. Cummings of the outcome of that consultation.

In March 2006, Ms. Keniston, acting in her individual capacity, retained NHD to form a corporation that would provide commercial loan brokerage services. NHD established Commercial Alternatives, Inc., as Ms. Keniston requested, but Commercial Alternatives, Inc. had little business activity, and Commercial Alternatives did not pursue the commercial mortgage business. Ms. Keniston did not inform Plaintiffs Floor and Cummings of the formation of Commercial Alternatives.

In March or April of 2006, Mortgage Solutions issued an initial report to shareholders, which report reflected a profit of \$16,800 per shareholder. Because Ms. Keniston believed that the profit might change at the time of the final report, she did not immediately distribute the profits to the shareholders. When Mr. Floor demanded his distribution check, at first, Ms. Keniston resisted paying him, but ultimately issued a check for the initially reported profit amount (\$16,800). After a bookkeeping correction, which resulted in a corrected profit amount of \$14,346 per shareholder, Ms. Keniston asked Mr. Floor to return the overpayment, but he refused to do so because, according to Mr. Floor, Ms. Keniston refused to explain the reason for the miscalculation.

In April or May 2006, following the dispute over the parties' distribution payments, communication among the business partners deteriorated. Ms. Keniston subsequently approached Mr. Cummings about the possibility of a buy out. Ultimately, Mr. Floor and Mr. Cummings proposed in writing that Ms. Keniston purchase their interest in the company for a total of \$100,000 (\$50,000 each).

Ms. Keniston forwarded the written offer to Defendant Rovzar, an attorney with NHD, who informed Ms. Keniston that his "gut reaction" was to say "thanks but no thanks." Defendant Rovzar and NHD then advised Ms. Keniston with respect to negotiations with Plaintiffs Floor and Cummings. As part of this process, Ms. Keniston asked Defendant Rovzar whether she could use a shell corporation that had been established to start a new mortgage company. Defendant Rovzar advised Ms. Keniston that she could use the shell corporation, and that she should "launch" a letter containing her counterproposal to buy out Plaintiffs Floor and Cummings.

By emails dated May 31, 2006, Ms. Keniston and Defendant Rovzar discussed Ms. Keniston's preference to "wrap up" Mortgage Solutions, and her desire to make arrangements for some of Mortgage Solutions' employees to join her new mortgage company. They agreed to meet to discuss Ms. Keniston's "exit strategy." Attorney Rovzar provided Ms. Keniston with advice regarding the various ways in which she might want to extricate herself from the business. On Ms. Keniston's behalf, on May 31, 2006, NHD formed a new corporation for Ms. Keniston.

On June 2, 2006, Ms. Keniston wrote to Plaintiffs Floor and Cummings rejecting Mr. Floor's offer and making two counterproposals: (1) to purchase Plaintiffs Floor and Cummings' interests for \$20,000 each; or (2) to sell her 1/3rd interest for \$50,000. Ms. Keniston proposed dissolution if neither of the options was acceptable to Plaintiffs Floor and Cummings. She also informed them that she "would be happy to ask her attorney to host a meeting to discuss dissolution of" Mortgage Solutions, and that she was going to look elsewhere for her business endeavors. Finally, in the same letter Ms. Keniston informed Mr. Floor that she would withhold June's rent in the amount of \$2000 as an offset against the difference between the 2005 profit distributed to him and the reduced profit report amount.

In the course of the buy-out negotiations, Mr. Floor and Mr. Cummings reviewed Mortgage Solutions' books and noted that Ms. Keniston had written herself a check in the amount of \$19,788.00. Ms. Keniston maintains that the payment represented compensation for unpaid commissions due her and that it was paid at approximately the same time as a payment was made to Mr. Cummings to reimburse him for \$50,000 of his cash contribution. Plaintiffs contend that Ms. Keniston was not due any commissions. Upon learning of the payment to Ms. Keniston, Mr. Floor called a special meeting of the shareholders to remove Ms. Keniston as president and to remove her check-writing authority. Ms. Keniston alleges that during that meeting, which occurred on June 16, 2006, and at which meeting Defendant Rovzar attended with Ms. Keniston, the parties agreed that Ms. Keniston would begin concluding the affairs of Mortgage Solutions. Plaintiffs contest Ms. Keniston's assertion that she was authorized to wind up the business of Mortgage Solutions.

Following the June 16, 2006 meeting, Ms. Keniston withheld the June rent payment from Mr. Floor as a "set off" against the profit disbursement to him. In response, Mr. Floor issued a Notice of Termination of Mortgage Solutions' tenancy. In a letter dated July 12, 2006, Ms. Keniston notified Mr. Cummings that she was resigning from Mortgage Solutions. The parties dispute the exact date on which Ms. Keniston's new business (KMS) began operations, and whether she improperly took Mortgage Solutions' clients, assets and employees with her.

In their motions, Defendants seek summary judgment in their favor on Counts I, III, V, VI, VII, VIII, IX, X, XI and XIII of Plaintiffs' Amended Complaint.

Discussion

I. Standard of Review

M.R. Civ. P. 56(c) provides that summary judgment is warranted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." M.R. Civ. P. 56(c). For purposes of summary judgment, a "material fact is one having the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573, 575. "A genuine issue of material fact exists when there is sufficient evidence to require a fact-finder to choose between competing versions of the truth at trial." *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178, 1179. If ambiguities in the facts exist, they must be resolved in favor of the non-moving party. *Beaulieu v. The Aube Corp.*, 2002 ME 79, ¶ 2, 796 A.2d 683, 685.

