

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. FAR- _____

Middlesex, ss.

DAVID LADD, DOING BUSINESS AS LADD PROPERTY DEVELOPMENT,
PLAINTIFF AND DEFENDANT-IN-COUNTERCLAIM / APPELLEE

v.

ALINA BOSCH,
DEFENDANT AND PLAINTIFF-IN-COUNTERCLAIM
AND IN THIRD-PARTY COMPLAINT / APPELLANT

v.

RALPH LADD,
THIRD-PARTY DEFENDANT AND THIRD-PARTY PLAINTIFF-IN-COUNTERCLAIM / APPELLEE

APPEAL FROM THE MASSACHUSETTS APPEALS COURT, No. 2024-P-1175

APPELLANT ALINA BOSCH'S APPLICATION FOR FURTHER APPELLATE REVIEW

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Dated: March 27, 2026

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**I. REQUEST FOR LEAVE TO OBTAIN
FURTHER APPELLATE REVIEW**

The Appellant / Defendant / Plaintiff-in-Counterclaim (“Appellant”), Alina Bosch (“Bosch”), respectfully requests that the Supreme Judicial Court grant further appellate review of the Appeals Court’s decision affirming the Trial Court’s and jury’s finding that Bosch abused process against Third-Party Defendant, Ralph Ladd (“Ralph”), and the Trial Court’s determination that Bosch did not prove her claims brought against Plaintiff / Defendant-in-Counterclaim, David Ladd (“David”), pursuant to the New Hampshire Consumer Protection Act, N.H. Rev. Stat. Ann. § 358-A:2 (“NH CPA”).

Bosch’s instant application raises significant issues that affect the interests of justice. The Appeals Court’s decision: 1) contravened clear precedent set forth by this Court which established that the “ulterior purpose” element of an abuse of process claim cannot be proved by groundlessness alone; 2) flatly misread applicable New Hampshire law and implemented the completely incorrect legal test in determining whether Bosch proved her NH CPA claim; and 3) ignored Massachusetts’ evidentiary rules and doctrine to permit trial counsel to refresh a witness’s memory using a hearsay document without first showing exhaustion of the witness’s memory and allowed the witness to read the contents of such document explicitly to the jury. This Court’s clarification of its established precedent will aid the interests of justice by giving both the lower courts and litigants clear guidance

on these issues. The Appeals Court’s decision, if left preserved, would carry out a severe injustice to both Bosch personally and to future parties who would now be litigating similar issues alongside erroneous persuasive precedent impacting subsequent rulings.

II. STATEMENT OF PRIOR PROCEEDINGS

On January 17, 2017, David initiated litigation against Bosch, seeking payment from Bosch for services rendered during construction of Bosch’s home in Dunbarton, New Hampshire. RA43.¹ A month later, on February 17, 2017, Bosch filed her Answer and Counterclaim, asserting that David had breached his contract with Bosch and violated the NH CPA for providing structurally unsound and sub-par construction services, which required her to hire a structural engineer and a new contractor to substantially fix and repair his work. *See* RA47, 54. Bosch additionally added a Counterclaim against Ralph, David’s father. *See id.* On May 4, 2017, Ralph filed a Counterclaim against Bosch, contending that Bosch had abused the legal process by naming him as a Third-Party Defendant. RA74.

During trial, in support of her misrepresentation and NH CPA claims against David and Ralph Ladd, Bosch testified that, while preparing for the structural engineering for the Dunbarton Property, David Ladd misrepresented to her that the

¹ Citations to “RA” refer to the record appendix filed in the Appeals Court in Bosch’s appeal, No. 2024-P-1175. Similarly, citations to “TR” refer to the transcript pages as filed in the Appeals Court.

blueprints for the structural engineering plans for her home were “stamped” and approved by a qualified and licensed civil engineer. TR639. Bosch further testified that, in reliance of David Ladd’s representation, she had stopped inquiring into the structural integrity of the Dunbarton Property, and trusted and relied upon David Ladd to construct the Dunbarton Property in accordance with best practices in the construction industry. TR639-40.

To support his abuse of process claim against Bosch at trial, Ralph generated a legal “invoice,” prepared during the middle of trial which allegedly reflected Ralph’s legal fees incurred in litigating his defense on the abuse of process claim. TR1572; RA 84-98. Due to the late designation of the legal invoice, the Trial Court ruled it to be inadmissible and ordered that it could not be submitted as an exhibit at trial. TR1574-75. Nevertheless, Caroline Ladd, Ralph’s wife, testified as to the contents of the invoice. TR1571. Over Bosch’s repeated objections, Caroline Ladd testified that the legal invoice stated Ralph owed \$232,715.00 in legal fees. *See id.*

At the conclusion of the testimony, Bosch filed a Motion for Directed Verdict on Ralph’s abuse of process claim, which the Trial Court denied. TR1604. During closing arguments, Ralph argued, *inter alia*, that Bosch desired to create leverage against David by filing claims against Ralph to compel David to drop his claims against Bosch. TR1664. Additionally, Ralph filed a Motion for Directed Verdict on Bosch’s breach of contract, misrepresentation, and negligence claims. RA34. While

the Trial Court granted such motion as to breach of contract and misrepresentation, the Trial Court found that Bosch had sufficient evidence to support her negligence claim against Ralph Ladd to send such claim to the jury. TR1608.

After its decisions, the Trial Court provided instructions to the jury regarding Ralph's abuse of process claim and the remaining claims presented by both David and Bosch. TR1619. The Trial Court provided that the jury could find David liable for misrepresentation if he knowingly misrepresented to Bosch that engineering plans to be used in the construction of her home were approved by a qualified structural engineer in order to induce Bosch into relying on such representation. *See* TR1635-36.

At the end of trial and subsequent deliberations, the jury found that Bosch did not breach her contract with David Ladd. TR1767; RA99. The jury found that David Ladd was liable for misrepresentation and for negligence in the construction of the Dunbarton Property and subsequently awarded Bosch a total of \$40,950.00. TR1767-68; RA99. The jury then returned a verdict in favor of Ralph Ladd regarding his abuse of process claim, and awarded Ralph \$232,715.00. TR1769; RA99.

After the jury verdict, the Parties filed several post-trial motions seeking to have the jury's findings overturned or remitted. RA35-37. Bosch filed, among others: 1) Motion for Judgment Notwithstanding the Verdict or, in the alternative, for a New Trial on the Abuse of Process Claim Asserted by Third-Party Defendant

Ralph Ladd; 2) Motion for Remittitur as to Jury Award of Damages on Abuse of Process; and 3) Motion to Alter or Amend the Verdict and Judgment, or for a New Trial Arising from Inadmissible Medical Testimony of Ralph Ladd (collectively the “Post-Trial Motions”). Ralph Ladd subsequently filed his objections to Bosch’s Post-Trial Motions. RA35, 36. Bosch additionally timely filed a Notice of Appeal from the jury decision. RA176. On September 26, 2023, after a hearing, the Trial Court denied all of Bosch’s Post-Trial Motions. AD40-43.² Eleven (11) months later, on August 23, 2024, the Trial Court ruled against Bosch on her outstanding New Hampshire Consumer Protection Act claims against both David and Ralph. AD44.

