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**ORDER OF THE SUPREME COURT FOR
THE STATE OF NEW HAMPSHIRE
(OCTOBER 18, 2022)**

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

BRANDYWYNE COMMON CONDOMINIUM

v.

WEIXING V. WANG

No. 2021-0399

Before: MACDONALD, C.J., HICKS, BASSETT,
HANTZ MARCONI, and DONOVAN, JJ.

In Case No. 2021-0399, *Brandywyne Common Condominium v. Weixing V. Wang*, the court on October 18, 2022, issued the following order:

Having considered the parties' briefs and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. *See* Sup. Ct. R. 18(1). The defendant, Weixing V. Wang, appeals orders of the Superior Court (Honigberg, J.) granting summary judgment to the plaintiff, Brandywine Commons Condominium, on its claim to recover certain unpaid assessments and fines from him, and awarding the plaintiff \$1,468.36 in damages and \$12,688.50 in attorney's fees. We affirm.

When reviewing a trial court's grant of summary judgment, we consider the affidavits and other evidence,

and all inferences properly drawn from them, in the light most favorable to the non-moving party. *Clark v. N.H. Dep't of Emp't Sec.*, 171 N.H. 639, 650 (2019). If our review of that evidence reveals no genuine dispute of material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the grant of summary judgment. *Id.* We review the trial court's application of law to the facts *de novo*. *Id.*

We will not overturn a trial court's decision concerning attorney's fees absent an unsustainable exercise of discretion. *Short v. LaPlante*, 174 N.H. 384, 393 (2021). To warrant reversal, the discretion must have been exercised for reasons clearly untenable or to an extent clearly unreasonable to the prejudice of the aggrieved party on that issue. *Id.* In evaluating the trial court's ruling on this issue, we acknowledge the tremendous deference given a trial court's decision regarding attorney's fees. *Id.* If there is some support in the record for the trial court's determination, we will uphold it. *Id.*

As the appealing party, the defendant has the burden to demonstrate reversible error. *Gallo v. Traina*, 166 N.H. 737, 740 (2014). Based upon our review of the trial court's well-reasoned orders, the defendant's challenges to them, the relevant law, and the record submitted on appeal, we conclude that the defendant has not demonstrated that the court committed reversible error. *See id.*

To the extent that the defendant argues that the trial judge demonstrated bias against him, we note that adverse rulings alone do not establish judicial bias. *See State v. Bader*, 148 N.H. 265, 271 (2002). Based upon our review of the record submitted on

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appeal, we conclude that no reasonable person would have questioned the judge's impartiality and that no factors were present that would have *per se* disqualified the trial judge from participating in this case. *See id.* at 268-71.

In light of this order, the plaintiff's request in its brief that we strike the defendant's brief is moot. The plaintiff's request in its brief for an award of attorney's fees and costs incurred on appeal is granted. Consistent with Rule 23, the plaintiff may file a motion for taxation of costs and attorney's fees, and shall support the motion with an affidavit of counsel establishing the reasonableness of the attorney's fees it incurred in defending this appeal. Failure to comply with Rule 23 or this order shall be deemed a waiver of an award of attorney's fees and costs incurred on appeal.

Affirmed.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas
Clerk

**ORDER OF THE SUPREME COURT FOR
THE STATE OF NEW HAMPSHIRE
(DECEMBER 22, 2022)**

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

BRANDYWYNE COMMON CONDOMINIUM

v.

WEIXING V. WANG

No. 2021-0399

Before: HICKS, BASSETT, HANTZ MARCONI,
and DONOVAN, JJ.

In Case No. 2021-0399, *Brandywyne Common Condominium v. Weixing V. Wang*, the court on December 22, 2022, issued the following order:

Brandywyne Common Condominium's motion for taxation of attorney's fees in the amount of \$33,163.00 is granted.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas
Clerk

**ORDER OF THE SUPERIOR COURT OF
THE STATE OF NEW HAMPSHIRE
(AUGUST 3, 2021)**

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

BRANDYWYNE COMMON CONDOMINIUM

v.

WEIXING V. WANG

Docket No. 218-2019-CV-221

Before: Martin P. HONIGBERG, Judge.

Rockingham County
Rockingham Superior Court

ORDER ON PENDING MOTIONS

Plaintiff Brandywyne Common Condominium (hereinafter "Plaintiff" or the "Condominium") initiated this action to recover unpaid assessments and fines from Defendant Weixing V. Wang. *See* Doc. 38 ¶¶ 1-3 (Am. Compl.). On May 18, 2021, the Court granted Plaintiffs fourth motion for summary judgment with respect to all unpaid assessments and several unpaid fines but denied Plaintiff's motion and dismissed Plaintiffs claims with respect to other, unproven fines. *See* Doc. 110 at 14. In addition, the Court denied Defendant's motion for compensation and his request

for damages under RSA 358-A:10. *See id.* at 15. Defendant now seeks reconsideration with respect to portions of the May 18, 2021, Order. *See* Doc. 111; *see also* Doc. 112 (Def.'s Aff.). Further, the parties have filed supplemental pleadings concerning Plaintiffs requested attorney's fees, the amount of Plaintiff's recovery, and the status of the lien Plaintiff recorded on Defendant's Condominium unit, *see* Doc. 113; *see also* Doc. 114 (Def.'s Obj. to Doc. 113); Docs. 115-119 (Attachs. to Doc. 114). After review, the Court finds and rules as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The facts underlying this action have been laid out in the Court's prior Orders and need not be reiterated in full here. By way of brief and/or additional background, this case concerns several minor underpayments of the monthly assessments charged to Defendant's Condominium unit, as well as fines charged based upon the conduct of Defendant's former tenants. On May 18, 2021, the Court determined Plaintiff was entitled to recover the following:

[T]he under-and/or late assessment payments shown on Defendant's Owner Ledger, as well as the fines assessed for the second (\$100) violation for unleashed pets on 5/10/2018, the second (\$100) and third (\$250) violations for noise/disturbance on 5/29/2018, and the third (\$250) violation for unleashed pets on 7/25/2018, with applicable interest.

Doc. 110 at 14.

After noting Plaintiff had sought summary judgment on four occasions but had not fully addressed

defects in proof previously identified by the Court, the Court denied Plaintiff's motion for summary judgment and dismissed Plaintiff's requests for relief concerning "the third (\$250) violation for disposal of pet waste on 5/10/2018, the third (\$250) violation for guest parking on 5/29/2018, and the third (\$25) notice concerning Defendant's overdue chimney inspection on 11/06/2019." *Id.* at 9-14.

Further, in addressing Plaintiff's request for an award of attorney's fees, the Court questioned whether each charge listed on Plaintiff's statement of counsel fees could "fairly be characterized as reasonable" given the "unnecessarily complicated procedural history" of this case. *Id.* at 10. The Court thus instructed Plaintiff to file a pleading addressing that issue. *See id.* (also instructing Plaintiff to file a revised ledger setting forth the interest attributable to the damages awarded to Plaintiff).