II. Standing of Plaintiffs Cummings and Floor

Defendants preliminarily contend that all of the claims asserted by Plaintiffs Floor and Cummings in their individual capacities must be dismissed for lack of standing. Defendants argue that for Plaintiffs Floor and Cummings to have standing to sue individually, they must have complied with the statutory and procedural requirements for bringing a derivative action on behalf of Mortgage Solutions, or they must demonstrate that they suffered a harm "separate and distinct from that suffered by the other shareholders."² Defendants maintain that Plaintiffs Floor and Cummings have failed to satisfy the requirements for a derivative action and have similarly failed to demonstrate the necessary individualized harm. Plaintiffs articulate no response to Defendants' arguments on the issue of standing,

² Defs.' Mot. at 20 (quoting *Forbes v. Wells Beach Casino, Inc.*, 307 A.2d 210, 221 (Me. 1973)).

seemingly conceding the point. *See e.g. Grenier v. Cyanamid Plastics, Inc.*, 70 F.3d 667, 678 (1st Cir. 1995) ("If a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal.") (citations and internal quotation marks omitted); and *Reid v. Town of Mount Vernon*, 2007 ME 125, ¶ 13, 932 A.2d 539, 543-44.

Despite Plaintiffs' lack of direct response to Defendants' argument, whether Plaintiffs Floor and Cummings have adequately pled particularized damage or at a minimum generated a dispute of fact as to any alleged individual harm requires an examination of each claim. That is, because Plaintiffs Floor and Cummings have evidently asserted their claims in their individual capacities,³ the Court must examine each claim and evaluate the nature of the alleged harm to determine whether the harm is distinct from the alleged harm to Mortgage Solutions. To the extent that Plaintiffs Floor and Cummings have failed to demonstrate a harm that is distinct from the harm to Mortgage Solutions, summary judgment in Defendants' favor on Plaintiffs' individual claims would be appropriate.

III. Motion for Summary Judgment of Defendant Keniston and Keniston Mortgage

A. *Count 1: Breach of Fiduciary Duty*

Under Maine common law, a corporate director of a close corporation owes the following fiduciary duties to the corporation as well as to the shareholders:

- (1) To act with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions;

³ Under the Maine Business Corporation Act as well as Maine common law, an individual stockholder may "sue on behalf of a corporation to protect or restore the assets of the corporation from ultra vires actions and other acts of mismanagement." when the corporation's management is unable or unwilling to protect it. *Wells Beach Casino, Inc.*, 307 A.2d at 221-22. *See also* 13-C M.R.S. §§ 751-53; and M.R. Civ. P. 23B. However, in order to have standing to sue derivatively, a stockholder must demonstrate that it has demanded that the corporation sue on its own behalf and that the corporation has refused to do so. *See* 13-C M.R.S. § 753. Further, a derivative action must be pled as such. *See* M.R. Civ. P. 23B. In this case, Plaintiffs Floor and Cummings do not purport to have filed this action derivatively or to have complied with the statutory and procedural requirements that would permit them to do so. Indeed, MSM is a named Plaintiff in this action, demonstrating that a derivative action on behalf of the corporation is not necessary. Accordingly, Plaintiffs Floor and Cummings appear to have brought their claims in their individual capacities, thus requiring them to demonstrate that they have suffered individualized harm separate and distinct from any harm suffered by MSM.

(2) To discharge the duties affecting their relationship in good faith with a view to furthering the interests of one another as to the matters within the scope of the relationship;

(3) To disclose and not withhold from one another relevant information affecting the status and affairs of the relationship;

(4) To not use their position, influence or knowledge respecting the affairs and organization that are subject to the relationship to gain any special privilege or advantage over the other person or persons involved in the relationship.

Rosenthal v. Rosenthal, 543 A.2d 348, 352 (Me. 1988).

In support of their motion for summary judgment on Count I of Plaintiffs' Amended Complaint, Defendants Keniston and Keniston Mortgage Services argue that Ms. Keniston did not violate her fiduciary responsibility to the corporation because as an employee at will who was not subject to a non-competition agreement, she could resign from the corporation and establish a new business. Defendants further maintain that contrary to Plaintiffs' contention, Ms. Keniston did not take any customers of MSM with her, and that she adequately and appropriately concluded the business of MSM. Finally, Defendants implicitly invoke the business judgment rule by pointing to *Rosenthal*, wherein the Law Court explained an officer of a corporation may not be held personally liable for breach of fiduciary duty unless the person's actions were primarily motivated by fraud or bad faith.

Plaintiffs contend that summary judgment is not appropriate because Ms. Keniston had a fiduciary duty to "disclose and not withhold relevant information concerning any potential conflict of interest with the corporation."⁴ Plaintiffs further assert that the record establishes that Ms. Keniston breached that duty in a number of respects: that Ms. Keniston was not entitled commissions and, therefore, that she was not entitled to the \$19,877 for which she wrote herself a check; that she was not entitled to the salary, in excess of \$52,000, that she authorized for herself; that she paid Norman, Hanson & DeTroy from corporate funds for legal services rendered to her in her individual capacity; and that

⁴ Pls.' Opp. at 16 (quoting *Northeast Harbor Golf Club, Inc. v. Harris*, 661 A.2d 1146, 1148 (Me. 1995)).

while an officer with the corporation, she established a business (KMS) that was in direct competition with the company.

On this record, summary judgment on Mortgage Solutions' claims is not appropriate. Contrary to Defendants' suggestion, whether Defendant Keniston legally could terminate her employment with MSM is not pertinent to at least part of Plaintiffs' breach of fiduciary duty claim. That is, regardless of whether Defendant Keniston could lawfully resign as an employee of Mortgage Solutions, she owed a fiduciary duty in her capacity as a director of the company. Given this fiduciary relationship and given the factual disputes as to Defendant Keniston's actions (e.g., whether she had the authority to pay herself on a commission basis, whether she solicited MSM clients for her new venture, etc.), the record does not support the entry of summary judgment in favor of Defendant Keniston on MSM's claim against her.

