

No. 25-6673

IN THE
SUPREME COURT OF THE UNITED STATES

James R. Caputo, M.D.
PETITIONER

VS.

Richard S. Tubiolo, Esq.
Bryan S. Kornfield, Esq.
Hirsch and Tubiolo, PC
RESPONDENTS

PETITIONER'S BRIEF IN REPLY

APPENDIX A

MOTION W/ AFFIRMATION FOR REARGUMENT to the
New York State Appellate Division: Fourth Department (38 pages)
Re: Originating Court No. E2024000703
Appellate Division Docket #: CA 24-01298 – 3/2/2026.....1a

Appellate Division: Fourth Department – ORDER
w/ (2/27/2026) Notice of Entry (3 pages)
Re: Originating Court No. E2024000703
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Monroe County Supreme Court
DECISION AND ORDER (10 pages)
Re: Originating Court No. E2024000703 – 7/26/2024.....42a

**MOTION W/ AFFIRMATION FOR REARGUMENT
to the New York State Appellate Division:
Fourth Department (38 pages)**

**Re: Originating Court No. E2024000703
Appellate Division Docket #: CA 24-01298**

3/2/2026

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

James R Caputo

Plaintiff-Appellant

– VS –

Nathan Holt, Owen Billet, Premium Mortgage Corporation, Robert T Houle, Houle Sales Consulting Inc, Donald Cheney Esq, Cheney Law Firm PLLC, ABAR Abstract Corporation, Monroe County Clerk's Office

Defendant-Respondents

**NOTICE OF MOTION
FOR REARGUMENT**

**Originating Court
No. E2024000703**

**Appellate Division
Case/Docket #: CA 24-01298**

PLEASE TAKE NOTICE that, upon the annexed affirmation of James R. Caputo, (dated March 2, 2026), the *Order* of this Court, and all prior papers and proceedings in this action, Plaintiff-Appellant James R. Caputo will move this Court at a term of the Appellate Division, 50 East Avenue, Rochester, New York, 14604 on the 16th day of March, 2026, at 10:00am, pursuant to 22 NYCRR 1250.16(d) and 22 NYCRR 1250.4, for an order:

1. Granting reargument of this Court's *Order*, (entered on February 11, 2026), which breached all components of *Federal Circuit Rule 36* when it summarily affirmed the July 26, 2024, *Decision and Order* by the Monroe County Supreme Court, after this lower Court failed to comply with CPLR 4213(b) by not setting forth essential, case-changing facts with precedential value, such as: 1) a (pending and lawful) nunc pro tunc motion for lien extension; 2) the subject premises being illicitly sold in violation of (both) a standing Court Order and the Lien Law; and 3) a licensed attorney (and current defendant) admitting in writing to fraudulent representation, fraudulent inducement, legal malpractice, contempt of court, collusion, breach of fiduciary duty and professional misconduct, let alone being proven a perjurious liar [to both Courts] about his foreknowledge of Judge Valleriani's Decision. By rendering a *Judgment of Affirmance*

Without Opinion in this matter, the Appellate Division failed one of its primary duties of ensuring the lower court complied with CPLR 4213(b), while endorsing premeditated civil crimes.

2. (Upon reargument), reversing the Appellate Division's *Order* and granting judgment for foreclosure of mechanic's lien, fraud, breach of fiduciary duty, legal malpractice, collusion, contempt of court, breach of contract, and attorney misconduct; and

3. Granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that this motion will be submitted without oral argument, pursuant to 22 NYCRR 1250.4 [a] [8]. Answering papers, if any, must be filed with the Court on or before the Friday preceding the return date.

Dated: March 2, 2026



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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

James R Caputo

Plaintiff-Appellant

— VS —

Nathan Holt, Owen Billet, Premium Mortgage Corporation, Robert T Houle, Houle Sales Consulting Inc, Donald Cheney Esq, Cheney Law Firm PLLC, ABAR Abstract Corporation, Monroe County Clerk's Office

Defendant-Respondents

**AFFIRMATION IN
SUPPORT OF MOTION
FOR REARGUMENT**

**Originating Court
No. E2024000703**

**Appellate Division
Case/Docket #: CA 24-01298**

James R. Caputo hereby affirms under the penalty of perjury pursuant to CPLR § 2106 the following to be true:

1. I am the Plaintiff-Appellant acting pro se in this matter [James R. Caputo], and I am fully familiar with the facts and circumstances of this action and appeal.
2. I make this third person affirmation in support of Plaintiff-Appellant's Motion to Reargue this Court's *Order*, dated February 11, 2026, with *Note of Entry* e-filed and served on February 27, 2026, attached hereto as Exhibit A.
3. Pursuant to 22 NYCRR 1250.16, this motion is timely made within thirty (30) days of service of the *Order* with Notice of Entry, the latter of which has yet to be filed and served. *2/27/2026*

4. The Appellate Division's *Order* affirmed, without opinion, the order of the Supreme Court, Monroe County, entered July 26, 2024, attached hereto as Exhibit B.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

5. A thorough statement of facts and procedural history were established in papers before the trial court as well as the Appellate Division, the bulk of which was disregarded by each. (Emphasis added). The following are core points for the purpose of this reargument.

6. Plaintiff-Appellant filed a \$25,000 mechanic's lien on the subject premises on January 21, 2022, which was challenged by then homeowner Defendant-Respondents (Houle) in Monroe County Supreme Court. On May 2, 2022, Judge Sam L. Valleriani declared the lien valid on all points, (despite there being a slight *misdescription* of the property owner), and cited specific sections of the Lien Law directing his ruling. (A0873, A0885-A0888)

7. Within weeks of the court's *Decision*, Plaintiff-Appellant's lien was holding up a pending sale for the property. Material evidence before both Courts proves Defendant-Respondents (Cheney), (attorney/firm for homeowner Houle) unequivocally knew about Judge Valleriani's *Decision* at this time. (A0503, Appellant's Brief (AB) pgs. 49-51, Appellant's Reply Brief (ARB) pgs. 15-18)

8. On or before June 29, 2022, Defendant-Respondents (Cheney) fraudulently misled all parties involved with the stalled sale of the subject premises to believe that Plaintiff-Appellant's mechanic's lien was invalid because of a *misidentification* of the property owner. This completely contradicted the law and this "*named owner*" issue already being settled by Judge Valleriani's *Decision*. This deliberate lie by Defendant-Respondent Donald Cheney, Esq. to the other parties was admitted to in email communications. (A0814-A0820, AB 43-52)

9. On or before June 29, 2022, Defendant-Respondents (Cheney) fraudulently induced all parties to proceed with the (stealthy) sale of the subject premises over and against A) Plaintiff-Appellant's valid, in-force mechanic's lien; and B) a standing Court *Order* specific to that lien. Plaintiff-Appellant would discover the illicit sale six weeks later. (AB 47-52)

10. On January 18, 2023, the (violated) mechanic's lien was extended at the Clerk's Office, assigned to the subject premises, and a printed receipt provided. (A0561, A0570, A0970-A0971)

11. In June and August of 2023, the new homeowners were sent certified mailings with notices of intent to foreclose on the mechanic's lien. Both were returned undeliverable. (A0990-A1005)

12. On January 11, 2024, Plaintiff-Appellant filed a notice of pendency and a summons and complaint for mechanic's lien foreclosure, with additional pleadings

for breach of contract, negligence, fraud, breach of fiduciary duty, contempt of court, collusion, and professional misconduct against Defendant-Respondents (Cheney) and all other parties to the unlawful property sale. The complaint contained multiple exhibits to establish the merits of the case and pleadings against each defendant. (A0788-A1035)

13. Except for counsel representing Monroe County Clerk's Office, all other parties responded with individual motions to dismiss *without* naming the directing statute *or* the material basis. Verified Responses to each motion materially overcame all defendants' rights to dismissal by statute. (A0293-A0570, AB29-31)