Turning to Defendant's motion for compensation—wherein Defendant sought to recover for time he devoted to this case—the Court observed that it was "unaware of any legal authority which would permit the Court to make such an award to a self-represented party." *Id.* at 11. In addition, the Court noted that "the existing record d[id] not support Defendant's claims of fabricated evidence or fraud." *Id.* For these reasons, the Court denied Defendant's motion. *Id.* For similar reasons, the Court denied Defendant's request for damages under RSA 358-A:10. *Id.* at 11-12 (also denying Defendant's request because he never filed a valid counterclaim in this action).

Before concluding, the Court expressed doubt as to the propriety of the lien Plaintiff previously recorded on Defendant's Condominium unit. *See id.* at 12-13

(noting the majority of the lien appeared to relate to unpaid fines rather than unpaid assessments). The Court afforded Plaintiff an opportunity “to defend the propriety of the existing” lien, noting it would “enter an Order requiring that the existing” lien be “stricken from the Registry” if Plaintiff did not adequately address the Court’s concerns. *See id.*

The Notice of Decision for the Court’s May 18, 2021, Order is dated May 24, 2021 *See id.* at 15. On June 8, 2021, Defendant filed a motion challenging several of the Court’s May 18, 2021, rulings. *See* Doc. 111. Thereafter, Plaintiff submitted a filing aimed at demonstrating the reasonableness of its requested attorney’s fees and the amount of interest that accrued on the awarded assessments and fines. *See* Doc. 113. That filing also indicates Plaintiff has begun the process of discharging the lien on Defendant’s Condominium unit. *Id.* Defendant’s objection to Plaintiff’s filing questions certain line items in Plaintiff’s taxation of costs. *See* Doc. 114 at 16. The majority of Defendant’s objection, however, addresses the merits of the underlying case, and does not assist the Court in assessing the reasonableness of Plaintiff’s requested attorney’s fees or the accuracy of the interest calculations. *See id.* at 1-26; Docs. 115-119.

ANALYSIS

There are several issues pending before the Court. The Court will first address Defendant’s June 8, 2021, filing. *See* Doc. 111. Captioned as a motion to “revoke” the Court’s May 18, 2021, Order, Defendant’s motion challenges several of the Court’s rulings. *See id.* In effect, Defendant’s filing is a motion for reconsideration. *See id.*; *see also Smith v. Shepard*, 144 N.H. 262,

264 (1999) (“A motion for reconsideration allows a party to present points of law or fact that the Court has overlooked or misapprehended.” (citation omitted)). Pursuant to Superior Court Civil Rule 12(e), “[a] party intending to file a motion for reconsideration or to request other post-decision relief shall do so within 10 days of the date on the written Notice of the order or decision . . .” Here, the relevant Notice of Decision is dated May 24, 2021. *See* Doc. 110. Defendant’s June 8, 2021, motion was filed fifteen (15) days after the date on the Notice of Decision. *See* Super. Ct. Civ. R. 12(e). Defendant has not attempted to justify or explain the late nature of his filing. *See* Doc. 111. Defendant’s June 8, 2021, motion is thus DENIED as untimely. *See Matter of St. Pierre*, 172 N.H. 209, 217 (2019) (“Under our case law, self-represented parties are bound by the same procedural rules that govern parties represented by counsel.” (quotations omitted)).

The Court now turns to the interest calculations attached to Plaintiff’s June 11, 2021, filing. *See* Doc. 113, Ex. 1. In the May 18, 2021, Order, the Court questioned whether Defendant’s regular monthly payments should have been applied to assessments or fines. *See* Doc. 110 at 13 (questioning the amounts referenced in the recorded lien, and noting, “[i]f Plaintiff wishes to defend the propriety of the existing” lien, it “should address, among other things, whether any applicable Condominium rules dictate the manner in which owner payments are applied to an outstanding balance comprised of fines and assessments”). Rather than addressing those issues, Plaintiff now appears to concede that Defendant’s regular monthly payments applied to assessments due, not fines. *See* Doc. 113, Ex. 1 (calculating interest on \$2 and \$4 assessment

underpayments and on the full amount of unpaid fines). According to Plaintiffs calculations, Defendant's assessment underpayments resulted in interest charges totaling \$6.36. *See id.* By contrast, the awarded fines and interest thereon total \$1,462.00. *See id.*

On its face, the updated ledger appears mathematically correct, and Defendant has not questioned Plaintiff's calculations. On the record presented, the Court concludes Plaintiff is entitled to recover \$1,468.36 in underpaid assessments, unpaid fines, and interest. Accordingly, Plaintiff is AWARDED damages in that amount, plus any appropriate post-judgment interest which might accrue.

Consistent with the foregoing, Plaintiff is a prevailing party in this action, and the Court must therefore determine the appropriate amount of fees to be awarded to Plaintiff. *See* RSA chapter 356-B; Doc. 101 at 7 ("[A]ll collection/law suit costs, including reasonable attorney's fees, will be . . . the responsibility of the owner to reimburse the Association for such costs incurred."); *accord* Doc. 86 at 62. When determining the reasonableness of requested attorney's fees, the Court considers the following factors: "the amount involved, the nature, novelty, and difficulty of the litigation, the attorney's standing and the skill employed, the time devoted, the customary fees in the area, the extent to which the attorney prevailed, and the benefit thereby bestowed on his clients." *In re Metevier*, 146 N.H. 62, 64 (2001) (citation omitted). "The party requesting the fees must submit an affidavit outlining in reasonable detail the actual time spent . . . and setting forth a rate for that person who performed the work." *Scheele v. Vill. Dist. of Eidelweiss*, 122 N.H. 1015, 1020-21 (1982).

Here, Plaintiff has submitted two documents outlining its requested fees: an affidavit from counsel dated December 15, 2020, *see* Doc. 92, and the aforementioned supplemental filing, *see* Doc. 113. Having carefully reviewed those documents, the Court concludes that the rate charged by Plaintiff's counsel is generally reasonable given the customary fees in this area. The Court further concludes that the time devoted to discrete tasks was generally reasonable. In reaching this conclusion, the Court accepts Plaintiff's argument that certain fees—such as those incurred in defending against Defendant's claims of fraud and impropriety—were reasonable and necessary under the circumstances. Further, the Court notes that although the amount in dispute in this case was, at most, \$3,307.28, *see* Doc. 91 (Dec. 15, 2020 Aff. of Damages), attorney's fees are often higher than the amount in dispute in cases where fee awards are statutorily authorized. *See* N.H. R. Prof. Conduct 1.5 Ethics Comm. cmt. (recognizing that one purpose of fee-shifting statutes is "to encourage attorneys to take cases that otherwise might not be economically feasible or attractive"). As such, the amount involved does not necessarily render Plaintiff's fee request unreasonable.

Notwithstanding the foregoing, the Court remains unconvinced that all of Plaintiff's requested attorney's fees are reasonable. First, as set forth above, Plaintiff now apparently concedes that by the time counsel filed the lien on Defendant's Condominium unit, Defendant owed (exclusive of fines) only \$36 in underpaid assessments, plus interest. *See* Doc. 113, Ex. 1. As the Court has previously explained, Plaintiff was only entitled to record a lien concerning the underpaid assessments, not fines. *See* Doc. 36. Moreover, the recorded lien

suggested that Defendant had not paid entire assessments, when he had in fact only made slight underpayments. *See id.*; *see also* Doc. 113, Ex. 1. Although the Court recognizes that the filing of a lien is, as Plaintiff puts it, in accord with the lien enforcement procedure of RSA 356-B,” in this case Plaintiffs lien misstated the nature of the amounts owed, resulting in the recording of a lien that was substantially more than it should have been. Under the circumstances, the Court cannot conclude that the fees requested in connection with this activity are reasonable. Accordingly, the Court deducts \$320 from Plaintiffs fee request.

