

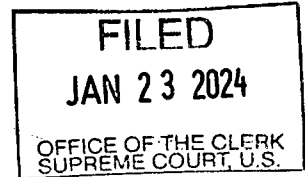
23-817

No.

ORIGINAL

\_\_\_\_\_  
In the

Supreme Court of the United States  
\_\_\_\_\_



Michael Donatelli and Peter Chien,

*Petitioners*

*versus*

Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton,  
Anthony Germaine, Steven Broy, Jami Ladakakos,  
Dan Feeney, Rod Belanger, Town of Old Orchard  
Beach

*Respondents*

\_\_\_\_\_  
**On Petition for Writ of Certiorari  
to the Maine Supreme Judicial Court**  
\_\_\_\_\_

**PETITION FOR WRIT OF CERTIORARI**  
\_\_\_\_\_

Michael Donatelli &  
Peter Chien

*Pro Se*

10 Dwight St, Unit 3  
Boston, MA 02118  
(646) 321-5294

## **Questions Presented for Review**

Did the court err in passing on properly disposing of the plaintiffs' filing of a motion for sanctions due to spoliation of evidence mis-styled as a motion for summary judgment?

Did the court err in not properly disposing of the plaintiffs' motion to reconsider for oral argument that was filed timely?

Did the court err in entering a final decision prematurely because it did not first properly dispose of a timely motion for sanctions for spoliation of evidence nor properly dispose of a timely motion for reconsideration for oral argument?

The question of whether a court can neglect its responsibilities on properly disposing of timely filed motions in contradiction of its own rules and statutes, causing severe prejudice against the petitioners, violates the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. The issue is important because it deprives the constitutional rights of individuals and would allow for a state court system that does not respect laws.

Given the Constitutional violations, the United States Supreme Court has jurisdiction to review these questions of federal law. The Court has previously held that the Fourteenth Amendment applies to state court proceedings, and the issue of whether a court can pass on disposing of timely filed motions and render a final judgment in apparent

violation of the equal protection and due process clauses is one that has not been definitively resolved by the Court.

For these reasons, the United States Supreme Court should grant certiorari to review the questions presented.

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### **List of Parties to Proceeding**

1. Plaintiffs:  
Michael Donatelli  
Peter Chien
2. Defendants:  
Scott E. Jarrett  
Dana M. Kelley  
Gerard Hamilton  
Anthony Germaine  
Steven Broy  
Jami Ladakakos  
Dan Feeney  
Rod Belanger  
Town of Old Orchard Beach

### **Corporate Disclosure Statement**

1. The Plaintiffs-Petitioners have no relationships to institutions involved in this petition.
2. Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton, Anthony Germaine, Steven Broy, and Jami Ladakakos are or have been employees of the Police Department of Defendant Town of Old Orchard Beach, a municipal corporation.

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Rod Belanger and Dan Feeney are or were employees of the Code Enforcement Department of the Town of Old Orchard Beach.

### **List of Related Proceedings**

*Michael Donatelli and Peter Chien vs. Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton, Anthony Germaine, Steven Broy, Jami Ladakakos, Dan Feeney, Rod Belanger, Town of Old Orchard Beach, CV-20-200 (York County Superior Court, Alfred, ME), final judgment entered December 1, 2022.*

*Michael Donatelli and Peter Chien vs. Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton, Anthony Germaine, Steven Broy, Jami Ladakakos, Dan Feeney, Rod Belanger, Town of Old Orchard Beach, Yor-23-23 (Maine Judicial Supreme Court, Portland, ME), decision October 10, 2023, motion for reconsideration denied October 25, 2023.*

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### Maine Rules of Civil Procedure

Me.R.Civ.P. 8(f) .....	Pages 3, 6
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### State Statute

M.R.S. Title 4, §57 .....	Pages 2, 4, 7
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### Federal Statute

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## **Opinion Below**

The memorandum of decision by the Maine Judicial Supreme Court denying the Petitioners' appeal is reported as Michael Donatelli et al. v. Town of Old Orchard Beach et al., Mem 23-110. As a memorandum of decision it is not published per Maine Rules of Appellate Procedure 12(c) but it is temporarily listed at <https://www.courts.maine.gov/courts/sjc/memdec.html> for 60-90 days after issuance.

## **Statement of the Basis for the Jurisdiction**

The Judgment of the Maine Judicial Supreme Court was entered on October 10, 2023. A motion for reconsideration was denied on October 25, 2023. This petition for writ of certiorari postmarked within 90 days (on or before January 23, 2024) is considered timely filed. This Court's jurisdiction rests on 28 U.S. Code § 1257, and it is a question of federal law, as the state supreme court issued a decision to affirm a trial court's judgment in apparent violation of the Fourteenth Amendment.

## **Constitutional Provisions**

United States Constitution, Amendment XIV:  
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### **Statutes**

Maine Revised Statutes Title 4, §57:

When the issues of law presented in any case before the Law Court can be clearly understood, they must be decided, and a case may not be dismissed by the Law Court for technical errors in pleading alone or for want of proper procedure if the record of the case presents the merits of the controversy between the parties.