14. On June 6, 2024, before the Court ruled on any prior motions, and previous to any discovery, interrogatories, depositions or the filing of a note of issue, counsel for Defendant-Respondents (Holt, Billet, Premium Mortgage, Corp. and ABAR Abstract Corp.) filed a motion for summary judgment seeking dismissal pursuant to CPLR 3212. (A0757-A1098)

15. The summary judgment motion asserted Plaintiff-Appellant's mechanic's lien extension was invalid and legally void because it was extended by motion to the court. The Monroe County Clerk's system did not reject Plaintiff-Appellant's unintended mistake to extend a mechanic's lien without motion, which could have been readily corrected. (A0538, A1206-A1207, AB 23)

16. On July 15, 2024, *as* a legally valid and directly applicable remedy for his mechanic's lien extension deficiency, Plaintiff-Appellant filed a *nunc pro tunc* motion to extend the mechanic's lien under the original case # for Judge Valleriani's *Decision*. (A1116-A1187)

17. On July 22, 2024, Plaintiff-Appellant filed a letter through NYSCEF to the Judge notifying the court of this pending *nunc pro tunc* motion for mechanic's lien extension and asked that the time to Answer the summary judgment motion be delayed until this pending motion was returned. This was disputed by opposing counsel stating the lien was unrevivable and any further delay would be prejudicial to his clients. (A1109, A1112)

18. On July 23, 2024, Plaintiff-Appellant filed a reply letter citing the *Matter of Shilian v All Sons Elec. Corp* as the relevant controlling law for granting his motion to retroactively extend the mechanic's lien. The lower court clearly knew of this remedy. (A1114)

19. Overextended with work, Plaintiff-Appellant filed his answer and cross-motion for summary judgment in the late hours of the July 25, 2024 deadline and into the early hours of July 26, 2024. Zero parties were prejudiced by the last exhibit being filed five hours past midnight. (A1190-A1414)

20. On July 26, 2024, just six hours after Plaintiff-Appellant's final exhibit upload, the Court already had its arbitrary and capricious *Decision and Order* written

and uploaded to NYSCEF, dismissing the case against all defendants except Defendant-Respondents (Houle), for whom an excessively accelerated trial schedule was set for Plaintiff-Appellant to now have to comply with. A trial instead of awarding Plaintiff-Appellant's unambiguous prima facie showing of entitlement for breach of contract against this defendant; *and* for all pleadings against the others. (A0009-A0017)

21. On August 5, 2024, a letter was received from Judge Waldorf (not Judge Valleriani) denying Plaintiff-Appellant's *nunc pro tunc* motion for mechanic's lien extension for failure to comply with certain CPLR service guidelines, which did not apply to this specific type of motion. This very issue was preemptively addressed in the motion itself yet outwardly ignored (once again) by a court (evidently) accustomed to this practice. (A1188)

22. On August 9, 2024, Plaintiff-Appellant filed an Appeal. On August 20, 2024, all parties were sent a *notification of appellate case number* with counsel for the Monroe County Clerk's Office being the only attorney of record to comply with their statutory requirement of signing on to the case. All other parties ignored their duty to the law, just as was done with the lien, the lien law and Judge Valleriani's *Decision*. (A0003, AB 52)

23. From January 9, 2025 to June 27, 2025, Plaintiff-Appellant was forced to seek settlement of the *Complete Record on Appeal* by motion to the lower court

because counsel for the defendants ignored their respective duties of complying with statutory directives for settling the record. This was followed by the lower court's inexplicable delay in responding to this motion, requiring multiple motions by Plaintiff-Appellant to extend the time to perfect the appeal, at considerable added cost. (AB 52)

24. On June 27, 2025, the Monroe County Supreme Court settled the record on appeal. (A1423-A1424)

25. On July 11, 2025, Plaintiff-Appellant filed his Appellant's Brief, where specific questions and sections were written to once more address:

- A. Plaintiff-Appellant's right to a *nunc pro tunc* motion to revive the mechanic's lien for the purposes of the lawsuit, specifically asking the Appellate Court to grant the motion within its full authority to do so. (AB 26-27)
- B. The misuse and misapplication of CPLR 3211 and 3212 by the lower court when granting motions to dismiss and how the dismissals must not stand. (AB 28-31)
- C. The legal basis for an *informal fiduciary duty* by all parties, which was evaded by the Defendants and ultimately ignored by this court. (AB 32-34)

D. Plaintiff-Appellant's obvious showing of entitlement to breach of contract and contempt of court by Defendant-Respondents (Houle), which the lower court also got wrong. (AB 34-36, 49-52)

E. Plaintiff-Appellant's prima facie showing of entitlement for fraud, collusion, negligence, legal malpractice and professional misconduct by Defendant-Respondents (Cheney), all of which was deliberately tainted and/or patently ignored by the lower court and eventually given a pass by the Appellate Division. (AB 40-49, 51, 53-54)

26. Counsel for Defendant-Respondents eventually filed two individual Respondents' Briefs by October 10, 2025. Each offered up the primary defense of "*not knowing*" about facts they surely did know about. Defendant-Respondents Holt and Billet (the new homeowners) claim they did not know about the lien on the house and therefore contend they cannot be held responsible for paying it. Defendant-Respondents (Cheney) claimed no foreknowledge of Judge Valleriani's *Decision* on Plaintiff-Appellant's mechanic's lien and therefore he cannot be held to the ruling. In so doing, Cheney admits that for him to follow the lien law on a mechanic's lien he *did* know about, he requires a court ruling on the lien *and* to be personally served a copy of that ruling. A *lack of knowing* is not a legitimate excuse, defense or escape from culpability for any of these Defendant-Respondents.

27. In Plaintiff-Appellant's December 12, 2025 *Reply Brief*, material evidence before the Appellate Division proved that each of Defendant-Respondents' claim of "not knowing" was an intentional lie to the Court, in a signed affidavit, no less. (A0503, AB 50, ARB 15-18)

28. After fully addressing the multiple core issues of the case that were (either) completely ignored by the lower court or purposely adulterated and/or minimized by it, the following was specifically written in Plaintiff-Appellant's Reply Brief: (ARB 5)

Should the Appellate Division decide to affirm the lower court's decision in this case, (despite Plaintiff-Appellant's prima facie showing of entitlement to his entire Complaint), then due process of law would oblige the Appellate Division to state the material facts and law behind their decision rather than wordlessly hiding behind NY CPLR § 5712(b) and (c).

29. On January 15, 2026, at oral argument before the five Appellate Division justices, two core issues with the case surfaced from the Justices' own mouths. One was Justice Curran acknowledging the *nunc pro tunc* motion as a means of reviving the mechanic's lien, consequently obligating the new homeowners. The other was Justice Ogden raising a question regarding the fiduciary duty of Defendant-Respondents (Cheney) towards Plaintiff-Appellant. Aside from this latter issue being thoroughly founded in submitted papers, Plaintiff-Appellant responded with the simple assertion that Defendant-Respondents (Cheney) had a

professional duty to follow the law, which indirectly impacted Plaintiff-Appellant's fiduciary standing with his mechanic's lien. This was in concert with Plaintiff-Appellant's papers affirmatively establishing an *informal fiduciary relationship* with Defendant-Respondents (Cheney).(A0501-502, A0539-540, AB 32-34, ARB 18-22)

30. On February 11, 2026, the Appellate Division: Fourth Department entered a three-sentence *Order* – a meager summary affirmance (without opinion) of the lower court's decision. (*see Exhibit A*)

31. The Appellate Division's wordless summary affirmance officially endorsed the following: (with emphasis)

A. That it was correct for the lower court to: 1) entertain misuse of CPLR 3211 and 3212 against a pro se litigant by culpable parties seeking dismissal; and 2) improperly and *prematurely* apply these statutes, respectively, thereby depriving Plaintiff-Appellant of his basic due process rights of discovery, interrogatories, and deposition testimony.