On September 9, 2024, Bosch timely filed her Second Amended Notice of Appeal appealing from the jury’s verdict on Ralph’s abuse of process claim, the Trial Court’s decision on Bosch’s Post-Trial Motions, and the Trial Court’s adverse decision on her NH CPA claim as to David. RA187. On December 9, 2025, the Appeals Court heard oral argument. *See* Dkt., Appeal No. 2024-P-1175. During oral argument, counsel for Ralph conceded that the legal invoice brought forth at trial was likely hearsay.³

On March 6, 2026, the Appeals Court rendered a Memorandum and Order Pursuant to Rule 23 (the “Decision”), affirming the jury’s abuse of process verdict

² Citations to “AD” refer to the Addendum to this application

³ Counsel’s concession of this point occurs at time stamp 19:03 in the recording uploaded on the publicly available docket; <https://www.ma-appellatecourts.org/docket/2024-P-1175>

against Bosch, the Trial Court’s denial of Bosch’s Post-Trial Motions, and the Trial Court’s decision denying Bosch’s NH CPA claim against David. AD25. The Decision explained that the Trial Court’s and jury’s finding of abuse process was proper because the groundlessness of Bosch’s suit served as sufficient evidence to prove that she used process as a way to leverage her claim against Ralph to David’s claim against her. *See* AD30. The Decision further explained that Caroline’s testimony regarding the hearsay legal invoice was proper because the invoice was used as a way to refresh her memory and because Caroline had independently testified as to an approximate amount owed by Ralph in legal fees. *See* AD30-31. Last, the Decision affirmed the denial of Bosch’s NH CPA claim against David because David’s misrepresentation did not amount to a level of “rascality” which would otherwise be actionable conduct under the NH CPA. AD38.

On March 20, 2026, Bosch filed a Motion for Reconsideration of the Decision, which was subsequently denied by the Appeals Court on March 23, 2026. *See* Dkt. Re #23, Appeal No. 2024-P-1175.

III. STATEMENT OF FACTS

Pursuant to Mass. R. App. P. 27.1(b)(3), Bosch restates the operative facts as set forth in the Appeals Court Decision, but further provides, for purposes of clarity, that during the course of Bosch’s engagement of David’s services, the jury found that David made a willful misrepresentation to Bosch, while knowing its falsity, that

the engineering plans he was prepared to use in the construction of her home were stamped and approved by a qualified structural engineer, when in fact they were not. *See* TR1635-36; RA99-100. The misrepresentation caused damages to Bosch, as her home was subsequently found to be structural unsound, forcing her to retain another construction service to fix the issue. TR702; RA100.

**IV. STATEMENT OF POINTS WITH RESPECT TO
WHICH FURTHER APPELLATE REVIEW IS SOUGHT**

Bosch seeks further appellate review of the following issues:

1. Whether the groundlessness of Bosch's legal claims against Ralph, alone, can serve as sufficient evidence to prove that Bosch's ulterior purpose in filing against Ralph was to use such claims as leverage in her lawsuit with David, contrary to established case law.

2. Whether the Trial Court and Appeals Court erred in finding against Bosch on her NH CPA claim against David when both courts clearly misconstrued controlling New Hampshire law and applied the wrong legal test under the NH CPA statute to adjudicate the issue.

3. Whether Caroline Ladd's testimony as to the contents of a hearsay document was proper because such document was used to refresh her memory, even when there was no showing that Caroline Ladd had exhausted her memory and Caroline Ladd explicitly read the contents of the document to the jury.

**V. STATEMENT OF REASONS WHY
FURTHER APPELLATE REVIEW IS APPROPRIATE**

This Court should allow further appellate review because of substantial reasons affecting the interests of justice. *See* Mass. R. App. P. 27.1(a). This Court has routinely reviewed and overturned cases in which the Appeals Court has misinterpreted or disregarded this Court's precedent. *See, e.g., Harhen v. Brown*, 730 N.E.2d 859, 867 (Mass. 2000). Here, the Decisions of the Trial Court and Appeals Court: 1) significantly misapprehended this Court's established case law regarding abuse of process; 2) clearly misinterpreted controlling New Hampshire jurisprudence; and 3) ignored this Court's established evidentiary rules regarding the refreshing of a witness's memory and use of a hearsay document at trial.

A. Groundlessness Alone Cannot Prove Ulterior Purpose

The Trial Court and Appeals Court misconstrued governing case law by finding that Ralph's abuse of process claim was proved by the groundlessness of Bosch's claim against him. This Court has long established that groundlessness of a claim in litigation, alone, is not sufficient evidence to prove an abuse of process action. *See Beecy v. Pucciarelli*, 387 Mass. 589, 596 (1982). To satisfy an abuse of process claim, a claimant must show that the defendant: (1) used legal process; (2) for an ulterior or illegitimate purpose; and that (3) resulted in damages. *See Psy-Ed Corp. v. Klein*, 459 Mass. 697, 713 (2011), citing *Millennium Equity Holdings, LLC v. Mahlowitz*, 456 Mass. 627, 636 (2010). The ulterior purpose must be to gain some

collateral advantage not properly involved in this proceeding itself, such as the surrender of property or the payment of money. *See Ladd v. Polidoro*, 424 Mass. 196, 199-200 (1997).

However, “mere commencement of litigation to enforce a claim which the person commencing the litigation knows or reasonably should have known to be groundless [does not] constitute legal abuse of process *without proof* of any ulterior purpose.” *Beecy*, 387 Mass. at 596. (emphasis added). “[A] groundless claim does not alone constitute an abuse of process. There must also be proof of an ulterior motive.” *Polidoro*, 424 Mass. at 199-200. In *Ladd v. Polidoro*, this Court made clear of the trouble that allowing groundlessness to serve as sufficient proof of an abuse of process would otherwise cause:

“Such a rule would subject many unsuccessful plaintiffs to the risk of abuse of process claims, perhaps expressed, as here, in the form of a counterclaim. ... a litigant should not be subjected to the risk that, if the jury reject his or her position, that same jury ... will conclude that he or she knew from the beginning that the claim was groundless.”

424 Mass. 196, 200 (1997).

Nevertheless, both the Trial Court and Appeals Court held that Ralph satisfied his abuse of process claim against Bosch solely because Bosch’s claims against him were groundless. AD30; AD41. In its Decision, the Appeals Court attempted to reconcile its holding with the established body of this Court’s case law by asserting:

“The fact that Bosch’s claims against Ralph were groundless tended to show that she had an ulterior motive in bringing them. ‘Filing a groundless claim is not an element of the tort, but it is relevant, because it may tend[] to show that the process was used for an ulterior purpose’ (quotation and citation omitted). *Psy-Ed Corp.*, 459 Mass. at 713.”

