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APPENDIX A

Decision by

Supreme Court of New Hampshire on 02/27/2024

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2022-0569, Mark T. Eno v. Khaled Abdel-Fattah, the court on February 27, 2024, issued the following order:

The court has reviewed the written arguments and the record submitted on appeal, and has determined to resolve the case by way of this order. See Sup. Ct. R. 20(2). The defendant, Khaled Abdel-Fattah, appeals, and the plaintiff, Mark T. Eno, cross-appeals, a decision of the Superior Court (Colburn, J.), following a two-day bench trial, granting declaratory relief concerning the distribution between the parties of sale proceeds held by two limited liability companies in which the parties own interests. We affirm.

At the outset, we note that the defendant makes numerous assertions throughout his brief that the trial court lacked jurisdiction and, thus, that its decision is void. A court's subject matter jurisdiction concerns its authority to decide a particular case and is dependent upon the nature of the case and the type of judicial relief sought. Hardy v. Chester Arms, LLC, 176 N.H. ___, ___ (Jan. 30, 2024) (slip op. at 4). Because subject matter jurisdiction concerns the court's power to decide the case at all, a decision outside of its subject matter jurisdiction is void, and an objection to the court's exercise of subject matter jurisdiction may not be waived. See id. at ___ (slip op. at 4-5); Lonergan v. Town of Sanbornton, 175 N.H. 772, 775 (2023). Personal jurisdiction, by contrast, concerns whether the court may properly assert its coercive power over a particular person. See Fortune Laurel, LLC v. High Liner Foods (USA), Tr., 173 N.H. 240, 245 (2020). An objection to the court's exercise of personal jurisdiction, including a challenge to service of process, may be waived by, for instance, defending a case on its merits or failing to timely object to the exercise of personal jurisdiction or appeal an adverse decision on personal jurisdiction. See Mosier v. Kinley, 142 N.H. 415, 423-24 (1997) (objection to personal jurisdiction must be raised as preliminary issue, and failure to immediately appeal denial of motion to dismiss on personal jurisdiction grounds constitutes waiver); Beggs v. Reading Company, 103 N.H. 156, 158 (1961) (defendant waived challenge to personal jurisdiction by failing to timely move to dismiss and participating in hearings relating to merits of case); Sup. Ct. R. 9(e) (requiring party challenging personal jurisdiction or service of process to do so by motion to dismiss within 30 days of service and to appeal adverse decision thereon within 30 days of notice of decision, and providing that failure to comply constitutes waiver).

The superior court is a court of general jurisdiction with authority to decide common law civil disputes between parties, including contractual disputes between parties, and to issue declaratory judgments in disputes

between parties making adverse claims to a present legal or equitable right or title. See *Rogers v. Rogers*, 171 N.H. 738, 743 (2019); RSA 491:7 (Supp. 2023); RSA 491:22 (Supp. 2023); cf. RSA 304-C:190 (2015) (providing that “[n]othing in this subdivision shall be construed to restrict the right of a member [of a New Hampshire limited liability company] to bring a direct action on his or her own behalf against [another] member” of the limited liability company). Here, the parties’ dispute as to the proper distribution of sale proceeds held by the relevant limited liability companies under the relevant operating agreement terms fell squarely within the trial court’s subject matter jurisdiction. To the extent the defendant is challenging whether the plaintiff effected proper service of process, the record reflects that he participated in a full trial on the merits, and has never appealed the denial of a preliminary motion to dismiss on service of process or personal jurisdiction grounds. Under these circumstances, he has waived any challenge to the trial court’s exercise of personal jurisdiction. Accordingly, we reject the defendant’s arguments that the trial court lacked jurisdiction and that its decision is void. For the same reasons, we deny the defendant’s separate motion to “inform Supreme Court of New Hampshire of the void judgment.”

Based upon our review of the parties’ written arguments, the relevant law, the record on appeal, and the trial court’s thorough and well-reasoned decision, we find both the defendant’s arguments in his appeal and the plaintiff’s arguments in his cross-appeal to be unpersuasive, and we affirm the trial court’s decision.

Affirmed.

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

**Timothy A. Gudas,
Clerk**

Distribution:

Hillsborough County Superior Court South, 226-2018-CV-00451
Honorable Jacalyn A. Colburn
Honorable Mark E. Howard
Mr. Khaled Abdel-Fattah
Brittney M. White, Esq.
Leonard Foy, Esq.
Francis C. Fredericks, Supreme Court
Sherri L. Miscio, Supreme Court
File

APPENDIX B

Denial of Rehearing by Supreme Court on 03/28/2024

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2022-0569, Mark T. Eno v. Khaled Abdel-Fattah, the court on March 28, 2024, 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 to reconsider and conclude that no points of law or fact were overlooked or misapprehended in our decision. Accordingly, upon reconsideration, we affirm our February 27, 2024 decision and deny the relief requested in the motion.

Relief requested in motion to reconsider denied.

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

**Timothy A. Gudas,
Clerk**

Distribution:

Hillsborough County Superior Court South, 226-2018-CV-00451
Honorable Jacalyn A. Colburn
Mr. Khaled Abdel-Fattah
Brittney M. White, Esq.
Leonard Foy, Esq.
Sherri L. Miscio, Supreme Court
File

APPENDIX C

Ruling by

Hillsborough South Superior Court of NH on 08/15/2022

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

File Copy

Case Name: **Mark T Eno v. Khaled Abdel-Fattah**
Case Number: **226-2018-CV-00451**

Enclosed please find a copy of the court's order of August 15, 2022 relative to:

Court Order

August 15, 2022

Amy M. Feliciano
Clerk of Court

(940)

C: Tanya L. Spony, ESQ; Keith A. Mathews, ESQ

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2018-CV-00451

Mark T. Eno

v.

Khaled Abdel-Fattah

ORDER

The plaintiff, Mark Eno, has brought this action against the defendant, Khaled Abdel-Fattah, seeking to determine the proper distribution of funds belonging to two limited liability companies of which they are both members. The Court held a bench trial on this matter on June 1 and 2, 2022, at which the Court heard testimony from the plaintiff, Martin Poulin, and the defendant. Following the trial, the parties submitted proposed findings of fact and rulings of law. The defendant also filed a post-trial motion to dismiss, to which the plaintiff objects. After considering the record, the arguments, and the applicable law, the Court finds and rules as follows.

Findings of Fact

The Court finds the following facts based on the evidence presented at the trial. The plaintiff formed Merrimack Enterprises, LLC ("MEL"), a New Hampshire limited liability company, in May 2016 for the purpose of "flipping"¹ real property. He was MEL's sole member at that time. In early 2017, the plaintiff met the defendant and the two agreed to flip houses together. To that end, the plaintiff modified MEL's operating agreement in April 2017 to add his then-wife, Christine Eno, and the defendant as

¹ "The term 'flipping' as used in real estate refers to the buying of a house that needs repair, fixing it up, and then (hopefully) reselling it for a profit." *In re Collins*, No. 1700281, 2018 WL 6605913, at *1 n.3 (Bankr. S.D. Miss. Dec. 13, 2018).

additional members. Under the modified operating agreement, which is in writing, the plaintiff and Ms. Eno each owned one-quarter of MEL, while the defendant owned one-half. However, Ms. Eno and the plaintiff have since divorced. Pursuant to their divorce agreement, the plaintiff has essentially assumed any rights or liabilities that Ms. Eno may have had under the operating agreement. Thus, for all intents and purposes, the plaintiff and the defendant each own one-half of MEL. In November 2017, the plaintiff and the defendant (collectively, "the parties") formed Kconstruction, LLC ("KCL"), a Delaware limited liability company, also for the purpose of flipping real property. Both the plaintiff and the defendant are equal members of KCL, although there is no written operating agreement governing that relationship.

Using these two LLCs, the plaintiff and the defendant purchased three properties to flip that are the subject of this dispute. For each property, the parties had the same agreement regarding the division of work and profit. Specifically, the plaintiff was generally responsible for securing the financing for the purchase of each property and paying the upfront expenses for all of the costs incurred in renovating each property. These upfront expense payments were treated as loans to the LLCs. For his part, the defendant generally performed the necessary renovations (*i.e.*, labor) for each property. After each property was renovated, the goal was to resell it for a quick profit. If the LLC received a net cash payment at the closing of the flipped property, the parties agreed that those proceeds would be allocated in the following manner: first, any expenses²

² To be clear, the term "expenses" does not encompass the value of the parties' own work/labor. The parties never agreed that they would be paid for their own time or labor expended during the flipping process. The Court did not find credible the defendant's testimony that he was to be paid for his own labor as the "general contractor" for each property. Accordingly, the defendant's purported general contractor invoices, (*see* Ex. A), are not "expenses" and are not subject to payment from the closing proceeds.

that either party incurred in renovating that property would be reimbursed immediately from the proceeds; and second, the remaining amount, if any, (i.e., the profit) would be split among the LLC members according to their ownership interests.

As noted above, there are three properties at issue. As will be discussed below, two of the properties have been sold and there are excess funds from the closings of each of those properties.³ The parties, however, have been unable to agree as to how those funds should be divided. Consequently, the plaintiff has brought this declaratory judgment action asking the Court to determine the proper allocation of those funds.⁴ Specifically, the Court must determine the amount of each party's expenses that must be paid from the excess funds and then determine how the remainder, if any, should be divided. The Court will discuss each of the three properties at issue in turn.

I. Fayetteville, North Carolina

On April 28, 2017, MEL acquired a single family home located at 899 Long Iron Drive in Fayetteville, North Carolina for \$158,427.39. MEL financed the purchase of the property through an entity known as Groundfloor Finance, Inc. ("Groundfloor"). The loan amount was \$151,750 with an 8.5% interest rate, and included a \$26,210 allowance to use for the anticipated renovation of the property. The loan was to be repaid in a single lump sum due on or before April 28, 2018. In essence, this financing arrangement afforded MEL one year to complete the necessary renovations and resell the property without having to make any payments on the loan. As part of the financing transaction, MEL made two earnest money deposits totaling \$5,690, and contributed

³ The parties were unable to successfully flip the third property. Rather, as will be discussed below, they deeded it to the lender in lieu of foreclosure.

⁴ Pursuant to a previous Court order, the plaintiff's attorney is holding the excess funds in escrow.

\$25,599.61 in cash at the closing to cover various fees. The plaintiff paid these amounts from his personal bank account, and incurred two \$4 fees for bank checks. MEL also paid: (1) a \$250 Groundfloor application/appraisal fee; (2) a \$64 title search fee; (3) a \$100 legal fee; and (4) a \$52 legal fee. The plaintiff paid these fees from either his personal bank account or the accounts belonging to the LLCs.⁵ Overall, these fees related to the acquisition of the property totaled \$31,763.61, all of which were paid directly or indirectly by the plaintiff.

After acquiring the property, the parties began to renovate it. The defendant performed the majority of the renovations. To cover the costs of renovations, the plaintiff wrote seven checks from his personal account to the defendant,⁶ totaling \$30,400. The defendant also received the entire \$26,210 allowance from the financing transaction to use for renovations, although it is unclear how he came into receipt of those funds.⁷ For his part, the plaintiff spent \$509.08 on various materials and \$1,200 on labor. The plaintiff also rented a car to use while in North Carolina, which cost \$378.42. Thus, in total, the plaintiff spent \$32,487.50 of his own funds for the materials, labor, and rental car in connection with the property.

The parties were unable to flip the property by the April 26, 2018 maturity date on the Groundfloor note. Fortunately, an individual lender, Walter Kane, agreed to pay off the Groundfloor debt before its maturity date, which effectively afforded MEL additional time to complete the renovation and resell the property. Specifically, Mr. Kane agreed

⁵ The two LLCs had their own bank accounts. The plaintiff provided all of the funding for those accounts. The defendant did not contribute any cash except for \$5,000 as noted below. (See *infra* at 9 & n.11.)

⁶ Six of the checks were actually made payable to "Kai Realty Development" at the defendant's request.

⁷ The defendant did not produce any receipts showing how the \$26,210 allowance or the \$30,400 he received from the plaintiff was spent.

to provide a \$165,000 loan at a 14% interest rate. As part of the loan transaction, the plaintiff, on behalf of KCL,⁶ signed a promissory note on April 15, 2018. Under the terms of the note, KCL and/or MEL was obligated to make monthly interest-only payments in the amount of \$1,925 to Mr. Kane for twelve months, beginning on May 31, 2018, and to pay off the loan entirely by April 30, 2019. Thereafter, the plaintiff made each of the required \$1,925 monthly payments using his own funds.⁷ These interest only-payments totaled \$23,353.15.

In addition to these costs, there were a number of ongoing expenses related to the property, including: (1) cable internet from May 2017 through December 2017, totaling \$275.72; (2) propane charges totaling \$415.72; (3) waste fees totaling \$296.40; (4) insurance fees totaling \$2,582.52; (5) landscaping fees totaling \$533; (6) water/sewer fees of \$1,292.87; (7) electric fees totaling \$2,169.66; (8) property taxes totaling \$5,646.93; (9) pest control services totaling \$1,525; and (10) a home inspection that cost \$400. The plaintiff paid all of these expenses, which totaled \$15,137.82, from his personal account, LLC accounts that he funded, or his personal credit cards.

Adding all of the foregoing categories of expenses together, the Court finds as a matter of fact that the plaintiff personally paid \$102,742.10 towards the flipping of the Fayetteville property, and none of those expenses have been reimbursed by MEL. The Court also finds, as a matter of fact, that the defendant has no outstanding or unreimbursed expenses related to the Fayetteville property. To the extent the defendant claims he is entitled to be paid or reimbursed for the value of his own labor or

⁶ It is unclear why KCL was a party to the promissory note as MEL, and not KCL, owned the property. The Court did not follow the plaintiff's explanation. (See Tr. Day 1 at 1:46.)