Further, given the relatively straightforward nature of the issues presented in this action, the Court is puzzled by the fact that Plaintiff did not successfully obtain partial summary judgment until the fourth try, and even then was only partially successful. Moreover, on two occasions Plaintiff failed to completely resolve defects which the Court had expressly identified. Specifically, on November 14, 2019, the Court denied Plaintiffs first motion for summary judgment because, among other things, Plaintiff had not properly asserted a claim for damages in its Complaint. *See* Doc. 23 (margin Order). Although Plaintiff’s second motion for summary judgment resolved some of the issues identified in the Court’s prior Order, Plaintiff again sought an award of damages without first amending its Complaint to include such a claim. *See* Doc. 36 (Jan. 27, 2020, Order noting Plaintiff had not corrected this defect and had also not provided competent evidence as to the “factual basis for the fines”). Plaintiff then sought leave to amend its Complaint to add a claim for damages. *See* Docs. 37-38.

Thereafter, Plaintiff moved for summary judgment a third time. *See* Doc. 49. The Court denied that motion because, among other things, Plaintiff had not provided competent evidence as to the factual basis for the fines. *See id.* at 6-7 (cautioning, in a footnote, that Plaintiff's failure in this regard "may impact the Court's assessment of what constitutes a 'reasonable' award of attorney's fees"). Nevertheless, Plaintiff's fourth motion for summary judgment was still lacking in some evidentiary respects, thus prompting the Court to issue an interim Order soliciting additional evidence. *See* Doc. 100 (March 1, 2021, interim Order).

Under the circumstances presented, the Court cannot conclude that the fees incurred in connection with Plaintiffs various motions for summary judgment and/or Plaintiffs original and amended Complaints are all reasonable. As the issues presented were straightforward, it is unclear why the original Complaint did not include a request for each type of recovery Plaintiff wished to obtain. Plaintiff's counsel charged \$899 for drafting and filing the original Complaint, \$475 for drafting the motion to amend, and \$124 for drafting a response to Defendant's objection. Had the Complaint included a claim for each type of relief Plaintiff sought to obtain, neither the motion to amend nor the response to Defendant's corresponding objection would have been necessary. Accordingly, the Court deducts \$599 from Plaintiffs attorney's fee request.

Further, Plaintiff's counsel charged \$1,653 in connection with the first motion for summary judgment, \$1,023 in connection with Plaintiffs third motion for summary judgment, \$217 in connection with counsel's review of Defendant's objection to that filing, and

\$1,581 in connection with Plaintiffs fourth motion for summary judgment.¹ In the Court's view, it should have been unnecessary for Plaintiff to seek summary judgment so many times. Like the issues presented in this case, the nature of proof necessary to sustain Plaintiffs claims is relatively straightforward. Although Plaintiff seeks fees of \$4,474 in connection with its various motions for summary judgment, the Court concludes that an award of \$2,000 for those efforts is reasonable. Accordingly, the Court deducts \$2,474 from Plaintiffs attorney's fee request.

In sum, although Plaintiffs requested attorney's fees are largely reasonable, the Court finds it appropriate to deduct a total of \$3,393.00 from the requested fees. Accordingly, Plaintiff is **AWARDED** attorney's fees totaling \$12,688.50.²

CONCLUSION

Consistent with the foregoing, Defendant's June 8, 2021, motion is **DENIED** as untimely. Plaintiff is **AWARDED** damages in the amount of \$1,468.36, plus any appropriate post-judgment interest, and attorney's fees totaling \$12,688.50. As Plaintiff has begun the process of discharging the lien it recorded on

¹ The Court notes that Plaintiffs counsel is not seeking an award of fees incurred in connection with Plaintiffs second motion for summary judgment. *See* Doc. 113 at 6.

² Plaintiffs counsel will likely devote additional time to this case, but Plaintiff does not currently intend to seek additional attorney's fees for those activities. *See* Doc. 113 at 10. The Court appreciates Plaintiffs efforts to resolve the remainder of this action in an efficient way that promotes judicial economy. *See id.*

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Defendant's Condominium unit, the Court deems any
issues concerning the propriety of that lien MOOT

So ordered.

/s/ Martin P. Honigberg
Judge

Date: August 3, 2021

**ORDER ON PLAINTIFF'S FOURTH MOTION
FOR SUMMARY JUDGMENT, DEFENDANT'S
MOTION FOR COMPENSATION, AND
DEFENDANT'S REQUEST FOR DAMAGES
PURSUANT TO RSA 358-A:10
(MAY 18, 2021)**

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

BRANDYWYNE COMMON CONDOMINIUM

v.

WEIXING V. WANG

Docket No. 218-2019-CV-221

Before: Martin P. HONIGBERG, Judge.

Rockingham County
Rockingham Superior Court

In this action, Plaintiff Brandywyne Common Condominium (hereinafter "Plaintiff" or the "Condominium") seeks to recover unpaid assessments and fines from Defendant Weixing V. Wang, an individual who owns, but does not reside in, a unit within the Condominium. *See* Doc. 38 ¶¶ 1-3 (Am. Compl.). The following motions are pending before the Court: Plaintiff's fourth motion for summary judgment, *see* Docs. 86-102; Defendant's motion for compensation, *see* Docs. 103-105, 108-109; and Defendant's request for damages pursuant

to RSA 358-A:10, *see* Docs. 106-107. After review, the Court finds and rules as follows.

FACTUAL AND PROCEDURAL BACKGROUND

The Court's Order denying Plaintiff's renewed motion for summary judgment contains a detailed discussion of the facts underlying this action. *See* Doc. 36. The facts set forth in the following excerpt are relevant to the pending motions:

From May 29, 2018 through May 28, 2019, Defendant made 13 monthly payments of \$215 to the unit owners' association for the Condominium (the "Association"). *See* Doc. 34 at 85-86. As of May 1, 2018, the monthly common expense assessment charged to Defendant's condominium unit was \$217. *Id.* at 85. On January 1, 2019, that charge increased to \$219 per month. *Id.* On June 11, 2019, Defendant made a payment of \$219 to the Association, and he thereafter continued to make monthly payments in that amount. *See id.* at 86. Without accounting for interest charges, the total difference between the monthly assessment charges that came due from May 1, 2018 to May 28, 2019, and Defendant's monthly payments during that same timeframe was \$36. *See id.* at 85-86.¹ On May 28, 2019 Defendant made an extra payment to the Association in the amount of

¹ Defendant made [eight] monthly payments (for May 2018 through December 2018) that were each \$2 short, and he thereafter made five monthly payments (for January 2019 through May 2019) that were each \$4 short, for a total shortage (excluding interest and other amounts charged) of \$36.

\$44. *See id.* at 86.

During this timeframe, the Association charged Defendant's condominium unit for several violations of the Condominium Rules and Regulations (the "Rules and Regulations"). *See id.* at 85-86.