B. That the lower court could unlawfully omit crucial and essential facts and mischaracterize others when reaching a grossly erroneous conclusion, all without correction from the Appellate Division.

C. That neither the lower court nor the Appellate Division was required to consider, mention or even respond to central issues like Plaintiff-

Appellant's *nunc pro tunc* motion to rightfully restore his mechanic's lien; and that the controlling case law directing the matter was of no effect.

D. That when the Court has no answer to a core question favoring a party the Court does *not* favor, the Court is allowed to treat that issue like it didn't exist, who could then rely on the Appellate Division doing the same.

E. That a Supreme Court Judge's *Decision* on a mechanic's lien can be contemptuously ignored by a member of the legal profession so that the lien and the law could be violated.

F. That an attorney can then perjuriously (and successfully) lie to the Court about his foreknowledge of a Supreme Court ruling prohibiting his unlawful acts, as if such knowledge is a prerequisite for simply following the existing and known law.

G. That a licensed attorney can unilaterally act as court and judge (in violation of Lien Law 19) and do so without penalty when declaring a duly filed (and already deemed valid) mechanic's lien "invalid" on fraudulent grounds, so that the lien encumbered property could be unlawfully sold past the lien.

H. That a licensed attorney can (without any penalty) fraudulently induce other parties to willingly: 1) break the Lien Law; 2) violate their own industry rules and guidelines; and 3) violate a standing Court order on the lien

in order for them all to proceed with the unlawful sale of the subject premises, to the (known) detriment of the lienholder, Plaintiff-Appellant.

32. All these injustices and improprieties are what intentional exploitation and groundless application [of the summary judgment and summary affirmance statutes] enable the court to perpetrate and then conceal. Atrocious.

FEDERAL AND CONSTITUTIONAL STANDARDS NOT MET

Form of Decision / Findings and Conclusions / Abuse of Summary Judgment

33. NY CPLR § 4213(b), the law directing the form of a NY Court's decision, is out of alignment with the Federal standard found in the Federal Rules of Civil Procedure, FRCP 52(a). FRCP 52(a) states the following:

(a) FINDINGS AND CONCLUSIONS. (1) In General. In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately.

34. “*Must find the facts specially*” means the judge is required to individually enumerate and detail the specific factual findings that objectively support their final decision. This is the Federal standard. The New York equivalent is NY CPLR § 4213(b), which states, *(b) Form of decision. The decision of the court may be oral or in writing and shall state the facts it deems essential.*

35. The significant difference between them has New York's version leaving the statement of the facts arbitrarily and subjectively up to the Court, who is

not even required to state its conclusions of law. When the Federal equivalent of any State law contains a directive of greater duty to the principles of due process and equal protection of the laws, then it reigns supreme over that of the State. Such is the case with FRCP 52(a) holding sway over NY CPLR § 4213(b).

36. When examining Monroe County Supreme Court's original *Decision and Order*, there is nothing close to the judge individually enumerating and detailing the specific factual findings behind the decision while stating the conclusions of law, as the Federal Standard mandates. The Appellate Division is supposed to ensure the lower court's compliance with CPLR 4213(b), especially after an appellant points out facts and law crucial to the case that were overlooked by the court. The Appellate Division failed this duty here.

37. By New York's statute being out of line with the Federal guidelines for a Court's *Findings and Conclusions*, and by the trial court in this matter having violated these Federal stipulations, while also effortlessly abusing the State's own anemic provision, (to the denial of justice), both the lower court's *Decision and Order* and NY CPLR § 4213(b) are therefore repugnant to the Constitution. As this case proves, CPLR § 4213(b) too easily enables a court to violate due process by denying a party's right to be heard and right to an impartial tribunal. (AB 36-38, *see also* Exhibit C, pgs. 29-31)

38. When a court has given itself license to abuse the very statute directing how it states its findings and conclusions, this navigates right into summary judgment abuse, (as detailed above) where the court can manifestly deny due process of law and consequently justice, by cherry-picking whatever facts it “deems essential”, while having zero obligation to state the conclusions of law. This dereliction of duty by the trial court is precisely what has occurred in the case at bar, with the Appellate Division thereafter ratifying it.

Judgment of Affirmance Without Opinion

39. By the Appellate Division summarily affirming the lower court’s ruling in this matter, (particularly after being asked not to), they likewise violated Federal law directing *Judgment of Affirmance Without Opinion* and therefore their *Order* is equally invalid as it is repugnant to the Constitution for having denied due process and equal protection of the laws. (*see* Exhibit C, pgs. 21-29)

Enabling Statutes and Federal Supremacy

40. While NY CPLR § 5712(b): *Order of Affirmance*, FRAP 36: *Entry of Judgment*, and Federal Circuit Rule 36: *Entry of Judgment(a) Judgment of Affirmance Without Opinion* are not statutorily conjoined, they all speak to an appellate court’s ability to enter a summary affirmance of a lower court’s ruling without any written opinion.

41. When examining NY CPLR § 5712: *Content of order determining appeal*, and specifically subsections (b) and (c) as they pertain to the Court's authority to enter an order of affirmance without any opinion, the language describing this entitlement is vague, ill-defined and imprecise as to any guidelines and/or safeguards involved with a wordless affirmance, thereby making this statute hostile to the parallel Federal Statute, (Federal Circuit Rule 36), as the supreme legal standard of the land for the practice of *Judgment of Affirmance Without Opinion*.

42. It matters not that Federal Circuit Rule 36 deals primarily with Federal appeals (often involving patent law). When state law fails to provide conditional statutory directives on A) the rightful application of a summary affirmance without opinion; and B) the precedential impact involved with such an affirmance, then C) the Federal equivalent must therefore prevail.

43. Federal Circuit Rule 36 is painfully transparent as to how an affirmance without opinion can only be invoked after certain conditions have been met and where an opinion would otherwise have no precedential value. When comparing the clarity and frankness of FCR 36 with that of NY CPLR § 5712(b) and (c), the latter is positively unsound in its language, [with zero direction for how the court is to apply this brush-stroke procedure, which erases an appellant's case in one felled swoop], thereby making it repugnant to the Federal standard found in FCR 36, to which this state statute is beholden under Article VI's supremacy clause.

44. When the Federal Standard is applied to the Appellate Division's *per curiam* affirmance in this matter, the affirmance utterly fails all four directives regarding its lawful application. The *Decision and Order* of the trial court appealed from is based on findings that are 1) clearly erroneous, 2) not supported by the evidence or 3) the record whatsoever, and 4) where an obligatory opinion (upon reversal) would have most definitely had precedential value.

45. While the Appellate Division's summary affirmance in this matter is unlawful by the Federal Standard, the entire concept of the *per curiam* affirmance is repugnant to the Constitution on multiple grounds. (*see entirely* Exhibits C and E)

Equal Protection of the Laws

46. When the Appellate Division reverses or modifies a lower court's decision, they are obligated by law to provide the Respondent party (the party being ruled against) with the facts and legal reasons behind their verdict. This party, who originally prevailed, is unhesitatingly given this fair and transparent treatment of having the grounds (for the adverse decision) provided by the Court.

47. Comparably, when the Appellate Division *affirms* a lower court ruling, it is no different than a decision *against* the moving/appealing party. Therefore, if a party (when ruled against via a *reversal/modification*) is afforded the right to have the reasons provided, then equal protection of the appellant would also include a legal mandate for the Appellate Division to state whether its affirmation (and adverse

ruling against the Appellant) is based upon the law, or upon the facts, or upon the law and the facts. That's what they are there for. Any law that enables a party to be denied this base-level response from an Appellate Court on the very issues being challenged in their appeal is therefore repugnant to the Constitution for denying equal protection of the laws.