⁷ The first payment was actually \$2,178.15. The extra \$253.15 covered additional accrued interest.

as a "general contractor," the Court disagrees. As discussed above, (see *supra* n.2), the defendant presented no credible evidence to support that position. Rather, the Court finds that the defendant's compensation for his labor, if any, would be in the form of distributions from the LLC, but only if the LLC made a profit from flipping the property.

Ultimately, MEL sold the property on May 13, 2019. MEL received a net cash amount of \$64,299.81 at the closing, after satisfying the note held by Mr. Kane and accounting for various closing costs. As noted earlier, this amount is currently being held in escrow by the plaintiff's attorney. (See Ex. 41.) While this action was pending, the Court granted the plaintiff's request to pay \$1,335.80 for an insurance policy related to the property from other escrowed funds. (See *id.*) Thus, the total amount of escrowed funds related to the Fayetteville property is \$62,964.01.

II. Columbia, South Carolina

On or about June 30, 2017, MEL acquired a single family home located at 205 Algrave Way in Columbia, South Carolina. The purchase price was \$165,527.07. MEL again financed the purchase of the property through Groundfloor. The loan amount was \$140,520 with a 10% interest rate, and included a \$10,800 allowance to use for the anticipated renovation of the property. The loan was to be repaid in a single lump sum due on or before December 29, 2017. In essence, this financing arrangement afforded MEL six months to complete the necessary renovations and resell/flip the property without having to make any payments on the loan. As part of the transaction, MEL made a \$4,800 earnest money deposit, and contributed \$20,327.85 in cash at the closing to cover various fees. The plaintiff paid these amounts from his personal bank account, and incurred a \$4 fee for a bank check and a \$20 wire fee. The plaintiff also

paid a \$250 application/appraisal fee on behalf of MEL. In sum, the fees related to the acquisition of the property totaled \$25,401.85, all of which were paid by the plaintiff.

After acquiring the property, the parties began to renovate it. The defendant performed the majority of the renovations. To cover the costs of renovations, the plaintiff gave the defendant \$19,500, split over two checks and a payment on a website operated by the defendant. The defendant also received the \$10,800 allowance from the financing transaction to use for renovations, although it is not entirely clear how the defendant received those funds.¹⁰ The plaintiff never visited or worked directly on the property. Nonetheless, he incurred the following expenses related to the property during MEL's ownership of it: (1) \$1,403.97 for appliances; (2) \$198 on landscaping; (3) \$250 for cleaning; (4) \$200 for a window; (5) natural gas charges totaling \$597.63; (6) water/sewer charges totaling \$435.72; and (7) shipping fees totaling \$57.90. The plaintiff paid all of these expenses, which totaled \$3,143.22, using cash, his personal bank account, LLC bank accounts that he funded, or his personal credit cards.

The parties were unable to flip the property by the December 29, 2017 maturity date on the Groundfloor note. However, as with the Fayetteville property, an individual lender, Dave DeHerd, agreed to pay off the Groundfloor debt before its maturity date. Specifically, Mr. DeHerd agreed to loan MEL \$148,000 at a 10% interest rate, which effectively afforded MEL additional time to complete the renovation and sell the property. To that end, the plaintiff, on behalf of MEL, signed a promissory note on December 26, 2017. Under the terms of the note, MEL was obligated to make monthly interest-only payments in the amount of \$1,233.33 to Mr. DeHerd for six months.

¹⁰ As with the Fayetteville property, the defendant did not produce any receipts showing how he spent the funds.

beginning on January 31, 2018, and to pay off the loan entirely by June 30, 2018. The plaintiff made four of the required payments using his own funds. These interest only-payments totaled \$4,933.32. MEL was unable to make the final two payments and never paid off the note. Rather, Mr. DeHerdt accepted the deed to the property in lieu of pursuing foreclosure. Thus, MEL was unable to sell the property for a profit, instead incurring a net loss after accounting for expenses.

Adding all of the foregoing categories of expenses together, the Court finds as a matter of fact that the plaintiff personally paid \$52,978.39 towards the flipping of the Columbia property, and none of those expenses have been reimbursed by MEL. The Court also finds, as a matter of fact, that the defendant has no outstanding or unreimbursed expenses related to the Columbia property. To the extent the defendant claims he is entitled to be paid or reimbursed for the value of his own labor or as a "general contractor," the Court disagrees. As discussed above, (*see supra* n.2), the defendant presented no credible evidence to support that position. Rather, the Court finds that the defendant's compensation for his labor, if any, would be in the form of distributions from the LLC, but only if the LLC made a profit from flipping the property.

III. Merrimack, New Hampshire

On or about December 5, 2017, KCL acquired from Mr. Poulin a single family home located at 201 Natlcook Road in Merrimack, New Hampshire. The purchase price totaled \$158,948.97. KCL financed the purchase of the property with a \$155,000 loan provided by Mr. Kane. Although not entirely clear, it appears that KCL only received \$153,720 from Mr. Kane. (*See* Ex. 2 at 174.) As a result, there was a \$5,228.97 difference between the amount received from the loan and the final closing price.

(\$158,948.97-\$153,720.00). To make up for this shortfall, the defendant transferred \$5,000 to KCL's account from North Carolina on December 4, 2017.¹¹ (See Ex. 2 at 179; Tr. Day 2 at 11:57.) The plaintiff deposited funds to cover the remaining \$228.97.

As part of the loan from Mr. Kane, the plaintiff, on behalf of KCL, signed a promissory note on November 27, 2017. Under the terms of the note, KCL was obligated to make monthly interest-only payments in the amount of \$1,808.33 to Mr. Kane beginning on December 31, 2017 through November 2018. KCL was required to pay the loan in full at the end of November 2018, which effectively afforded KCL one year to complete the necessary renovations and sell the property. The plaintiff made each of the required \$1808.33 payments for eight months, which totaled \$14,466.64.

After acquiring the property, the parties began to renovate it. As with the other properties, the plaintiff incurred a number of expenses during KCL's ownership of the property. The expenses include the following: (1) purchases from Home Depot, Walmart, and O'Reilly Auto Parts totaling \$2,442.40; (2) electric bills totaling \$127.07; (3) gas bill totaling \$72.54; (4) payments to Mr. Poulin totaling \$6,250¹²; (5) water/sewer bills totaling \$117.42; (6) payments to the registry of deeds totaling \$65.68; and (7) a \$2,000 payment to the eventual buyers of the property to account for the removal of

¹¹ This \$5,000 was part of a series of transfers or "wires" totaling \$24,000 that the defendant claimed he made to the plaintiff from October 2017 through January 2018. Unfortunately, the parties did not present much evidence about these transfers at the trial. Indeed, the defendant testified that he had "no idea" what the plaintiff did with the wired funds. He also testified that the plaintiff was experiencing financial "hardship" because of his divorce, and surmised that the plaintiff may have used the funds for personal expenses. If true, then it seems that the funds should be treated as a personal loan between the parties and not a loan to the LLC. Simply put, based on the record before it, the Court is only able to find that \$5,000 of these transfers was used towards the Merrimack property. The Court cannot find that any of the remaining \$19,000 was used towards the flipping of the Merrimack property or any other property.

¹² The record was not entirely clear what these payments covered. Mr. Poulin testified that he worked on the property after he sold it and earned these payments for that work. However, the plaintiff indicated that these payments were made as part of the initial agreement to sell the property. Ultimately, this distinction is immaterial as they are reimbursable expenses regardless of the classification.

mold in the attic, (see Ex. 34). The plaintiff paid all of these expenses, which totaled \$11,075.11 using his own cash, credit cards, or bank accounts that he funded.

Adding all of the foregoing categories of expenses together, the Court finds as a matter of fact that the plaintiff personally paid \$25,770.72 towards the "flipping" of the Merrimack property, and none of those expenses have been reimbursed. The Court also finds, as a matter of fact, that the defendant incurred \$5,000 in expenses connected to the Merrimack property, in the form of the \$5,000 deposit into KCL's account on December 4, 2017 to finance the purchase of the property. To the extent the defendant claims he is entitled to be paid or reimbursed for the value of his own labor or as a "general contractor," the Court disagrees. As discussed above, (see *supra* n.2), the defendant presented no credible evidence to support that position. Rather, the Court finds that the defendant's compensation for his labor, if any, would be in the form of distributions from the LLC, but only if the LLC made a profit from flipping the property.

KCL sold the property on August 29, 2018 for \$273,000. After paying off the note held by Mr. Kane, and accounting for various other closing costs, KCL received a final cash settlement payment in the amount of \$87,920.86. (See Ex. 17 at 2.) KCL also received a refund for a sewer charge in the amount of \$123.55. These amounts, which total \$88,044.41, are currently held in escrow by the plaintiff's attorney.

Discussion

I. Merits

A. MEL's Escrowed Funds

As discussed above, the plaintiff's attorney is currently holding funds belonging to MEL in the amount of \$62,984.01 from the sale of the Fayetteville property. Based on

the Court's factual findings above, the Court finds that the plaintiff is entitled to the entirety of those funds. Specifically, the plaintiff has unreimbursed expenses totaling \$102,742.10 arising from the flipping of the Fayetteville property and the defendant has no legitimate reimbursable expenses. The plaintiff also has unreimbursed expenses totaling \$52,978.39 arising from the (failed) flipping of the Columbia property, and the defendant has no legitimate reimbursable expenses for that property. Pursuant to the parties' agreement, each party's reimbursable expenses are treated as loans to the LLC and must be paid first from the closing proceeds. Thus, the Court finds that the plaintiff is entitled to the entirety of MEL's funds that are held in escrow, which is \$62,964.01.

To the extent the plaintiff seeks to recover the remainder of the expenses he incurred in connection with the Fayetteville and Columbia properties, which amounts to \$92,756.48, he must pursue that claim against MEL directly. The Court will not require the defendant to pay for any portion of those expenses for two reasons. First, the plaintiff's complaint did not indicate that he would be seeking damages from the defendant. Rather, the plaintiff only asked the Court "to determine how the gross profits from the sale of [the properties]" should be divided. (Compl. Prayer for Relief ¶ A.)¹³ Thus, the defendant has never been on notice that he may be subject to an award of damages in this case. Second, and perhaps more importantly, the defendant is not

¹³ Technically, the prayer for relief only sought a determination regarding the proceeds from the sale of the Merrimack property. However, the complaint also mentions both the Columbia and Fayetteville properties and the parties have been well aware for quite some time that the proceeds/expenses related to those properties would also be at issue in this case. (See Oct. 30, 2018 Court Order (noting that the parties agreed "to supplement the currently held proceeds in escrow")); see also *Fattah v. Eno*, No. 226-2019-CV-724, Court Doc. 30, at 7 (Apr. 21, 2020) (Order, Colburn, J.) (dismissing Mr. Fattah's complaint because it was duplicative of the issues in this case, noting: "As the Court has already informed Mr. Fattah in connection with the 451 Case, the Court will consider all of the parties' allegations regarding expenses and their respective obligations when it decides the proper distribution of the funds currently held in escrow while the 451 Case is pending.").

personally liable for the debts of MEL. See Mbahaba v. Morgan, 163 N.H. 561, 568 (2012) ("Ordinarily, corporate owners, like LLC members and managers, are not liable for a company's debts."); see also RSA 304-C:23, I.

B. KCL's Escrowed Funds

As discussed above, the plaintiff's attorney is currently holding funds belonging to KCL in the amount of \$88,044.41 from the sale of the Merrimack property. Based on the Court's factual findings above, the plaintiff has unreimbursed expenses totaling \$25,770.72 arising from the flipping of the Merrimack property and the defendant has \$5,000 in legitimate reimbursable expenses. Pursuant to the parties' agreement, these expenses must be paid first from the proceeds received at the closing. After deducting those amounts, the remaining balance is \$57,273.69. Pursuant to the parties' agreement, these funds would then be distributed to them from KCL equally, which equates to \$28,636.845 each. Thus, the Court finds that the plaintiff is entitled to \$54,407.56 (\$25,770.72+\$28,636.84) and the defendant is entitled to \$33,636.85¹⁴ (\$5,000+\$28,636.84) of KCL's funds that are held in escrow.

C. Conclusion

The Court's declaratory judgment is as follows: from the escrowed funds, the plaintiff is entitled to a total of \$117,371.57 and the defendant is entitled to \$33,636.85.

II. Motion to Dismiss

At the beginning of trial, the defendant moved to dismiss the case in its entirety. The defendant argued that he was indemnified under MEL's operating agreement, and

¹⁴ To the extent the plaintiff asks the Court to award him these funds to satisfy the expenses owed to him from the flipping of the Columbia and Fayetteville properties, the Court declines to do so. The Merrimack property was owned by KCL, which is a separate legal entity from MEL. Thus, the plaintiff cannot collect the expenses that MEL owes him from KCL's funds or the defendant's profit distribution from KCL.

because this action was only brought against him personally, it was a "problem." (Tr. Day 1 at 10:41.) The Court denied the motion from the bench, noting that it was "premature." (*Id.*) However, once the plaintiff rested, the defendant again orally moved to dismiss. In that oral motion, the defendant argued that he should have been sued in his capacity as an LLC member (and not individually), or that the LLCs should have been named as parties to the action. He contended that, to the extent the plaintiff seeks damages, the plaintiff should have brought suit against the LLC, noting that "if you bring a lawsuit, and I'm not the right party, I don't think the Court can order that I pay a judgment." (Tr. Day 2 at 1:33-34; 1:44.) The Court stated that it would "not grant the motion to dismiss at this juncture," (*id.* at 1:46), but informed the defendant that he could raise his arguments in a post-trial filing. In that filing, the defendant again asserts that the "funds currently being held in escrow . . . are inarguably owned by [KCL] and [MEL]," and therefore he "is not the proper party for the suit." (Court Doc. 71 ¶¶ 1, 2.) The defendant also maintains that, to the extent the Court is inclined to consider this a partition action, "the standard laid out by [the partition statute] has not been met," and therefore "the case must be dismissed." (*Id.* ¶ 6.)