28 U.S.C. § 1257 (a):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## **STATEMENT OF THE CASE**

The Plaintiffs-Petitioners for case CV-20-200, York County Superior Court, Maine, seek review of the Maine Judicial Supreme Court's flawed decision upholding the Superior Court's dismissal of their motion for sanctions. This petition centers on several critical procedural errors and potential constitutional violations that impeded the fair pursuit of justice.

### **Mischaracterization of Motion and Misapplication of Rules:**

On September 2, 2022, the Plaintiffs filed a motion seeking sanctions for Defendants' spoliation of evidence, mistitled as a "Motion for Leave for Summary Judgment on Count III Against Defendant and Instruction for Adverse Inference and Exclusion of Defendants' Testimonies or Evidence in Defense Against Count III" (Appendix F). Despite this technical error, the intent and basis for sanctions pleading were clear, to be construed with principles of "liberal construction of the pleadings" as supported by Maine Judicial Supreme Court's own rulings, *Travelers Indem. Co. v. Dingwell* 414 A.2d 220 (1980) and *National Hearing Aid Centers, Inc. v. Smith* 376 A.2d 456 (1977), Me.R.Civ.P. 8(f), and as upheld by the U.S. Supreme Court's own decision *Erickson v. Pardus*, 551 U.S. 89 (2007), citing that "a document filed pro se is to be liberally construed."

Unfortunately, the Superior Court misconstrued the motion solely as a summary judgment request and denied it for lacking a statement of material facts (Appendix C) and then denied the Plaintiff's motion

to reconsider (Appendix D). This misapplication of procedural rules ignored the Plaintiffs' prompt attempts to remedy the error through motions to amend and reconsider (Appendix E), further emphasizing disregard for Me.R.Civ.P. 37(b)(2)'s provision for sanctions due to spoliation.

The Maine Judicial Supreme Court as the Law Court, in affirming the Superior Court's decision, neglected its own responsibilities outlined in M.R.S. Title 4, §57 to decide cases where the issues of law are clear, and it cannot dismiss cases solely due to technical errors in pleading or procedural issues if the record presents the merits of the controversy.

#### **Maine Judicial Supreme Court's Erroneous Affirmance and Disregard for Spoliation:**

The Maine Judicial Supreme Court erroneously affirmed the Superior Court's flawed reasoning without addressing the Plaintiffs' compelling arguments in their Brief highlighting their motion for spoliation sanctions (Appendix G). This disregard for spoliation as a potential bar to summary judgment contradicts spoliation sanctions provided for in Me.R.Civ.P. 37(b)(2). This standard of review, not previously before the Maine or federal courts, is offered however in *Rodriquez v. Kravco Simon Company*, A.2d, 2015 Pa. Super. 41 (2015) — that an open issue of spoliation precludes summary judgment for the defendants. It should be noted that the Defendants' Motion for Summary Judgment passed on challenging the spoliation claim by the Plaintiffs and the Plaintiffs' motion for spoliation sanctions was also unopposed by the Defendants.

Furthermore, the Maine Judicial Supreme Court's silence on the crucial issue of spoliation perpetuates the Superior Court's oversight and arguably denies the Plaintiffs a fair opportunity to challenge the alleged misconduct, potentially violating their due process rights.

### **Procedural Irregularities and Potential Due Process Violations:**

Compounding the initial error, the Maine Judicial Supreme Court hastily issued a final judgment (Appendix A) before properly disposing of the Plaintiffs' timely filed motion for reconsideration of oral argument (Appendix H). The subsequent dismissal of the motion for want of jurisdiction (Appendix B) due to this self-created irregularity invites jurisdictional questions for the U.S. Supreme Court to consider.

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### **REASONS TO GRANT WRIT**

The Maine Judicial Supreme Court's decision warrants your intervention due to several compelling reasons:

#### **1. Misinterpretation of Motion's Nature and Violation of Liberal Construction Principles:**

Plaintiffs filed a motion seeking sanctions for spoliation (Appendix F), mis-styled as a "Motion for Leave for Summary Judgment on Count III Against Defendant and Instruction for Adverse Inference and Exclusion of Defendants' Testimonies or Evidence in

Defense Against Count III." Although mis-styled, the intent and basis for spoliation sanctions pleading was clear, and should be construed as to do substantial justice per Me.R.Civ.P. 8(f), using principles of liberal construction of pleadings described in Maine Judicial Supreme Court's own decisions in *Travelers Indem. Co. v. Dingwell* 414 A.2d 220 (1980) and *National Hearing Aid Centers, Inc. v. Smith* 376 A.2d 456 (1977) and in *Erickson v. Pardus*, 551 U.S. 89 (2007).

However, Superior Court misconstrued the sanctions for spoliation motion, applied an incorrect standard (summary judgment) and ignored Plaintiffs' attempts to clarify through motions to amend and reconsider (Appendix E). This misapplication of rules violates Me.R.Civ.P. 37(b)(2)'s provision for spoliation sanctions and also disregards principles of leniency towards inartful pro se pleadings (*Erickson v. Pardus*, 551 U.S. 89 (2007)). The Maine Judicial Supreme Court affirmed and perpetuated this error.