Id. at 2-3. Throughout these proceedings, Defendant has challenged the factual basis of the fines charged to his condominium unit. *See, e.g.*, Doc. 29 (Def.'s Obj. Pl.'s First Mot. Summ. J.), at 1 (alleging the Association "fabricated . . . bills" and "ma[de] up stories"); Doc. 42 (Def.'s Obj. Pl.'s Mot. Am. Compl.) (alleging Defendant had not received a "copy of any ticket issued to the former tenants").

Plaintiff has submitted several affidavits in support of its fourth motion for summary judgment. *See* Docs. 89-91, 101. The first affidavit, authored by a member of the Board of Directors for the Association (the "Board"), describes letters sent to Defendant about his tenants' alleged violations of the Rules and Regulations. *See* Doc. 89 (Aff. of Kevin Buckley) (explaining Mr. Buckley has personal knowledge of the violations and the corresponding letters). The second affidavit, authored by a former member of the Board, describes additional communications with Defendant about his tenants' alleged conduct and emails the affiant sent to the property management company for the Condominium (the "Management Company") about improperly parked vehicles. *See* Doc. 90 (Aff. of Christopher Butterweck, formerly known as Christopher O'Brien) (indicating Mr. Butterweck personally observed "violations related to the dogs of [Defendant]'s tenants including, in particular, many instances of the dogs being outside without leashes and without even their

owners present”). The third affidavit, authored by an employee of the Management Company, describes the Condominium instruments and charges assessed to Defendant’s condominium unit. *See* Doc. 91 (Aff. of Kevin Decker) (indicating Mr. Decker lacks personal knowledge of the events underlying the fines charged to Defendant’s unit, but that he has “personal knowledge of, and/or custody of, the books and records of the Association”). An updated copy of Defendant’s Owner Ledger is appended to Mr. Decker’s affidavit. *See id.* at Ex. A.

The last affidavit, which Plaintiff submitted in response to the Court’s February 27, 2021, Interim Order, *see* Doc. 100, authenticates a copy of the 2017 Rules and Regulations, and confirms that the 2017 version was “issued . . . to all unit owners . . .” *See* Doc. 101 (Aff. of Kerri Salls); *see also id.* at 3-15 (2017 Rules and Regulations). This affidavit, with the supporting documentation attached thereto, reveals that the following fine structure was in place as of August 23, 2017:

4.] Notice and Fine Structure

- a) Notice-Any notice hereunder shall be deemed to have been duly given if in writing and delivered in person or by regular mail, addressed to the unit owner at the address on record.
- b) The unit owner may challenge any notification by requesting a meeting with the Board . . . within ten (10) days after receipt of the notice.
- c) The first notification of a violation will be considered a warning to the unit owner . . .

- d) A second notification of a violation may result in a fine of up to \$100.00 imposed on the unit owner . . .

company for the Condominium (the “Management Company”) about improperly parked vehicles. *See* Doc. 90 (Aff. of Christopher Butterweck, formerly known as Christopher O’Brien) (indicating Mr. Butterweck personally observed “violations related to the dogs of [Defendant]’s tenants including, in particular, many instances of the dogs being outside without leashes and without even their owners present”). The third affidavit, authored by an employee of the Management Company, describes the Condominium instruments and charges assessed to Defendant’s condominium unit. *See* Doc. 91 (Aff. of Kevin Decker) (indicating Mr. Decker lacks personal knowledge of the events underlying the fines charged to Defendant’s unit, but that he has “personal knowledge of, and/or custody of, the books and records of the Association”). An updated copy of Defendant’s Owner Ledger is appended to Mr. Decker’s affidavit. *See id.* at Ex. A.

The last affidavit, which Plaintiff submitted in response to the Court’s February 27, 2021, Interim Order, *see* Doc. 100, authenticates a copy of the 2017 Rules and Regulations, and confirms that the 2017 version was “issued . . . to all unit owners . . .” *See* Doc. 101 (Aff. of Kerri Salls); *see also id.* at 3-15 (2017 Rules and Regulations). This affidavit, with the supporting documentation attached thereto, reveals that the following fine structure was in place as of August 23, 2017:

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4.] Notice and Fine Structure

- a) Notice-Any notice hereunder shall be deemed to have been duly given if in writing and delivered in person or by regular mail, addressed to the unit owner at the address on record.
- b) The unit owner may challenge any notification by requesting a meeting with the Board . . . within ten (10) days after receipt of the notice.
- c) The first notification of a violation will be considered a warning to the unit owner. . . .
- d) A second notification of a violation may result in a fine of up to \$100.00 imposed on the unit owner . . .
- e) A third and all subsequent notifications of a violation may result in a fine of up to \$250.00 per notification imposed on the unit owner. . . .
- f) A lien may be placed on the property in question for any unpaid fines. . . .
- g) All fines are due and payable within thirty (30) days of the date of notification of such fine. . . . All fines overdue will be subjected to a three percent (3%) per month finance charge . . .

Id. at 11; accord Doc. 86 at 66 (2019 Rules and Regulations).

Consistent with this fine structure, Plaintiff seeks to recover the following fines:

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5/10/2018	Third Violation — Disposal of pet waste	\$250
5/10/2018	Second Violation — Unleashed Pets	\$100
5/29/2018	Second Violation — Noise / Disturbance	\$100
5/29/2018	Third Violation — Noise / Disturbance	\$250
5/29/2018	Third Violation — Guest Parking Violation	\$250
7/25/2018	Third Violation — Unleashed Pets	\$250
11/06/2019	Third Violation- Chimney Inspection	\$ 25

Doc. 91 Ex. A.

The evidence in the summary judgment record demonstrates that on April 23, 2018, Defendant was issued a warning about his tenants' dogs roaming the common areas unleashed. *See* Doc. 89 Ex. 1. On May 10, 2018, Defendant was issued a warning about noise coming from his condominium unit. *Id.* at Ex. 2. In addition, Defendant was charged \$100 for a second violation in connection with his tenants' failure to keep pets leashed in common areas. *Id.* Defendant was also charged \$250 for a third violation of failure to dispose of pet waste. *Id.* The summary judgment record does not contain documentation concerning a first or

second violation notice sent to Defendant about the pet waste issue.

On May 29, 2018, Defendant was charged \$100 for a second noise-related violation, and he was charged an additional \$250 for a third such violation later that same day. *See id.* at Ex. 3. In addition, Defendant was charged \$250 for a third violation concerning guest parking. *Id.* As noted in the Court's February 27, 2021, Interim Order, the summary judgment record does not contain the first or second violation notice sent to Defendant about this issue. *See* Doc. 100 at 2 ("The second problem with Plaintiff's most recent filing is that although a May 29, 2018 letter to Defendant references a third violation concerning guest parking, Plaintiff has submitted no evidence indicating that Defendant was notified of the first or second such violation.").

On July 25, 2018, Defendant was charged \$250 for a third violation concerning his tenants' failure to leash dogs in common areas. *See id.* at Ex. 4. On November 29, 2018, Defendant was issued a warning concerning a commercial vehicle that was improperly parked in front of his unit. *See id.* at Ex. 5. No charge was assessed in connection with that warning. *See id.* On September 30, 2019, Defendant was issued a warning regarding his tenants' disorderly conduct. *See id.* at Ex. 7; *see also id.* at Ex. 6 (photograph of police response). No charge was assessed in connection with that warning. *See id.* at Ex. 7.