Based on the Court's analysis on the merits, it seems that the defendant's motion to dismiss is based on two flawed premises. First, as stated above, the Court agrees with the defendant that the plaintiff did not adequately plead a claim for damages and that is one of the reasons why the Court declined to award the plaintiff damages. Thus, dismissal is not warranted on that basis. Second, the Court did not treat this action as a partition action brought pursuant to RSA 547-C. Rather, the Court treated this a declaratory judgment action, see RSA 491:22, to determine the proper distribution of the

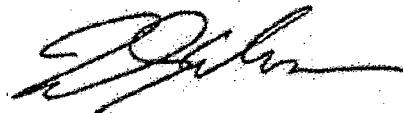
funds held in escrow. Thus, the complaint did not need to comply with RSA 547-C and dismissal on that basis is also unwarranted.

To the extent the defendant moves for dismissal on the basis that the LLCs themselves were necessary parties to the action, he has cited no law to support that position. Moreover, under the circumstances of this case, the Court cannot find that either LLC was a necessary party. See Durham v. Durham, 151 N.H. 757, 761 (2005) (holding that trial court had discretion to allow shareholder "to bring a direct suit against other members of a close corporation" where "the shareholders are few in number, know each other, and actively serve in the management of the business as officers or directors"); see also Kessler v. Gleich, 156 N.H. 488, 493 (2007) (adopting same rule for partnerships). Specifically, the plaintiff and the defendant are the only members of each LLC,¹⁵ and both of those parties are (obviously) before the Court. See Durham, 151 N.H. at 763 (suggesting that a direct action may be appropriate where "all of the corporation's shareholders are before the court as either the plaintiff or defendants"). Thus, it is difficult to imagine how naming the LLCs as a nominal parties would have at all changed the outcome of this dispute. See Kessler, 156 N.H. at 494 (holding that direct action against partner was appropriate where it was "unlikely that the outcome of this case would change even if it had been brought as a derivative action"). Indeed, if the Court were to dismiss the action on that basis, the escrowed funds would then be returned to each LLC. At that point, the parties would still have the same dispute regarding the proper allocation of the funds and would, in all likelihood, end up right

¹⁵ The Court recognizes that Ms. Eno may or may not still be considered a 25% owner of MEL. However, the Court credited the plaintiff's testimony that Ms. Eno essentially agreed to cede her interest in MEL to the plaintiff as part of the divorce proceedings. As such, all of the interested parties are before the Court.

back here. See id. at 493 (noting that "superimposing derivative pleading requirements upon claims" involving closely held partnerships "needlessly delays ultimate substantive resolution and serves no useful or meaningful public policy purpose" (cleaned up)). For these reasons, the Court does not find that dismissal is appropriate due to the plaintiff's failure to name the LLCs as parties. The defendant's motion to dismiss is therefore DENIED.

So ordered.



Date: August 15, 2022

Hon. Jacalyn A. Colburn,
Presiding Justice

APPENDIX D

Denial of Motion to Reconsider

by Hillsborough South

Superior Court of New Hampshire issued on 09/14/2022

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **Mark T Eno v Khaled Abdel-Fattah**
Case Number: **226-2018-CV-00451**

Please be advised that on September 14, 2022 Judge Colburn made the following order relative to:

Plaintiffs Motion to Reconsider-Denied

Defendants Motion to Reconsider-Denied

September 14, 2022

Amy M. Feliciano
Clerk of Court

(921)

C: Tanya L. Spony, ESQ; Keith A. Mathews, ESQ

APPENDIX E
Operating Agreement of Merrimack Enterprise LLC.

LIMITED LIABILITY COMPANY AGREEMENT
of
Merrimack Enterprises LLC

This Limited Liability Company Agreement (the "Agreement") made and entered into this 11th day of April, 2017 (the "Execution Date"),

AMONGST:

Khaled Abdel-Fattah of 94 1/2 Bowers St, Nashua, New Hampshire 03060,
Mark T. Eno of 4 Taconic Dr, Merrimack, New Hampshire 03063, and
Christine Eno of 4 Taconic Dr, Merrimack, New Hampshire 03054

(individually the "Member" and collectively the "Members").

BACKGROUND:

- A. The Members wish to associate themselves as members of a limited liability company.
- B. The terms and conditions of this Agreement will govern the Members within the limited liability company.

IN CONSIDERATION OF and as a condition of the Members entering into this Agreement and other valuable consideration, the receipt and sufficiency of which is acknowledged, the Members agree as follows:

Formation

1. By this Agreement, the Members form a Limited Liability Company (the "Company") in accordance with the laws of the State of New Hampshire. The rights and obligations of the Members will be as stated in Chapter 304-C of the New Hampshire Revised Statutes (the "Act") except as otherwise provided in this agreement.

Name

2. The name of the Company will be Merrimack Enterprises LLC.

Purpose

3. The purpose of this Company is to purchase and sell real estate.

Term

4. The Company will continue until terminated as provided in this Agreement or may dissolve under conditions provided in the Act.

Place of Business

5. The Principal Office of the Company will be located at 20 A Northwest Blvd, Suite 294, Nashua, New Hampshire 03063 or such other place as the Members may from time to time designate.

Capital Contributions

6. The following is a list of all Members and their Initial Contributions to the Company. Each of the Members agree to make their Initial Contributions to the Company in full, according to the following terms:

Member	Contribution Description	Value of Contribution
Khaled Abdel-Fattah		\$10.00
Mark T. Eno		\$5.00
Christine Eno		\$5.00

Allocation of Profits/Losses

7. Subject to the other provisions of this Agreement, the Net Profits or Losses, for both accounting and tax purposes, will be allocated between the Members in the following manner:

Member	Profit/Loss Percentage
Khaled Abdel-Fattah	50.00%
Mark T. Eno	25.00%
Christine Eno	25.00%

8. Distributions to Members will be made in the same fixed proportions as the allocation of Net Profits or Losses described above.
9. No Member will have priority over any other Member for the distribution of Net Profits or Losses.

Nature of Interest

10. A Member's Interest in the Company will be considered personal property.

Withdrawal of Contribution

11. No Member will withdraw any portion of their Capital Contribution without the unanimous consent of the other Members.

Liability for Contribution

12. A Member's obligation to make their required Capital Contribution can only be compromised or released with the consent of all remaining Members or as otherwise provided in this Agreement. If a Member does not make the Capital Contribution when it is due, he is obligated at the option of any remaining Members to contribute cash equal to the agreed value of the Capital Contribution. This option is in addition to and not in lieu of any others rights, including the right to specific performance that the Company may have against the Member.

Additional Contributions

13. No Member will be required to make Additional Contributions. Any changes to Capital Contributions will not affect any Member's Interests except with the unanimous consent of the Members.

14. Any advance of money to the Company by any Member in excess of the amounts provided for in this Agreement or subsequently agreed to, will be deemed a debt due from the Company rather than an increase in the Capital Contribution of the Member. This liability will be repaid with interest at such rates and times to be determined by a majority of the Members. This liability will not entitle the lending Member to any increased share of the Company's profits nor to a greater voting power. Repayment of such debts will have priority over any other payments to Members.

Capital Accounts

15. An individual capital account (the "Capital Account") will be maintained for each Member and their Initial Contributions will be credited to this account. Any Additional Contributions made by any Member will be credited to that Member's individual Capital Account.

Interest on Capital

16. No borrowing charge or loan interest will be due or payable to any Member on their agreed Capital Contribution inclusive of any agreed Additional Contributions.

Management

17. Management of this Company is vested in the Members.

Authority to Bind Company

18. Only the following individuals have authority to bind the Company in contract: Any Member.

Duty of Loyalty

19. Any Member may invest in or engage in any business of any type, including without limitation, a business that is similar to the business of the Company whether or not in direct competition with the Company and whether or not within the established or contemplated market regions of the Company. Neither the Company nor any Member will have any right to that opportunity or any income derived from that opportunity.

Duty to Devote Time

20. Each Member will devote such time and attention to the business of the Company as the majority of the Members will from time to time reasonably determine for the conduct of the Company's business.

Member Meetings

21. A meeting may be called by any Member providing that reasonable notice has been given to the other Members.
22. Regular meetings of the Members will be held only as required.

Voting

23. Each Member will be entitled to cast votes on any matter based upon the proportion of that Member's Capital Contributions in the Company.

Admission of New Members

24. No new Members may be admitted into the Company.

Voluntary Withdrawal of a Member

25. A Member may not withdraw from the Company without the unanimous consent of the remaining Members. Any such unauthorized withdrawal will be considered a wrongful dissociation and a breach of this Agreement. In the event of any such wrongful dissociation, the withdrawing Member will be liable to the remaining Members for any damages incurred by the remaining Members including but not limited to the loss of future earnings.
26. The voluntary withdrawal of a Member will have no effect upon the continuance of the Company.
27. It remains incumbent on the withdrawing Member to exercise this dissociation in good faith and to minimize any present or future harm done to the remaining Members as a result of the withdrawal.

Involuntary Withdrawal of a Member

28. Events leading to the involuntary withdrawal of a Member from the Company will include but not be limited to: death of a Member; Member mental incapacity; Member disability preventing reasonable participation in the Company; Member incompetence; breach of fiduciary duties by a Member; criminal conviction of a Member; Operation of Law against a Member or a legal judgment against a Member that can reasonably be expected to bring the business or societal reputation of the Company into disrepute. Expulsion of a Member can also occur on application by the Company or another Member, where it has been judicially determined that the Member: has engaged in wrongful conduct that adversely and materially affected the Company's business;

has willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or to the other Members; or has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the business with the Member.

29. The involuntary withdrawal of a Member will have no effect upon the continuance of the Company.

Dissociation of a Member

30. In the event of either a voluntary or involuntary withdrawal of a Member, if the remaining Members elect to purchase the interest of the withdrawing Member, the remaining Members will serve written notice of such election, including the purchase price and method and schedule of payment for the withdrawing Member's Interests, upon the withdrawing Member, their executor, administrator, trustee, committee or analogous fiduciary within a reasonable period after acquiring knowledge of the change in circumstance to the affected Member. The purchase amount of any buyout of a Member's Interests will be determined as set out in the Valuation of Interest section of this Agreement.
31. Valuation and distribution will be determined as described in the Valuation of Interest section of this Agreement.
32. The remaining Members retain the right to seek damages from a dissociated Member where the dissociation resulted from a malicious or criminal act by the dissociated Member or where the dissociated Member had breached their fiduciary duty to the Company or was in breach of this Agreement or had acted in a way that could reasonably be foreseen to bring harm or damage to the Company or to the reputation of the Company.
33. A dissociated Member will only have liability for Company obligations that were incurred during their time as a Member. On dissociation of a Member, the Company will prepare, file, serve, and publish all notices required by law to protect the dissociated Member from liability for future Company obligations.
34. Where the remaining Members have purchased the interest of a dissociated Member, the purchase amount will be paid in full, but without interest, within 90 days of the date of withdrawal. The Company will retain exclusive rights to use of the trade name and firm name and all related brand and model names of the Company.

Right of First Purchase

35. In the event that a Member's Interest in the Company is or will be sold, due to any reason, the remaining Members will have a right of first purchase of that Member's Interest. The value of that interest in the Company will be the lower of the value set out in the Valuation of Interest section of this Agreement and any third party offer that the Member wishes to accept.

Assignment of Interest

36. In the event that a Member's interest in the company is transferred or assigned as the result of a court order or Operation of Law, the trustee in bankruptcy or other person acquiring that Member's Interests in the Company will only acquire that Member's economic rights and interests and will not acquire any other rights of that Member or be admitted as a Member of the Company or have the right to exercise any management or voting interests.

Valuation of Interest

37. In the event of a dissociation or the dissolution of the Company, each Member's financial interest in the Company will be in proportion to the following schedule:

Member	Dissolution Distribution Percent
Khaled Abdel-Fattah	50%
Mark T. Eno	25%
Christine Eno	25%

38. In the absence of a written agreement setting a value, the value of the Company will be based on the fair market value appraisal of all Company assets (less liabilities) determined in accordance with generally accepted accounting principles (GAAP). This appraisal will be conducted by an independent accounting firm agreed to by all Members. An appraiser will be appointed within a reasonable period of the date of withdrawal or dissolution. The results of the appraisal will be binding on all Members. The intent of this section is to ensure the survival of the Company despite the withdrawal of any individual Member.

39. No allowance will be made for goodwill, trade name, patents or other intangible assets, except where those assets have been reflected on the Company books immediately prior to valuation.

Dissolution

40. The Company may be dissolved by a unanimous vote of the Members. The Company will also be dissolved on the occurrence of events specified in the Act.
41. Upon Dissolution of the Company and liquidation of Company property, and after payment of all selling costs and expenses, the liquidator will distribute the Company assets to the following groups according to the following order of priority:
 - a. in satisfaction of liabilities to creditors except Company obligations to current Members;
 - b. in satisfaction of Company debt obligations to current Members; and then
 - c. to the Members based on Member financial interest, as set out in the Valuation of Interest section of this Agreement.