While Plaintiff Mortgage Solutions' claim survives summary judgment, the question remains whether Plaintiffs Floor and Cummings have standing to assert any non-derivative claims. Plaintiffs Floor and Cummings contend that they suffered lost profits as a result of Ms. Keniston's actions, and that Ms. Keniston's alleged actions wrongfully deprived them of the opportunity to realize the annual distributions from MSM. As explained above, to have standing to sue in their individual capacities, Plaintiffs Floor and Cummings must demonstrate that they suffered particularized harm, distinct from that suffered by the corporation and its other shareholders. The loss of profits constitutes a loss to the corporation, not its shareholders. *See In re Dein Host, Inc.*, 835 F.2d 402, 406 (1st Cir. 1987) ("Actions to enforce corporate rights or redress injuries to the corporation cannot be maintained by a stockholder in his own name . . . even though the injury to the corporation may incidentally result in the depreciation or destruction of the value of the stock.") (internal citations and quotations omitted). Accordingly, Plaintiffs Floor and Cummings do not have standing to assert a claim for lost profits.

Similarly, Plaintiffs Floor and Cummings cannot maintain an action based on their claimed loss of annual distributions. Their entitlement to annual distributions is dependent upon, and therefore derivative of, MSM's profits. The loss of the distributions thus represents a loss common to all

shareholders, rather than a unique loss suffered by Plaintiffs Floor and Cummings. Therefore, although the record establishes a dispute of fact as to whether Defendant Keniston breached a fiduciary duty owed to Plaintiff Mortgage Solutions and its shareholders, Plaintiffs Floor and Cummings have failed to demonstrate that they have suffered a loss that is unique to them. Summary judgment in favor of Defendant Keniston and against Plaintiffs Floor and Cummings is, therefore, warranted.

B. Count III: Fraud

In Count III, Plaintiffs contend that Defendant Keniston fraudulently failed to disclose her efforts to establish KMS, a competing mortgage loan business. To prevail on a fraud claim, a plaintiff must demonstrate by clear and convincing evidence:

(1) that the defendant made a false representation, (2) of a material fact, (3) with knowledge of its falsity or in reckless disregard of whether it is true or false, (4) for the purpose of inducing the plaintiff to act in reliance upon it, and, (5) the plaintiff justifiably relied upon the representation as true and acted upon it to the plaintiff's damage.

Rand v. Bath Iron Works, Corp., 2003 ME 122, ¶ 9, 832 A.2d, 771, 773 (citations omitted).

In addition to affirmative misrepresentations, "omission by silence may constitute the supplying of false information" in the context of a fiduciary relationship. *Glynn v. Atlantic Seaboard Corp.*, 1999 ME 53, ¶ 12, 728 A.2d 117, 120. As the Law Court has explained:

A fiduciary relationship exists between a corporate officer and the corporation he serves, and the officer must disclose and not withhold relevant information concerning any potential conflict of interest with the corporation. . . . Substituting nondisclosure for false representation, a party with a fiduciary duty to another commits fraud when he (1) intentionally does not disclose; (2) a material fact to the other; (3) for the purpose of inducing the other to act or refrain from acting in reliance on the failure to disclose; and (4) the other justifiably relies on the nondisclosure and acts upon it to his or her damage.

Glynn, 1999 ME 53, ¶ 12, 728 A.2d at 120 (internal citations and quotation marks omitted).

Defendants contend that Defendant Keniston neither misrepresented nor concealed information from Plaintiffs and, therefore, summary judgment is warranted. Defendants further

argue that any reliance by Plaintiffs on any alleged misrepresentations or omissions was unreasonable.

Defendants' arguments are unpersuasive. The record contains several factual disputes as to Plaintiffs' fraud claim, including, but not limited to, when Defendant Keniston established her competing business, and the extent of Plaintiffs' knowledge of the those efforts. Summary judgment is not, therefore, appropriate as to Mortgage Solutions' claim against Defendant Keniston.

Because Plaintiffs' fraud claim is not exclusively based upon Defendant Keniston's relationship to Mortgage Solutions, but is based in part on alleged representations made to Plaintiffs Floor and Cummings, the Court must determine whether the record would support a finding of damages other than the lost profit claim that is, as explained above, a loss for which Plaintiffs Floor and Cummings cannot recover. While theoretically Plaintiffs Floor and Cummings could have suffered a unique harm as the result of the alleged misrepresentations, the record does not support such a claim in this case. The alleged damages for which Plaintiffs Floor and Cummings seek to recover are limited to the claimed lost profits or lost annual distributions. Because the claimed damages are not unique to Plaintiffs Floor and Cummings, Defendant Keniston is entitled to summary judgment on the individual claims.

Finally, the record contains no evidence to support the claim that Defendant KMS made any misrepresentations or withheld information that it was obliged to share with Plaintiffs, nor is there any record evidence from which a fact finder could rationally conclude that Defendant Keniston made any misrepresentations in her capacity as a representative of Defendant KMS. Defendant KMS is thus entitled to judgment as a matter of law.

C. Count V: Negligent Misrepresentation

In Count V, Plaintiffs assert a claim for negligent misrepresentation. The Law Court has described negligent misrepresentation as follows:

One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Rand, 2003 ME 122, ¶ 13, 832 A.2d at 774 (quoting RESTATEMENT (SECOND) TORTS § 552(a)(1)).