## **2. Failure to Address Spoliation and Potential Due Process Violation:**

The Maine Judicial Supreme Court ignored the crucial issue of spoliation despite its potential impact on the question of facts of the case, falling short of the standard for summary judgment established in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986); that is to say, a defendant cannot get summary judgment through a conclusory assertion that the plaintiff does not have evidence to support the complaint. Instead, the defendant must show the absence of evidence in the discovery record. In this

particular case, the Defendants passed on challenging the Plaintiffs' spoliation claim, which proffers the very evidence from discovery that bars summary judgment.

This omission in review by the Maine Judicial Supreme Court perpetuates the Superior Court's oversight and arguably denies Plaintiffs a fair opportunity to challenge the misconduct, violating their due process rights.

### **3. Procedural Irregularities and Potential Denial of Due Process:**

The Maine Judicial Supreme Court hastily issued a final judgment (Appendix A) before disposing of the timely filed motion for reconsideration of oral argument (Appendix H). Subsequently, the Court dismissed the motion for want of jurisdiction due to this self-created irregularity, raising further jurisdictional questions and denying Plaintiffs a fair hearing.

### **4. Violation of Maine Statute, Case Laws, and Due Process and Equal Protection:**

Plaintiffs argue that the Maine Judicial Supreme Court failed to properly dispose of motions and set aside Maine's statute (M.R.S. Title 4, §57) regarding technical errors as well as applying different standards in construing of pleadings than what is described in Maine Judicial Supreme Court's own case laws (*Travelers Indem. Co. v. Dingwell* 414 A.2d 220 (1980) and *National Hearing Aid Centers, Inc. v. Smith* 376 A.2d 456 (1977)). These court errors

violate the Plaintiffs' 14th Amendment rights to due process and equal protection. This significant constitutional claim warrants review.

### **5. Jurisdictional Opportunity for U.S. Supreme Court:**

The Maine Judicial Supreme Court's procedural missteps, coupled with the constitutional concerns, create a strong argument for U.S. Supreme Court intervention. Furthermore, the Maine Judicial Supreme Court acknowledged its error in improperly disposing of the Petitioners' motion to reconsider oral argument but could not correct it for want of jurisdiction (Appendix B). The court informed the Petitioners that only the U.S. Supreme Court could intervene next (Appendix I). Granting certiorari would ensure fairness, address potential constitutional violations, and allow Plaintiffs to pursue their legitimate claims, ensuring the integrity of the judicial process.

These compelling reasons, supported by relevant legal precedents, present a powerful case for granting the writ. Granting certiorari would serve justice and establish important legal principles concerning construction of pleadings, constitutional due process and equal protection, and the handling of procedural errors.

## CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that the U.S. Supreme Court issue a writ of certiorari to review the judgment of the Maine Judicial Supreme Court.

Respectfully submitted,



Michael Donatelli and Peter Chien  
*Petitioners, Pro Se*  
10 Dwight St, Unit 3, Boston, MA 02118

Dated: January 19, 2024

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## APPENDIX

### APPENDIX A (Memorandum of Decision Affirming Judgment)

MAINE SUPREME  
JUDICIAL COURT

Reporter of Decisions  
Decision No. Mem 23-110  
Docket No. Yor-23-23

MICHAEL DONATELLI et al.

v.

TOWN OF OLD ORCHARD BEACH et al.  
Submitted on Briefs September 27, 2023

Decided October 10, 2023

Panel: STANFILL, C.J., and MEAD, JABAR,  
CONNORS, and LAWRENCE, JJ.

## MEMORANDUM OF DECISION

Michael Donatelli and Peter Chien appeal from the Superior Court's (York, *Mulhern, J.*) entry of summary judgment in favor of the Town of Old Orchard Beach, Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton, Anthony Germaine, Stephen Brody, Jami Ladakakos, Dan Feeney, and Rod Belanger on the complaint Donatelli and Chien filed on October 13, 2020. Donatelli and Chien make numerous arguments on appeal regarding the court's rulings on the joinder and service of process on individuals, all of which are based on a misapprehension of the Maine Rules of Civil Procedure. *See* M.R. Civ. P. 3; M.R. Civ. P. 19; M.R. Civ. P. 37; M.R. Civ. P. 56. We find no merit in their arguments. The trial court did not err in granting the Town's motion for summary judgment because Donatelli and Chien did not dispute the statement of material facts filed by the Town or file a competing statement of material fact and the undisputed facts show that the Town was entitled to a judgment as a matter of law. *See Coward v. Gagne & Son Concrete Blocks, Inc.*, 2020 ME 112, ¶ 13, 238 A.3d 254; *Cote v. Cote*, 2016 ME 94, ¶ 11, 143 A.3d 117; M.R. Civ. P. 56, (c), (h).

The entry is: Judgment affirmed.