AD30. Both the Trial Court and the Appeals Court pointed to no additional evidence other than the groundlessness of Bosch’s claim that tended to prove that Bosch filed a claim against Ralph for leverage purposes. *See id.*

In essence, the Trial Court and Appeals Court have subverted this Court’s precedent by holding that, while groundlessness of a claim cannot serve as an ulterior purpose, groundlessness of a claim can be sufficient evidence to prove an ulterior purpose existed. No Massachusetts Supreme Judicial Court case has allowed groundlessness alone to serve as sufficient proof of an asserted ulterior purpose. In contrast, Massachusetts courts consistently hold that groundlessness of a claim is not considered if there is no other evidence evincing an asserted ulterior purpose. *See Terry v. Cassidy*, 188 N.E.3d 992 (Mass. App. Ct. 2022) (“[T]he bringing of a groundless claim, alone, is not enough to show ulterior motive.”); *See also Bednarz v. Bednarz*, 542 N.E.2d 300, 303 (Mass. App. Ct. 1989) (finding that even if claims were groundless, no evidence proved claimant’s asserted ulterior purpose). Bosch respectfully requests further appellate review out of the interests of justice to correct

the lower courts' misconstruction of this Court's established case law regarding abuse of process.

B. Specifically Enumerated Misrepresentations Under the NH CPA Are Not Analyzed Under the "Rascality" Test

Moreover, further appellate review is warranted because both the Trial Court and Appeals Court used the wrong legal test in adjudicating Bosch's NH CPA claim. Massachusetts courts adjudicate claims regarding the NH CPA under New Hampshire law. *See N.J. Gendron Lumber Co. v. Great N. Homes, Inc.*, 395 N.E.2d 457, 462-63 (Mass. App. Ct. 1979). The NH CPA proscribes "any person" from using "any unfair or deceptive act or practice in the conduct of any trade or commerce." N.H. Rev. Stat. Ann. § 358-A:2. The NH CPA lists nineteen (19) specifically enumerated misrepresentations and acts which fall under its ambit (N.H. Rev. Stat. Ann. § 358-A:2 (I)-(XIX)), and additionally contains generally proscriptive language as a "catch-all" provision to include actionable conduct which may fall outside of the specific enumerations. *See id.* ("Such unfair method of competition or unfair or deceptive act or practice shall include, *but is not limited to...*").

Importantly, New Hampshire courts employ different legal tests under the NH CPA depending on the type of misrepresentation or act at issue. For misrepresentations or deceptive acts which *do not* fall under one of the nineteen (19) specific misrepresentations provided by the statute, courts have employed the "rascality" test to determine whether such misrepresentations arise to a violation of

the NH CPA. *See Fat Bullies Farm, LLC v. Devenport*, 170 N.H. 17, 24 (2017). However, for misrepresentations that *do* fall under one of the nineteen (19) specific misrepresentations, courts use much more narrowly tailored tests depending on which enumerated misrepresentation is at issue. *See, e.g., Guay v. Sig Sauer, Inc.*, 626 F. Supp. 3d 536, 544 (D.N.H. 2022).

Here, Bosch's NH CPA claim against David Ladd concerned two (2) specifically enumerated misrepresentations under the CPA: Section V and Section VII, which prohibit, *inter alia*, statements which "[r]epresent[] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have." *See* N.H. Rev. Stat. Ann. § 358-A:2 (V); (VII). After trial, the jury found David liable for common law misrepresentation for knowingly misrepresenting to Bosch that his construction services were approved by a qualified structural engineer with the intent to induce reliance of Bosch on such statement. *See* TR1635-36; RA99-100.

To bring a successful claim under sections V or VII of the NH CPA, a plaintiff "must establish that the defendant made a representation, with actual knowledge of its falsity or reckless disregard for its truth, with the intent to induce consumers to enter a transaction." *Guay*, 626 F. Supp. 3d at 544. Because the jury found that David made a knowingly false misrepresentation concerning the approval and sponsorship of his services for which he did not have, Bosch argued that David violated the

sections of the NH CPA which specifically prohibited that exact kind of misrepresentation.⁴

But the Trial Court and Appeals Court ruled against Bosch on her NH CPA claim because both courts erroneously used the “rascality” test instead of the more specific test for violations of Sections V and VII of the NH CPA. *See* AD37-38; AD50. Such error is plainly visible in the Appeals Court’s Decision. Speaking to the NH CPA as a whole, the Appeals Court stated, to violate the NH CPA: “the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” AD38. The Appeals Court additionally provided: “a misrepresentation ‘does not, as a matter of law,’ amount to a violation of the CPA.” AD37 (quoting *Fat Bullies Farm*, 170 N.H. at 26 (2017)).

Neither of those statements are true regarding the NH CPA as a whole. The case cited favorably by the Appeals Court, *Fat Bullies Farm, LLC v. Devenport*, specifically explains that those maxims are only applicable when evaluating conduct under the “rascality” test; and the “rascality” test is only applicable when dealing with misrepresentations that fall outside the specifically enumerated misrepresentations provided in the NH CPA. *See* 170 N.H. 17, 24 (2017). Importantly, the Appeals Court acknowledged in its Decision that David’s

⁴ *See* Bosch’s Opening Brief, filed in Appeal No. 2024-P-1175, at p. 50.

misrepresentation fell under Sections V and VII of the NH CPA (AD37), yet employed the “rascality” test anyway, in contravention of its own cited case law. Bosch thus requests further appellate review to correct and clarify the lower courts’ misapplication of New Hampshire case law and to prevent a miscarriage of justice.

C. Contents of a Hearsay Document Cannot Be Read to the Jury

Last, Bosch respectfully requests further appellate review because the Appeals Court disregarded Massachusetts evidentiary rules and this Court’s clearly established case law by holding that: 1) the hearsay document reflecting Ralph’s purported legal fees was appropriately used by his trial counsel as a means to refresh Caroline Ladd’s memory, even when there was no showing of the exhaustion of her memory; and 2) Caroline Ladd’s subsequent testimony was proper even after she explicitly read the contents of the hearsay document to the jury. *See* AD34.

Massachusetts Rules of Evidence Section 612 and further case law allow a hearsay document to be used by trial counsel in order to refresh a witness’s memory, but with important exceptions. *See Commonwealth v. Cunneen*, 389 Mass. 216, 225 (1983); Mass. R. Evid. § 612(a)(1). First, before a hearsay document to refresh memory can be used, a witness must actually be experiencing a failure of memory. *Commonwealth v. O’Brien*, 419 Mass. 470, 478 (1995) (“The only prerequisite to refreshing recollection is a showing that the witness’s memory is clearly exhausted.”). Second, “[t]he writing or object should not be read from or shown to

the jury.” Mass. R. Evid. § 612(a)(1); *Bendett v. Bendett*, 315 Mass. 59, 63 (1943) (a witness who uses writing to refresh recollection may not read the writing to the jury).

It is undisputed that the alleged legal invoice reflecting Ralph’s litigation fees was hearsay.⁵ Moreover, the Trial Judge prohibited the admission of the document due its late designation. TR1574-75. Nevertheless, Caroline was allowed to explicitly read the contents of such invoice to the jury, who returned a verdict in the exact amount as provided in the invoice. TR1571; RA101.

The Appeals Court held that Caroline’s testimony regarding the hearsay invoice was proper because it was used to refresh her memory as to the amount of fees owed by Ralph. AD34; 36. But nowhere in the trial transcript during this testimony did Caroline experience a failure a memory. *See* TR 1569-71. Caroline provided an approximate amount of fees she believed Ralph owed, and Ralph’s counsel then immediately provided her with the hearsay document and asked what its contents were. *See id.* Caroline then specifically stated that the document “says \$232,715.” TR1571. The hearsay document was clearly not used to refresh Caroline’s memory, and, even if it was, it would still be improper to read the contents of the invoice to the jury. *See Commonwealth v. Meyer*, 50 N.E.3d 220 (Mass. App. Ct. 2016). Bosch requests further appellate review to correct the Appeals Court’s

⁵ *See supra* n. 3.

clear circumvention of the established rules and precedent set forth by this Court in the interests of justice.