In support of their motion, Defendants contend in part that Plaintiffs' reliance, if any, on Defendants' representations was unreasonable. Simply stated, the Court cannot conclude as a matter of law that Plaintiffs' alleged reliance was unreasonable. Whether a plaintiff's reliance on a misrepresentation or whether a defendant's conduct was undertaken with "reasonable care" is a question of fact to be decided by the fact finder. RESTATEMENT (SECOND) TORTS § 552(1) cmt. a & e. As the Law Court has explained, "unlike fraud or deceit, the defendant's knowledge is largely immaterial for negligent misrepresentation, and the fact-finder's primary task is to ascertain whether the defendant's conduct was reasonable." *Rand*, 2003 ME 122, ¶ 13, 832 A.2d at 774. Whether Plaintiffs relied upon any of the Defendants' representations and, if so, whether the reliance was reasonable are issues for the fact finder.

For the reasons discussed above, Plaintiffs Floor and Cummings lack standing to assert this claim in their individual capacities. Additionally, the record is devoid of any facts upon which a fact finder could conclude that Defendant KMS made any misrepresentations. Judgment is thus warranted in favor of Defendants on the claims of Plaintiffs Floor and Cummings, and in favor of Defendant KMS on the claims of all of the Plaintiffs.

D. Count VI: Conversion

In Count VI, Plaintiffs allege that upon her departure from MSM, Ms. Keniston converted various business assets belonging to MSM. A claim of conversion requires a party to prove that: (1) the person claiming that his property was converted has a property interest in the property; (2) that he had

the right to possession at the time of the alleged conversion; and (3) that he made a demand for its return and that demand was denied by the holder. *Withers v. Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798, 800 (citing *Leighton v. Fleet Bank of Me.*, 634 A.2d 453, 457 (Me. 1993)).

In support of their motion for summary judgment on Count VI, Defendants contend that Plaintiffs' conversion claim fails as a matter of law because they have failed to demonstrate that they suffered any damage as a result of the alleged conversion. Defendants maintain that the only damages referenced by Plaintiffs are the alleged lost profits, which are not related to the alleged conversion.

Under Maine law, on a conversion claim, a party can recover damages for the loss of the converted property, and that loss can include lost profits. See *Reardon v. Lovely Dev., Inc.*, 2004 ME 74, ¶¶ 9-14, 852 A.2d 66, 69-70. In this case, the record reveals factual disputes as to the property, if any, that Defendants converted, Plaintiffs' entitlement to the property, and the damages, if any, that MSM suffered as the result of the alleged conversion. Consequently, Defendant Keniston is not entitled to summary judgment as to MSM's claim.

For the reasons discussed above, Plaintiffs Floor and Cummings lack standing to assert this claim in their individual capacities. Additionally, the record contains no facts upon which a fact finder could conclude that Defendant KMS converted any of Plaintiffs' property. Judgment is thus warranted in favor of Defendants on the claims of Plaintiffs Floor and Cummings, and in favor of Defendant KMS on the claims of all of the Plaintiffs.

E. Count VII: Unjust Enrichment

In Count VII, Plaintiffs assert a claim for unjust enrichment.

To establish unjust enrichment, the complaining party must establish that: (1) it conferred a benefit on the other party; (2) the other party had appreciation or knowledge of the benefit; and (3) the acceptance or retention of the benefit was under such circumstances as to make it inequitable for it to retain the benefit without payment of its value.

Me. Eye Care Assocs. P.A. v. Gorman, 2006 ME 15, ¶ 26, 890 A.2d 707, 712 (citations omitted). In support of their unjust enrichment claim, Plaintiffs allege that the benefit conferred upon Defendants consists of the business and assets of Mortgage Solutions. Defendants move for summary judgment on Count VII, arguing, among other things, that Plaintiffs have failed to identify unjust enrichment damages and, as a result, Plaintiffs' claim fails as a matter of law.

As explained above, Plaintiffs' claimed damages in this matter are the alleged lost profits. Lost profits are not an appropriate or available measure of damage for an unjust enrichment claim. See *Incase Inc. v. Timex Corp.*, 488 F.3d 46, 54 (1st Cir. 2007) (explaining that damages for unjust enrichment must be based upon the value of the benefit retained and "may not be based only upon lost profits") (citations omitted). See also *Aladdin Elec. Assocs. v. Town of Old Orchard Beach*, 645 A.2d 1142, 1145-46 (Me. 1994). Given the absence any evidence from which a fact finder could determine recoverable damages for Plaintiffs' alleged unjust enrichment, summary judgment on Count VII is appropriate.

F. Count VIII: Accounting

In Count VIII of their Complaint, Plaintiffs assert that Ms. Keniston must account, and remit payment to MSM for all MSM funds wrongfully taken by her or paid by her to others. Defendants contend that Plaintiffs have failed to produce evidence of damages that are related to the accounting claim, and that Plaintiffs have failed to designate a proper expert witness to undertake an accounting. Neither argument is persuasive.

The purpose of an accounting is to establish damages when such a calculation would be too difficult or complex without an accounting. See *Maine Civil Remedies* § 8-2. By definition, therefore, Plaintiffs' failure to articulate damages other than the alleged lost profits is not fatal to the claim. The lack of an accounting is the essence of the claim, and the relief sought is the conduct of an accounting.

If the Court determines that Plaintiffs are entitled to an accounting, the Court would order the accounting and a competent person could be appointed to conduct the accounting. Defendant Keniston is not, therefore, entitled to summary judgment. The Court is, however, aware of no basis for Plaintiffs' request for an accounting from Defendant KMS. Judgment in favor of Defendant KMS on this claim is thus warranted.