Michael Donatelli and Peter Chien, appellants pro se  
John J. Wall, III, Esq., Monaghan Leahy, LLP,  
Portland, for appellees Town of Old  
Orchard Beach, Scott E. Jarrett, Dana M. Kelley,  
Gerard Hamilton, Anthony Germaine, Stephen  
Brody, Jami Ladakakos, Dan Feeney, and Rod  
Belanger

York County Superior Court docket number  
CV-2020-200 FOR CLERK REFERENCE ONLY

**APPENDIX B (Order denying Motion for  
Reconsideration for Oral Argument)**

STATE OF MAINE

SUPREME JUDICIAL  
COURT

Sitting as the Law Court  
Docket No. Yor-23-23

Michael Donatelli et al.

v.

ORDER

Town of Old Orchard  
Beach et al.

On October 3, 2023, appellants Michael  
Donatelli and Peter Chien filed a motion for  
reconsideration of this Court's order, dated  
September 26, 2023, denying their request for oral  
argument.

This Court issued the final decision in this  
matter on October 10, 2023. The pending motion for  
reconsideration is therefore moot. In any event, the  
Court no longer has jurisdiction to act on the motion.

It is therefore ORDERED that the motion is  
DISMISSED for want of jurisdiction.

Date: Oct. 19 2023

For the Court,  
s/ Mater  
Associate Justice

RECEIVED OCT 19 2023 Clerk's Office  
Maine Supreme Judicial Court

**APPENDIX C (Superior Court Order Denying  
Plaintiff's Motion for Spoliation Sanctions  
treated as a Motion for Summary Judgment)**

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
Civil Action  
Docket No. CV-20-200  
ORDER ON PENDING  
MOTIONS

MICHAEL DONATELLI  
and PETER CHIEN,  
Plaintiffs

v.

TOWN OF OLD  
ORCHARD BEACH, et  
al.,  
Defendants

[...]

5. Plaintiffs' Motion for Summary Judgment on Count  
III.

Plaintiffs have not supported their motion with a  
statement of material facts as required by M.R.Civ.P.  
56(h). Accordingly, Plaintiffs' motion is DENIED.

The clerk may enter this Order on the docket by reference pursuant to M.R.Civ.P. 79(a).

[...]

Dated: November 17,  
2022

s/ Richard Mulhern  
Hon. Richard Mulhern  
Justice, Superior Court

**APPENDIX D (Superior Court Order Denying  
Plaintiffs' Motion to Reconsider)**

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
Civil Action  
Docket No. CV-20-200

MICHAEL DONATELLI  
and PETER CHIEN,  
Plaintiffs

v.

TOWN OF OLD  
ORCHARD BEACH, et  
al., Defendants

ORDER ON  
PLAINTIFFS' MOTION  
TO RECONSIDER

Pending before the Court is Plaintiffs' Motion to Reconsider, filed November 30, 2022, asking the Court to reconsider the rulings made in its Order dated November 17, 2022, together with Defendants' Objection, filed December 19, 2022, and Plaintiffs' Reply filed December 28, 2022. Having considered the arguments of the parties, the Court concludes that it properly decided the six motions ruled on in the November 17, 2022, Order.

Accordingly, the Order will be:

Plaintiffs' Motion to Reconsider is DENIED.

The clerk may enter this Order on the docket by reference pursuant to M.R.Civ.P. 79(a).

Dated: January 3, 2023      s/ Richard Mulhern

Hon. Richard Mulhern  
Justice, Superior Court

Entered on the Docket on: 1/9/2023

**APPENDIX E (Motion to Reconsider Order on Pending Motions)**

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CV-20-200

MICHAEL DONATELLI  
and PETER CHIEN,  
Plaintiffs

v.

SCOTT E. JARRETT, et  
al., Defendants

Motion to Reconsider  
Order on Pending  
Motions  
MAINE RULES OF  
CIVIL PROCEDURE  
59(a)(e)

To:    John J. Wall, III and Allyson Knowles  
        MONAGHAN LEAHY, LLP  
        95 Exchange Street, P.O. Box 7046  
        Portland, ME 04112-7046  
        jwall@monaghanleahy.com  
        aknowles@mleahy.com

NOW COME the Plaintiffs, Michael Donatelli  
and Peter Chien, to move the Court to reconsider the

Order on Pending Motions dated November 17, 2022<sup>1</sup>  
for the following reasons:

[...]

4. The Plaintiffs filed a Motion *for Leave* for Summary Judgment on Count III. The Court should understand that with a Motion for Leave that a Statement of Material Facts in formatting compliance with M.R.Civ.P. 56(h) should not be required when the Motion *for Leave* was filed. Nevertheless, the Plaintiffs have still effectively filed a statement of material facts when it submitted its Motion for Leave for Summary Judgment, when the Plaintiffs included in their filing a letter with an exhibit list with descriptions of each exhibit with the Motion for Leave for Summary Judgment, along with the pertinent exhibits to support the Motion, and *citation to a specific item in the list of exhibits with each proffered fact*. The Court should take judicial notice that this Motion for Leave for Summary Judgment on Count III was completely unopposed by the Defendants. If the Court finds this letter with a list of exhibits as insufficient as a statement of material facts, then it should have issued an Order for the Plaintiffs to correct this deficiency instead of just simply dismissing the Motion for Leave. In the Motion for Leave for Summary Judgment on Count III, the Plaintiffs cite extensively to sworn depositions taken of Defendants Jami Ladakakos and Dana Kelley,