On November 5, 2019, Defendant was charged \$25 in connection with an overdue chimney inspection. *See id.* at Doc. 8. The corresponding letter indicates it is the third notice to Defendant about this issue. *See Id.* However, the summary judgment record contains no

evidence concerning the first or second notice. Moreover, Defendant's Owner Ledger does not indicate he was charged in connection with the second such notice. *See* Doc. 91 **Ex. A**.

ANALYSIS

There are several motions pending before the Court. The Court will first address Plaintiffs fourth motion for summary judgment. The summary judgment procedure in this state is governed by RSA 491:8-a and Superior Court Civil Rule 12(g). As relevant here, RSA 491:8-a requires a party seeking summary judgment to "accompany his motion with an affidavit based upon personal knowledge of admissible facts as to which it appears affirmatively that the affiants will be competent to testify." RSA 491:8-a, II. In ruling on a motion for summary judgment, the Court must consider the evidence, and all reasonable inferences therefrom, in the light most favorable to the non-moving party. *See Stewart v. Bader*, 154 N.H. 75, 85 (2006). The movant bears the burden of proving that no genuine issue of material fact exists, and that it is entitled to judgment as a matter of law. *See id.* at 86.

In its most recent motion for summary judgment, Plaintiff seeks to recover unpaid fines and assessments, plus applicable interest and related attorney's fees and costs. Specifically, Plaintiff first seeks to recover in connection with the minor underpayments resulting from the assessment increases reflected on Defendant's Owner Ledger, as well as any late fees charged for past-due assessments generally. *See* Doc. 91 at 5-6. Defendant does not dispute that the underpayments and/or late payments shown on his Owner Ledger occurred. Rather, he suggests he reached some sort of

a settlement with the Management Company pursuant to which his May 28, 2019, payment of \$44 resolved his outstanding assessment balance. *See* Doc. 102 ¶ 15. Defendant has not, however, submitted competent evidence in support of that suggestion. *See* Doc. 31 (May 21, 2019, email from Management Company) (“Attached for your review is the Defendant claims he did not sign the 2017 Rules and Regulations, and thus he cannot be charged the increased fine amounts. *See id.* Importantly, however, the 2015 version, the 2017 version, and the 2019 version of the Rules and Regulations each specifies that the “Rules and Regulations may be revised and/or amended, in any way and at any time, by the Board, as conditions warrant, provided an updated copy is provided to each owner.” *See* Doc. 97 at 9-10 (2015); Doc. 101 at 11 (2017); Doc. 86 at 67 (2019). Defendant does not deny receiving a copy of the 2017 Rules and Regulations. *See id.* Further, there is evidence in the summary judgment record that a copy of the 2017 Rules and Regulations was sent to unit owners on or about August 28, 2017. *See* Doc. 101 at 1. Given the state of the record, the Court must conclude that the fine structure set forth in the 2017 Rules and Regulations, as well as the 2019 Rules and Regulations, is enforceable in the context of this case. *See* Doc. 101 at 2.

Accordingly, and consistent with the facts set forth above, the Court concludes that Plaintiff has made a sufficient showing as to the applicable fine structure. In addition, Plaintiff has made a sufficient showing that Defendant was sent proper notice of, and was properly charged in connection with, the second (\$100) violation for unleashed pets on 5/10/2018, the second (\$100) and third (\$250) violations for noise/disturbance

on 5/29/2018, and the third (\$250) violation for unleashed pets on 7/25/2018. In other words, the evidence demonstrates that Defendant was sent a warning before he was assessed these fines, and that he was assessed a fine for a second violation prior to being assessed a fine for a third violation concerning noise/disturbance and unleashed pets. Accordingly, Plaintiff's motion for summary judgment is GRANTED as it relates to those fines, as well as the appropriate interest information you requested regarding the 2018 and 2019 fee increases for Brandywyne Commons. In January, 2018 fees increased from \$215.00 to \$217.00 = 12 underpaid fees by \$2.00 [\$24.00] and in January, 2019 fees increased from \$217.00 to \$219.00 = 5 underpaid fees by \$4.00 [\$20.00]."); Doc. 102 ¶ 15 (arguing that because the May 21, 2019, email only indicated Defendant had underpaid his assessments by a total of \$44, that must have been all that he owed the Association at that time). In the Court's view, the Management Company's May 21, 2019, email in no way expresses an agreement to waive applicable interest or to otherwise accept \$44.00 in full satisfaction of Defendant's late and/or underpaid assessments. On the record presented, the Court concludes that Plaintiff has made a sufficient showing as to the underpayments and the late assessment payments set forth on Defendant's Owner Ledger.² Plaintiff's motion for summary judgment is thus GRANTED to the extent it seeks recovery in connection with those under-and/or

² The Court notes that although the May 21, 2019, email suggests there were 12 \$2 underpayments in 2018, Defendant's Owner Ledger does not reflect underpayments prior to May 2018. As such, Plaintiff has not demonstrated a right to recovery for underpayments alleged to have occurred prior to May 2018.

late payments, as well as the appropriate interest thereon.

Plaintiff also seeks to recover in connection with fines assessed to Defendant's condominium unit. As set forth above, the specific fine amounts charged to Defendant's condominium unit are consistent with the increased fine structure first adopted in 2017. *See* Doc. 101. Notably, after Plaintiff submitted the 2017 Rules and Regulations in response to the Court's February 27, 2021 Interim Order, *see id.*; *see also* Doc. 100 (noting the fine structure differed between the 2015 version and the 2019 version of the Rules and Regulations), Defendant filed a supplemental objection questioning the propriety of the 2017 fine increases. *See* Doc. 102. In his unsworn, supplemental filing, thereon. *See* Doc. 86 at 62 and 66 (providing that overdue fines and assessments bear interest at a rate of "three percent (3%) per month"); *accord* Doc. 101 at 7 and 11.

In the Court's view, however, Plaintiff has not demonstrated that Defendant was afforded the requisite notice with respect to the third (\$250) violation for disposal of pet waste on 5/10/2018, the third (\$250) violation for guest parking on 5/29/2018, or the third (\$25) notice concerning Defendant's overdue chimney inspection on 11/06/2019. In other words, the record does not establish that the requisite warnings were issued to Defendant, or that Defendant was assessed a fine for a second violation prior to being assessed these third violations. As such, Plaintiff is not entitled to summary judgment with respect to those charges.

Moreover, the Court is cognizant of the fact that the underlying motion represents Plaintiff's fourth attempt to obtain summary judgment in its favor, and

although the Court expressly identified one of the relevant failures of proof in its Interim Order, Plaintiff did not cure that defect. *See* Doc. 100 at 1-2 (“Plaintiffs most recent motion still suffers from at least two defects. . . . The Second problem with Plaintiffs most recent filing is that although a May 29, 2018, letter to Defendant references a third violation concerning guest parking, Plaintiff has submitted no evidence indicating that Defendant was notified of the first or second such violation.”). Although Defendant has not formally renewed his July 23, 2020, motion for summary judgment, *see* Doc. 60, at this juncture the Court concludes that Plaintiff should not be permitted a fifth bite at the apple in attempting to collect for the third (\$250) violation for disposal of pet waste on 5/10/2018, the third (\$250) violation for guest parking on 5/29/2018, or the third (\$25) notice concerning Defendant’s overdue chimney inspection on 11/06/2019. *See* Super. Ct. Civ. R. 1(b) (“The rules shall be construed and administered to secure the just, speedy, and cost-effective determination of every action.”); Super. Ct. Civ. R. 1(d) (“As good cause appears and as justice may require, the court may waive the application of any rule.”); *Garabedian v. Donald William, Inc.*, 106 N.H. 156, 158 (1965) (“The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” (quoting *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-631 (1962))). Accordingly, Plaintiffs motion for summary judgment is DENIED as it relates to these fines, and Plaintiff’s claim for relief concerning such fines is DISMISSED.