Due Process of Law – Right To Be Heard

48. A *per curiam* affirmance by an Appellate Court fails any honest definition of “being heard” to satisfy the 14th Amendment’s right to due process of law. A big part of the public’s expectation of Court impartiality and equity is being verifiably heard on the issues being debated, where the material facts and the law are what decides the outcome.

49. The wordless summary affirmance by the Appellate Division failed to provide any response to what Plaintiff-Appellant asserted and corroborated when interacting directly with the Court and therefore fails to meet any rational standard for this appellant having been received on his argument. This is why a *per curiam* affirmance (PCA) manifestly violates a party’s due process right to be confirmatively heard and is therefore repugnant to the Constitution.

Right To An Impartial Tribunal

50. There can be no doubt from this case alone that exploitation of the *summary affirmance without opinion* statute enables a court to deliberately deny

justice. Plaintiff-Appellant would further contend that the PCA, in all applications, (intentionally misapplied or not), is an instrument of judicial prejudice. A prejudice against providing a full rebuttal of the appellant's case or having to do whatever extra work necessary to provide both the factual and legal basis for denying the appellant's argument (when affirming the lower court).

51. The PCA completely undermines the public's advanced expectation of an Appellate Court to provide a decisive verdict without ambiguity or controversy. This point is compounded further when the appeal is under a *de novo* standard of review where the lower court's previous action has been technically removed from all consideration. Nothing about a summary affirmance without opinion is impartial from the tribunal and therefore is repugnant to the Constitution. And because the PCA has been proven to be an instrument to deny justice, its Constitutional repugnancy is thereby compounded.

Supreme Court Challenge of the Per Curiam Affirmance

52. Presently before The United States Supreme Court is a Constitutional challenge by Plaintiff-Appellant against this dreadful summary affirmance practice that denies the unfortunate recipient their right to due process and equal protection of the law. This instant matter was cited in Supreme Court papers as another example (or witness) of flagrant due process abuses and professional impropriety by attorneys and state courts abusing both the summary judgment and summary

affirmance statutes, (for any number of ill-begotten motives), to outright deny justice. Copies of that *Petition for Writ of Certiorari* and two *Reply Papers* are attached to this paper as Exhibits C, D and E respectively, as has a copy of this Petition for Reargument been submitted on Reply to SCOTUS. Accordingly, a copy of this Petition and a notice under U.S.C. § 2403(b) have been forwarded to the NY State Attorney General, and other parties, at the time of this filing.

53. The full register of documents regarding these two matters, can be found at: https://www.goodlifecentre.com/writ_of_certiorari-jrcmd.html.

REARGUMENT: THE COURT OVERLOOKED OR MISAPPREHENDED THE FACTS AND THE LAW

Nunc Pro Tunc Motion to Extend Mechanic's Lien

54. Reargument is warranted for Foreclosure of Mechanic's Lien because both the lower Court and the Appellate Division overlooked the controlling principles of law regarding Plaintiff-Appellant's ability to remedy his incorrectly extended mechanic's lien for the purposes of foreclosure.

55. Specifically, the trial court's Decision and Order states, "*Plaintiff's filing of a notice of extension on January 18, 2023 is a legal nullity.*" and "*Plaintiff has not shown facts sufficient enough to require a trial of any issue of fact*", while making zero mention of Plaintiff-Appellant's pending and permissible *nunc pro tunc* motion to lawfully cure his mechanic's lien extension deficiency (as if this entire

issue didn't exist, was never mentioned or wasn't extensively addressed with the court). This absence was glaring, inexcusable and completely flouted the Court's duty to the non-moving party in a summary judgment motion. (*see* Exhibit B, pg. 8)

56. Furthermore, the Court overlooked controlling case law, which directs how a mechanic's lien extension on a single-family dwelling not completed by motion to the court can be remedied for the purposes of mechanic's lien foreclosure. In *Matter of Shilian v All Sons Elec. Corp.* 2016 NY Slip Op 50756(U), the Court held that "*the contractor filed an extension document and paid the requisite fee within the one-year period prior to the expiration of the initially filed mechanic's lien. A court order extending a mechanic's lien would normally be routinely granted. There is no prejudice to the petitioners in granting the relief requested by the respondent.*", which is directly applicable to the instant case and presented all throughout Plaintiff-Appellant's papers to both Courts. (A1114, A1119, AB 26-27, ARB 33-38)

57. The trial court ruling Plaintiff-Appellant's mechanic's lien as legal nullity was *clearly erroneous*, thereby negating the Appellate Division's right to summary affirmance pursuant to the FCP 36 standard. Moreover, had the Appellate Division lawfully reversed the lower court and granted the *nunc pro tunc* motion to extend the lien and then dutifully foreclosed on it, there would have been further precedential solidification of the controlling case law found in *Shilian*.

58. For the same reasons why every other component of the lower court's ruling was manifestly corrupted away from rendering justice in favor of Plaintiff-Appellant's prima facie showing of entitlement, the court knowingly and willingly chose to ignore Plaintiff-Appellant's lien extension remedy altogether because it had no answer against that reality.

59. Had either Court considered the law, the result would have been granting Plaintiff-Appellant's formally requested *nunc pro tunc* motion for mechanic's lien extension for the express purpose of this lawsuit, instead of treating the issue as if it didn't exist. The Appellate Division's *Order* cannot be allowed to summarily affirm (without comment) that which was unlawfully ignored by the lower court to begin with, yet thoroughly readdressed on appeal.

Informal Fiduciary Relationship

60. Reargument is warranted because the State Supreme Court overlooked a controlling principle of law regarding the *fiduciary duty* owed by the defendants.

61. Specifically, the *Decision and Order* states, "*there is no allegation of, nor triable issue of fact concerning the existence of a fiduciary duty owed by these defendants to plaintiff.*" However, the record clearly demonstrates that all Plaintiff-Appellant's submissions (the original Complaint, all Verified Responses, the cross-motion for summary judgment and all appellate papers), meticulously addressed the issue of fiduciary duty as it pertained to each defendant named in the lawsuit in full

contradiction to the lower court's ruling. At the barest of minimums, this matter of fiduciary duty is a triable issue of fact. Therefore, this statement by the lower court is a fiction. (A0501-A0502, A0810, A0814-A0822, AB 32-34, ARB 18-22)

62. Furthermore, the Court overlooked controlling case law, which dictates the standard of *informal fiduciary relationship*. In (*Brass v. American Film Technologies Inc.*, 987 F.2d 142, 150-51 (2d Cir. 1993)), "*The Second Circuit observed that New York embraces "informal fiduciary relationships" that include priest and parishioner, bank and depositor, majority and minority stockholder, and close friends or family members.*", which is directly applicable to the instant case. (AB 32, 44, ARB 23, 46-47, 50)

63. As a licensed attorney and law firm, Defendant-Respondents (Cheney) are expected to abide by the rule of law, and that includes a Court *Decision* upholding a mechanic's lien. In this matter, that obligation to the law provides an indirect guarantee or insurance to Plaintiff-Appellant's lien (and thus Plaintiff-Appellant's financial interests) that it would stand its ground and not be violated. Plaintiff-Appellant's reliance on Defendant-Respondents (Cheney), [who accepted his own oversight and legal representation for the sale of this property] made him a vulnerable party to Cheney, who singlehandedly voided Plaintiff-Appellant's protection (via the lien) of his unpaid income by leading the charge to circumvent it.