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<sup>1</sup> Included please find a copy of the Court Order on Pending Motions without a docket entry date. The Plaintiffs find this lack of notice for entry of the Order to be irregular and prejudicial against Plaintiffs.

and deponent Peter Guay for proffered facts. As stated in *Joseph v. Lincare, Inc.*, 989 F.3d 147 (1st Cir. 2021):

‘Discovery is expensive enough without adding make-work. When a party in response to discovery requests points to a document that appears on its face to be a business record of the producing party, the other parties should be able to treat the document as authentic unless someone offers some reason to think otherwise, before it is too late to do something about it. See McConathy v. Dr. Pepper/Seven Up Corp., 131 F.3d 558, 562 (5th Cir. 1998) (finding that district court did not abuse its discretion in finding a document authenticated on the basis that "(1) [the plaintiff] produced the document in response to a discovery request, (2) the document bore her signature, [and] (3) she did not claim that the document [was] not authentic or that her signature [was] a forgery"); McQueeney v. Wilmington Tr. Co., 779 F.2d 916, 929-30 (3d Cir. 1985) (finding "the fact that the copies were produced by the plaintiff in answer to an explicit discovery request ... while not dispositive on the issue of authentication, is surely probative" and concluding that challenged documents were authentic because of the "sum of ... circumstantial evidence").’

The court cannot thus deny the the Plaintiffs the Motion for Leave for Summary Judgment just because they did not comply perfectly with the formatting requirements of Maine Rules of Civil Procedure 56(h) for the statement of material facts. The Court should have at least granted the motion for leave for Motion of Summary Judgment to be filed, and then issued an order directing the Plaintiffs to conform with the formatting requirements for a Statement of Material Facts. In its current order, the only effect the Court has created is abuse of discretion in using procedure to create prejudice against the Plaintiffs for otherwise just adjudication on the merits of the case. See also the Superior Court decision in Penobscot County, which allowed for flexibility in the format of proceedings for pro se parties, such as allowing leave to amend the Answer, see *Nowicki v. Loco Inc. and Loman*, No. CV-04-201 (Penobscot, September 22, 2005), <https://files.maine.gov/mainelaw.maine.edu/library/SuperiorCourt/decisions/PENcv-04-201.pdf>.

5. The Court is striking the Plaintiffs' reply to the Defendants' reply and deeming it a sur-reply, citing M.R.Civ.P. 7 as not authorizing a sur-reply. However, sur-replies are not prohibited by that rule. Furthermore, the Court's reliance on M.R.Civ.P. 7 is misplaced, as the Plaintiff's reply was filed under authorizing rule M.R.Civ.P. 56(i) (2), which states, "If the moving party objects in its reply statement to any factual assertion, denial, or qualification made by the opposing party, the party opposing summary judgment

may file a response within 7 days of the filing of the reply statement. Such a response shall be strictly limited to a brief statement of the reason(s) why the factual assertion should be considered and any supporting authority or record citations.” Since the Defendants were the moving party for its motion for summary judgment and objected to the Plaintiffs’ *entire* Opposition to the Defendants’ Motion for Summary Judgment, a sur-reply is allowed on all points with a factual assertion to be considered. The sur-reply in this instance is specifically authorized under M.R.Civ.P. 56(i)(2) on the motion for summary judgment and thus the court is erring in its decision to strike, in violation of M.R.Civ.P. 56(i), which does not permit a Motion to Strike. Not only must the Court accept the sur-reply under M.R.Civ.P. 56(i)(2) on all points that the movants contested, the court nevertheless also has a duty to inquire whether the moving party has met its burden to demonstrate undisputed facts entitling it to summary judgment as a matter of law. See *López v. Corporación Azucarera de Puerto Rico*, 938 F.2d 1510 (1st Cir. 1991). The Court cannot simply strike without further consideration of the Plaintiffs’ pleading, which is permitted under authorizing rule M.R.Civ.P. 56(i)(2).

6. Furthermore, within the Plaintiffs’ Reply to the Defendants’ Reply Memorandum to the Plaintiffs’ Opposition to Defendants’ Motion for Summary Judgment, in response to Defendants’ Argument II, the Plaintiffs did in fact move the court for

leave to amend its Statement of Material Facts to respond to the Defendants' Motion for Summary Judgment; see Page 2, 7 lines from the bottom of that pleading. **Thus on the premise that a motion for leave to amend is offered as a cure by this Court, the Plaintiffs fulfilled that premise.** Even if the Court were to strike the sur-reply that is actually permitted for Motions for Summary Judgment under authorizing rule M.R.Civ.P. 56(i)(2), the court still has to dispose of the Motion for leave to amend within that pleading, which it has yet to do.

[...]

WHEREFORE, based on the above arguments, the Court should grant the Motion to Reconsider, and namely grant Motion for Leave to amend Plaintiffs' MSJ to conform to M.R.Civ.P 56, as well as accept the sur-reply as an amended Plaintiffs' response to Defendants' MSJ or issue an order for the Plaintiffs to amend the response further to conform to M.R.Civ.P 56.