Records

42. The Company will at all times maintain accurate records of the following:
 - a. Information regarding the status of the business and the financial condition of the Company.
 - b. A copy of the Company federal, state, and local income taxes for each year, promptly after becoming available.
 - c. Name and last known business, residential, or mailing address of each Member, as well as the date that person became a Member.
 - d. A copy of this Agreement and any articles or certificate of formation, as well as all amendments, together with any executed copies of any written powers of attorney pursuant to which this Agreement, articles or certificate, and any amendments have been executed.
 - e. The cash, property, and services contributed to the Company by each Member, along with a description and value, and any contributions that have been agreed to be made in the future.

43. Each Member has the right to demand, within a reasonable period of time, a copy of any of the above documents for any purpose reasonably related to their interest as a Member of the Company, at their expense.

Books of Account

44. Accurate and complete books of account of the transactions of the Company will be kept in accordance with generally accepted accounting principles (GAAP) and at all reasonable times will be available and open to inspection and examination by any Member. The books and records of the Company will reflect all the Company's transactions and will be appropriate and adequate for the business conducted by the Company.

Banking and Company Funds

45. The funds of the Company will be placed in such investments and banking accounts as will be designated by the Members. All withdrawals from these accounts will be made by the duly authorized agent or agents of the Company as appointed by unanimous consent of the Members. Company funds will be held in the name of the Company and will not be commingled with those of any other person or entity.

Audit

46. Any of the Members will have the right to request an audit of the Company books. The cost of the audit will be borne by the Company. The audit will be performed by an accounting firm acceptable to all the Members. Not more than one (1) audit will be required by any or all of the Members for any fiscal year.

Tax Treatment

47. This Company is intended to be treated as a partnership, for the purposes of Federal and State Income Tax.

Tax Matters Partner

48. The tax matters partner will be Mark T. Eno (the "Tax Matters Partner"). The Tax Matters Partner will prepare, or cause to be prepared, all tax returns and reports for the Company and make any related elections that the Members may deem advisable.
49. A Tax Matters Partner can voluntarily withdraw from the position of Tax Matters Partner or can be appointed or replaced by a majority of the Voting Members. In the event of a withdrawal of the Tax Matters Partner from the Company, the remaining Members will appoint a successor as

soon as practicable.

Annual Report

50. As soon as practicable after the close of each fiscal year, the Company will furnish to each Member an annual report showing a full and complete account of the condition of the Company including all information as will be necessary for the preparation of each Member's income or other tax returns. This report will consist of at least:

- a. A copy of the Company's federal income tax returns for that fiscal year.

Goodwill

51. The goodwill of the Company will be assessed at an amount to be determined by appraisal using generally accepted accounting principles (GAAP).

Governing Law

52. The Members submit to the jurisdiction of the courts of the State of New Hampshire for the enforcement of this Agreement or any arbitration award or decision arising from this Agreement.

Force Majeure

53. A Member will be free of liability to the Company where the Member is prevented from executing their obligations under this Agreement in whole or in part due to force majeure, such as earthquake, typhoon, flood, fire, and war or any other unforeseen and uncontrollable event where the Member has communicated the circumstance of the event to any and all other Members and where the Member has taken any and all appropriate action to satisfy his duties and obligations to the Company and to mitigate the effects of the event.

Forbidden Acts

54. No Member may do any act in contravention of this Agreement.
55. No Member may permit, intentionally or unintentionally, the assignment of express, implied or apparent authority to a third party that is not a Member of the Company.
56. No Member may do any act that would make it impossible to carry on the ordinary business of the Company.

57. No Member will have the right or authority to bind or obligate the Company to any extent with regard to any matter outside the intended purpose of the Company.
58. No Member may confess a judgment against the Company.
59. Any violation of the above forbidden acts will be deemed an Involuntary Withdrawal and may be treated accordingly by the remaining Members.

Indemnification

60. All Members will be indemnified and held harmless by the Company from and against any and all claims of any nature, whatsoever, arising out of a Member's participation in Company affairs. A Member will not be entitled to indemnification under this section for liability arising out of gross negligence or willful misconduct of the Member or the breach by the Member of any provisions of this Agreement.

Liability

61. A Member or any employee will not be liable to the Company or to any other Member for any mistake or error in judgment or for any act or omission believed in good faith to be within the scope of authority conferred or implied by this Agreement or the Company. The Member or employee will be liable only for any and all acts and omissions involving intentional wrongdoing.

Liability Insurance

62. The Company may acquire insurance on behalf of any Member, employee, agent or other person engaged in the business interest of the Company against any liability asserted against them or incurred by them while acting in good faith on behalf of the Company.

Life Insurance

63. The Company will have the right to acquire life insurance on the lives of any or all of the Members, whenever it is deemed necessary by the Company. Each Member will cooperate fully with the Company in obtaining any such policies of life insurance.

Amendment of this Agreement

64. No amendment or modification of this Agreement will be valid or effective unless in writing and signed by all Members.

Title to Company Property

65. Title to all Company property will remain in the name of the Company. No Member or group of Members will have any ownership interest in Company property in whole or in part.

Miscellaneous

66. Time is of the essence in this Agreement.

67. This Agreement may be executed in counterparts.

68. Headings are inserted for the convenience of the Members only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in a neutral gender include the masculine gender and the feminine gender and vice versa.

69. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it is the Members' intent that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected, impaired or invalidated as a result.

70. This Agreement contains the entire agreement between the Members. All negotiations and understandings have been included in this Agreement. Statements or representations that may have been made by any Member during the negotiation stages of this Agreement, may in some way be inconsistent with this final written Agreement. All such statements have no force or effect in respect to this Agreement. Only the written terms of this Agreement will bind the Members.

71. This Agreement and the terms and conditions contained in this Agreement apply to and are binding upon each Member's successors, assigns, executors, administrators, beneficiaries, and representatives.

72. Any notices or delivery required here will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the Members at the addresses contained in this Agreement or as the Members may later designate in writing.

73. All of the rights, remedies and benefits provided by this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law.

Definitions

74. For the purpose of this Agreement, the following terms are defined as follows:

- a. "Additional Contribution" means Capital Contributions, other than Initial Contributions, made by Members to the Company.
- b. "Capital Contribution" means the total amount of cash, property, or services contributed to the Company by any one Member.
- c. "Distributions" means a payment of Company profits to the Members.
- d. "Initial Contribution" means the initial Capital Contributions made by any Member to acquire an interest in the Company.
- e. "Member's Interests" means the Member's collective rights, including but not limited to, the Member's right to share in profits, Member's right to a share of Company assets on dissolution of the Company, Member's voting rights, and Member's rights to participate in the management of the Company.
- f. "Net Profits or Losses" means the net profits or losses of the Company as determined by generally accepted accounting principles (GAAP).
- g. "Operation of Law" means rights or duties that are cast upon a party by the law, without any act or agreement on the part of the individual, including, but not limited to, an assignment for the benefit of creditors, a divorce, or a bankruptcy.
- h. "Principal Office" means the office whether inside or outside the State of New Hampshire where the executive or management of the Company maintain their primary office.
- i. "Voting Members" means the Members who belong to a membership class that has voting power. Where there is only one class of Members, then those Members constitute the Voting Members.

IN WITNESS WHEREOF the Members have duly affixed their signatures under hand and seal on this 11th day of April, 2017.

K.A. 4-12-17

Khaled Abdel-Fattah (Member)

M.T.E.

Mark T. Eno (Member)

Christine Eno

Christine Eno (Member)



State of New Hampshire
Department of State

Date Submitted: 5/16/2016
William M. Gardner
Secretary of State

Form LLC-1
RSA 304-C:31

THIS BUSINESS FORMATION HAS BEEN SUBMITTED AND IS UNDER REVIEW BY THE SECRETARY OF STATE'S OFFICE.

**CERTIFICATE OF FORMATION
NEW HAMPSHIRE LIMITED LIABILITY COMPANY**

THE UNDERSIGNED, UNDER THE NEW HAMPSHIRE LIMITED LIABILITY COMPANY LAWS SUBMITS THE FOLLOWING CERTIFICATE OF FORMATION:

FIRST: The name of the limited liability company is

MERRIMACK ENTERPRISES, LLC

SECOND: The nature of the primary business or purposes are:

NAICS CODE	NAICS SUB CODE
Real Estate and Rental and Leasing	Other Activities Related to Real Estate

THIRD: The name of its registered agent **IN NEW HAMPSHIRE** is **Eric Mark T**

and the physical address, of its registered office **IN NEW HAMPSHIRE** is

4 Taconic Drive, Merrimack, NH, 03054, USA

FOURTH: The latest date on which the limited liability company is to dissolve is **Perpetual**

FIFTH: The management of the limited liability company **is** vested in a manager or managers.

SIXTH: The sale or offer for sale of membership interests of the limited liability company will comply with the requirements of the New Hampshire Uniform Securities Act (RSA 421-B).

PRINCIPAL OFFICE ADDRESS:

PRINCIPAL OFFICE BUSINESS ADDRESS	PRINCIPAL OFFICE MAILING ADDRESS
20 A Northwest Blvd Box 294, Nashua, NH, 03063, USA	20 A Northwest Blvd Box 294, Nashua, NH, 03063, USA

Mailing Address - Corporation Division, NH Department of State, 107 North Main Street, Room 204, Concord, NH 03301-4989

Physical Location - State House Annex, 3rd Floor, Room 317, 25 Capitol Street, Concord, NH

Phone: (603)271-3246 | Fax: (603)271-3247 | Email: corporate@sos.nh.gov | Website: sos.nh.gov

**CERTIFICATE OF FORMATION
NEW HAMPSHIRE LIMITED LIABILITY COMPANY**

Form LLC-1
(Cont.)

MERRIMACK ENTERPRISES, LLC

CERTIFY:

By checking this box and continuing, each signatory certifies that the information provided herein is true, accurate, and complete to the best of his/her knowledge and belief, and that he/she has authorized the affixing of his/her electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (e-Sign) and N.H. RSA § 294-E. Further, each signatory understands that his/her electronic signature has full legal effect and enforceability and he/she intends this form, as signed, to be filed with the office of the New Hampshire Secretary of State.

EFFECTIVE DATE:

This statement shall be effective from: 05/16/2016

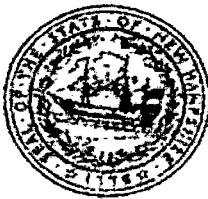
*Signature: Mark T. Eno

Title: Manager

Date signed: 05/16/2016

Notice: The membership interests of the limited liability company: 1) have been registered or when offered will be registered under RSA 421-B; 2) are exempted or when offered will be exempted under RSA 421-B; 3) are or will be offered in a transaction exempted from registration under RSA 421-B; 4) are not securities under RSA 421-B; OR 5) are federal covered securities under RSA 421-B. The statement above shall not by itself constitute a registration or a notice of exemption from registration of securities within the meaning of sections 448 and 461(i)(3) of the United States Internal Revenue Code and the regulation promulgated thereunder.

DISCLAIMER: All documents filed with the Corporation Division become public records and will be available for public inspection in either tangible or electronic form.



State of New Hampshire

Department of State



ONLINE BUSINESS FORMATION CONFIRMATION RECEIPT

Business Name:	MERRIMACK ENTERPRISES, LLC	Payment Received:	\$102.00
Type of Request:	Business Formation	Request Date/Time:	05/16/2016 10:51AM

PAYMENT RECEIPT

Payment Type:	Credit Card	Payment Transaction #:	109582
Payment#:	XXXXXXXXXXXXXX2052	Authorization :	382824
Billing Amount:	\$102.00	Billing Date/Time:	05/16/2016 10:51AM
Filing Fee:	\$100.00		
Electronic Filing Fee:	\$2.00		
Total Fees:	\$102.00		

Mailing Address - Corporation Division, NH Department of State, 107 North Main Street, Room 204, Concord, NH 03301-4989
Physical Location - State House Annex, 3rd Floor, Room 317, 25 Capitol Street, Concord, NH
Phone: (603)271-3246 | Fax: (603)271-3247 | Email: corporate@sos.nh.gov | Website: sos.nh.gov

APPENDIX F

2022-0569 Brief submitted
to
Supreme Court of New Hampshire

STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2022-0569

MARK T. ENO

Vs.

KHALED ABDEL-FATTAH

**MANDATORY APPEAL FROM RULINGS OF THE HILLSBOROUGH SOUTH COUNTY
SUPERIOR COURT**

APPELLANT, KHALED ABDEL-FATTAH

FROM CASE # 226-2018-CV-00541

APPELLANT, KHALED ABDEL-FATTAH

733 TURNPIKE STREET #186

N. ANDOVER, MA. 01845

508-400-7770

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ARGUMENT:

The Appeal Court of New Hampshire is forcing me, Khaled Abdel-Fattah, to file an appeal in Case 226-2018-CV-00451 against the Honorable US Supreme Court knowing that

the Notice of Decision issued on 08/15/2022 is a void Judgment that has no effect. The New Hampshire Supreme Court is trying to give jurisdiction where the lower court lacked Jurisdiction over the case from day one. The New Hampshire Supreme Court was notified in 2 separate motions that the lower court and the Appellate court lacked jurisdiction over this case. **When appeal is taken from a void judgment, the appellate court must declare the judgment void, because the appellate court may not address the merits.** it must set aside the trial court's judgment and dismiss the appeal.

Pleadings which notify the opposing party and the court of the factual and legal bases of the pleader's claims or defenses better define the issues of fact and law to be adjudicated. This definition should give the opposing party and the court sufficient information to determine whether the claim or defense is sufficient in law to merit continued litigation. Pleadings should assist in setting practical limits on the scope of discovery and trial and should give the court sufficient information to control and supervise the progress of the case. The Pleading in Case 226-2018-CV-00451 failed to do all of that. It failed to state a claim but still the trial Court accepted the Complaint against New Hampshire State Rule 8. It also failed to meet Federal Rule of Civil Procedure 17(a)(l) which requires that "[a] action must be prosecuted in the name of the real party in interest.