VI. CONCLUSION

For the foregoing reasons, this Court should grant further appellate review of the Appeals Court's affirmation of the Trial Court's finding of abuse of process and that Bosch did not prove her NH CPA claim against David.

Respectfully submitted,
APPELLANT / DEFENDANT and
PLAINTIFF-IN-COUNTERCLAIM, Alina
Bosch,

By her Attorneys,

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Dated: March 27, 2026

CERTIFICATE OF COMPLIANCE

I, Philip M. Giordano, certify that this brief complies with the rules of the court that pertain to filing of Applications for Further Appellate Review, including the provisions of Mass. R. App. P. 16 and 27.1. This application was composed with a proportionally-spaced font, specifically Times New Roman, at size 14, and the statement indicating why further appellate review is appropriate is less than 2,000 non-excluded words. Specifically the statement indicating why further appellate review is appropriate contains 1,999 non-excluded words, as calculated by Microsoft Word's word count feature.

/s/ Philip M. Giordano

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Dated: March 27, 2026

CERTIFICATE OF SERVICE

Pursuant to Mass. R. A. P. 13(d), I hereby certify, under the penalties of perjury, that on the 27th of March, 2026, I made service of this Appellant's Application for Further Appellate Review, upon the attorneys of record for the Appellees, David Ladd and Ralph Ladd, by the Court's electronic filing system and by email, upon:

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Philip M. Giordano

Dated: March 27, 2026

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Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston

In the case no. 24-P-1175

DAVID LADD

vs.

ALINA BOSCH; RALPH V. LADD, third-party defendant.

Pending in the Superior

Court for the County of Middlesex

Ordered, that the following entry be made on the docket:

The judgment dated June 2, 2023, on Ralph V. Ladd's abuse of process counterclaim is affirmed. The orders dated September 27, 2023, denying Bosch's motions (1) for judgment notwithstanding the verdict, or, in the alternative, for a new trial, on the abuse of process counterclaim; (2) for remittitur; and (3) to alter or amend the judgment, or for a new trial, based on Ralph's medical testimony, are affirmed. The judgment dated August 23, 2024, against Bosch on her counterclaims for unfair and deceptive acts or practices is affirmed.

By the Court,

 , Clerk

Date March 6, 2026.

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

24-P-1175

DAVID LADD¹

vs.

ALINA BOSCH; RALPH V. LADD,² third-party defendant.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

After an eight-day Superior Court jury trial, the defendant, Alina Bosch (Bosch), appeals from judgments holding her liable for abuse of process and dismissing her claims under the New Hampshire consumer protection act (CPA), N.H. Rev. Stat. Ann. § 358-A (2015), and from postjudgment orders denying relief. This case arose from Bosch's renovation of a farmhouse she owned in Dunbarton, New Hampshire (farmhouse). Bosch hired the plaintiff, David Ladd (David), doing business as Ladd

¹ Doing business as Ladd Property Development.

² Doing business as Ladd Plumbing and Heating.

Property Development, to do the renovation.³ After Bosch terminated his services, David brought this action for breach of contract, unjust enrichment, and conversion, claiming that Bosch owed him payment for his work. Bosch brought counterclaims in contract and tort and for violations of the CPA -- not only against David, but also, as third-party claims, against David's father, Ralph V. Ladd (Ralph), doing business as Ladd Plumbing and Heating. Ralph counterclaimed against Bosch for abuse of process, and the jury returned a verdict in Ralph's favor. On the CPA claims, the judge found that, despite jury verdicts against David for misrepresentation, negligence, and gross negligence, Bosch did not prove that either David or Ralph violated the CPA.

Bosch appeals, arguing that the judge erred by (1) denying her motions for a directed verdict and judgment notwithstanding the verdict (judgment n.o.v.) on Ralph's abuse of process counterclaim; (2) ruling to admit evidence of Ralph's legal costs and his medical condition; (3) denying Bosch's motion to reduce the jury's damages award; and (4) finding that Bosch did not prove that David violated the CPA. We affirm.

³ Because the same surname is shared by plaintiff David Ladd, third-party defendant Ralph V. Ladd, and witness Caroline Ladd, we refer to them by their first names to avoid confusion.

Background. Bosch hired David and his construction business to renovate the farmhouse. They did not have a written contract; rather, Bosch would communicate what work she wanted performed, and David would provide an estimated cost. The scope of work on the farmhouse grew substantially, and David tried to handle it by himself with workers from his business when he should have obtained additional expertise, particularly from a structural engineer.

Ralph and his plumbing business had no involvement in the renovation of the farmhouse. Bosch never asked Ralph to do any work on the farmhouse, never paid him for any work on the farmhouse, and never saw him there. Ralph had no management or control over David's business or its projects.

On November 5, 2016, Bosch terminated David's services. On November 30, David sent Bosch a final invoice, which Bosch did not pay. As mentioned above, David sued Bosch for unpaid work. Bosch brought counterclaims against David and third-party claims against Ralph for breach of contract, breach of the implied covenant of good faith and fair dealing, misrepresentation, negligence, gross negligence, and violations of the CPA. Ralph counterclaimed against Bosch for abuse of process.

The jury returned a verdict in favor of Ralph on his abuse of process claim, awarding him \$232,715 in damages.⁴ Judgment on the counterclaim entered, and Bosch appealed. Bosch filed various posttrial motions, including for judgment n.o.v., remittitur of damages, and for a new trial. The judge denied the motions, and Bosch appealed.

Before trial, the judge had reserved to his own decision Bosch's claims that David and Ralph had violated the CPA. The judge found that Bosch had not proven those claims. Judgment on Bosch's CPA claims entered, and Bosch appealed. Bosch's consolidated appeals from these judgments are now before us.

Discussion. 1. Abuse of process. Bosch argues that the judge erred in denying her motions for a directed verdict and for judgment n.o.v. on Ralph's abuse of process counterclaim. Bosch contends that Ralph did not prove that she had an ulterior

⁴ The judge directed verdicts in favor of Ralph on Bosch's claims for breach of contract and misrepresentation. The jury returned a verdict in favor of Ralph on Bosch's claims for negligence and gross negligence. No issue is before us as to those claims.

The jury returned a verdict in favor of Bosch on David's breach of contract claim as well as on her misrepresentation, negligence, and gross negligence counterclaims against David, awarding her \$40,950 in damages. David did not appeal, and has not participated in this appeal.

or illegitimate motive or purpose in bringing her third-party claims against Ralph. We are not persuaded.

As the judge instructed the jury, to prove abuse of process, Ralph was required to show by a preponderance of the evidence that Bosch (1) used legal process; (2) for an ulterior or illegitimate purpose; that (3) resulted in damages to Ralph. See Psy-Ed Corp. v. Klein, 459 Mass. 697, 713 (2011), citing Millennium Equity Holdings, LLC v. Mahlowitz, 456 Mass. 627, 636 (2010); Powers v. Leno, 24 Mass. App. Ct. 381, 383-384 (1987). As to the ulterior or illegitimate purpose, the judge instructed:

"The ulterior purpose must be to gain some collateral advantage not properly involved in this proceeding itself, such as the surrender of property or the payment of money. The desire to litigate a dispute by itself does not translate into an ulterior purpose for bringing the action even if you determine that [Bosch]'s claims against Ralph were groundless."