Dated: November 28, 2022

Respectfully  
submitted,  
Plaintiffs  
Michael Donatelli  
Peter Chien  
Address on Record

lazygullcottages@gmail.com  
By: s/ Michael Donatelli  
Michael Donatelli  
By: s/ Peter Chien  
Peter Chien

**APPENDIX F (Motion for Spoliation Sanctions  
Mis-styled as a Motion for Leave for Summary  
Judgment)**

STATE OF MAINE  
YORK, SS.

SUPERIOR COURT  
CIVIL ACTION

Docket No. CV-20-200

MICHAEL DONATELLI  
and PETER CHIEN,  
  
Plaintiffs

v.

SCOTT E. JARRETT, et  
al.,  
  
Defendants

MOTION FOR LEAVE  
FOR SUMMARY  
JUDGMENT ON  
COUNT III AGAINST  
DEFENDANT AND  
INSTRUCTION FOR  
ADVERSE INFERENCE  
AND EXCLUSION OF  
DEFENDANTS'  
TESTIMONIES OR  
EVIDENCE IN  
DEFENSE AGAINST  
COUNT III

To: John J. Wall, III and Allyson Knowles  
MONAGHAN LEAHY, LLP  
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jwall@monaghanleahy.com  
aknowles@mleahy.com

NOW COME the Plaintiffs, Michael Donatelli and  
Peter Chien, and move this Court for Leave for  
Summary Judgment against Defendants on Count

III with Instruction on Adverse Inference or exclusion of Defendants' testimonies or evidence in defense against Count III for the following reasons:

7. Plaintiff Donatelli suffered harassment and discrimination against the protected class of disability on October 11, 2017 (trial **Exhibit 37**, page 42-52), as meted out by Defendant Jami Ladakakos and Deponent Peter Guay, and proposed supervising Defendant Joshua Robbins (see Motion for Leave for Joinder).
8. On October 11, 2017, Defendant Jami Ladakakos stated falsely to Plaintiff Donatelli that it was illegal to record the police (trial **Exhibit 40** and trial **Exhibit 41**, pages 14-18) and thus deprived Plaintiff Donatelli from defending himself by recording equipment against actions of disability bias committed by Officers Ladakakos, Guay, and Robbins.
9. Defendant Ladakakos gave no good reason why under color of law she threatened Plaintiff Donatelli with false statements about recording the police illegally in 2017, even though a case in Portland in 2015 establishes the right of citizens to record the police under the First Amendment of the U.S. Constitution (<https://www.aclu.org/press-releases/aclu-portland-police-reach-settlement-filming-case>, trial **Exhibit 41**, pages 35-36).
10. Defendant Ladakakos also committed perjury, denying that she ever told Plaintiff Donatelli that it was illegal to record the police (trial **Exhibit 66**, page 17).
11. Deponent Peter Guay stated that the police would have definitely recorded the events on October 11,

2017 by a body cam or a microphone on the second floor where there was a conversation they thought was turning into an argument (trial **Exhibit 42**, page 36).

12. Plaintiff Chien provided notice on October 11, 2017 to Defendant Ladakakos to preserve any recording of the incident on October 11, 2017 (trial **Exhibit 67**).
13. Then Plaintiffs' Attorney Stanley Tupper also followed up on the recording request (trial **Exhibit 19**).
14. Defendants deny any recordings exist of the incident on October 11, 2017 (trial **Exhibit 60**, page 3).
15. Defendant Kelley also stated in Deposition that all the officers should have been wearing body cams by 2017 (trial **Exhibit 31**, pages 6-7), but the Defendants offer no sufficient explanation as to why no recordings existed nor any logs of such recordings existed on October 11, 2017 for all three officers who showed up to the Plaintiffs' property on that day (implausible for all three officers to not have any recording equipment on them that day).
16. The following elements of spoliation of evidence have been met, the requested items (recordings of the incident on October 11, 2017) should have been preserved in anticipation of litigation, the Defendant was duly notified for this as described above in items 6 and 7; the Defendants should have taken reasonable steps to preserve the recordings of the incident on October 11, 2017, especially when Defendant Ladakakos deprived Plaintiff Donatelli's right to document the incident

with a false recitation of the law prohibiting recording of the police; the lost recordings cannot be replaced or restored. Furthermore, the negligence of the Defendants led to significant impairment and the ability to prove the lawsuit for Count III, and as Plaintiffs' Attorney was communicating with the Defendants on the day of the incident as well — and getting lawyers involved reasonably signifies a potential lawsuit — the causal relationship between the evidence destruction and the inability to prove the lawsuit exists. The damages of the charge of Count III are further delineated in the Complaint and in Discovery, including further emotional, psychological, and physical damages to Plaintiff Donatelli (trial **Exhibit 37**, pages 48-49, 105, 125-127). Maine's Superior Courts have previously analyzed issues of spoliation test used by the First Circuit and the U.S. District Court for Maine. See *Id.*, *Town of Winthrop v. Bailey Bros.*, No. CV-12-313, 2014 Me. Super. LEXIS 34, \*17 (Mar. 18, 2014, Cumberland Cty., Murphy, J.), and *York Ins. Co. v. Snow Flake Holdings d/b/a/ Downeast Energy*, No. CV-14-236, 2015 Me. Super LEXIS 51, \*1 (Mar. 20, 2015, Cumberland Cty., Mills, J.), *Driggin v. American Sec. Alarm Co.*, 141 F. Supp. 2d 113 (D. Me. 2000). This instant Motion describes the first case in Maine Superior Court where the tests for spoliation of evidence have been met.