The trial court erred when accepted the Complaint without proper service? This is in violation of RSA 510:2-a "***Contents of Writs and Processes.***" And also, in violation of US rule 4 C (2). The attorney for the Plaintiff, Tanya Spony, claimed that the complaint was hand delivered by her to the Defendant, Khaled Abdel-Fattah as an individual. The LLCs were never named in the Pleading and were never served in the case.

The Notice of Decision issued on 08/15/2022 is a void judgment for lack of Jurisdiction for not naming the correct party in the complaint. The Complaint if 451 also left out Christine Eno who is a member of both LLCs. No proceeds could be divided if she is not named in the Poorly written Frivolous Complaint. The Presiding Judge was aware of this defect in the Malicious Complaint but elected to stay on the case and issue rulings with ZERO Jurisdiction over the LLCs and the Parties of the LLCs.

Again, I am filing this Brief against US Supreme Rules on appealing Void Judgments. If I don't file one by May 5th, 2023, the NH Supreme Court will probably issue a decision in favor of Mark T. Eno and his attorney Tanya Spony even though the US Supreme Court stated that the Ruling is a Void Judgment. The New Hampshire Supreme Court refused to answer 3 Motions on Jurisdiction of the Lower Court before the deadline for the Brief.

QUESTIONS TO THE COURT

- 1- Whether the trial court Judge erred when accepted the Complaint in Case 451 that does not state a Claim? The Complaint was only about dividing proceeds from sold properties that belong to 2 LLCs.

Answer 1- The Poorly Written Complaint in Case 451 failed to comply with New Hampshire Rule 8 Complaint. Pleadings which notify the opposing party and the court of the factual and legal bases of the pleader's claims or defenses better define the issues of fact and law to be adjudicated. This definition should give the opposing party and the court sufficient information to determine whether the claim or defense is sufficient in law to merit continued litigation. Pleadings should assist in setting practical limits on the scope of discovery and trial and should give the court sufficient information to control and supervise the progress of the case. Case 451 Poorly Written Complaint failed to meet all of these criteria but the Court elected to keep the case alive which renders the Notice of Decision to be Void.

- 2- Whether the trial court Judge erred when accepted the Complaint in Case 451 vs. Khaled Abdel-Fattah as an individual and not as an officer of the LLCs? The original Complaint requests division of funds belonging to the LLCs but fails to name the LLCs or the Defendant as an officer.

Answer 2-

The Plaintiff through his Counsel elected to sue me, Khaled Abdel-Fattah individually instead of suing me as an officer/member of the LLCs was intentional to keep the first sold property for litigation. The Court accepted the Pleading against me as an individual even though I was protected by the LLCs' Operating Agreement in Clause # 60. Not naming the LLCs in the Pleading makes the Notice of Decision issued on 08/15/2022 void for lack of jurisdiction. The Trial Court Judge ignored the request of the Defendant's Attorney, Keith Mathews during the trial, to dismiss the case since the Defendant, Khaled Abdel-Fattah, is given immunity from personal suit by Indemnification Clause. (Paragraph 60 of Article of Organization) Federal Rule of Civil Procedure 7(a)(1) which requires that "[a] action must be prosecuted in **the name of the real party in interest**. The Pleading in Case 451 was against me, Khaled Abdel-Fattah in my individual capacity and not against the correct party which are KConstruction LLC and Merrimack Enterprise LLC. The **Malicious Poorly Written Complaint in Case 451** was brought by through his attorney Tanya Spony for her Client, Mark T. Eno, again, as an individual and not as an LLC member to divide LLC proceeds through the Frivolous Complaint. The Court issued a Lien on Funds that belong to 2 LLCs even though the Complaint was Vs me as an individual brought by the Plaintiff through his attorney, again as an individual which clearly shows that there is no **legal path to the LLCs' proceeds**. Since 2019, I the Defendant in the Case have asked the Court and the Plaintiff to show Jurisdiction over the case and they elected not to answer it nor amend the complaint to include the 2 LLCs. So, the Trial Court Judge tried to give legitimacy to the ruling when wrote the following in her Void Notice of Decision on page 12:

II. Motion to Dismiss

At the beginning of trial, the defendant moved to dismiss the case in its entirety. The defendant argued that he was indemnified under MEL's operating agreement, and because this action was only brought against

*him personally, it was a "problem." (Tr. Day 1 at 10:41.) The Court denied the motion from the bench, noting that it was "premature." (IQ.) However, once the plaintiff rested, the defendant again orally moved to dismiss. In that oral motion, the defendant argued that he should have been sued in his capacity as an LLC member (and not individually), or that the LLCs should have been named as parties to the action. He contended that, to the extent the plaintiff seeks damages, the plaintiff should have brought suit against the LLC, noting that "if you bring a lawsuit, and I'm not the right party, I don't think the Court can order that I pay a judgment." (Tr. Day 2 at 1:33-34; 1:44.) The Court stated that it would "not grant the motion to dismiss at this juncture," (*id.* at 1:46), but informed the defendant that he could raise his arguments in a post-trial filing. In that filing, the defendant again asserts that the "funds currently being held in escrow ... are inarguably owned by [KCL] and [MEL]," and therefore he "is not the proper party for the suit." (Court Doc. 71,1,11, 2.) The defendant also maintains that, to the extent the Court is inclined to consider this a partition action, "the standard laid out by [the partition statute] has not been met," and therefore "the case must be dismissed.*

Based on the Court's analysis on the merits, it seems that the defendant's motion to dismiss is based on two flawed premises. First, as stated above, the Court agrees with the defendant that the plaintiff did not adequately plead a

claim for damages and that is one of the reasons why the Court declined to award the plaintiff damages."

***CASE IN POINT:** Here, the Trial Court judge is attempting to give the court jurisdiction over the case while the trial court had none. This was made clear early on during the trial by my attorney, Keith Mathew that the Pleading named the wrong party to the case. According to Federal Rule of Civil Procedure 7(a)(1), this is a **Void Judgment**.

- 3- Whether the Trial Court Judge erred when accepted the complaint Vs. Khaled Abdel-Fattah when he is given immunity from personal suit by the Indemnification Clause (Paragraph 60 of Article of Organization).

Answer 3- Not naming Khaled Abdel-Fattah as an officer of both LLCs in the Pleading makes the Notice of Decision issued on 08/15/2022 void for lack of jurisdiction. The Poorly written Complaint was against the wrong party and not against the LLCs that the Complaint wants the proceeds to be divided from. The Operating Agreement Clause 60 protects Khaled Abdel-Fattah from any suits unless a breach was committed. The Poorly written complaint in 451 only stated dividing of proceeds as a claim. This makes the Notice of Decision issued on 08/15/2022 a Void Judgment that needs no respect as to the US Supreme Court decisions on Void Judgments.

- 4- Whether the trial court erred when ignored the request of the Defendant's Attorney, Keith Mathews during the trial, to dismiss the case since the Defendant, Khaled Abdel-Fattah, is given immunity from personal suit by Indemnification Clause. (Paragraph 60 of Article of Organization)

Answer 4- The Trial Court Judge ignored the request of the Defendant's Attorney, Keith Mathews during the trial, to dismiss the case since the Defendant, Khaled Abdel-Fattah, is given immunity from personal suit by Indemnification Clause.

(Paragraph 60 of Article of Organization). The Presiding Judge elected to continue the trial with no Jurisdiction over the LLCs and no Jurisdiction over Khaled Abdel-Fattah as an individual.

5- Whether the trial court erred when accepted the Complaint without proper service? This is in violation of RSA 510:2-a "*Contents of Writs and Processes.*" And also, in violation of US rule 4 C (2). The attorney for the Plaintiff, Tanya Spony, claimed that the complaint was hand delivered by her to the Defendant, Khaled Abdel-Fattah.

Answer 5-

The service in Case 451 was improper. Hillsborough South Superior Court accepted the complaint that was filed by the Plaintiff's attorney, Tanya Spony, on August 29th. 2018. Tanya Spony claims that she served the complaint by handing over the complaint to me, the Defendant Khaled Abdel-Fattah, in Case 451, on the street. (*Please see Exhibit 8 of Return of Service.*) I, the Defendant, Khaled Abdel-Fattah, only received the Ex Parte ruling to attach the funds of \$87,920.86 that was issued on August of 29th, 2018. I never received the complaint's initiating documents from attorney Tanya Spony and no proof was ever submitted to the lower Court that I was served properly. Since the service was improper, the Court has ZERO Jurisdiction over Khaled Abdel-Fattah, and over the LLCs according to the Ruling in a similar appeal by the New Hampshire Supreme Court in Case No. 2014-0565, *In the Matter of Alexandra Starr and David Starr*:

"The plaintiff bears the burden of demonstrating facts sufficient to establish personal jurisdiction over the defendant. Mosier v. Kinley, 142 N.H. 415, 418 (1997). When jurisdictional facts are challenged, the plaintiff must offer affirmative proof. Id. Because the husband was never properly served with the motion to bring forward, we conclude that the trial court never acquired jurisdiction over him. Accordingly, we vacate the trial court's order and direct the trial court, upon remand, to dismiss the matter."

***CASE IN POINT:** Court records show that, Tanya Spony, the attorney for the Plaintiff, Mark T. Eno, is the one who served the Defendant, Khaled Abdel-Fattah with the initiating documents for Case # 226-2018-CV-00451. Who could serve Initiating Documents in the state of New Hampshire? Anyone over the age of eighteen (18) years old, who is not a party to the case, is legally able to serve papers in the state of New Hampshire. This is in violation of RSA 510:2-a "*Contents of Writs and Processes.*" And also, in violation of US rule 4 C (2). When did the Plaintiff Mark T. Eno's attorney, Tanya Spony file the improper Summons to Hillsborough South Superior Court? (*Please see Exhibit 8 of Return of Service.*) It was filed December 20, 2018. That is 113 days after the improper service by the attorney against Superior Court Procedure of Civil Rules 4 (c) of 21 days. The Presiding Judge and the Clerk accepted the late entry of the Proof of Service in Violation of my Civil Rights by allowing their friend the attorney to file anything, anytime and it gets accepted.

"Proof of service shall be filed with the court within 21 days of the court-ordered deadline for service. If a defendant is not served within the court-ordered deadline for service, the court shall dismiss the action with or without prejudice, as justice may require."

- 6- Whether the trial court Judge erred when issued a Final Order on August 15, 2022 on issues above and beyond the claim in the original Complaint to divide proceeds from both LLCs? The Court expanded the claim with its order against the Courts trial management conference order issued on 12/06/2019. *Please see Exhibit # 3*

Answer 6- The Trial Judge Expanded the Complaint by making a Declaratory Judgment Action instead of the Partition Action as the Pleading was requesting in the Case of 451. The Trial Judge took this unlawful step to achieve 2 things.

- a- To avoid the Partition of LLC proceeds that were not named in the Complaint.

b- Taking Declaratory Judgment Action will give the impression that there was no Operation Agreement to fall on between the parties, ignoring the fact that there was an Operating agreement for the LLCs as it was mentioned in the Pleading of Mark T. Eno and his Counsel, Tanya Spony. This order presupposes the nature of this case, one for declaratory judgment despite the tenor of this case being one of a direct suit throughout. This change in direction resulted in the Defendant having no notice that his damages would be addressed at all and he is inappropriately punished for it. This makes the Notice of Decision a Void Judgment. The lower Court had no Jurisdiction over the LLCs. *Please see next caption from the POORLY WRITTEN PLEADING OF 451. (Complete Frivolous 451 Complaint is Exhibit # 6)*

7- Whether the trial Court erred when it issued orders on matters that were not in the original Complaint? The trial court has no jurisdiction over these matters that were in the Final Order.

Answer 7- The Trial Court Judge extended the courts reach in deciding matters that were not in the Poorly Written Complaint of Case 451. The Complaint failed to raise a claim. It was filed deliberately against the wrong party, and the Court allowed this Frivolous Complaint to stay the course against all State and Federal Rules. Not only that, but 2 Cases that were filed by me the Appellant, Khaled Abdel-Fattah were dismissed in favor of Case 451 in clear violation of my Civil Rights.

8- Whether the trial court Judge erred when it accepted the Complaint that purposely left out Christine Eno who is a 25% shareholder in both LLCs? Mark T. Eno through his attorney, Tanya Spony, falsely claimed that Mark T. Eno holds 50% of both LLCs

leaving out Christine Eno? This was a false claim that the court continued to ignore after multiple motions to Dismiss the case, by the Defendant Khaled Abdel-Fattah.

Answer 8- When Mark T. Eno and his attorney claimed that he holds 50% shares in both LLCs in their **POORLY WRITTEN Frivolous Complaint**, they put forward a false claim. This makes it a Fraudulent Complaint that the Court ignored from day one. Attorney Spony filed this Malicious Complaint of Case 451, on behalf of her client knowing that this was a false claim. According to the Operating Agreement of both LLCs, Mark T. Eno holds 25%, Christine Eno holds 25% and Fattah Holds 50%. (*Please see Exhibit # 15 of Merrimack Enterprise LLC Operating Agreement*). This renders the Complaint to be based on a Fraudulent Complaint, which makes the Notice of Decision Void. During the trial of Case 451, the Presiding Judge and the attorney for the Plaintiff, Tanya Spony both repeat the false pretense of Mark T. Eno is entitled to 50% of the profits where he only holds 25% as to the Operating Agreement. What type of Math gives Mark T. Eno \$117,000 for his 25% share from the total amount of \$151,000? The Plaintiff was awarded a number based on a Decision of the Presiding Judge and not through an Expert Accountant that the Plaintiff needed to bring as an Expert Witness. The Court Pierced through the Veil of both LLCs with no Jurisdiction which again makes the Notice of Decision VOID. (*Please see Exhibit 12 from line 13 to line 24 of Page 208 from trial transcript of 451.*)
(*Caption of transcript of trial 451, page 208 line 13 to line 24*):

13 MS. SPONY: Yeah.

14 THE COURT: -- is your client has testified that

15 when he took the 134, that included his share, if I understand

16 this correctly --

17 MS. SPONY: Yep.

18 THE COURT: -- of both his expenses and his share of

19 the 50/50 profit.