That instruction paraphrased governing cases on this element, including Psy-Ed Corp., supra at 713-714 & n.35, and Ladd v. Polidoro, 424 Mass. 196, 199-200 (1997).

In denying the postjudgment motions, the judge concluded that "the jury was . . . justified in its determination that Bosch's third party claim[s] against Ralph served the ulterior and illegitimate purpose in providing leverage in the case that

David had commenced."⁵ We agree. See Millennium Equity Holdings, LLC, 456 Mass. at 640 (ulterior purpose of lawsuit was to disqualify defendant from representing plaintiff's wife in divorce).

As mentioned, see note 4, supra, all of Bosch's third-party claims against Ralph resulted in directed verdicts and jury verdicts in Ralph's favor. In denying the motion for judgment n.o.v. on the abuse of process counterclaim, the judge found that the "absence of Ralph's connection to the N.H. work became very clear at trial." The fact that Bosch's claims against Ralph were groundless tended to show that she had an ulterior motive in bringing them. "Filing a groundless claim is not an element of the tort, but it is relevant, because it may tend[] to show that the process was used for an ulterior purpose" (quotation and citation omitted). Psy-Ed Corp., 459 Mass. at 713.

Before the trial judge, Bosch contended that because she brought the third-party claims against Ralph in the proceeding

⁵ At trial, Ralph argued that Bosch also had two other ulterior motives: to make David and Ralph the "scapegoats" for her own mismanagement of the farmhouse renovation so that she could obtain funds from her father, and as "revenge" for David's lawsuit. We need not consider those theories, because we agree with the judge that the jury could have found that Bosch's ulterior motive was to gain leverage in David's breach of contract action.

that David had initiated, those claims were not collateral within the meaning of Psy-Ed Corp., 459 Mass. at 713-714, which requires that "the ulterior purpose must be to gain some collateral advantage." The judge disagreed, pointing out that Bosch's argument would mean that "a third-party complaint could never qualify as abuse of process." We concur. In Psy-Ed Corp., the Supreme Judicial Court stated, "[w]e do not suggest that the claim must be collateral to the proceeding, but only that it be collateral to the legitimate purposes of the proceeding." Id. at 714 n.36.

Bosch argues that the judge's instruction on ulterior motive was "erroneous," and the jury's "confusion" about the instruction was shown by their question during deliberations.⁶ Bosch did not object at trial to either the instruction or the response to the jury question, and thus she waived the issue.⁷

⁶ The jury asked, "If the preponderance of the evidence shows that [Bosch] had little or no evidence connecting Ralph to David's business, does that in itself prove an ulterior or illegitimate motive, re: abuse of process?"

⁷ Because the trial judge was unavailable, a different judge handled the jury question. The transcript reflects that Bosch's counsel provided that judge with an electronic document containing the trial judge's abuse of process instruction, and the substitute judge used it to craft a typewritten response, which was provided to the jury and marked for identification. Bosch has not provided us with a copy of that exhibit. As appellant, it was her duty to do so. See Mass. R. A. P. 18 (a) (1) (A) (v), as appearing in 481 Mass. 1637 (2019).

See Mass. R. Civ. P. 51 (b), 365 Mass. 816 (1974). See also Greene v. Philip Morris USA Inc., 491 Mass. 866, 877-878 (2023).

2. Evidentiary rulings. "We review a trial judge's evidentiary decisions under an abuse of discretion standard." N.E. Physical Therapy Plus, Inc. v. Liberty Mut. Ins. Co., 466 Mass. 358, 363 (2013). "[A] judge's discretionary decision constitutes an abuse of discretion where we conclude the judge made a clear error of judgment in weighing the factors relevant to the decision, such that the decision falls outside the range of reasonable alternatives" (quotation and citation omitted). L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). See Nyberg v. Whelittle, 101 Mass. App. Ct. 639, 648 (2022).

a. Testimony about legal costs incurred by Ralph. Bosch argues that the judge erred in admitting the testimony of Ralph's bookkeeper, Caroline Ladd (Caroline), about the amount of the legal costs Ralph incurred in defending against Bosch's third-party claims. Bosch contends that Caroline's testimony was hearsay and violated the best evidence rule.

In a trial for abuse of process, damages include "the costs of defending against the improper action." Millennium Equity Holdings, LLC, 456 Mass. at 645. "As such, fees for defending such a lawsuit are considered compensatory damages, not

attorney's fees." Id., citing American Velodur Metal, Inc. v. Schinabeck, 20 Mass. App. Ct. 460, 470 (1985).

As of trial, Bosch's third-party claims against Ralph had been pending for more than six years. Caroline, who had been the bookkeeper for Ralph's business for about sixty-two years, testified that throughout the case she communicated with Ralph's counsel "[a]ll the time" and reviewed "thousands of pages" of documents. Asked how much Ralph had incurred in legal costs in defending against Bosch's third-party claims, Caroline testified, without objection, "approximately 235,000 dollars." Ralph's counsel then showed Caroline a document and asked her for the specific amount; over Bosch's objection, Caroline testified that, as of May 28, 2023, it was \$232,715. On Bosch's objection, the judge precluded Ralph from introducing the document into evidence because of its late disclosure.⁸

We conclude that Caroline's testimony about the amount of legal costs incurred by Ralph was not hearsay. See DiMarzo v. American Mut. Ins. Co., 389 Mass. 85, 105-106 (1983) (where documents evidencing legal costs were generated while action was

⁸ The document was not marked for identification. Bosch has included in the record appendix an invoice from Ralph's counsel that seems to be the document that Ralph's counsel showed Caroline; it states, "TOTAL[] AS OF MAY 28, 2023 - \$232,715." Neither party challenges the inclusion of the invoice in the record appendix.

pending and thus not business records, "[t]hose bits of relevant evidence which could be found in the records were introduced through the testimony"); American Velodur Metal, Inc., 20 Mass. App. Ct. at 467 (abuse of process damages proven by testimony of counsel's law partner, which "was necessarily based in part on the records of the firm"). Bosch did not object to Caroline's testimony that Ralph's legal costs were "approximately 235,000 dollars," but only to Ralph's counsel's using the document to refresh her recollection. To refresh a witness's recollection, a lawyer may show the witness a document that contains hearsay. See Commonwealth v. Cunneen, 389 Mass. 216, 225 (1983) (memory refreshed by invoices). See also Mass. G. Evid. § 612(a)(1) (2025).

As for Bosch's claim that Caroline's testimony violated the best evidence rule because the invoice was not admitted in evidence, that claim was not preserved for appellate review. At trial, Bosch strenuously objected to admission of the invoice. She cannot now be heard to complain about its absence, particularly on a theory she did not raise at trial. See Ciccarelli v. School Dep't of Lowell, 70 Mass. App. Ct. 787, 799 (2007) (issue not preserved for appeal where party failed to "lodge a specific objection on the record" at trial).

b. Testimony about Ralph's medical condition. Bosch argues that the judge erred in admitting testimony of Ralph and Caroline that while the litigation was pending Ralph suffered two strokes, and because of that testimony Bosch was entitled to a new trial.