Because Plaintiff has successfully demonstrated a right to recovery concerning certain late and/or underpaid assessments and fines, Plaintiff is also entitled to recover its reasonable attorney's fees. *See* RSA chapter 356-B; Doc. 101 at 7 (“[A]ll collection/law suit costs, including reasonable attorney’s fees, will be . . . the responsibility of the owner to reimburse the Association for such costs incurred.”); *accord* Doc. 86 at 62. To that end, Plaintiff has submitted a statement of counsel fees dated December 15, 2020. *See* Doc. 92 (describing time spent on various activities). At this stage of the proceedings, and given this case’s “unnecessarily complicated procedural history,” *see* Doc. 100 at 1, the Court is not convinced that each of the charges described in Plaintiff’s statement of counsel fees can fairly be characterized as “reasonable.” As such, the Court directs Plaintiff to file a supplemental pleading aimed at addressing that issue within twenty (20) days of the Notice of Decision accompanying this Order. Defendant will then be afforded a period of twenty (20) days to respond.

In addition, the Court notes that the Owner Ledger provided by Plaintiff includes some fines for which Plaintiff may not recover, as well as attorney’s fee amounts which have not yet been awarded. *See* Doc. 91, Ex. A. Accordingly, this ledger does not aid the Court in calculating amounts owed (including applicable three percent interest) based upon the rulings set forth herein. Within the same twenty (20) day timeframe, the Court directs Plaintiff to submit a revised ledger that contains only those charges which have been awarded in this Order (including applicable interest). Defendant will then have twenty (20) days to respond to the calculations set forth in that filing.

The Court now turns to Defendant's April 2, 2021, motion for compensation. *See* Doc. 103; *see also* Docs. 104-105, 108-109. In brief, Defendant contends he has spent at least 200 hours litigating this matter, and that he should be paid for that time at a rate of \$120 per hour. *See* Doc. 103. Defendant argues such an award is reasonable because, in his view, Plaintiff has fabricated evidence and seeks to commit fraud. *See id.* The Court, however, is unaware of any legal authority which would permit the Court to make such an award to a self-represented party. Moreover, the existing record does not support Defendant's claims of fabricated evidence or fraud. For these reasons, Defendant's motion for compensation is DENIED.

The Court next addresses Defendant's request for damages under RSA 358A:10. *See* Docs. 106-107. Defendant contends he is entitled to damages under this statute because, in his view, Plaintiff willfully violated the law while litigating this case. *See id.* Notably, however, Defendant has never filed a counter-claim in this action. Further, as noted, the existing record does not support Defendant's claim that Plaintiff fabricated evidence or committed fraud. In addition, Defendant has not articulated why the provisions of RSA 358-A would apply in the context of this case. In the Court's view, Plaintiffs conduct in litigating this action does not amount to trade or commerce. For all of these reasons, Defendant's request for damages under RSA 358-A:10 is DENIED.

As a final matter, the Court must address the status of the Memorandum of Lien referenced in Plaintiff's Amended Complaint. *See* Doc. 34 (referencing the Memorandum of Lien recorded with the Rockingham County Registry of Deeds at Book 5974,

Page 1086, and contending that this lien was recorded pursuant to RSA 356-B:46, I and 46, VII). The referenced portions of RSA 356-B:46, however, pertain to liens for “assessments,” but the Court takes judicial notice of the fact that the Memorandum of Lien includes the July 25, 2018, \$250.00 fine concerning the third violation for unleashed pets. For the reasons articulated in the Court’s January 27, 2018, Order, fines are not assessments. *See* Doc. 36. Accordingly, the \$250 fine should not have been included in a lien recorded pursuant to RSA 356-B:46. Further, the Memorandum of Lien suggests Defendant failed to pay the full amount of the \$217.00 assessments for September, October, November, and December of 2018. Yet, Defendant’s Owner Ledger and the May 21, 2019, email from the Management Company indicate Defendant paid \$215.00 towards each of those assessments, and that he thereafter made a “catch-up” payment of \$44.00. While the Court has no basis to conclude that the \$44.00 payment satisfied the underpayments with associated late fees and interest, the difference between those two amounts is likely rather small.

On this record, the Court is inclined to Order that the January 11, 2019, Memorandum of Lien be stricken from the Registry. In other words, although the Court concludes that Plaintiff has a right to recovery, Plaintiff does not have the right to maintain an RSA 356-B:46 super-priority lien on Defendant’s condominium unit for the full amount contained in the Memorandum of Lien, **and** there is likely a very small amount for which Plaintiff may properly maintain such a lien. If Plaintiff wishes to defend the propriety of the existing Memorandum of Lien, it may do so by

filing an appropriate legal memorandum within the aforementioned twenty-day timeframe.³ If Plaintiff makes such a filing, it should address, among other things, whether any applicable Condominium rules dictate the manner in which owner payments are applied to an outstanding balance comprised of fines and assessments. Plaintiff should also address whether it should be deemed to have waived any such rules by virtue of the Management Company's May 21, 2019, email which appears to recognize that Defendant made partial payments on the assessments referenced in the Memorandum of Lien.

Further, the revised ledger the Court has instructed Plaintiff to submit would need to be divided in two, so that the Court could ascertain the amount of interest that accrued on the underpaid and/or late assessments separate from the amount of interest that accrued on the fines for which Plaintiff may now recover. If Plaintiff does not submit a filing concerning this topic within the twenty-day timeframe, the Court will enter an Order requiring that the existing Memorandum of Lien be stricken from the Registry. Such an Order would not impact Plaintiff's right to recovery, but only the priority thereof.

³ If Plaintiff elects to make such a filing, Defendant will be afforded twenty days to respond.

CONCLUSION

Consistent with the foregoing, Plaintiff's motion for summary judgment is GRANTED with respect to the under-and/or late assessment payments shown on Defendant's Owner Ledger, as well as the fines assessed for the second (\$100) violation for unleashed pets on 5/10/2018, the second (\$100) and third (\$250) violations for noise/disturbance on 5/29/2018, and the third (\$250) violation for unleashed pets on 7/25/2018, with applicable interest. Plaintiff's motion for summary judgment is DENIED, however, as it relates to charges assessed in connection with the third (\$250) violation for disposal of pet waste on 5/10/2018, the third (\$250) violation for guest parking on 5/29/2018, and the third (\$25) notice concerning Defendant's overdue chimney inspection on 11/06/2019. Moreover, Plaintiff's claim for relief concerning those fines is DISMISSED.