G. Count IX: Tortious Interference

In Count IX, Plaintiffs allege a claim for tortious interference with an economic relationship. To prevail on a claim for tortious interference with a prospective economic advantage, a plaintiff must prove: "(1) that a valid contract or prospective economic advantage existed; (2) that the defendant interfered with that contract or advantage through fraud or intimidation; and (3) that such interference proximately caused damages." *Rutland v. Mullen*, 2002 ME 98, ¶ 13, 798 A.2d 1104, 1110 (citations omitted). In support of their request for summary judgment, Defendants contend that Plaintiffs have failed to establish the existence of any contracts or any prospective business advantage with which Defendants are alleged to have interfered. In response, Plaintiffs argue that prior to July 12, 2006, MSM was a viable ongoing concern with pending loan applications and that Ms. Keniston's actions, including her departure and alleged diversion of MSM business to KMS, rendered MSM inoperable.

Contrary to Defendants' assertions, Plaintiffs are not required to identify a specific contract with which Defendants allegedly interfered. Rather, Plaintiffs' assertion that Defendant Keniston interfered with MSM's overall business relationships is sufficient to sustain a claim for tortious interference. *See James v. MacDonald*, 1998 ME 148, ¶¶ 6-7, 712 A.2d 1054, 1057 (explaining that a prospective economic advantage can include ongoing business relationships that are not bound by a legally enforceable contract). Because the record contains factual disputes as to the extent and nature of Defendant Keniston's actions with respect to clients of Mortgage Solutions, summary judgment is not warranted. Summary judgment in favor of Defendant KMS is also not appropriate as it is unclear on

this record whether Defendant Keniston was acting solely in her individual capacity or at least in part in her capacity as a representative of Defendant KMS when she engaged in the alleged tortious conduct.

For the reasons discussed above, Plaintiffs Floor and Cummings lack standing to assert this claim in their individual capacities. Judgment is thus warranted in favor of Defendants on the claims of Plaintiffs Floor and Cummings.

H. Count X: Unfair and Deceptive Trade Practices

Count X of Plaintiffs' complaint, which alleges a violation of Maine's Uniform Deceptive Trade Practices Act ("UDTPA") (10 M.R.S. §§ 1211-1216), is based upon a newspaper article, printed in the *Lakes Region Suburban Weekly*, announcing the opening of KMS and describing KMS as the successor to MSM. Section 1212 of the UDTPA provides, in relevant part:

A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he [or she]

...

B. Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

C. Causes likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;

...

E. Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

...

10 M.R.S. § 1212(1).

In support of their motion, Defendants argue that they cannot be held liable under section 1212 because they were unaware of the article and did not have any control over the content or printing of it. The Court agrees. The record contains no evidence from which a fact finder could conclude that Defendant Keniston, either in her individual capacity or as a representative of Defendant KMS, made any representations or engaged in any other conduct to cause the author of the article to conclude that

KMS was the successor to MSM. Defendants are not, therefore, responsible for the publication. Furthermore, Defendants are not obligated to retract and or clarify statements made by third parties for which statements they are not responsible. As a matter of law, therefore, Plaintiffs cannot prevail on Count X.

I. Count XI: Aiding and Abetting

In Count XI, Plaintiffs assert a claim against all of the Defendants for "aiding and abetting." Plaintiffs thus seek to hold each of the Defendants jointly and severally liable for allegedly acting in concert with one another to breach fiduciary duties owed to Plaintiffs.

Although not favored by Maine courts, the Law Court has previously recognized aiding and abetting liability as an available means of establishing joint and several liability among defendants for underlying tortious conduct. *See Cohen v. Bowdoin*, 288 A.2d 106, 111-112 (Me. 1972). In *Cohen*, the Law Court explained that although "Maine law generally denies that there is a separate and independent tort of 'civil conspiracy', allegations of concerted action do operate to assist in the promulgation of an actionable claim that" an underlying tort "having been allegedly committed, all of the named defendants averred to have acted in combination in relation to" the underlying tort "are vicariously liable to plaintiff for its commission." *Id.* Quoting *Prosser*, Torts, 3rd Ed. p. 259, the Law Court further explained the principle behind civil conspiracy:

All those who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or ratify and adopt his acts done for their benefit, are equally liable with him."

...

It is in connection with such vicarious liability that the word conspiracy is often used. The original writ of conspiracy was employed only in the case of combinations of two or more persons to abuse legal procedure, and was the forerunner of the action for malicious prosecution. This was replaced at a later date by an action on the case in the nature of conspiracy, and the word gradually came to be used to extend liability in tort, as well as

crime, beyond the active wrongdoer to those who have merely planned, assisted or encouraged his acts.

Cohen, 288 A.2d at 111-12 (quoting *Prosser* at 260).

Under the applicable law, therefore, Plaintiffs' claim for aiding and abetting is dependent upon Plaintiffs' ability to prevail on their various tort claims. The only claim for which record evidence exists from which a fact finder might conclude that Defendants engaged in a civil conspiracy is the claim for tortious interference. Thus, to the extent that Plaintiffs' aiding and abetting is based upon the alleged tortious interference, summary judgment is not appropriate. For all other potential claims, Plaintiffs cannot, as a matter of law, prevail.

For the reasons discussed above, Plaintiffs Floor and Cummings lack standing to assert this claim in their individual capacities. Judgment is thus warranted in favor of Defendants on the claims of Plaintiffs Floor and Cummings.