In denying the motion for a new trial, the judge concluded that "there were valid reasons to introduce evidence of Ralph's ailments and condition," and it "did not poison the trial as Bosch suggests." We agree that evidence of Ralph's medical condition was admissible to explain inconsistencies between his deposition testimony and his trial testimony. Ralph testified that medications he was taking at the time of his deposition caused vertigo, loss of memory, extreme confusion, and fatigue, but the medications he was taking at the time of trial did not affect his memory. We conclude that the judge did not abuse his discretion in ruling that the evidence was relevant. See Harris-Lewis v. Mudge, 60 Mass. App. Ct. 480, 485 (2004).

Moreover, as the judge noted, he had "instructed the jury that it could not attribute any medical condition to the litigation against Ralph, due to the absence of medical testimony." Bosch did not object to those instructions. We presume that the jury followed them. See David v. Kelly, 100 Mass. App. Ct. 443, 451 (2021). We agree with the judge that,

because the jury did not award Ralph any damages related to his medical condition, the issue is "academic."

3. Damages. Bosch argues that the judge erred in denying her motion for remittitur of the jury's award to Ralph of \$232,715 in damages. We apply a "highly deferential" standard in assessing the evidence supporting a jury's award of damages "and will overturn such an award only if it is 'clearly excessive in relation to what the plaintiff's evidence ha[d] demonstrated damages to be.'" Trites v. Cricones, 105 Mass. App. Ct. 246, 256 (2025), quoting Spinosa v. Tufts, 98 Mass. App. Ct. 1, 10 (2020).

In denying Bosch's motion, the judge found that Ralph's evidence of damages was based "almost entirely" on Caroline's testimony. As mentioned, Caroline testified, without objection, that the amount of Ralph's legal costs was "approximately 235,000 dollars," and, after her recollection was refreshed, testified that it was \$232,715 -- the same amount the jury awarded. In light of this evidence, the jury's damage award cannot be said to "lack[] an evidentiary foundation." Anthony's Pier Four, Inc. v. HBC Assocs., 411 Mass. 451, 483 (1991). We discern no abuse of discretion in the denial of Bosch's postjudgment motion to the extent that it was based on an

excessive damage award. See Baudanza v. Comcast of Mass. I, Inc., 454 Mass. 622, 630 (2009).

4. New Hampshire consumer protection act. Finally, Bosch argues that the judge erred in finding that David did not violate the CPA, N.H. Rev. Stat. Ann. § 358-A.⁹ Bosch contends that because the jury found David liable for misrepresentation, and, according to Bosch, the trial evidence would support a finding that David's misrepresentations were fraudulent and intentional, the judge was required to find that David also violated the CPA. We disagree.

We apply the New Hampshire statute. See N.J. Gendron Lumber Co. v. Great N. Homes, Inc., 8 Mass. App. Ct. 411, 418-419 (1979) (applying CPA). It proscribes "any person" from using "any unfair or deceptive act or practice in the conduct of any trade or commerce," including "[r]epresenting that goods or services are of a particular standard, quality, or grade . . . , if they are of another." N.H. Rev. Stat. Ann. § 358-A:2 (VII). See N.H. Rev. Stat. Ann. § 358-A:2 (V). As construed by the New Hampshire Supreme Court, a misrepresentation "does not, as a matter of law," amount to a violation of the CPA. Fat Bullies Farm, LLC v. Devenport, 170 N.H. 17, 26 (2017). Rather, "the

⁹ On appeal, Bosch does not argue that the judge erred in ruling that Bosch failed to prove that Ralph violated the CPA, and so we do not consider the issue.

objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce."¹⁰ Id. at 24, quoting George v. Al Hoyt & Sons, Inc., 162 N.H. 123, 129 (2011). In the context of the CPA, "[t]he trial court's findings of fact and rulings of law will be upheld unless they lack evidentiary support or constitute clear error of law." Axenics, Inc. v. Turner Constr. Co., 164 N.H. 659, 675 (2013), quoting George, supra. Cf. Green Mountain Realty Corp. v. Fifth Estate Tower, LLC, 161 N.H. 78, 82 (2010) (whether CPA applied to conduct in political setting was question of law reviewed de novo).

From the trial evidence, including the testimony of David and Bosch, the judge found that David was "in over his head" in trying to renovate the farmhouse, and "should have obtained additional expertise," particularly that of a structural engineer, and as a result some of David's work had to be redone. The judge found that those facts were reflected in the verdicts

¹⁰ That standard was originally enunciated by this court in Levings v. Forbes & Wallace, Inc., 8 Mass. App. Ct. 498, 504 (1979), construing G. L. c. 93A, the Massachusetts analogue to the CPA. Although the Supreme Judicial Court has since repudiated that language as "uninstructive," Massachusetts Employers Ins. Exchange v. Propac-Mass, Inc., 420 Mass. 39, 42 (1995), the New Hampshire Supreme Court has adopted it, see Barrows v. Boles, 141 N.H. 382, 390-391 (1996), and continues to apply it in construing the CPA.

against David for misrepresentation, negligence, and gross negligence, but David "did not undertake to defraud Bosch, nor did he take her money without performing work or buying materials." We conclude that the judge's findings of fact do not lack evidentiary support, and his rulings of law do not constitute clear error. See Axenics, 164 N.H. at 675-677.

Conclusion. The judgment dated June 2, 2023, in favor of Ralph on his abuse of process counterclaim is affirmed. The orders dated September 27, 2023, denying Bosch's motions (1) for judgment n.o.v., or, in the alternative, for a new trial, on the abuse of process counterclaim; (2) for remittitur as to the jury's award of damages on abuse of process; and (3) to alter or amend the judgment, or for a new trial, based on Ralph's medical testimony, are affirmed. The judgment dated August 23, 2024, against Bosch on her CPA counterclaims is affirmed.¹¹

So ordered.

By the Court (Singh, Grant & Tan, JJ.¹²),

A handwritten signature in blue ink, appearing to read "Paul Little".

Clerk

Entered: March 6, 2026.

¹¹ Ralph's request for appellate attorney's fees is denied.

¹² The panelists are listed in order of seniority.

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05/24/2023 Defendant Alina Bosch's Motion for Directed verdict (oral request @ 3:27 PM)at the close of Plaintiffs case Request denied.

05/31/2023 Defendant Alina Bosch's Motion for Directed Verdict filed at the close of the evidence 127

05/31/2023 Endorsement on Motion for directed verdict (#127.0): DENIED after hearing. [Image](#)

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09/27/2023 Endorsement on Motion for judgement notwithstanding the verdict or, in the alternative, for a new trial on the abuse of process claim asserted by third- party defendant Ralph Ladd (#140.0): DENIED
Dated 9/26/23



[Image](#)

After hearing, denied. As discussed on the record during trial, the ulterior purpose satisfying abuse of process was that, after David Ladd sues Bosch for alleged unpaid work, Bosch and her counsel made the decision to file a third-party claim against Ralph Ladd, despite the absence of evidence that Ralph was involved in the N.H. construction work in any way. This absence of Ralph's connection to the N.H. work became very clear at trial. The jury was therefore justified in its determination that Bosch's third-party claim against Ralph served the ulterior and illegitimate purpose of providing leverage in the case that David had commenced. This improper strategic choice by Bosch and her counsel led to the abuse of process verdict in favor of Ralph.