Within twenty (20) days of the date on the Notice of Decision accompanying this Order, Plaintiff is directed to file: (1) a pleading aimed at addressing the reasonableness of Plaintiff's requested attorney's fees; and (2) a revised ledger that contains only those charges which have been awarded in this Order (including applicable interest). Plaintiff may also, at its election, submit a legal memorandum addressing the propriety of the Memorandum of Lien Plaintiff claims to have recorded pursuant to RSA 356-B:46. If Plaintiff does not submit a timely filing concerning the propriety of the Memorandum of Lien, the Court will enter an Order requiring that the Memorandum be stricken from the Registry. Defendant will be afforded a period of twenty (20) days to respond to any/all filings submitted by Plaintiff.

App.34a

Finally, Defendant's motion for compensation and his request for damages under RSA 358-A:10 are each **DENIED**.

So ordered.

/s/ Martin P. Honigberg
Judge

Date: May 18, 2021

**ORDER OF THE SUPREME COURT FOR THE
STATE OF NEW HAMPSHIRE DENYING
MOTION FOR RECONSIDERATION
(NOVEMBER 14, 2022)**

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

BRANDYWYNE COMMON CONDOMINIUM

v.

WEIXING V. WANG

No. 2021-0399

Before: MACDONALD, C.J., HICKS, BASSETT,
Hantz MARCONI, and DONOVAN, JJ.

In Case No. 2021-0399, *Brandywyne Common Condominium v. Weixing V. Wang*, the court on November 14, issued the following order:

Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that he claims the court has overlooked or misapprehended.

We have reviewed the claims made in the motion for reconsideration and conclude that no points of law or fact were overlooked or misapprehended in our decision. Accordingly, upon reconsideration, we affirm our October 18, 2022 decision and deny the relief requested in the motion.

App.36a

Relief requested in motion for reconsideration denied.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas
Clerk

**STATUS HEARING TRANSCRIPT,
SUPERIOR COURT OF NEW HAMPSHIRE
(NOVEMBER 16, 2020)**

STATE OF NEW HAMPSHIRE
ROCKINGHAM COUNTY SUPERIOR COURT
Brandywyne Common Condominium, Plaintiff

vs.

Weixing V. Wang, Defendant

Supreme Court Case No. 2021-0399

Superior Court Case No. 218-2019-CV-00221

Brentwood, New Hampshire

November 16, 2020, 9:03 a.m.

**STATUS CONFERENCE BEFORE THE
HONORABLE MARTIN P. HONIGBERG JUDGE
OF THE SUPERIOR COURT**

For the Plaintiff:

Gary M. Daddario, Esq.
MARCUS ERRICO EMMER & BROOKS P.C.
32 Daniel Webster Highway, Suite 12
Merrimack, NH 03054

Pro Se Defendant:

Weixing V. Wang
(Address Unknown)

(Proceedings commence at 9:03 a.m.)

THE CLERK: (Audio begins mid-sentence) v. Weixing
Wang, docket number 218-2019-CV-00221. The

parties appear before this court for a scheduling conference via Webex. The Plaintiff is represented by Attorney Daddario. And the--I'm sorry, the Plaintiff is represented by Attorney Daddario, and the Defendant appears pro se.

THE COURT: All right. Good morning, folks.

So Mr. Wang, I don't know if all of what I did late last week has made its way to you, but your various motions to continue have all been denied. The motion for clarification I think was denied. I believe I'm up to date on all of your various motions. In addition--

MR. GOFFBAR: Dan Goffbar (phonetic).

THE COURT: Hang on one sec. Hang on one sec, folks.

(Other Matters Discussed)

THE COURT: All right. I'm back to Brandywyne and Mr. Wang. So Mr. Wang, all the motions have been denied and I reimposed the discovery stay, so nothing would happen until we have a chance to talk about the schedule going forward. So that's the state of play right now. I know you feel very strongly that the condo folks and Attorney Daddario have not been responsive in discovery, but there's now, again, a stay of discovery. I have read also in all of your pleadings about your feelings about their conduct, so I feel like I'm up to date on where you think this case is.

Attorney Daddario, you filed--I believe you filed a proposed structure and order at one point, although in the file it's now--it may be buried so far that it's irrelevant. But what do we--what can

we do here to move this case along, Attorney Daddario?

MR. DADDARIO: I think, Your Honor, at this point, probably, we just need a realistic timeline laid out for the case. Apparently incorrectly, we had originally felt that it was a case that would most certainly end with a dispositive motion. It appears that that is not the case. I mention that only because the Plaintiff isn't half-finished with discovery or anything like that. The discovery hadn't been addressed because we originally made a motion--

UNIDENTIFIED SPEAKER: (Indiscernible).

THE COURT: If you're not Weixing Wang or Gary M. Daddario, please mute your microphones.

UNIDENTIFIED SPEAKER: Is that unusual?

THE COURT: Mr. Daddario, can you finish what you were saying, please?

MR. DADDARIO: Certainly, Your Honor. And so as I said, I mention that only because it's not the case that the Plaintiff is half-finished with discovery or anything like that. When it was received, we initially made a motion to stay. That motion was granted. After it was lifted, there was a flurry of motions that resulted in a couple of things. One was us requesting a scheduling conference so that dates could be set, and another was ultimately you reimposing the stay because of the motions that were received by the Court. So when I say a realistic timeline, it's clear that it has to move

forward, but the Plaintiff would just like appropriate time to deal with the discovery because as yet that hasn't happened.

THE COURT: All right.

MR. WANG: I have a question, Your Honor.

THE COURT: What is your question, Mr. Wang?

MR. WANG: How long it has been since we proceed to (indiscernible) and there's a request that's called production of documents. How long does that take?

THE COURT: The rules provide what the rules provide, and you need to be operating under the superior court rules, not the circuit court rules. So--

MR. WANG: The superior court rule that (indiscernible) change that the Rule 20 stay and 24, which is also 30 days. Now, totally, it's been more than eight months, so they've already past the deadlines for more than seven months.

THE COURT: Discovery has been stayed, Mr. Wang. There was a stay of discovery in place, so--and the stay was reimposed. So all those deadlines were not in effect while discovery was stayed. So once--

MR. WANG: Why they don't--because when it was an issue, the discovery did not stay, they--they've already violated the law for a few months. That's in June-June--so they have already violated the law. It's not stay before they--if it's before the 30 day. Then it might be not violating the law, but they've already violated the law for two months, then even the stay, it did not change the fact they violated the law, Rule 23 and 24.

THE COURT: But you hadn't made--

MR. WANG: (Indiscernible)--

THE COURT:--you have not made any requests under the superior court rules that I'm aware of. You've made requests under the circuit court rules, that don't apply in this Court.

MR. WANG: But my last one was.

THE COURT: Which was very recent, just within the last few weeks, right, while the stay was in effect? Mr. Wang, let me tell you--

MR. WANG: Yes.

THE COURT:--something, based on the record and maybe there's something I'm not aware of and maybe you can convince me otherwise with some persuasive written pleading, but based on the record as it stands right now, you are not entitled to a default of the Plaintiff in this one. I don't see it. You've requested it a few times, but you've been requesting it under the circuit court rules that don't apply. To the extent that the superior court rules apply, they've only been invoked recently. You're not entitled to a default. So--

MR. WANG: (Indiscernible).