20 MS. SPONY: Right. But my -- in my -- absolutely,

21 Your Honor.

22 THE COURT: And what he just testified to was that

23 he gave Mr. Fattah some sort of accounting --

24 MS. SPONY: Yes.

***CASE IN POINT:** Favoritism is very clear during the trial as well. The Plaintiff's Attorney and the Presiding Judge are in sync on every single issue as long as it favors the Plaintiff and his attorney.

9- Whether the trial court Judge erred when it took a decision in the absence on of an LLCs member? It is unconstitutional to take a decision on behalf of an absent member of the LLCs.

Answer 9- This Notice of Decision by the lower court is void and needs no respect as stated by the Honorable US Supreme Court. When the trial Judge states an inaccurate statement that would influence the outcome of the case, that is misconduct by the Presiding Judge. Actions that can be classified as judicial misconduct include: conduct prejudicial to the effective and expeditious administration of the business of the courts (as an extreme example: "falsification of facts"). In this case, it is not extreme where it is clear that the Presiding Judge is changing the facts that were presented by the Plaintiff in their Pleading of Case 451. (*Please see Exhibit # 9 page 14) of Notice of Decision*

when Presiding Trial Judge stated this false statement to give the court Jurisdiction:

"Specifically, the plaintiff and the defendant are the only members of each LLC,¹⁵ and both of those parties are (obviously) before the Court."

Let us see what Mark T. Eno through his Counsel wrote in their ***POORLY WRITTEN Pleading*** in Case 226-2018-CV-00451 say about who are the members of the LLC? *Please Caption from 451 POORLY WRITTEN Complaint next: (Also included in Exhibit # 6)*

CAUSE OF ACTION

6. There are two domestic limited liability companies which has been formed by Mark T. Eno, Christine Eno, and Khaled Abdel-Fattah. They are Merrimack Enterprises LLC and K Construction LLC. Both of these entities "flip" homes.

10- Whether the trial court Judge erred when its order presupposes the nature of this case, one for declaratory judgment despite the tenor of this case being one of a direct suit throughout?

Answer 10- In the next statement by the Presiding Judge in the Void Notice of Decision on page 12: *Please see Exhibit # 9*

"Thus, dismissal is not warranted on that basis. Second, the Court did not treat this action as a partition action brought pursuant to RSA 547-C. Rather, the Court treated this a declaratory judgment action, see RSA 491:22, to determine the proper distribution of the funds held in escrow. Thus, the complaint did not need to comply with RSA 547-C and dismissal on that basis is also unwarranted."

***CASE IN POINT:** The Trial Judge Expanded the Complaint by making a Declaratory Judgment Action instead of the Partition Action as the Pleading was requesting in the Case of 451. The Trial Judge took this unlawful step in an attempt to bestow jurisdiction over the case.

11- Whether the trial Judge erred when dismissed the Defendant's Complaint in case 226-2019-CV-00724 with the following reasoning "the Court will consider all of the parties" regarding expenses and their respective obligations when it decides the proper distribution of the funds currently held in escrow? But this is not what this order represents, and the issue stems from the way the complaint is written.

Answer 11- I, Khaled Abdel-Fattah, the Defendant in Case 451, filed 2 Motions to Recuse the Presiding Judge in 2 different Cases 226-2019-CV-00633 and 226-2019-CV-00724. (*Please see attached Exhibits 1 & 2 for these 2 Motions to Recuse.*) I predicted that the notice of decisions to dismiss 724 & 633 will take place in favor of Case 451. That was my prediction since 2019 and 2020. The Presiding Judge Dismissed 2 Cases that did Raise a Claim of Breach of Contract, GC, Invoices, and the Embezzlement of \$134,115 by the Plaintiff in Case 451, Mark T. Eno. All judgments rendered by the Biased Presiding Judge are void Judgments. The Presiding Judge showed Discrimination, Favoritism, and Abuse of Due Process in issuing rulings that are against my Constitutional Rights in a clear violation of Canon Rules 1, 2, & 3. (*Please see multiple Notice of Decisions by the Presiding Judge that prove Prejudice & Favoritism.*) (*Exhibits 3, 4, & 5*)

The Operating Agreement of the LLCs have 3 members that include Christine Eno. How could the Presiding Judge declare that there were 2 members only in the LLCs unless the court is desperate to issue a ruling in the favor of the Plaintiff and his attorney no matter what. The same way the Presiding Judge jumped on Cases 226-2019-CV-00633 and 226-2019-CV-00724 and dismissed them both, in favor of Case 226-2018-CV-00451. And now, the Supreme Court of

New Hampshire is forcing me to file a Brief where the lower Court lacked Jurisdiction over the 2 LLCs and against what the US Supreme Court rules for Void Judgments.

During the trial of 451, on page 208 between line 6 and 12, the Plaintiff's attorney Spony and the Presiding Judge Concur that the first property sold by the LLC, Rock Hill, is not part of this, (meaning the trial). (*Please see Exhibit # 12 on page 208 between line 6 and 12*). This above decision during the trial of 451 by the presiding Judge is in contrast to her over promising decision in Case 724 when she dismissed the case. This again proves that the statement by the Presiding Judge in her Notice of Decision in Case 724 that both cases are the same and everything will be considered in Case 451 with leniency is also FALSE. Let's read the Presiding Judge's closing paragraph in her Notice of Decision before granting the Defendants, Mark T. Eno and his Counsel their wishes to dismiss Case 724: (*Please see last paragraph of 724 Notice of Decision in Exhibit # 5*)

"As such, consistent with its earlier rulings in the 451 Case, Mr. Eno is on notice that Mr. Fattah's allegations regarding expenses and breach of duty will be considered by the Court in deciding the proper relief in that case. The Court further recognizes that Mr. Fattah is pro se and will afford him some procedural leniency when it decides the proper remedy in the 451 Case. For these reasons, the defendants' motion to dismiss as to Mr. Eno is GRANTED. Any further litigation involving these three properties and the parties' obligations under their "flipping" arrangement should be filed in the 451 Case."

CASE IN POINT: I am still waiting for that PROCEDURAL LENIENCY from the Presiding Judge. YES, AND MY EXPENSES AND THE BREACH THAT THE ENOS COMMITTED, I'M STILL WAITING FOR THEM AS WELL. These DECISIONS show the intention of the Presiding Judge that there was a predetermination years before entering the trial of 451 that she will decide

everything in favor of Mark T. Eno and his attorney Tanya Spony. I predicted this scenario in 2019 and 2020 when the Presiding Judge got assigned to 724 & 633 that they will be dismissed in favor of Case 451. (*Please see Exhibits 1 & 2 in 2 Motions to Recuse*). What I predicted in my Motions to Recuse the Presiding Judge happened in 2022. I was not a Psychic to predict it years ago, but it was obvious that the Presiding Judge was protecting the other party in favor of the Frivolous Complaint of Case 451. Here, I have to say that the justice system of New Hampshire including the Hon. Supreme Court of New Hampshire have failed me multiple times to protect me from a Judge who took it upon her own to issue rulings against all Rules to protect a Complaint in Case 451 that failed to raise a claim and had no Jurisdiction what so ever. (*Please Exhibit # 12 Brief of 0220-0330 for Case 633*)

12- Whether the trial court Judge erred when no explanation was given as to the basis of this determination and why a partition action was not what was intended by the Plaintiff's poorly written pleading? The Trial Court Judge in its final order determines that "[T]he Court did not treat this action as a partition action brought pursuant to RSA 547-C. Rather, the Court treated this as a declaratory judgment action, see RSA 491:22.

Answer 12- The Presiding Judge intentionally stayed away from a partition action since the Court lacked jurisdiction. The Court also failed to include LLCs' member Christine Eno. This makes the Notice of Decision issue on 08/15/2022 an extended reach for a Poorly written Complaint that only requests dividing proceeds after all expenses are paid. It is not accurate that the Pleading in Case 451 was for Declaratory Judgment. *Please see Notice of Decision of 08/15/2022 page 3 paragraph 2 in the next Caption:*

As noted above, there are three properties at issue. As will be discussed below, two of the properties have been sold and there are excess funds from the closings of each of those properties.³ The parties, however, have been unable to agree as to how those funds should be divided. Consequently, the plaintiff has brought this declaratory judgment action asking the Court to determine the proper allocation of those funds.⁴ Specifically, the Court must determine the amount of each party's expenses that must be paid from the excess funds and then determine how the remainder, if any, should be divided. The Court will discuss each of the three properties at issue in turn.

This statement by the Presiding judge is an inaccurate statement. The Poorly written Complaint of Case 451 was for dividing proceeds of 2 LLCs as stated in the Plaintiff's Request A. This proves that the Frivolous Complaint was not asking for a Declaratory Judgment. The above statement in the Notice of Decision also states that there are 3 properties only at issue as the Plaintiff and his attorney wished exactly. To keep the 1st property sold out of litigation of Case 451. They succeeded in dismissing Case 633 that is about the embezzlement of funds by Mark T. Eno and the Trial Judge grants them their wishes.

WHEREFORE, Plaintiff, Mark T. Eno, respectfully requests that this Honorable Court:

- A. Schedule a hearing to determine how the gross profits from the sale of the Merrimack, New Hampshire, property should be divided;
- B. Order that Mr. Eno's \$35,000.00 loss from the Columbia, South Carolina, project be included in the expenses paid from the Merrimack gross profit;

The Trial Judge also failed to include my GC invoices in favor of the fictitious invoices that were paid to the Plaintiff Mark T. Eno and his friend Martin Poulin/general laborer who collects unemployment and getting paid cash. This is the second time Mark T. Eno gets his share to pay other GCs other than I, Khaled Abdel-Fattah who should have been paid. Mark T. Eno was awarded around \$9,500 from the funds held in escrow in April of 2019. To reward the Plaintiff twice for repair work and ignore my GC invoices that I was promised to

be considered in case 451 is another proof that the presiding Judge has favored the Plaintiff in every single decision in all cases, 724, 633, & 451. This makes all rulings by the Presiding Judge Void. My Motions to Recuse explained what the intentions were of the Presiding Judge when got assigned to these Cases. The predetermination of the Presiding Judge was to Dismiss these cases in favor of the Frivolous Case of 451. *Please see Notice of Decision footnote 12 on page 9:*

¹² The record was not entirely clear what these payments covered. Mr. Poulin testified that he worked on the property after he sold it and earned these payments for that work. However, the plaintiff indicated that these payments were made as part of the initial agreement to sell the property. Ultimately, this distinction is immaterial as they are reimbursable expenses regardless of the classification.

***CASE IN POINT:** Here, the presiding Judge acknowledges that GC expenses need to be paid first as stated in the Operating Agreement. The Plaintiff gets paid 2 times for the same GC expenses but I, Khaled Abdel-Fattah get denied my GC work in a clear discrimination by the Court against me. All of the rulings by the presiding Judge are void due to the clear Bias against me in all of the cases that she presided on.

13- Whether the Trial Court Judge erred when issued a Final Order that picked and choose between properties and expenses in favor of the Plaintiff, Mark T. Eno?

Answer 13- The Final Notice of Decision issued on 08/15/2022 in Case 451 had no jurisdiction over the LLCs and over the Defendant, Abel-Fattah as an LLCs member. It also omitted the 3rd member, Christine Eno who is an LLCs member that was not named in the Poorly written Complaint who was left out intentionally.

14- Whether the Trial Court Judge erred when accepting the Complaint that holds funds in Escrow from KConstruction LLC that was incorporated in Delaware in 2017 then was transferred by the Plaintiff, Mark T. Eno to New Hampshire without the knowledge of LLC members in a clear violation of the written and signed Article of Organization? The

Court has no jurisdiction over these funds if the court considers KConstruction LLC of Delaware.

Answer 14- The lower Court had no jurisdiction over the LLC that was transferred unlawfully to New Hampshire by Mark T. Eno in an apparent breach of the Operating Agreement of KConstruction LLC and Merrimack Enterprise LLC. This was brought to the attention of the presiding judge but the lower Court ignored these facts and never requested the Plaintiff in the Case to amend the Complaint. This renders the Notice of Decision Void. The lower Court had no jurisdiction over the LLCs and the Proceeds from the LLCs. The funds being held in escrow without due process in violation of my Civil Rights.

15- Whether the Trial Court Judge erred if accepted KConstruction LLC of New Hampshire since its incorporation was unlawful. The Court has no Jurisdiction over it since it only has the name of Mark T. Eno only who intentionally left out Khaled Abdel-Fattah and Christine Eno as members, to secure the transfer of the funds after the sale of one of the properties in his own personal account.

Answer 15- This was one of the claims that I had raised in my claim in Case 633 and then got dismissed without due process by the presiding Judge in Favor of Case 451. Mark T. Eno the Plaintiff in Case 451 moved the Company without notifying LLC members in an attempt to have the proceeds from the sale of one of the properties to be transferred to his bank account. Favoritism by the Presiding Judge makes the Notice of Decision in Case 451 Void.