64. Had either Court considered the law, the result would have been the confirmation of an “*informal fiduciary relationship*” between Plaintiff-Appellant and Defendant-Respondents (Cheney), which therefore creates liability for all pleadings against them. Absent the Court recognizing this relationship, what’s to stop any attorney from doing what Defendant-Respondents (Cheney) (or the others) did in this matter? Two Courts completely ignored it all.

Lien Law § 9, Lien Law § 19 and Fraud

65. Reargument is warranted because the Court overlooked a controlling principle of law regarding a *misdescription* of the true owner on a mechanic’s lien and how a lien can be legally discharged.

66. Specifically, the Decision and Order fails to recognize or address (at all) the fact that the subject premises was sold against an active and court upheld mechanic’s lien after it was fraudulently deemed invalid by Defendant-Respondents (Cheney), who then compelled the other parties to proceed with the unlawful sale of the property. However, the record clearly demonstrates that this issue was expressly established with each court. (AB 38-54, ARB 11-28)

67. Furthermore, the Court overlooked the controlling case law and statutes which dictate the difference between a *misdescription* and a *misidentification* of the owner on a mechanic’s lien and how a lien is legally discharged. In his *Decision*, Judge Valleriani cited (with emphasis) Lien Law § 9 on how a *misdescription* of

property owner does not invalidate the lien. In *Rigano v. Vibar Construction, Inc.*, 2014 NY Slip Op. 08762, the Court held that “*Mis-description*” is defined by the Courts as when the “*listed owner is closely related to the true owner, there was consent to the construction work, and a third party would not be prejudiced.*” Lien Law § 19 requires a court order or a bond before a lien can be discharged. Each authority is directly applicable to the instant case. (AB 46-47)

68. Defendant-Respondent Donald Cheney’s admitted in an email that he judged Plaintiff-Appellant’s mechanic’s lien to be invalid for *misidentification* of owner in direct opposition to Judge Valleriani’s *Decision*, Lien Law § 9 and *Rigano v. Vibar Construction*. Cheney then fraudulently misrepresented the facts and the law to the other parties when inducing them all to engage in the property sale past the lien, in direct violation of Lien Law 19. (AB 50-51)

69. Despite Defendant-Respondent Cheney’s own email admission being documentary evidence before the Court sustaining his own fraud, contempt of court, collusion, breach of fiduciary duty, legal malpractice and professional misconduct, Judge Dinolfo characterized these proven actions as: A) not a violation to Judge Valleriani’s *Decision*; B) “bare legal conclusions”; and C) “inherently incredible” and “not entitled to the presumption of truthfulness. This judgment of the trial court appealed from is based on findings that are clearly erroneous, thus precluding the Appellate Division from lawfully affirming the lower Court by the Federal Standard.

Had either Court considered the law, they would have sustained each cause of action against this Defendant-Respondent, including professional misconduct and punitive damages as a future deterrent. (AB 57-61)

CPLR 3211 and 3212 Misapplication

70. Reargument is warranted because the Court overlooked and misapplied a controlling principle of law regarding summary dismissal of a lawsuit.

71. Specifically, the *Decision and Order* states that the contempt of court/fraud case against Defendant-Respondents Cheney must be dismissed, under CPLR 3211 and all other charges against (Holt, Billet, Premium Mortgage Corp and ABAR Abstract Corp.) must also be dismissed under CPLR 3212. However, the pleadings in the original Complaint against each party clearly state a cause of action for each, including fraud, contempt, collusion, negligence and professional misconduct against Defendant-Respondents (Cheney), where the record unmistakably proves he misled all parties about the lien's validity, (acting as judge and jury outside of what is permissible in the law), thereby inducing both the buyer and the seller to proceed with the sale and transfer of the property against the lien. Papers before both Courts also firmly establish the *premature* nature of defense counsel's CPLR 3212 motion for summary judgment, upon which the motion should have been denied. (AB 29-31)

72. Furthermore, the Court overlooked controlling statute, CPLR 3211(a)(7), which dictates that only when “*the pleading fails to state a cause of action*” can a case be dismissed against a defendant under this rule, which is directly applicable to the instant case. (AB 30, ARB 27-28)

73. Additionally applicable, the Court overlooked *CPLR 3212[f] : Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.*) Further, in *Knowles v 21-43 27th St., LLC* 2024 NY Slip Op 00759), the Court held that, “*plaintiff demonstrated that further discovery, including ...a deposition...may result in the [*2]disclosure of evidence relevant to the issue ...*” (see *Sepulveda v Cammeby's Mgt. Co., LLC*, 119 AD3d at 927; *Aurora Loan Servs., LLC v LaMattina & Assoc., Inc.*, 59 AD3d 578). *Accordingly, the defendants' motion was premature.*” (ARB 39-42)

74. The lower court defied its own citations to the statutes favoring justice for the non-moving party when it improperly applied the law to summarily dismiss Plaintiff-Appellant’s well-established Complaint. Fundamental entitlements to discovery of documents (such as emails between the defendant parties), and depositions under oath would have been two powerful due process rights for

Plaintiff-Appellant to compound what has already been proven to the Court. (AB 36-38, ARB 43-44)

75. Had either Court considered the facts and the law, the result would have been to deny each party's effort at summary dismissal.

Stewards, Not Owners

76. Attorneys and judges admitted to the NYS Bar Association have been granted a license to be stewards of the venerated system of law that buttresses our Constitutional Republic. They have been entrusted with the system's care and righteous implementation. A law license does not confer ownership of the law upon an attorney or judge, where he/she can then break the law at will and/or leverage that law against anyone who they deem vulnerable to their superior knowledge and ability to (either) dishonestly apply it or bend it as needed. Such would be abhorrent. (AB 59-60)

77. For the past twenty-four years, this Plaintiff-Appellant has personally witnessed the inconceivably flagrant abuse of the law by attorneys and judges who desecrated the very principles and directives [they were licensed to uphold with the highest esteem] all because they could. These include the following relevant examples:

A. Plaintiff-Appellant had his hugely successful medical practice and license, [as (verifiably) the *top-performing* Obstetrician, Gynecologist

and Pelvic Surgeon in NY State], annihilated by the unscrupulous attorneys (and director) at New York's notoriously unconstitutional Office of Professional Medical Conduct (OPMC), where this unwitting target of anonymous complaints (not from patients) never got to face his accuser-(abuser), and where, (at least in Plaintiff-Appellant's case), OPMC *intentionally* chose to violate every possible professional ethical code when breaking countless rules of their own proceedings (PHL 230), over the course of twelve unrelenting years of malicious prosecution of Plaintiff-Appellant, (despite his unyielding defense), leading to five separate precedential rulings and/or changes to the law [because of their unbridled cheating], and to the eventual loss of his license in 2014, in large part because of the dubious actions of the attorneys under example C below. (*see* Exhibit C, pg. 7)

B. After a 2008 revelation in his marriage and subsequent divorce proceedings, Plaintiff-Appellant would go on to repeatedly lose very badly in nearly forty appearances in family court, where the red carpet was shockingly laid out for his adversary and where every effort to modify the child support order, reduce illegitimate arrears and/or reclaim his stolen fatherhood was inexplicably met with an even greater penalty and setback from the magistrate or judge. This unimaginable

discriminatory journey has resulted in: three baseless arrests; three years of reporting biweekly for probation; the loss of Plaintiff-Appellant's fatherhood; a mockery of a trial in 2020 on this issue of parental alienation – all while unlawfully accruing more than \$136,000 in child support arrears, living below the poverty level and still paying over \$100,000 in child support across nine years from 2012-2021.