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09/27/2023 Endorsement on Motion for remittitur as to jury's award of damages on abuse of process. (#141.0):
DENIED
Dated 9/26/23

[Image](#)

After hearing and careful consideration, the motion for new trial and remittitur is DENIED. Bosch's focus on Sullivan's attorney time records in this motion is incongruent, in light of my ruling excluding the late-breaking time records, in response to Bosch's motion. Without the time records, Ralph Ladd's evidence supporting his abuse of process damages was almost entirely the testimony of his spouse, Caroline Ladd. Caroline Ladd testified that Ralph Ladd had incurred attorney's fees of \$232,000 defending Busch's claims, although Ralph and Caroline had not paid all those fees. This raises the question whether damages attributable to attorney's fees/defense costs can be awarded if there is evidence they are owed but not yet paid. It was within the jury's purview in assessing damages to credit Caroline's testimony and find that the Ladd's (Ralph and Caroline) owed that money such that it could constitute damages. Moreover, abuse of process damages also may include emotional distress damages, an area where I am routine to interrupt the jury's assessment of the evidence. The jury could easily assess motional distress damages to Ralph here, even though they could not attribute any physical condition to the abuse of process, as I instructed the jury. The verdict for Ralph Ladd will stand.

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09/27/2023 Endorsement on Motion to alter or amend the verdict and judgment, or for a new trial arising from inadmissible medical testimony of Ralph Ladd (#143.0): DENIED Dated 9/26/23



After hearing, DENIED. I instructed the jury that it could not attribute any medical condition to the litigation against Ralph, due to the absence of medical testimony. As Ralph Ladd's counsel argues in opposition, there were valid reasons to introduce evidence of Ralph's ailments and conditions. That evidence did not poison the trial as Bosch suggests in this motion. Cross-motion to strike is denied.

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#166

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 1781cv150

DAVID M. LADD d/b/a LADD PROPERTY DEVELOPMENT

vs.

ALINA BOSCH

**DECISION AND ORDER FOLLOWING TRIAL CONCERNING CLAIMS FOR
UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN TRADE OR COMMERCE**

This civil action arose out of the renovation of a farmhouse in Dunbarton New Hampshire owned by the defendant, Alina Bosch. Bosch hired David Ladd, a contractor she had used for work on some Massachusetts residential buildings she owned, to handle the renovation. Ultimately David Ladd brought suit against Bosch for breach of contract, alleging Bosch owed him for work performed. Bosch counterclaimed for breach of contract, negligence, misrepresentation and unfair or deceptive trade practices, alleging that David Ladd misrepresented his capabilities and qualifications and performed substandard work, including considerable work that had to be re-done because it was structurally unsound and dangerous. Bosch also brought those same claims against Ralph Ladd, David's elderly father who was a licensed plumber in Massachusetts, contending that David and Ralph effectively were partners in their development and renovation business. Ralph Ladd responded by bringing a claim against Bosch for abuse of process.

The parties tried the case to a Middlesex County jury over eight days ending June 1, 2023. I allowed Ralph Ladd's motion for directed verdict as to Bosch's claims against him for

misrepresentation and breach of contract. On June 2, 2023, the jury delivered its verdict, finding that:

- Neither David Ladd nor Bosch had proven breach of contract;
- David Ladd was liable to Bosch for misrepresentation;
- David Ladd was liable to Bosch for negligence, and gross negligence;
- Bosch was entitled to damages of \$21,450 for misrepresentation and \$19,500 for negligence, totaling \$40,950, with no duplication between those awards;
- Ralph Ladd was not liable to Bosch for negligence;
- Bosch was liable to Ralph Ladd for abuse of process;
- Ralph Ladd was entitled to damages of \$232,715 for abuse of process.

Judgments entered consistent with the trial verdict.

I had reserved for my own decision Bosch's claims for unfair or deceptive acts or practices in trade or commerce brought under New Hampshire Law, Revised Statutes Annotated ("RSA") § 358-A, as that statute provides no right to jury trial. I informed the parties before trial that I would decide those claims without an advisory verdict from the jury, but that they should expect that my decision would adhere to the jury's verdict. Following the parties' request for a stay, I now issue this decision on those claims under New Hampshire law.¹

APPLICABLE LAW

The New Hampshire Legislature enacted Revised Statutes Annotated ("RSA") § 358-A, the Consumer Protection Act ("CPA") "in 1970 to 'ensure an equitable relationship between consumers and persons engaged in business.'" Hair Excitement, Inc. v. L'Oreal U.S.A., Inc.,

¹ I note the incongruence in the fact that I instructed the jury on all the parties' claims under Massachusetts law, withal parties' agreement, yet this claim uniquely applies New Hampshire law. Presumably this is because chapter 93A would not be available to Bosch because there was no nexus to trade or commerce in Massachusetts because all the relevant work took place in New Hampshire. Because no party has objected to application of New Hampshire law to this claim only, I will do so despite the incongruence.

158 N.H. 363, 368 (2009) (citation omitted). The CPA “is ‘a comprehensive statute designed to regulate business practices for consumer protection by making it unlawful for persons engaged in trade or commerce to use various methods of unfair competition and deceptive business practices.’” Id. (citation omitted).

Pursuant to RSA § 358-A:2, “It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state.” “Any person injured by another’s use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper.” RSA § 358-A-10, I. See Hair Excitement, Inc., 158 N.H. 363, 369 (2009) (“[N]othing in the language of RSA chapter 358-A specifically provides for a right to a jury trial. . . . [thus,] the court is vested with the authority to decide claims brought under RSA chapter 358-A.”); Unit Owners Ass’n of Summit Vista Lot 8 Condo. v. Miller, 141 N.H. 39, 44 (1996) (holding that CPA “does not contain a specific provision that allows individuals to be held liable for the acts of the ‘corporate’ entity absent application of the veil-piercing doctrine” because “‘person’” is the “unlawful actor”). The prevailing party may recover the greater of actual damages or \$1,000, as well as “the costs of suit and reasonable attorney’s fees, as determined by the court.” RSA § 358-A-10, I. The prevailing party may receive double or treble damages only “[i]f the court finds that the use of the method of competition or the act or practice was a willful or knowing violation of this chapter” Id.

The statute sets forth a nonexhaustive list of eighteen unfair or deceptive acts or practices. RSA § 358-A:2, I-XVIII. See Becksted v. Nadeau, 155 N.H. 615, 618-619 (2007) (“After th[e] general proscription of unfair or deceptive trade practices, the CPA lists specific types of conduct that qualify as unfair or deceptive trade practices.”); Roberts v. General Motors

Corp., 138 N.H. 532, 538 (1994) (noting that RSA § 358-A:2’s “representative categories of unlawful acts or practices . . . deal[] with transactions for the provision of goods or services to consumers”). This list does not “impose strict liability” because the Legislature’s “use of the words ‘deceptive’ and ‘unfair’ . . . requir[e] a degree of knowledge or intent.” Kelton v. Hollis Ranch, LLC, 155 N.H. 666, 668 (2007). Accord Guay v. Sig Sauer, Inc., 626 F. Supp. 3d 536, 544 (D.N.H. 2022).