THE COURT: So that's just the way it is, right now.

MR. WANG: Yeah. I'd like to know emphasize the fact the Plaintiff violated the rule to, the superior court law Rule 23 and 24. That's the defect. The passed the 30-day, and they're even past the-more than 90-day (indiscernible). So even if it was stay, still they violated the law. And why after seven-after eight months they have not responded.

THE COURT: Okay. I understand--

MR. WANG: That's violate the law.

THE COURT: -- your position. I understand your position, and if you want to-your motions on this point have all been denied. I have no reason to think that you'll get a different result if you file a motion again. But if you can explain how the Plaintiffs have failed to do something and that that entitles you to a default, you are free to make that argument. But it's not happening right now.

So --

MR. WANG: And that's the law. I'm following the superior court (indiscernible).

THE COURT: Mr. Wang--

MR. WANG:-the law.

THE COURT: Mr. Wang, I understand your position.
Mr. Daddario--

MR. DADDARIO: Yes, Your Honor.

THE COURT : -- you should-we'll enter two things:
First, it seemed like the last motion for summary judgment had one piece missing, and that was someone with personal knowledge of something. And if that situation were cured, it seemed like that-I mean, as I recall the order that denied the motion, that was really the reason, that there was a lack of personal knowledge on one or two key facts. And I don't know if that's curable. Maybe it is; maybe it isn't. But that's just an observation I would make on the dispositive motions.

So with that comment out of the way, we should talk about a schedule. And I don't have a structuring conference--the structured order form in front of me. Do we have--

THE CLERK: Is there one over there?

THE COURT: There is probably one here, but since we never use them--

THE CLERK: I can make sure.

MR. WANG: Your Honor, may I say something?

THE COURT: Wait. I got it.

Mr. Wang, what would you like to say?

MR. WANG: They need to provide the fact and the evidence. That's a purpose for the interrogatory (indiscernible).

THE COURT: Yeah, and when we reopen discovery--when we reopen discovery, they're going to be responding to your discovery requests, assuming they comply with the superior court rules.

MR. WANG: The fact has been very clear. They are lying, fabricating--

THE COURT: I'm not adjudicating--I am not ruling on the merits of this dispute. I'm not going to evaluate anyone's credibility while I'm sitting here. I understand your position--

MR. WANG: The fact--

THE COURT:--Mr. Wang. I've read it.

MR. WANG: (Indiscernible)--

THE COURT: I've read it. I have read it now dozens of times. I am not going to rule on your allegations that they are lying.

MR. WANG: That's not following the law. The law said clearly Rule 23, after 30 days is for the judgment should be granted. That's the law. Rule 23 that's the superior court law.

THE COURT: Mr. Wang--

MR. WANG: If they're not doing that, then it's not following the law.

THE COURT: Mr. Wang, we're now going to talk about the schedule going forward. I have already told you that I'm not--there's no basis for a default at this time.

So--

MR. WANG: No, this is not being justice. Okay. The law says clearly Rule 23--

THE COURT: I understand your position--

MR. WANG:--after 30 days--

THE COURT: Mr. Wang, you will stop--Mr. Wang--

MR. WANG:--so then, you're not following the law.

THE COURT: Mr. Wang, we are talking about the schedule now and only about the schedule.

So--

MR. WANG: That's not right. That's not fair. I will appeal if it's not fair. Not clearly if it's an injustice. The law is set up there applying to this case, and the law is not followed for what reason?

THE COURT: Mr. Wang--

MR. WANG: The facts is clear. They cannot provide true fact. What they provide is only lie and fabricated thing. That's already clear.

THE COURT: Mr. Wang, are you not willing to speak about the schedule right now?

MR. WANG: I don't think that's the case.

THE COURT: Are you willing--

MR. WANG: I think that--

THE COURT: I'm asking you a yes or no question. Are you willing to talk about the schedule going forward?

MR. WANG: I think that we need to consider--

THE COURT: This is a yes or no question, Mr. Wang. This is a yes or no question.

MR. WANG: No.

THE COURT: You are not willing to speak about the schedule right now?

MR. WANG: They violated the law already.

THE COURT: Mr. Daddario?

MR. WANG: The law state--

THE COURT: Mr. Daddario?

MR. DADDARIO: Yes.

THE COURT: We're going to be ending this hearing. . Daddario, you may file a proposed schedule. The Court will review it. If it is reasonable, the Court will approve it. Do you understand?

MR. DADDARIO: Yes. Thank you, Your Honor.

THE COURT: Mr. Daddario, should I lift the stay of discovery or will you be filing another motion for summary judgment, do you expect?

MR. DADDARIO: I would like to, Your Honor, rectify the issue that you pointed out, so my answer would be yes, we would like to file our summary judgment.

THE COURT: All right. So the stay of discovery is going to be--is going to remain in effect.

Mr. Daddario, you have 30 days to file a motion for summary judgment, at which time, if you do not file a motion for summary judgment, the stay will be lifted. You may file a proposed structuring order. And as I said, if it's reasonable the Court will approve it.

Is there anything else we can discuss this morning?

MR. WANG: Yes, that is right now.

THE COURT: What would that be, Mr. Wang?

MR. WANG: May I say something?

THE COURT: Absolutely.

MR. WANG: Their motion for judgment has been submitted three times with all lies, with no fact. So it's been denied. And then they said, why they need to submit another one, fourth time, with no true fact.

THE COURT: I understand--

MR. WANG: (Indiscernible)--

THE COURT:--your position, Mr. Wang. I understand. You'll have an opportunity to respond to the motion and you have rights, which

I advise you to familiarize yourself with under the rules.

MR. WANG: No, Judge, because you--the current situation is to follow the superior court rule. When Rule 20 (indiscernible) Rule 23, there's a--there is a law saying that, okay. The default motion should be granted. If it's not granted, it's not following the law.

THE COURT: When--

MR. WANG: (Indiscernible)--

THE COURT:--did you--

MR. WANG:--(indiscernible)--

THE COURT:--send them a document that invoked Rules 23 and 24?

MR. WANG: The last motion.

THE COURT: Your last motion was filed within, what, just a couple days ago.

MR. WANG: No, it's more than a week.

THE COURT: Oh, so a week ago, you invoked Rules 23 and 24?

MR. WANG: Yeah. You can read it.

THE COURT: I have read it. That's what I thought. You are not entitled to a default. Is there anything else you want to talk about this morning?

MR. WANG: I'm sorry. It simple as Rule 23, 24, superior court rule.

THE COURT: Got it.

MR. WANG: If you don't consider that, it's not following the law.

THE COURT: Is there anything else you want to talk about this morning?

All right.

MR. WANG: Yes, I submitted--I submitted a motion. Again, if you don't see that--that's the Rule 23--I will submit right away. And you have to follow the rule. It's the law.

THE COURT: Okay. I understand your position.

MR. WANG: Yes, I'm going to do that right away.

THE COURT: I'm sure you will.

So we're going to adjourn this hearing.

Daddario, you have some work to do. And I'll issue a short order as a result of this hearing.

We are adjourned. Thank you.

MR. DADDARIO: Thank you, Your Honor.

MR. WANG: Thank you.

(Proceedings concluded at 9:19 a.m.)

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SUPREME COURT
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