16- Whether the Trial Court Judge erred when ignored the breach of agreement committed by the Plaintiff, Mark T. Eno after failing to meet his financial obligation paying the mortgage for 205 Algrave Way South Carolina, that was then foreclosed on.

Answer 16- Breach of Contract was one of the claims V. Mark T. Eno and Christine Eno, that I, Khaled Abdel-Fattah, raised in my claim in Case 724 and then got dismissed without due process by the presiding Judge in Favor of Case 451.

17- Whether the Trial Court Judge erred when ignored in the Final Order, the embezzlement committed by the Plaintiff, Mark T. Eno during testifying under oath in the trial, admitted that he took the amount of \$134,115.26 with no permission from LLC members?

Answer 17- Embezzlement was one of the claims that I had raised in my claim in Case 633 and then got dismissed without due process by the presiding Judge in Favor of Case 451. Mark T. Eno the Plaintiff in Case 451 transferred \$134,115.26 to his bank account without notifying LLC members in writing, in a clear violation of the Operating Agreement that was signed by all 3 members. The presiding Judge ignored the Operating Agreement and kept the sale of the first property by the KConstruction LLC out of 451 litigations as the Plaintiff and his attorney wished for all along. Favoritism by the Presiding Judge makes the Notice of Decision in Case 451 Void.

18- Whether the Trial Court Judge erred when ignored to settle GC invoices of \$1,10,718.00 first, before dividing proceeds as specified in the Article of Organization? I, the Defendant, Khaled Abdel-Fattah, holds 50% shares in both LLCs. Mark T. Eno and Christine Eno hold 25% shares each in each LLC.

Answer 18- The Footnote #2 from the Void Decision of Case 451 is clear that the presiding Judge ignored the invoices that the Plaintiff received from me, Khaled Abdel-Fattah, before August of 2018. The presiding judge accepted bank statements from Mark T. Eno as expenses and also elected to pay a laborer who was on Disability for his labor work but refused to accept my GC invoices. This is also against the Poorly written Complaint in Case 451 and against the Operating Agreement of both LLCs.

² To be clear, the term "expenses" does not encompass the value of the parties' own work/labor. The parties never agreed that they would be paid for their own time or labor expended during the flipping process. The Court did not find credible the defendant's testimony that he was to be paid for his own labor as the "general contractor" for each property. Accordingly, the defendant's purported general contractor invoices, (see Ex. A), are not "expenses" and are not subject to payment from the closing proceeds.

Please see following Caption from Poorly written Complaint of 451 stating clearly that Abdel-Fattah performs necessary construction and each party gets reimbursed for expenses. The presiding Judge ignored these facts in favor of the Plaintiff.

In terms of the operating agreement of Merrimack Enterprises and the actual practices of the parties, Eno and Abdel-Fattah have assumed different duties for the LLCs. Eno arranges the financing and Abdel-Fattah performs necessary construction. When a property is sold, each party gets reimbursed for expenses he incurred; the balance is split 50-50 between the parties.

19- Whether the Trial Court Judge erred when ignored to account for the \$24,000 that the Plaintiff, Mark T. Eno borrowed to meet his financial obligations towards both LLC's?

Answer 19- Same answer as in Answer # 12.

20- Whether the Trial Court Judge violated my 5th and 14th Amendment Rights when issued an Ex Parte motion in my absence before I was notified of the Complaint in this case?

Answer 20- I, the Defendant, Khaled Abdel-Fattah, only received the Ex Parte ruling to attach the funds of \$87,920.86 that was issued on August of 29th, 2018. I never received the complaint's initiating documents from attorney Tanya Spony and no proof was ever submitted to the lower Court that I was served properly. Since the service was improper, the Court has ZERO Jurisdiction over Khaled Abdel-Fattah, and over the LLCs according to the Ruling in a similar appeal by the New Hampshire Supreme Court in Case No. 2014-0565, *In the Matter of Alexandra Starr and David Starr*:

"The plaintiff bears the burden of demonstrating facts sufficient to establish personal jurisdiction over the defendant. Mosier v. Kinley, 142 N.H. 415, 418 (1997). When jurisdictional facts are challenged, the plaintiff must offer affirmative proof. Id. Because the husband was

never properly served with the motion to bring forward, we conclude that the trial court never acquired jurisdiction over him. Accordingly, we vacate the trial court's order and direct the trial court, upon remand, to dismiss the matter."

Court records show that, Tanya Spony, the attorney for the Plaintiff, Mark T. Eno, is the one who served the Defendant, Khaled Abdel-Fattah with the initiating documents for Case # 226-2018-CV-00451. Who could serve Initiating Documents in the state of New Hampshire? Anyone over the age of eighteen (18) years old, who is not a party to the case, is legally able to serve papers in the state of New Hampshire. This is in violation of RSA 510:2-a "*Contents of Writs and Processes.*" And also, in violation of US rule 4 C (2). For the clerk of Hillsborough South Superior Court on New Hampshire, the Presiding Judge of Case 451, are very much aware of what proper service is but they elected to help our friend the attorney to grant a lien on LLC Proceeds with improper service VS Khaled Abdel-Fattah as an individual. Favoritism is very clear from day one. I ask the Honorable Supreme Court of New Hampshire to take a look at all the biased ruling that were issued against me in the lower Court and it will be very clear to Court that the ground was tilted against me in the Lower Court. So, what is there to appeal? It is a Void Judgment. When did the Plaintiff Mark T. Eno's attorney, Tanya Spony file the improper Summons to Hillsborough South Superior Court? (*Please see Exhibit 8 of Return of Service.*). It was filed December 20, 2018. That is 113 days after the improper service by the attorney against Superior Court Procedure of Civil rules 4 (c) of 21 days.

"Proof of service shall be filed with the court within 21 days of the court-ordered deadline for service. If a defendant is not served within the court-ordered deadline for service, the court shall dismiss the action with or without prejudice, as justice may require." For the Clerk to ignore the improper service and the untimely filing of the improper Summons is also against NH Rule 1 (f),

"The clerk may refuse to accept, by notification in writing, any filing that the clerk determines does not comply with these rules."

21- Whether the Trial Court Judge violated my Constitutional rights of receiving a fair and just trial?

Answer 21- This above decision during the trial of 451 by the presiding Judge is in contrast to her over promising decision in Case 724 when she dismissed the case. This again proves that the statement by the Presiding Judge in her Notice of Decision in Case 724 that both cases are the same and everything will be considered in Case 451 with leniency is also FALSE. Let's read the Presiding Judge's closing paragraph in her Notice of Decision before granting the Defendants, Mark T. Eno and his Counsel their wishes to dismiss Case 724: *(Please see last paragraph of 724 Notice of Decision in Exhibit # 5)*

"As such, consistent with its earlier rulings in the 451 Case, Mr. Eno is on notice that Mr. Fattah's allegations regarding expenses and breach of duty will be considered by the Court in deciding the proper relief in that case. The Court further recognizes that Mr. Fattah is pro se and will afford him some procedural leniency when it decides the proper remedy in the 451 Case. For these reasons, the defendants' motion to dismiss as to Mr. Eno is GRANTED. Any further litigation involving these three properties and the parties' obligations under their "slipping" arrangement should be filed in the 451 Case."

I am still waiting for that PROCEDURAL LENIENCY from the Presiding Judge. So, what New Hampshire State Rule or US Federal Rule allows a dismissal of a Complaint based on a promise by the Presiding Judge to be Lenient with the Plaintiff of the to be dismissed case in another Case where I was the defendant? Litigants are not looking for leniency in the Court of law but they look for Justice based on the facts and laws presented. YES, AND MY EXPENSES AND THE BREACH THAT THE ENOS COMMITTED, I'M STILL WAITING FOR THEM AS WELL. These DECISIONS show the intention of the Presiding Judge that there was a predetermination years before entering the trial of 451 that she will decide everything in favor of Mark T. Eno and his attorney Tanya Spony. I predicted this scenario in 2019 and 2020 when the Presiding Judge got assigned

to 724 & 633 that they will be dismissed in favor of Case 451. (*Please see Exhibits 1 & 2 in 2 Motions to Recuse*). What I predicted in my Motions to Recuse the Presiding Judge happened in 2022. I was not a Psychic to predict it years ago, but it was obvious that the Presiding Judge was protecting the other party in favor of the Frivolous Complaint of Case 451. Here, I have to say that the justice system of New Hampshire including the Hon. Supreme Court of New Hampshire have failed me multiple times to protect me from a Judge who took it upon her own to issue rulings against all Rules to protect a Complaint in Case 451 that failed to raise a claim and had no Jurisdiction what so ever. (*Please Exhibit # 12 Brief of 0220-0330 for Case 633*)

22- Whether the Trial Court Judge discriminated against me, the Defendant in favor of the Plaintiff and his Attorney? Multiple Motions to recuse the Hon. Judge were denied without Due Process. Not a single Motion for urgent hearing was accepted and 100% of my motions were denied

Answer 22- These alterations of facts by the Presiding Judge are not only in Case 451, but also in Case 724 and 633. *Please see Exhibits # 4, 5 and # 7*. The Presiding Judge stated the following in her Ruling on 04/21/2020: (*Please see Exhibit # 5 Page 7 2nd paragraph line 4 to 8*)

"Here, the Court finds that dismissal of this action is appropriate. As explained above, the Court now has two cases regarding the exact same subject matter. It is not at all clear why Mr. Fattah brought this separate action rather than simply paying the filing fee for his counterclaims in the 451 Case."

It is important to show that the Pleading in the **POORLY WRITTEN COMPLAINT** in case 451 is only about dividing LLCs' Proceeds. The trial Court tried to extend the Complaint to include Business Dispute/Breach of contract on March 25 2022 but failed to do so after I challenged the court and Tanya Spony to show that the original complaint that was filed on August 29, 2018 has any mention of Business Dispute/Breach of a Contract. (*Exhibit # 10 of*

Motion to Dismiss by Defendant Khaled Abdel-Fattah and Motion to Object Exhibit # 11).

The Legitimate Complaint that I filed in Case 724 was v. Mark T. Eno and Christine Eno was for Breach of Contract and unpaid GC invoices and not about dividing proceeds as in Case 451. This fact shows the FALSE Conclusion and the twisting of the facts by the Presiding Judge over Cases 451, 724 & 633 when stated in her notice of decision, "***the Court now has two cases regarding the exact same subject matter.***" These decisions are void as well for the clear Prejudice and Favoritism by the Presiding Judge that have committed Fraud Upon the Court. These 2 cases were dismissed to keep the Malicious Case of 451 alive to issue a ruling in the Plaintiffs favor as just happened in the Notice of Decision issued on 08/15/2022. The Presiding Judge have violated all Canon Rules with siding with the Plaintiff in all of her decision in multiple cases which renders all judgments to be void.

23- Whether the Trial Court Judge acted outside of the color of law when ordered the dismissal of Case # 226-CV-2019-724 for Breach of Contract and Case # 226-2019-CV-633 for Embezzlement, Fraud, and Larceny, without any hearing scheduled. The Hon. Judge heard the Plaintiff admit to the Breach he committed and his Embezzlement of \$134,115.26 under oath and still issued a final order in the Plaintiff's favor.

Answer 23- The lower court dismissed both cases, 633 & 724 without a single hearing held. This is an error for not allowing the Plaintiff to be fairly heard as stated in Canon Rule 2.2 [4]. This is clear Discrimination by the Lower Court that the Supreme Court elected to ignore. Over 200 legal errors were raised in multiple appeals and not a single error was responded to by the Supreme Court of New Hampshire. (2020-0330, 2020-0429, & 2021-0037) What will be different this time? NO APPEAL IS NEED AS TO THE US SUPREME COURT. **When appeal is taken from a void judgment, the appellate court must declare**

the judgment void, because the appellate court may not address the merits.

24- Whether the Trial Court Judge erred when ordered in the Final Decision to reward the Plaintiff, Mark T. Eno the Sum of \$117,371.57 from the held Escrow funds in a clear favoritism knowingly that the Plaintiff Mark T. Eno only holds 25% shares in both LLC and the Defendant, Khaled Abdel-Fattah holds 50%?

Answer 24- This is the same answer as in Answer # 8. During the trial of Case 451, the Presiding Judge and the attorney for the Plaintiff, Tanya Spony both repeat the false pretense of Mark T. Eno is entitled to 50% of the profits where he only holds 25% as to the Operating Agreement. What type of Math gives Mark T. Eno \$117,000 for his 25% share from the total amount of \$151,000? The Plaintiff was awarded a number based on a Decision of the Presiding Judge and not through an Expert Accountant that the Plaintiff needed to bring as an Expert Witness. The Court Pierced through the Veil of both LLCs with no Jurisdiction which again makes the Notice of Decision VOID. (*Please see Exhibit 12 from line 13 to line 24 of Page 208 from trial transcript of 451.*) (*Caption of transcript of trial 451, page 208 line 13 to line 24 in answer # 8 of this brief:*)

1- Violations that make Notice of Decision in Case 451 Void.