C. Two attorneys hired to defend Plaintiff-Appellant against another malicious prosecution by OPMC in 2014 saw fit to surreptitiously back Plaintiff-Appellant into an Answer default on the charges (without him knowing), while secretly working with OPMC to set Plaintiff-Appellant up for a medical license surrender once the ALJ revealed his Answer default ruling. When sued for legal malpractice with a prima facie level case, the lower court, the Appellate Division and the State Court of Appeals all endorsed these illicit actions and protected the attorneys by abusing the law (CPLR §3212(b), 4312(b) and §5712) and exploiting leverage against Plaintiff-Appellant's ability to legally retort. That case has reached the Supreme Court of the United States, (No.25-6673) with this reargument paper being cross-submitted to The Court because of parallel Constitutional considerations and argument. (see Exhibit C)

D. In this instant matter, (the merits of which have been thoroughly established here), when legal action was filed against the liable parties, all representative attorneys purposely chose to: 1) exploit CPLR 3211 and CPLR 3212; 2) ignore their legal duties; and 3) lie to the court. All this wrongdoing was approved by one judge at the supreme court level and all five justices from the Appellate Division by (again) abusing the law and once again exploiting leverage against Plaintiff-Appellant's (perceived) ability to legally retort. The pattern is quite evident.

78. This is not stewardship of the law but the unspeakably intentional abuse of legal licensure and bench authority against an undeserved party to the detriment of justice and therefore a shame upon the profession.

Why Is This Paper Even Necessary?

79. This case marks the second civil matter in as many years that has come before this Appellate Division where Plaintiff-Appellant held the veritable *Royal Flush* of material evidence and applicable law against all parties for prevailing in each matter only to see the Appellate Division summarily affirm (without opinion) a derelict Supreme Court dismissal in each instance.

80. If physicians dared to operate towards medicine as the attorneys and judges (*here*) have unashamedly operated towards the law, there might not be any patients left alive.

81. The question that begs to be answered is “why?” have these legal professionals hazarded their violations of the law and abandoned their ethical duties as they have in this (and even the other) matter to the intentional denial of justice for Plaintiff-Appellant? A differential diagnosis for this (specific) clinical presentation reveals the following potential etiologies – in no particular order, nor to the exclusion of any another.

- A. These attorneys each practice unscrupulous law and thought they could violate the statutes and then venture their dirty deed(s) against Plaintiff-Appellant ever knowing or legally touching them.
- B. The historical hate judges have for pro se litigants was enough for each Court to deny justice as they did, all because they could.
- C. The justices chose, were ordered or were coerced to bail out fellow attorneys, colleagues, friends or favored secret society members, over and against the dutiful application of the facts, the law and Plaintiff-Appellant’s constitutionally protected due process rights.

82. There can be no other explanation. Whatever the case, Plaintiff-Appellant does not accept such impropriety being committed at his expense.

Hon. James P. Murphy

83. In 2020, after Plaintiff-Appellant experienced his due process rights being desecrated during a parental alienation trial in Onondaga County (NY) Family

Court, (after already living through seven years of hell at the hands of this same Court), it was discovered that the administrative judge of the entire district (and boss to every magistrate/judge encountered by Plaintiff-Appellant) was his ex-wife's first cousin. All Plaintiff-Appellant's past injuries by this Court, done against the law, suddenly made sense.

84. Plaintiff-Appellant's ex-wife has been allowed to successfully abuse all five of their children, where Plaintiff-Appellant's court-induced poverty has been the central pillar behind the methodical destruction of each child's own endearment for their loving father.

85. After Plaintiff-Appellant appealed his loss in the 2020 parental alienation and inflated arrears cases, Plaintiff-Appellant named Judge Murphy as a conflict to justice in early papers to the Appellate Division. Within days, Plaintiff-Appellant's ex-wife was suddenly willing to vacate his \$136K in unlawfully accrued child support arrears and agree to new visitation terms in exchange for Plaintiff-Appellant making future payments against certain parent-plus loans for four of their children and for him to also drop the appeal. This was September 2021.

86. Plaintiff-Appellant agreed to the terms' economics based solely on his foreknowledge of receiving a lump payment at the end of the (then) ongoing work at the subject premises involved in *this* lawsuit. (A0835-A0837)

87. Plaintiff-Appellant has now defaulted on the first two of those payment obligations because of lost monies from each of these lawsuits and the continued plight against the injustice by the courts overseeing them.

88. Plaintiff-Appellant would eventually learn that Judge Murphy is now the Deputy Chief Administrative Judge for the Courts Outside New York City and currently holds sway over each court Plaintiff-Appellant has been civilly engaging, where everything once again has begun to make sense. A victory in any of these meritorious cases for Plaintiff-Appellant is a huge loss for his ex-wife and her stranglehold over their children.

89. It would be impossible to believe that Judge Murphy is unaware of this current matter or the case now before SCOTUS, as his background presence has already been disclosed. If any Appellate Division Justice has been unduly influenced against Plaintiff-Appellant by this administrative superior, by law, they must instantly recuse themselves from the case.

Attorney and Judicial Codes of Ethics

90. Rather than endorsing and/or joining in on the misdeeds of these defendant parties, each court (along with any bystanding attorney) had a duty to strike down [through court rule] and report (respectively) any known instances of professional misconduct. All obligated parties in this matter have ostensibly failed this obligation. (A0063-A0075, A0815-0827, AB 53-54, ARB 13-15)

CONCLUSION

91. For the foregoing reasons, it is respectfully requested that this Court grant reargument, and upon reargument, rightfully overturn the lower court's ruling and grant Plaintiff-Appellants full Complaint (for having dutifully made a prima facie showing of entitlement), including all costs, interest and punitive damages. (A0073-A0076, A0825-A0828, AB 57-61, ARB 53-54)

92. Alternatively, leave to appeal to the Court of Appeals is requested if reargument is denied, as this case involves issues of law and Constitutional questions.

VERIFICATION

"I have carefully read the above-mentioned statements and attest to their truth and accuracy. I affirm this 2nd day of March, 2026, under the penalties of perjury, that the foregoing is true."

Dated: March 2, 2026



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CERTIFICATION OF COMPLIANCE WITH
PRINTING SPECIFICATIONS

1. This affirmation complies with the typeface print requirements of 22 NYCRR § 1250.8(f)(1) and the type-style requirements of 1250.8(f)(1)(i) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14 pt font with double line spacing.

2. This brief complies with the type-volume limitation of 22 NYCRR § 1250.8(f)(2) because this brief contains 6,998 words, exclusive of the heading, cites to the reproduced record or briefs, the verification and signature/date block, and the certification of printing compliance.

Dated: March 2, 2026



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**Appellate Division: Fourth Department – ORDER
w/ (2/27/2026) Notice of Entry (3 pages)**

**Re: Originating Court No. E2024000703
Appellate Division Docket #: CA 24-01298**

2/11/2026

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

James R Caputo

Plaintiff-Appellant

– vs –

Nathan Holt, Owen Billet, Premium Mortgage Corporation, Robert T Houle, Houle Sales Consulting Inc, Donald Cheney Esq, Cheney Law Firm PLLC, ABAR Abstract Corporation, Monroe County Clerk's Office

Defendant-Respondents

NOTICE OF ENTRY

**Originating Court
No. E2024000703**

**Appellate Division
Case/Docket #: CA 24-01298**

PLEASE TAKE NOTICE that attached hereto is a true copy of an Order of the New York State Supreme Court, Appellate Division, Fourth Department entered in the Office of the Clerk of the Appellate Division, Fourth Department on February 11, 2026.

Dated: February 27, 2026



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SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

76

CA 24-01298

PRESENT: CURRAN, J.P., BANNISTER, SMITH, OGDEN, AND DELCONTE, JJ.

JAMES R. CAPUTO, PLAINTIFF-APPELLANT,

V

ORDER

NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION, DONALD CHENEY, ESQ., CHENEY LAW FIRM, PLLC, ABAR ABSTRACT CORPORATION, MONROE COUNTY CLERK'S OFFICE, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS.

JAMES R. CAPUTO, PLAINTIFF-APPELLANT PRO SE.