WHEREFORE, the Court should grant the Plaintiffs' motion to enter summary judgment against Defendants on Count III, or in trial by jury, instruct

for Adverse Inference against Defendants on Count III, or to exclude any testimonies or evidence by Defendants that would otherwise be deleterious to the Plaintiffs' claim in Count III, or any other remedy that the Court deems just to the non-offending party, the Plaintiffs.

Dated: August 31, 2022	Address on Record
Plaintiffs	lazygullcottages@gmail.com
Michael Donatelli	By: <u>s/ Michael Donatelli</u>
Peter Chien	By: <u>s/ Peter Chien</u>
	Peter Chien

**APPENDIX G (Appellants' Brief)**

MAINE SUPREME	Sitting as the Law Court
JUDICIAL COURT	Docket No. Yor-23-23

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Michael Donatelli and Peter Chien  
Appellants (pro se)

-vs-

Scott E. Jarrett, Dana M. Kelley, Gerard Hamilton,  
Anthony Germaine, Steven Broy, Christopher  
Greenwood, Jami Ladakakos, Dan Feeney, Rod  
Belanger, and Town of Old Orchard Beach  
Appellees

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Appeal from an Order of York County Superior Court  
\*\*\*\*\*

APPELLANTS' BRIEF	MONAGHAN LEAHY LLP
To: Appellees' Counsel	95 EXCHANGE ST
John J. Wall III Esq.,	PORTLAND ME
	04112-7046

10 Dwight St, #3  
Boston, MA 02118

Peter Chien and  
Michael Donatelli

[...]

**STATEMENT OF ISSUES**

[...]

**3. Should Motions for Leave for Summary Judgment be treated the same way as a Motion for Summary Judgment, requiring a statement of material facts per Me.R.Civ.P 56(h)?**

In the deposition of Corporal Jami Ladakakos, it was revealed that Defendant Ladakakos wrongfully gave the order to Plaintiff Michael Donatelli that it was illegal for him to record the police. This is in contradiction to the Defendants' Response to the Plaintiffs' Request for Admissions #69 in which they denied such a wrongful order. The police who entered Plaintiff Donatelli's property also wore body cams and/or microphones that may have recorded the police bullying Plaintiff Donatelli about his disability. The Motion for Leave for Summary Judgment describes attempts by Plaintiff Chien and then Plaintiffs' Attorney Stanley Tupper III in trying to preserve the evidence, which ended up getting destroyed or lost. This evidence would have been central to supporting Count III of the Complaint, but because of the spoliage of evidence, the Plaintiffs had requested a leave for Summary Judgment since it is the absence (or destruction) of evidence that is at issue for the Summary Judgment rather than positive evidence that would normally be reviewed in deciding on Summary Judgment. The Trial Court

however, still imposed Me.R.Civ.P. 56 rules on the Motion for Leave for Summary Judgment as if it were an actual Motion for Summary Judgment, requiring a statement of material facts that were not available because any audio or video recording evidence regarding Count III was destroyed. Given the unusual nature of a police officer lying about giving orders that it was illegal to record the police and then the Defendants somehow losing all the evidence despite being noticed to preserve them, the Appellants are asking the Law Court to grant the Plaintiffs' Motion for Leave for Summary Judgment and provide them an opportunity to submit a Motion for Summary Judgment about the absence of evidence, as well as to treat the motion as a spoliation issue committed by the Defendants.

[...]

#### **ARGUMENTS**

[...]

- 4. A Motion for Leave for Summary Judgment is a Motion for Leave and not a Motion for Summary Judgment, and thus is not subject to the requirements of Me.R.Civ.P. 56(h) to make a valid pleading. A Motion raising the issue of spoliation of evidence and where criteria for spoliation have been met precludes the offending party from being granted a Motion for Summary Judgment in accordance with Me.R.Civ. P. 37(b)(2)(B).**

The Plaintiffs filed a Motion for Leave for Summary Judgment on Count III because of the issues identified above (Defendant Ladakakos committing perjury during deposition in contradiction to the response to the Request for