J. Count XIII: Punitive Damages

Defendants also seek summary judgment on Plaintiffs' claim for punitive damages. In order to recover punitive damages, a plaintiff must prove by clear and convincing evidence that a defendant acted with malice, express or implied, when committing the underlying tort. *Gayer v. Bath Iron Works Corp.*, 687 A.2d 617, 622 (Me. 1996). In this case, Plaintiffs' request for punitive damages appears to rest on their claim that Defendant Keniston misled Plaintiffs about the formation of KMS and that malice can be implied from her knowing misrepresentations and/or breach of her fiduciary duties. Defendants' summary judgment argument primarily focuses on the weight that the Court should afford certain factual assertions.

At this stage of the proceedings, the Court must view the evidence in the light most favorable to the non-moving party regardless of the likelihood of the party's success at trial. *See Searles v. Trustees of St. Joseph's College*, 1997 ME 128, P6, 695 A.2d 1206, 1209 (explaining that a trial court in

reviewing a motion for summary judgment cannot resolve a factual dispute against the nonmovant “no matter how improbable seem the opposing party’s chances of prevailing at trial”) (citations omitted); and *Hughes v. Beta Upsilon Bldg. Assn.*, 619 A.2d 525, 526 (Me. 1993) (explaining that the court is required to view the evidence in the light most favorable to the nonmoving party, giving that party “the full benefit of all favorable inferences that may be drawn from the evidence”). The comparative strength of the parties’ arguments as to the facts that are in dispute is not, therefore, pertinent to the Court’s consideration. When the Court considers the facts asserted on the record by the Plaintiffs, and when the Court gives Plaintiffs the benefit of all reasonable inferences, the Court cannot conclude that Defendants are entitled to judgment as a matter of law.

Because punitive damages are not available unless a plaintiff also recovers compensatory damages, and because Plaintiffs Floor and Cummings do not have standing to assert any of the alleged claims for which money damages are recoverable, the Court concludes that they are precluded from recovering punitive damages.

IV. Motion for Summary Judgment of Defendants NHD and Roderick Rovzar⁵

Defendants move for summary judgment based upon the following: (1) Plaintiff’s expert witness did not opine that the NHD Defendants deviated from the applicable standard of care; and (2) even if Defendants deviated from the standard of care, Plaintiff has failed to make any showing that Defendants’ conduct was a proximate cause of any loss or injury to Plaintiffs. Defendants’ motion, therefore, focused on the merits of Plaintiff’s contention that Defendants failed to satisfy their

⁵ As in their claims against Defendants Keniston and Keniston Mortgage Services, Plaintiffs Floor and Cummings assert individual claims against Defendants Norman, Hanson & DeTroy and Roderick Rovzar. Because the record establishes that the damages that Plaintiffs seek to recover are not unique to them, but are in fact the damages allegedly suffered by Mortgage Solutions, Plaintiffs Floor and Cummings cannot as a matter of law prevail on their individual claims. Furthermore, there is no evidence of record from which the Court could conclude that Defendants represented Plaintiffs Floor or Cummings at any time. Thus, even if the record contained a factual issue regarding the applicable standard of care, Plaintiffs Floor and Cummings could not prevail on a claim against Defendants Norman, Hanson & DeTroy and Roderick Rovzar. Summary judgment on the claims of Plaintiffs Floor and Cummings is, therefore, warranted. Accordingly, in addressing the merits of Defendants’ remaining arguments, the Court will refer only to the claims of Plaintiff Mortgage Solutions.

professional responsibility to Plaintiffs, including whether Plaintiffs can prove that Defendants' alleged failure proximately caused Plaintiff's claimed damages.⁶

In response, Plaintiff maintains that Defendants' violation of the Bar Rules (and, presumably, the standard of care) supports Plaintiff's breach of fiduciary duty claim. Plaintiffs also argue that they have sufficiently demonstrated through expert testimony that they lost profits as the result of Defendants' conduct. More specifically, Plaintiffs contend that Defendants violated the Bar Rules by (1) failing to disclose to Plaintiff that the law firm had represented Defendant Keniston in the past; and (2) failing to obtain the informed written consent from MSM before assisting Defendant Keniston in the formation of Commercial Alternatives, Inc., and KMS, and before counseling her on her separation from MSM.

Whether Defendants were obligated to disclose their prior representation of Defendant Keniston is governed in part by M. Bar R. 3.4(a)(1) which provides, in pertinent part:

Disclosure of Interest. Before commencing any professional representation, a lawyer shall disclose to the prospective client any relationship or interest of the lawyer or of any partner, associate or affiliated lawyer that might reasonably give rise to a conflict of interest under these rules. A lawyer has a continuing duty to disclose to the client any information that, in light of circumstances arising after the commencement of representation, might reasonably give rise to such a conflict of interest.

Id. To the extent that Plaintiff contends that Defendants were required to disclose their prior representation of Defendant Keniston before undertaking representation of MSM, Plaintiff's claim fails as a matter of law. The matters on which Defendants previously represented Plaintiff are clearly matters that are unrelated to the parties' business venture and would not, therefore, under any circumstances "reasonably give rise to a conflict of interest." Thus, even if a violation of a bar rule was sufficient to sustain Plaintiff's claim, on this record, Plaintiff cannot, as a matter of law, rely upon an alleged violation of M. Bar R. 3.4(a)(1).

⁶ In the Amended Complaint, Plaintiff asserted various theories of recovery. Based upon the Court's review of the Amended Complaint, although Plaintiff has alleged negligence misrepresentation, fraud and a breach of fiduciary duty, the Court is uncertain whether Plaintiff is actually asserting a claim of malpractice. Nevertheless, because Plaintiff's breach of fiduciary duty claim is based on Defendants' professional duty to Plaintiff, the Court concludes that expert testimony is necessary. The Court will, therefore, address Defendants' contention that Plaintiff's expert has failed to establish that Defendants breached the applicable standard of care.