D.J. & J.A. CIRANDO, PLLC, SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANTS-RESPONDENTS NATHAN HOLT, OWEN BILLET, PREMIUM MORTGAGE CORPORATION AND ABAR ABSTRACT CORPORATION.

CHENEY LAW FIRM, PLLC, CANANDAIGUA (DAVID D. BENZ OF COUNSEL), FOR DEFENDANTS-RESPONDENTS DONALD CHENEY, ESQ., AND CHENEY LAW FIRM, PLLC.

MATTHEW SCHWARTZ, COUNTY ATTORNEY, ROCHESTER (ADAM M. CLARK OF COUNSEL), FOR DEFENDANT-RESPONDENT MONROE COUNTY CLERK'S OFFICE.

Appeal from an order of the Supreme Court, Monroe County (Vincent M. Dinolfo, J.), entered July 30, 2024. The order, inter alia, granted the motions of defendants Monroe County Clerk's Office, Donald Cheney, Esq., and Cheney Law Firm, LLC, to dismiss the complaint against them and granted the motion of defendants Nathan Holt, Owen Billet, Premium Mortgage Corporation and ABAR Abstract Corporation for summary judgment dismissing the complaint against them.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs for reasons stated in the decision at Supreme Court.

Entered: February 11, 2026

Ann Dillon Flynn
Clerk of the Court

**Monroe County Supreme Court
DECISION AND ORDER (10 pages)**

Re: Originating Court No. E2024000703

7/26/2024

NYSCEF DOC. NO. 152

RECEIVED NYSCEF: 07/26/2024

MONROE COUNTY CLERK'S OFFICE

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Instrument: ORDER

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Index #: E2024000703

Date: 07/26/2024

Time: 11:25:51 AM

Return To:
Donna Brett
99 Exchange Blvd
Rochester, NY 14614

Caputo, James R

Holt, Nathan
Billet, Owen
Premium Mortgage Corporation
Houle, Robert T
Houle Sales Consulting Inc

Total Fees Paid: \$0.00

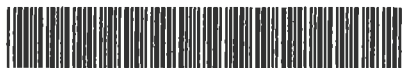
Employee: CW

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERK'S
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

JAMES R. CAPUTO,
Plaintiff,

v.

Index. No. E2024000703

NATHAN HOLT, OWEN BILLET,
PREMIUM MORTGAGE CORPORATION,
ROBERT T. HOULE, HOULE SALES
CONSULTING INC., DONALD CHENEY, ESQ.,
CHENEY LAW FIRM PLLC, ABAR ABSTRACT
CORPORATION, MONROE COUNTY CLERK'S OFFICE,
Defendants.

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DECISION AND ORDER

VINCENT M. DINOLFO, J.

Plaintiff James R. Caputo commenced this action *pro se* on January 11, 2024 via

summons and complaint seeking to foreclose a mechanic's lien against Defendants Nathan Holt and Owen Billet, and recovery for breach of contract against Defendant Premium Mortgage Corporation, breach of contract against Defendants Houle and Houle Sales Consulting, Inc., contempt of court against Defendants Houle and Houle Sales Consulting, Inc., breach of fiduciary duty against Defendants Cheney and Cheney Law Firm, PLLC, contempt of court and fraud against Defendants Cheney and Cheney Law Firm, PLLC, breach of fiduciary duty against Defendant ABAR Abstract Corporation, and breach of fiduciary duty against Defendant Monroe County Clerk's Office.

Before the Court are three motions. First, Defendant Monroe County moved to dismiss pursuant to Civil Practice Law and Rules ("CPLR") § 3211(a)(7) on the grounds that Plaintiff failed to file a notice of claim, that the statute of limitations expired, and that Plaintiff failed to state a claim. Plaintiff opposed.

Next, Defendants Donald Cheney, Esq. and Cheney Law Firm, PLLC moved to dismiss and sought sanctions, costs, and attorney's fees for frivolous conduct. Plaintiff opposed.

Last, Defendants Holt, Billet, Premium Mortgage Corporation, and ABAR Abstract Corporation moved for summary judgment dismissing the complaint and vacating the lien pursuant to CPLR § 3211. Plaintiff opposed.

After considering the parties' submissions (pursuant to CPLR § 2219[a], the specific papers considered were NYSCEF items 42-118)¹ and the relevant law, the following

¹ NYSCEF items 119-150 were considered for the limited purpose of Plaintiff's opposition to the above-described motions despite its supporting papers being filed on July 26, 2024 after the submissions deadline. As submissions closed on July 25, 2024 after the Court had already granted Plaintiff a two-week extension on the deadline, the Court declines to consider Plaintiff's cross-motion and it is struck.

constitutes the Decision and Order of the Court on the pending motions.

FINDINGS OF FACT

What follows is a recitation of the facts that is consistent with the procedural posture of the respective motions, that is either “view[ing] the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference” (*Esposito v Wright*, 28 AD3d 1142, 1143 [4th Dept. 2006]) or that “[e]ach and every allegation forwarded by the” complainant must be accepted as true (*219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]).

Plaintiff's causes of action arise out of an agreement between Plaintiff's home improvement business, House Surgeon Renovations, and Defendant Houle Sales Consulting, Inc., executed August 3, 2021 wherein House Surgeon Renovations was to complete restoration of a water damaged single-family dwelling located at 4 Chambord Drive in Mendon, New York for Defendant Houle Sales Consulting, Inc. Relevantly, House Surgeon Renovations completed work for Defendant Houle Sales Consulting, Inc. and was not paid in accordance with the agreement. Plaintiff filed a Notice of Mechanic's Lien against the property located at 4 Chambord Drive in the amount of \$25,000 on January 21, 2022, naming Defendant Houle as the owner of the property.

That lien was shortly thereafter subject to litigation wherein Defendant Houle sought, *inter alia*, an order of the Supreme Court compelling Plaintiff to withdraw the lien via order to show cause. On May 2, 2022, the Supreme Court (Valleriani, J.) denied the order to show cause.

On May 24, 2022, Defendant Cheney, on behalf of his client, Defendant Houle Sales Consulting, Inc., notified Plaintiff that a contract for the sale of 4 Chambord Drive was in

place, and closing would be in approximately 30 days. On June 29, 2022, the sale closed between Defendant Houle Sales Consulting, Inc. and Defendants Nathan Holt and Owen Billet.

On January 18, 2023 filed a Notice of Mechanic's Lien Extension at Defendant Monroe County Clerk's Office, naming the present owners as Defendants Billet and Holt, and the former owner as Defendant Houle Sales Consulting, Inc., rather than Defendant Houle as was named in the initial lien. There was no order of a court of record, of a judge or justice thereof extending the lien.

CONCLUSIONS OF LAW

Initially, the Court notes Plaintiff's *pro se* status warrants "some latitude" (*Duffen v State*, 245 AD2d 653, 653 [3d Dept. 1997] *lv. denied* 91 NY2d 810 [1998]), but confined by the bounds of the law, which does not "excuse a pro se litigant from compliance with procedural or other rules designed for the orderly conduct of an action" (*Yule v Comerford*, 140 AD2d 981, 982 [4th Dept. 1988]). Importantly, a "pro se litigant acquires no greater rights than those of any other litigant" (*Brooks v Inn at Saratoga Assn.*, 188 AD2d 921, 921 [3d Dept. 1992] [citation omitted]).

In evaluating a motion to dismiss pursuant to CPLR § 3211, a pleading is to "be liberally construed" (CPLR § 3026). "Each and every allegation forwarded by the" complainant must be accepted as true (*219 Broadway Corp.*, 46 NY2d at 509 [1979]). Such evaluation is to "determine simply whether the facts alleged fit within any cognizable legal theory" (*Morone v Morone*, 50 NY2d 481, 484 [1980] [citation omitted]). "Allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to" the presumption that facts alleged in

complaint are true (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY 2d 144, 151-152 [2002]).