- a- The judge does not follow statutory procedure, *Armstrong v. Obucino*, 300 Ill 140, 143, (1921)
- b- Unlawful activity of a judge, Code of Judicial Conduct.
- c- Violations of due process, *Johnson v. Zerbst*, 304 U.S. 458 S.Ct. 1019; *Pure Oil Co. v. City of Northlake*, 10 Ill.2d 241, 245, 140 N.E. 2d 289 (1956); *Hallberg v Goldblatt Bros.*, 363 Ill 25 (1936);
- d- If the court exceeded its statutory authority. *Rosenstiel v. Rosenstiel*, 278 f. Supp. 794 (S.D.N.Y. 1967)

- e- The **POORLY WRITTEN COMPLAINT IN CASE 451** had no justiciable issue that was presented to the court through proper pleadings, *Ligon v. Williams*, 264 Ill App 3d 701, 637 N.E. 2d 6d33 (1st Dist. 1994)
- f- Where the summons was not properly served.
- g- When the Rules of the Court are not Complied with.
- h- When the local rules of the special are not complied with. (One where the judge does not act impartially, *Bracey v. Warden*, U.S. Supreme Court No. 96-6133 (June 9, 1997)
- i- Where the statute is vague, *People v. Williams*, 638 N.E. 2d 207 (1st Dist. 1994)
- j- When proper notice is not given to all parties by the movant, *Wilson v. Moore*, 13 Ill. App. 3d 632, 301 N.E 2d 39 (1st Dist. 1973)
- k- When an order/judgment is based on a void order/judgment, *Austin v. Smith*, 312 F 2d 337, 343 (1962); *English v. English*, 72 Ill. App. 3d 736, 393 N.E. 2d (1st Dist. 1979)
- l- When the judge is a trespasser of the law.

2- **Stare decisis** is the doctrine that courts will adhere to precedent in making their decisions. *Stare decisis* means “to stand by things decided” in Latin. When a court faces a legal argument, if a previous court has ruled on the same or a closely related issue, then the court will make their decision in alignment with the previous court’s decision. The previous deciding-court must have binding authority over the court; otherwise, the previous decision is merely persuasive authority. In *Kimble v. Marvel Enterprises*, the U.S. Supreme Court described the rationale behind *stare decisis* as “promot[ing] the evenhanded, predictable, and consistent development of legal principles, foster[ing] reliance on judicial decisions, and contribut[ing] to the actual and perceived integrity of the judicial process.”

CONCLUSION:

The highest Court of the Land, the Honorable US Supreme Court states that lack of Jurisdiction renders the ruling Void. The Notice of Decision issued by Hillsborough South

Superior Court of NH lacked Jurisdiction for all the stated legal errors mentioned in this Motion. The US Supreme Court states it very clearly that A Party Affected by VOID Judicial Action Need Not APPEAL and that the law is well-settled that a void order or judgement is void even before reversal. For this reason, this notice of Decision that I am being forced to appeal is void and no appeal is needed.

The judiciary is built on a foundation of public faith-judges. They make rulings on the law. Rulings that the people must believe came from competent, lawful and independent judicial officers. Since facing blunt discrimination in Hillsborough South Superior Court and New Hampshire Supreme Court, I have lost faith in both Courts. This is not the first time that I am here before the New Hampshire Supreme Court. I have filed multiple Appeals but the Hon. Supreme Court elected not to answer a single legal error question especially when Case 226-2019-CV-00633 was dismissed without due process. Not a single Motion for Urgent hearings were granted by the Presiding judge. I was denied the right to be heard. The trial of Case 451 proved that my Claim in Case 633 was legitimate and it was dismissed without due process in favor of Case 451. The same thing for Case 724. It was dismissed/eliminated in favor of Case 451.

Now, to be forced to file an appeal on a Void Judgment is another step in the same direction even though it is against what the US Supreme Court laws are on judgments with lack of jurisdiction.

This is what I, Khaled Abdel-Fattah wrote to your Honorable Supreme Court in the **Appeal Docket # 2020-0330** on December 21st, 2020.

11- *"All effort of the lower court is to keep the sale of Rock Hill, SC. property since it was never mentioned in Mark T. Eno's pleading of 451. The court is aiding Mark T. Eno to not be questioned about the sale of the property and what he did with the proceeds from the sale of the property. This is why Case 633 and Case 724 were dismissed to block me from raising these issues and also be able to defend myself in case 451 by stopping me from litigating this property."*

After all of what I have mentioned in this motion for a Void Judgment and all of the blatant errors by the lower Court, I hope that the Hon. Supreme Court won't come back with a decision stating, "*THE APPELLANT, KHALED ABDEL-FATTAH FAILED TO DEMONSTRATE A REVERSABLE ERROR.*" This is what I have received in multiple different appeals with similar blatant legal errors.

The Notice of Decision in Case 451 is Void and demands no Respect as the Honorable US Supreme Court of the United States of America ruled. A Party Affected by VOID Judicial Action Need Not APPEAL and that the law is well-settled that a void order or judgement is void even before reversal. For this reason, this notice of Decision that I am being forced to appeal is void and no appeal is needed.

The Plaintiff, Mark T. Eno and his counsel, Tanya Spony, had over 4 and a half years to amend their POORLY WRITTEN COMPLAINT but elected to not name the 2 LLCs to keep the first sold property out. The crossclaim they filed in the Supreme Court, is void and should not have been accepted in the first place especially when it was granted after they filed it untimely. The Lower Court's lack of Jurisdiction could be raised any time even in the appeal court. The Honorable Supreme Court needs to Consider the judgment void even before reversal and Declare the Notice of Decision Void in writing. As a reminder, the Notice of Decision is Void even before reversal as to the Honorable US Supreme Court. The pursuant of this Void Judgement by the Plaintiff and his legal team will have legal ramifications as they were notified on multiple motions that were filed with the lower court since 2019. The Abuse of process and harassment is very clear.

PRAYER FOR RELIEF:

- 1- I pray that the Honorable Supreme Court to Declare the already Void Notice of Judgment from Case 226-2019-CV-00451 to be Void Judgment.
- 2- I pray that the Honorable Supreme Court to Impeach the Void Judgment from Case 226-2019-CV-00724 since a Motion to Recuse was denied by the Presiding Judge before the Dismissal of the case.

- 3- I pray that the Honorable Supreme Court to Impeach the Void Judgment from Case 226-2019-CV-00633 and reward me the default Judgment of \$781,000 that the Lower Court dismissed/Eliminated without due process.
- 4- I pray that the Honorable Supreme Court to release the Proceeds of \$151,000, that are held in Escrow by Smith-Weiss Shepard Kanakis & Spony, P.C. through the Frivolous Malicious and Fraudulent Complaint that took hold of LLC funds through a Biased Judge illegally.
- 5- I, the Appellant, Khaled Abdel-Fattah, pray that the Hon. Supreme Court of New Hampshire would grant such other and further relief as is equitable and just.

Service:

I hereby certify that on 05/05/2023, I have sent a copy of this Motion via the Supreme Court Electronic Service to Mark T. Eno and his counsel, attorney Tanya Spony of Smith-Weiss Shepard Kanakis & Spony, P.C.

Kindly Submit by:



Khaled Abdel - Fattah
Phone. 508-400-7770
733 Turnpike St. #186
N. Andover, MA. 01845

APPENDIX

- Ⓐ EXHIBIT 1 MOTION TO RECUSE IN CASE 724 42 Pages
- Ⓐ EXHIBIT 2 MOTION TO RECUSE IN CASE 633 42 Pages
- Ⓐ EXHIBIT 3 NOTICE OF DECISION NOT TO DISCUSS ANY OTHER MATTERS NOT IN PLEADING OF 451 1 Page
- Ⓐ EXHIBIT 4 OF 633 June 18-2020 Notice of decision By judge Jacelyn A. Colburn 2 Pages
- Ⓐ EXHIBIT 5 OF CASE 724 Court Order 4-21-2020 BY JUDGE COLBURN 7 Pages
- Ⓐ EXHIBIT 6 OF POORLY WRITTEN COMPLAINT OF 451 5 Pages
- Ⓐ EXHIBIT 7 OF Motion To Document Inconsistencies in Case 724 10 Pages
- Ⓐ EXHIBIT 8 SUMMONS OF 451 UNTIMELY FILED 3 Pages
- Ⓐ EXHIBIT 9 OF 451 Notice of Decision 08 15 2022 16 Pages
- Ⓐ EXHIBIT 10 OF Motion to Dismiss 451 FILED ON 04 12 2022 8 Pages
- Ⓐ EXHIBIT 11 Motion to Object to Breach of Contract in Case 451 8 Pages
- Ⓐ EXHIBIT 12 SPONY AND JUDGE KEEPIN ROCK HILL PROPERTY OUT DURING 451 TRIAL 1 Page
- Ⓐ EXHIBIT 13 OF Brief of Defendant 0220 0330 66 Pages
- Ⓐ EXHIBIT 14 US SUPREME COURT RULES ON VOID JUDGMENT 37 Pages
- Ⓐ EXHIBIT 15 MERRIMACK ENTERPRISE OPERATING AGREEMENT 17 Pages

APPENDIX G

Complaint

by

Plaintiff Mark T. Eno in Case 226-2018-CV-00451

STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

HILLSBOROUGH SUPERIOR COURT
SOUTHERN DISTRICT

AUGUST 2018

MARK T. ENO

v.

KHALED ABDEL-FATTAH

And

SUNSET SETTLEMENT COMPANY, LLC, TRUSTEE DEFENDANT

Case Number:

COMPLAINT

NOW COMES the Plaintiff, Mark T. Eno, by and through his attorneys Smith-Weiss Shepard, P.C., and hereby files his Complaint against the Defendant, Christine Eno. In support thereof states as follows:

PARTIES

1. Mark T. Eno is a private individual who resides at 4 Taconic Drive, Merrimack, New Hampshire.
2. Khaled Abdel-Fattah is a private individual who resides at 94 ½ Bowers Street, Nashua, New Hampshire.
3. Sunset Settlement Company, LLC is a limited liability company located at 76 Northeaster Blvd, Suite 26B, Nashua, New Hampshire 03062.

JURISDICTION

4. This Court has jurisdiction of this matter as it involves a contract between the parties that was created in and acted upon in Hillsborough South. The parties also reside in Hillsborough County, New Hampshire.

VENUE

5. Venue is proper as both parties reside in the Southern District.

CAUSE OF ACTION

6. There are two domestic limited liability companies which has been formed by Mark T. Eno, Christine Eno, and Khaled Abdel-Fattah. They are Merrimack Enterprises LLC and K Construction LLC. Both of these entities "flip" homes.

In terms of the operating agreement of Merrimack Enterprises and the actual practices of the parties, Eno and Abdel-Fattah have assumed different duties for the LLCs. Eno arranges the financing and Abdel-Fattah performs necessary construction. When a property is sold, each party gets reimbursed for expenses he incurred; the balance is split 50-50 between the parties.

There is no operating agreement for K Construction LLC. Notwithstanding the forgoing, the parties have operated K Construction LLC under the exact same terms and conditions as outlined in the Merrimack Enterprises LLC operating agreement.

Both LLCs have their principal places of business in Hillsborough South.

7. The LLCs own two (2) remaining parcels of land – one (1) in Merrimack, New Hampshire and one (1) in Fayetteville, North Carolina.

The parties also used to own a third property in Columbia, South Carolina. A deed in lieu of foreclosure was given on this property. As such, the LLCs, and specifically Mr. Eno, has incurred a loss of \$35,000.00±. Mr. Eno will not be able to recapture \$35,000.00 of expense he incurred in financing the project. Mr. Abdel-Fattah has been fully reimbursed for his expenses of construction.

8. The Merrimack, New Hampshire, property sold today (August 29, 2018) and there is a gross profit of \$87,920.86. Mr. Eno has expenses of \$25,000.00± remaining on this property, which Abdel-Fattah agrees will be paid from gross profit.

Mr. Abdel-Fattah proposes that the remaining \$60,000.00+ of gross profit be divided equally between the partners – about \$30,000.00 apiece. Mr. Eno disagrees, saying that the \$35,000.00 loss he incurred on the Columbia, South Carolina, property should also be paid from the gross profit of \$60,000.00 to him. The remaining \$25,000.00± would be split equally.

The closing company for the Merrimack, New Hampshire property was Sunser Settlement Company, LLC.

9. The Fayetteville, North Carolina property is currently under construction. Assuming Mr. Eno is paid for the loss he incurred on the Columbia South Carolina property from the profits from the Merrimack, New Hampshire property, the parties should equally share the net proceeds and/or losses associated with the Fayetteville, North Carolina property.

WHEREFORE, Plaintiff, Mark T. Eno, respectfully requests that this Honorable

Court:

A. Schedule a hearing to determine how the gross profits from the sale of the Merrimack, New Hampshire, property should be divided;

B. Order that Mr. Eno's \$35,000.00 loss from the Columbia, South Carolina, project be included in the expenses paid from the Merrimack gross profit;

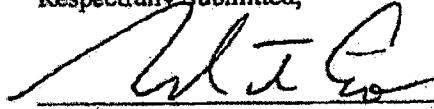
AND PENDING A FURTHER ORDER OF THIS COURT,

The Court shall issue an ex parte attachment on the entire gross profit (\$87,920.86) from the sale of the Merrimack, New Hampshire, property to be held in escrow as the Court shall direct until further order of this Court, or as the parties shall agree in writing.

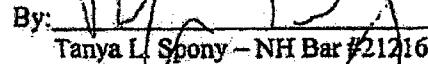
See Ex Parte Petition for Attachment and Trustee Process Closing Check filed herewith.

C. And for such other orders as the Court shall deem and equitable.

Respectfully Submitted,



Mark T. Eno
By His Attorneys
SMITH-WEISS SHEPARD, PC
47 Factory Street; PO Box 388
Nashua, NH 03061
(603) 883-1571

By: 
Tanya L. Spony - NH Bar #21216

August 29, 2018

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this 29th day of August, 2018, personally appeared before me Mark Eno, who proved to me through satisfactory evidence of identification, to wit, personally known to me, to be the signer of the foregoing document, and who swore or affirmed to me that the contents of said document are truthful and accurate to the best of his knowledge and belief.

Before me,

Notary Public
My Commission Expires: 