The next issue is whether Defendants were obligated under the Bar Rules to obtain MSM's informed written consent prior to representing Defendant Keniston in negotiations with Plaintiffs Floor and Cummings regarding a buy out, in counseling her regarding the conclusion of MSM's business, and in assisting her in the formation of Commercial Alternatives, Inc. and/or KMS. Rule 3.4(d)(1), the Rule governing an attorney's duty to a *former* client, provides:

... a lawyer shall not commence representation adverse to a former client without that client's informed written consent *if such new representation is substantially related* to the subject matter of the former representation or may involve the use of confidential information obtained through such former representation.

M. Bar. R. 3.4(d)(1) (emphasis added).

According to Defendants, their representation of MSM was limited to the two discrete matters they handled in November and December 2005, and ended when Defendants were compensated for their work on those projects. Therefore, Defendants maintain that MSM was a former client, that their representation of Defendant Keniston after December 2005 was not "substantially related" to the services provided to MSM, and, therefore, that MSM's written consent was not necessary.

Plaintiff argues that Defendants' representation of MSM was continuing and ongoing, at least in March 2006 when Defendants assisted Defendant Keniston in the formation of Commercial Alternatives. Plaintiff, therefore, maintains that any representation of Defendant Keniston by Defendants was prohibited under Rule 3.4(c)(2)⁷ unless Defendants first obtained MSM's informed consent. Alternatively, Plaintiff contends that if MSM was a former client, rather than a current client, Defendants' representation of Defendant Keniston involved matters that were "substantially related" to their representation of Plaintiffs and could have involved the use of confidential information.

⁷ Rule 3.4 (c)(2) provides in relevant part:

if a conflict of interest exists, a lawyer may not undertake or continue simultaneous representation of more than one client except with the informed consent of each affected client to representation of the others. Consent is required even though representation will not occur in the same matter or in substantially related matters.

Even if the Court determines that Plaintiff was a former client as Defendants urge, the record does not support the entry of summary judgment on the issue. The Law Court has articulated the following three-part test for determining whether matters are “substantially related” for the purposes of Rule 3.4(d)(1):

Initially, the trial judge must make a factual reconstruction of the scope of the prior legal representation. Second, it must be determined whether it is reasonable to infer that the confidential information allegedly given would have been to a lawyer representing a client in those matters. Finally, it must be determined whether that information is relevant to the issues raised in the litigation pending against the former client.

Adam v. MacDonald Page & Co., 644 A.2d 461, 463 (Me. 1994) (quoting *In re Schraiber*, 103 Bankr. 1001, 1003 (Bankr. N.D. Ill 1989)). The Law Court further explained that “[w]hether . . . matters are substantially related” for the purposes of Rule 3.4(d)(1) is a factual issue. *Id.* at 463.

Here, the record establishes that a factual issue exists as to the precise nature of the representation, and whether it was substantially related to the prior representation such that consent was necessary. Indeed, the parties’ dispute as to the testimony of the Plaintiff’s expert witness, including whether a bar rule was violated, demonstrates the disputed nature of the facts in this case.⁸ In other words, whether a bar rule was violated, which is a central issue in this case,⁹ requires a determination of whether the matters are substantially related to each other, which is an issue that is clearly disputed.

⁸ Defendants moved to exclude the affidavit of Plaintiff’s expert witness, in which affidavit the expert purported to clarify her deposition testimony. At her deposition, Plaintiff’s expert was provided every opportunity to comment upon all of the relevant issues in the case. Thus, to the extent that Plaintiff maintains that the affidavit was necessary because the expert was not asked certain questions at the deposition, Plaintiff’s argument fails. Furthermore, if the affidavit was truly a clarification of the expert’s deposition testimony, and did not change the testimony, the affidavit is unnecessary. The Court will, therefore, disregard the affidavit.

⁹ The Court realizes that the violation of a bar rule is not determinative as to whether an attorney has breached the applicable standard of care. It is, however, relevant to the issue of whether the standard was satisfied. See *Mainor v. Nault*, 101 P.3d 308, 320 (Nev. 2004) (explaining that “[t]he majority of jurisdictions . . . hold that the violation of professional rules of responsibility does not create a private right of action, but is relevant to the standard of care”). See also *Sargent v. Buckley*, 1997 ME 15, § 8, 697 A.2d 1272, 1275 (explaining that the Bar Rules can constitute evidence of an applicable standard of care).

Defendants nevertheless contend that the Court should enter summary judgment because the Plaintiff's expert did not specifically opine that the Defendants breached the applicable standard of care. A full and fair reading of the expert's testimony reveals that the expert believes, and has communicated to Defendants, that in this instance not only did the bar rules require Defendants to obtain Plaintiff's informed written consent, but that the failure to do so constitutes a breach of the standard of care for a reasonable attorney.

Defendants also argue that summary judgment is warranted because Plaintiff has failed to demonstrate that the outcome in this case would have been different but for Defendants' alleged negligence. In support of this argument, Defendants rely upon Defendant Keniston's affidavit in which she asserts that had Defendants refused to represent her due to the alleged conflict, she would have consulted another attorney and taken the same action with respect to her resignation from MSM and the formation of Commercial Alternatives and KMS. Defendants further assert that the lack of any expert testimony to establish that Defendants' alleged conduct proximately caused Plaintiff's alleged injuries is fatal to their claim. The Court disagrees.