Admission, and the spoliation of evidence by the Defendants needed to support Count III of the Complaint). However, since the evidence in support of Count III was destroyed or lost by the Defendants, the Plaintiffs could not proffer evidence or submit a statement of material facts on Count III to directly move for summary judgment, but instead moved for *leave* for summary judgment based on the Defendants' committing the spoliation of evidence. Since it was a Motion for Leave for a Summary Judgment, the Trial Court should have then determined if a Summary Judgment for the Plaintiffs is permissible on Count III despite not having available evidence that had been destroyed or lost by the Defendants, and then instructed the Plaintiffs on how to construct a Motion for Summary Judgment and whether a standard statement of material facts should be provided given the failure by the Defendants to preserve evidence. Indeed, the Trial Court should have instantly rejected the Defendants' Motion for Summary Judgment since the Plaintiffs had raised the question of spoliation of evidence committed by the Defendants. See *Rodriguez v. Kravco Simon Company*, A.2d, 2015 Pa. Super. 41 (2015). Also, "in order for a plaintiff to show proximate cause, the trier of fact must determine that the lost or destroyed evidence was so important to the plaintiff's claim in the underlying action that without that evidence the claim did not survive or would not have survived a motion for summary judgment under Rule 56, Ala. R. Civ. P. See *Smith v. Atkinson*, 771 So.2d at 434, Ala. 2000). The Trial Court should have also treated the Plaintiffs' Motion for Leave for Summary Judgment

on Count III as a Motion for Spoliage, and if granted, should have denied the Defendants' Motion for Summary Judgment on the basis of Me.R.Civ. P. 37(b)(2)(B) and automatically allow the Plaintiffs' claim of Count III of the Complaint to be true based on Me.R.Civ.P. 37(b)(2)(A), without going through Motion for Summary Judgment pursuant to Me.R.Civ.P. 56(h). The issue now comes before the Law Court to treat the Plaintiffs' Motion, "Motion for Leave for Summary Judgment against Defendants on Count III with Instruction on Adverse Inference or exclusion of Defendants' testimonies or evidence in defense against Count III" as a Motion of Spoliage and determine the merits of the Motion and to determine if the criteria for spoliage have been met, and to impose sanctions on the offending party, the Defendants.

**APPENDIX H (Motion for Reconsideration for Oral Argument)**

MAINE SUPREME  
JUDICIAL COURT

Sitting as the Law Court  
Docket No. Yor-23-23

MICHAEL DONATELLI  
and PETER CHIEN,  
Appellants (pro se)

v.

SCOTT E. JARRETT, et  
al., Appellees

MOTION TO  
RECONSIDER FOR  
ORAL ARGUMENT

To: John J. Wall, III  
MONAGHAN LEAHY, LLP  
95 Exchange Street, P.O. Box 7046  
Portland, ME 04112-7046  
jwall@monaghanleahy.com

Pursuant to Maine Rules of Appellate Procedure 14(b), Appellants Michael Donatelli and Peter Chien move this Court to reconsider for granting oral argument, based on the following reasons:

On September 7, 2022, the Appellants-Plaintiffs had filed in Superior Court a spoliation motion (mis-styled as a motion for leave for summary judgment), and this motion was unopposed. Oral argument would allow the Appellees-Defendants to explain their position on the spoliation claims against them, unless the Law Court determines that the opportunity for defense has passed, and the Law Court finds it sufficient to evaluate the spoliation claims based on the present record.

Wherefore, the Appellants move the court to reconsider for oral argument.

Dated: October 3, 2023

Appellants

Michael Donatelli

Peter Chien

10 Dwight St, Unit 3,

Boston, MA 02118

lazygullcottages@gmail.com

By: s/ Michael Donatelli

Michael Donatelli

By: s/ Peter Chien

Peter Chien

**Appendix I (Maine Judicial Supreme Court  
email stating only the United States Supreme  
Court can review the court's error)**

On Fri, Oct 20 at 8:00 AM , oldorchardroadcottages  
oldorchardbeachmaine

<lazygullcottages@gmail.com> wrote:

Good morning - the check can be made out to  
"Treasurer, State of Maine."

To the extent that you think you have been  
prejudiced, you may raise that issue in a motion for  
reconsideration. To the extent that you are seeking  
legal advice or legal research, you may contact a  
State Law Library. The only Court that can review a  
decision of this Court is the United States Supreme  
Court.

Thank you,  
Joel

--

Joel Biron  
Deputy Clerk  
Maine Supreme Judicial Court  
205 Newbury St Rm 139  
Portland ME 04101  
(207) 822-4146

On Fri, Oct 20 at 8:00 AM , oldorchardroadcottages  
oldorchardbeachmaine  
<lazygullcottages@gmail.com> wrote:

Hi, Joel, why does the court not have jurisdiction,  
when it made a mistake in disposing of the motion  
out of order? Who would have the jurisdiction then  
to correct the mistake, if the Law Court is not able to  
correct its own mistake, thereby prejudicing one  
party because of that mistake?

--Peter Chien and Michael Donatelli

**Appendix J (Maine Judicial Supreme Court  
Order Denying Motion to Reconsider Final  
Decision (Petition for Rehearing Denial))**

MAINE SUPREME  
JUDICIAL COURT  
Sitting as the Law Court

Docket No. Yor-23-23  
Decision No. Mem  
23-110

Michael Donatelli et al.  
v.  
Town of Old Orchard  
Beach et al.

ORDER DENYING  
MOTION TO  
RECONSIDER

Michael Donatelli and Peter Chien have filed a motion to reconsider the Court's decision dated October 10, 2023. The motion has been reviewed by the panel that decided the original appeal.

The motion to reconsider is DENIED.

Dated: October 25, 2023

For the Court,  
s/ Matthew Pollack  
Matthew Pollack  
Clerk of the Law Court  
Pursuant to M.R. App. P.  
12A(b)(4)