Summary judgment is a “drastic remedy” that should not be granted absent the clear appearance “that no material and triable issue of fact is presented” (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). “But when there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated” (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]).

Practically, to “obtain summary judgment it is necessary that the movant establish his cause of action or defense ‘sufficiently to warrant the court as a matter of law in directing judgment in his favor’ (CPLR § 3212, subd [b]), and he must do so by tender of evidentiary proof in admissible form” (*Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 [1979]).

To defeat a motion for summary judgment where a movant has made a *prima facie* case as to their cause of action or defense, an opponent must “show facts sufficient to require a trial of any issue of fact” (CPLR § 3212, subd [b]). Such showings consisting of “mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In determining a such a motion, “a court’s task is issue finding rather than issue determination,” and, as discussed *supra*, “must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact” (*Esposito*, 28 AD3d at 1143).

Defendant Monroe County Clerk's Office's motion to dismiss must be granted.

Plaintiff did not comply with General Municipal Law § 50-e and County Law § 52(1) and file a notice of claim prior to commencing this action. Further, both General Municipal Law § 50-i and County Law § 52 stand for the proposition that a plaintiff must file suit within one year and 90 days after the events giving rise to a plaintiff's claims occur. Plaintiff's complaint alleges the lien in question was missing from "all active filings" upon his visit to Defendant Monroe County Clerk's Office on August 11, 2022. This action was commenced January 11, 2024, greater than one year and 90 days after the claim accrued on August 11, 2022.

Setting aside, *arguendo*, Plaintiff's failings with respect to his claim against Defendant Monroe County Clerk's Office, the claim must also be dismissed because it fails to state a cause of action for breach of fiduciary duty. Claims of breach of fiduciary duty must be plead with particularity under CPLR § 3016(b) (*Cohen & Lombardo, P.C. v Connors*, 169 AD3d 1399, 1401 [4th Dept 2019]). "To state a claim for breach of fiduciary duty, a plaintiff must allege that the defendant owed him [or her] a fiduciary duty, that the defendant committed misconduct, and that the plaintiff suffered damages caused by that misconduct" (*Northland E., LLC v J.R. Militello Realty, Inc.*, 163 AD3d 1401, 1402 [4th Dept 2018]). Plaintiff failed to allege the existence of a fiduciary duty owed to him by Defendant Monroe County Clerk's Office and that the alleged missing documents resulted from misconduct.

Plaintiff's other causes of action alleging breach of fiduciary duty asserted against Defendants Premium Mortgage Corporation, Donald Cheney, Esq., Cheney Law Firm, PLLC, and ABAR Abstract Corporation also fail, under either CPLR § 3211 or CPLR § 3211. There is no allegation of, nor triable issue of fact concerning the existence of a fiduciary duty owed by these Defendants to Plaintiff.

Defendants Cheney and Cheney Law Firm, PLLC's motion to dismiss Plaintiff's "contempt of court/fraud" cause of action must also be granted. Plaintiff alleged the order of the Supreme Court (Valleriani, J.) (for brevity, "Order" hereinafter) denying and dismissing Defendant Houle's order to show cause to, *inter alia*, vacate the lien was violated, and specifically that it was violated by Defendants Cheney and Cheney Law Firm, PLLC "engineering the illicit sale of a real property over and against a duly filed and Court affirmed mechanic's lien" (NYSCEF item 2, para. 93). To characterize Defendants Cheney and Cheney Law Firm, PLLC as having "engineer[ed]" the sale of the property is the kind of allegation "consisting of bare legal conclusions [. . .] are not entitled to" the presumption that facts alleged in complaint are true (*511 W. 232nd Owners Corp.*, 98 NY 2d at 151-152). In order to have "engineer[ed]" the sale, Defendants Cheney and Cheney Law Firm, PLLC must have induced or directed both the seller and the buyer to engage in the transaction. Searching the four corners of the complaint and its supporting documents there is simply no such allegation, and even were some scintilla present to make such a suggestion it would be the type of factual claim that is "inherently incredible" and not entitled to the presumption of truthfulness.

Summary judgment must also be granted in favor of Defendants Holt and Billet on the first cause of action seeking to foreclose on the lien. Courts recognize "Lien Law § 17 restricts methods of obtaining extensions of liens against residential property, in order to limit the period of time [such] real property could be burdened by a mechanic's lien" (*Cook v Carmin S. Pariso, Inc.*, 287 AD2d 208, 216 [4th Dept 2001]). Lien Law § 17's specific restriction in cases such as this is that a "lien on real property improved or to be improved with a single family dwelling may only be extended by an order of a court of record, or a judge or justice thereof." The lien was filed January 21, 2022, and thus Plaintiff was obligated to either

foreclose on the lien or seek a court order extending the lien by January 21, 2023. Because the lien was placed on a single-family dwelling, Plaintiff's filing of a notice of extension on January 18, 2023 is a legal nullity. The Chambord Drive home thus has not been encumbered by the lien since January 21, 2023. Defendants Billet and Holt made a *prima facie* case of entitlement to summary judgment, and Plaintiff has not "show[n] facts sufficient to require a trial of any issue of fact" (CPLR § 3212, subd [b]).

In sum, the law and the facts dictate that this dispute is one that is between Plaintiff and Defendants Houle and Houle Sales Consulting, Inc., and no cause of action can stand against any of the other complained of Defendants. Consistent with the foregoing, it is hereby ORDERED

Defendant Monroe County Clerk's Office's motion to dismiss is GRANTED;
Defendants Cheney and Cheney Law Firm, PLLC's motion to dismiss is GRANTED;
Defendants Holt, Billet, Premium Mortgage Corporation, and ABAR Abstract Corporation's motion for summary judgment is GRANTED and to the extent not already effectuated by operation of law, the lien is VACATED; and it is further

ORDERED that any additional relief sought but not specifically granted is hereby DENIED.

The remaining causes of action involve only Plaintiff and Defendants Houle and Houle Sales Consulting, Inc. In order to effectively move the case forward, it is hereby

ORDERED, that all discovery, including any depositions, shall be completed on or before September 20, 2024, it is further

ORDERED, that all motions relating to disclosure shall strictly comply with 22 NYCRR § 202.7(a)(2) and all such motions and responses thereto shall be filed with a

proposed Order containing the specific relief requested and the exact amount of costs, disbursements and attorneys fees to be awarded to the prevailing party;

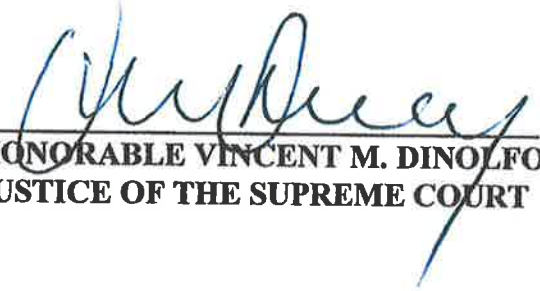
ORDERED, that a Note of Issue and Statement of Readiness shall be filed on or before September 27, 2024,

ORDERED, that pursuant to CPLR § 3212(a) no summary judgment motions shall be made later than sixty (60) days after the filing of the Note of Issue;

ORDERED, that a Pretrial Conference shall be held before this Court on September 30, 2024 at 11:00 AM. via Microsoft Teams, and it is further

ORDERED, that any request for an extension or amendment of this Scheduling Order must be made in writing, on notice, and must be accompanied by a proposed amended scheduling order.

Dated this 26th day of July, 2024, at Rochester, New York.


HONORABLE VINCENT M. DINOLFO
JUSTICE OF THE SUPREME COURT