While a legal malpractice plaintiff often must "demonstrate that he or she would have achieved a more favorable result but for the defendant's alleged malpractice," such proof is not the exclusive way in which a plaintiff can establish proximate cause. *Niehoff v. Shankman & Assocs.*, 2000 ME 214, ¶ 9, 763 A.2d 121, 125. Instead, that standard applies "in the context of actions asserting legal malpractice in advice or tactics which preceded a final results on the merits of any underlying action." *Id.* This is not such a case. Here, the alleged negligence is the failure of Defendants to reveal an alleged conflict of interest to the detriment of a former (or current) client. As the Law Court has explained, in the context of malpractice claims not involving litigation or some other "final result on the merits," "[r]equiring a plaintiff to demonstrate that a more favorable result would have been achieved is more problematic[.]" *Id.* In such situations, the Court has indicated that rather than determining whether a plaintiff would have received a better result, the proper inquiry is:

whether there are facts in dispute which are sufficient to allow a jury to conclude that: (1) the defendant attorney was negligent in representation of the plaintiff; and (2) the attorney's negligence caused the plaintiff to lose an opportunity to achieve a result, favorable to the plaintiff, which (i) the law allows; and (ii) the facts generated by plaintiff's [M.R. Civ. P. 56(h)] statements would support, if the facts were believed by the jury.

Id. ¶ 10, 763 A.2d at 124-25. In this case, Plaintiff has at a minimum generated an issue as to whether, with the benefit of the disclosure, they would have taken action that would have limited Defendant Keniston's ability to continue to operate MSM, including her ability to write checks from the MSM account.

With respect to Defendants' contention that Plaintiff lacks the expert testimony necessary to establish proximate cause, the Court similarly concludes that factual issues exist. The Law Court has explained that "[t]he question of whether a defendant's acts or omissions were the proximate cause of a plaintiff's injuries is generally a question of fact, reserved for the jury's determination." *Tolliver v. Dep't of Transp.*, 2008 ME 83, ¶ 42, 948 A.2d 1223, 1237 (citing *Houde v. Millett*, 2001 ME 183, ¶ 11, 787 A.2d 757, 759). In professional malpractice cases, proximate cause exists where "evidence and inferences that may reasonably be drawn from the evidence indicate that the negligence played a substantial part in bringing about or actually causing the injury or damage and that the injury or damage was either a direct result or a reasonably foreseeable consequence of the negligence." *Niehoff*, 2000 ME 214, ¶ 7, 763 A.2d 121, 124. Although expert testimony as to causation is frequently required "in cases involving complex facts beyond the knowledge of the average juror," and may well be required in this case, a jury may permissibly conclude that proximate cause exists without expert testimony "[i]f as a matter of ordinary experience a particular act or omission might be expected, under the circumstances, to produce a particular result, and that result in fact has followed[.]" *Tolliver*, 2008 ME 83, ¶ 42, 948 A.2d at 1223 (quoting W. PAGE KEETON, *PROSSER & KEETON ON THE LAW OF TORTS* 270 (5th ed. 1984)). On this record, the Court is not convinced that expert testimony is required on the causation issue. As explained above, the issue is whether with the benefit of the disclosure, Plaintiffs would have

taken action to limit Defendant Keniston's ability to conduct business on behalf of MSM thereby preventing her from, among other things, writing checks from the MSM account, or to establish a competing business. The Court fails to see how a legal expert witness is required on that issue.

Conclusion

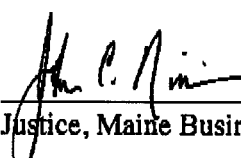
Based on the foregoing analysis, the Court orders:

1. The Court grants the motion for summary judgment of Defendants Keniston and KMS as to all claims asserted by Plaintiffs Floor and Cummings. Judgment is, therefore, entered in favor of Defendants on all the claims asserted by Plaintiffs Floor and Cummings.
2. The Court denies Defendant Keniston's motion for summary judgment as to Count I.
3. The Court denies Defendant Keniston's motion for summary judgment as to Count III. The Court grants the motion for summary judgment of Defendant KMS as to Count III. Judgment is, therefore, entered in favor of Defendant KMS on Count III.
4. The Court denies Defendant Keniston's motion for summary judgment as to Count V. The Court grants the motion for summary judgment of Defendant KMS as to Count V. Judgment is, therefore, entered in favor of Defendant KMS on Count V.
5. The Court denies Defendant Keniston's motion for summary judgment as to Count VI. The Court grants the motion for summary judgment of Defendant KMS as to Count VI. Judgment is, therefore, entered in favor of Defendant KMS on Count VI.
6. The Court grants Defendants' motions for summary judgment as to Count VII. Judgment is, therefore, granted as to all Defendants on Count VII.
7. The Court denies Defendant Keniston's motion for summary judgment as to Count VIII. The Court grants the motion for summary judgment of Defendant KMS as to Count VIII. Judgment is, therefore, entered in favor of Defendant KMS on Count VIII.

8. The Court denies the motion for summary judgment of Defendant Keniston and Defendant KMS as to Count IX.
9. The Court grants Defendants' motions for summary judgment as to Count X. Judgment is, therefore, granted as to Defendants Keniston and KMS on Count X.
10. The Court denies the motion for summary judgment of Defendant Keniston and Defendant KMS as to Count XI.
11. The Court denies the motion for summary judgment of Defendant Keniston and Defendant KMS as to Count XIII.
12. The Court grants the motion for summary judgment of Defendants Norman, Hanson, & DeTroy and Roderick Rovzar as to the claims of Plaintiffs Floor and Cummings. Judgment is entered in favor of Defendants Rovzar and Norman, Hanson & DeTroy on the claims of Plaintiffs Floor and Cummings. The Court otherwise denies the motion for summary judgment.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 9/25/09



Justice, Maine Business & Consumer Docket