The general proscription in RSA § 358-A:2 is seemingly “broadly worded,” but “not all conduct in the course of trade or commerce falls within its scope.” Axenics, Inc. v. Turner Constr. Co., 164 N.H. 659, 675 (2013). “In determining which commercial actions *not* specifically delineated are covered by the CPA, [New Hampshire courts] have employed the ‘rascality’ test” under which “the objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.” Id. at 675-676 (emphasis added), quoting Becksted, 155 N.H. at 619. See Barrows v. Boles, 141 N.H. 382, 390 (1996) (looking to Massachusetts for “rascality” test); Coutu v. State, 2016 WL 6277121 at *3 (N.H. Super. Ct. Sept. 23, 2016) (McNamara, J.) (acknowledging that New Hampshire adopted Massachusetts’s rascality test which Massachusetts has since abandoned). See, e.g., Fat Bullies Farm, LLC v. Devenport, 170 N.H. 17, 28 (2017) (collecting cases where rascality test was met). The statute also instructs courts that they “may be guided by the interpretation and construction given Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), by the Federal Trade Commission and the federal courts.” RSA § 358-A:13; Becksted, 155 N.H. at 619.

“The Federal Trade Commission determines if actions are unfair or deceptive by inquiring:

(1) Whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—whether, in other words, it is within at least the penumbra of some common-law, statutory or other established concept of unfairness;

(2) whether it is immoral, unethical, oppressive, or unscrupulous;

(3) whether it causes substantial injury to consumers (or competitors or other businessmen).”

Becksted, 155 N.H. at 619 (citation omitted).

Additionally, and similar to Massachusetts law, it is well established in New Hampshire that “[a]n ordinary breach of contract claim . . . is not a violation of the CPA.” Axenics, Inc., 164 N.H. at 675, quoting George v. Al Hoyt & Sons, Inc., 162 N.H. 123, 129 (2011).² Generally speaking, “routine contract and negligence issues” do not trigger liability under the New Hampshire CPA. McNeal v. Lebel, 157 N.H. 458, 469 (2008) (holding that plaintiffs’ claims against defendants were “‘routine contract and negligence issues’” that did not constitute unfair or deceptive trade practices under the CPA). Instead, I should assess all the facts and circumstances in evidence and assess whether Bosch has proven unfair or deceptive conduct, with a focus on the concepts outlined above including knowledge, intent, and “rascality.”

² See and compare George, 162 N.H. at 130 (affirming conclusion that defendant committed unfair or deceptive act or practice in violation of CPA where defendant entered into contract with bridge manufacturer for fabrication of a bridge, billed plaintiffs as a deposit for the bridge, received deposit money from plaintiffs, failed to remit the deposit to the manufacturer, and falsely informed plaintiffs that it was working on bridge), and State v. Moran, 151 N.H. 450, 453-454 (2004) (holding that defendant’s conduct was not merely an ordinary breach of contract but rather he acted with rascality where he “did not fail simply to perform his duties under the contract” but rather he induced the victim to pay him “for materials at a time when he clearly did not intend to perform the work” and “he made continuous misrepresentations in an ongoing effort to avoid performing or refunding the deposit”), with McNeal v. Lebel, 157 N.H. 458, 469 (2008) (holding that plaintiffs’ claims against defendants were “‘routine contract and negligence issues’” that did not constitute unfair or deceptive trade practices under the CPA where plaintiffs alleged that defendants “were deceptive in not disclosing problems with the stairs that would cause the house to fail its inspection, and in not disclosing issues with the driveway and building site which may have caused many of the house’s problems. . . . [and] by promising to deliver and complete a reasonably defect-free house in six weeks when ‘they knew they couldn’t, or were at least indifferent as to whether they could’”).

APPLICATION OF THE NEW HAMPSHIRE LAW TO TRIAL EVIDENCE

After carefully considering the evidence at trial, Bosch has failed to prove by a preponderance of the evidence that David Ladd engaged in unfair or deceptive acts in violation of the New Hampshire CPA.³ Bosch and David Ladd had a positive working relationship based on Ladd's work for Bosch on her Massachusetts properties. Based on that past experience, Bosch and Ladd began discussing some renovation work that Bosch contemplated for a farmhouse she owned in southern New Hampshire. Ladd was interested in the additional work, even though it was in New Hampshire, and Bosch was interested in having Ladd perform the work. The scope of work on the farmhouse grew, and grew some more, and Ladd tried to handle it himself and with his workers. Eventually Ladd was in over his head, endeavoring to handle work where he should have obtained additional expertise. This was most apparent with respect to certain structural work where Ladd should have associated, or associated more closely, with a structural engineer, but did not, ultimately requiring that certain of Ladd's work be redone. These facts are reflected in the jury's verdict with respect to both misrepresentation and negligence.

However, those verdicts and the damages attributed to Ladd's liability for misrepresentation and negligence, do not reflect misrepresentation or negligence that was broad in scope. Compared to the broad scope of work that Ladd agreed to perform, and did perform, on Bosch's farmhouse, the actionable conduct found by the jury was narrow. Viewing the

³ I do not discuss at any length claims against Ralph Ladd for unfair or deceptive trade practices. I directed a verdict in Ralph Ladd's favor as to the breach of contract and misrepresentation claims, and the jury found no negligence with respect to Ralph Ladd. The evidence showed Ralph had exceedingly limited involvement in the New Hampshire renovation. Bosch and her attorneys had no meaningful basis to sue Ralph Ladd. This is reflected in the jury's verdict against Bosch for abuse of process.

renovation project comprehensively, Ladd undertook to perform a broad scope of renovations, tried to complete the work timely and in a workmanlike manner, but encountered some challenges that were beyond his expertise or abilities. He tried to address those challenges, unsuccessfully. Ladd did not undertake to defraud Bosch, nor did he take her money without performing work or buying materials. The evidence did not show Ladd took any other actions that would distinguish this case from standard negligence issues or substandard work issues, which are familiar to residential renovation projects, particularly challenging projects involving older homes. In sum, the evidence does not support a finding of Ladd's knowledge or intent necessary for a New Hampshire CPA violation, nor does it support that Ladd engaged in the requisite "rascality" to support CPA liability.


I reach this conclusion while acknowledging and accounting for the jury's verdict on negligence, gross negligence, and misrepresentation. As discussed above, those findings and the verdict on damages reflects the relatively narrow scope of Ladd's actionable conduct as compared to the broad scope of the overall project and Ladd's work. The misrepresentation claim against Ladd focused on, first, whether David and his company had the qualifications, expertise and ability to complete the work as promised, and second, whether David and his company had obtained plans from a structural engineer. The negligence claim alleged that David Ladd's construction contractor and construction services failed to conform to the minimum acceptable standards required of professional contractors. The jury's verdict—on liability and damages—demonstrates that Ladd's actionable deficiencies concerned a small portion of the overall project in which he engaged, specifically, certain structural issues encountered during the project. For the vast majority of the broad array of construction services Ladd provided Bosch for her New Hampshire farmhouse, he provided the services in a workmanlike manner, working

with Bosch to carry out the extensive renovation. Notwithstanding the misrepresentation and negligence verdicts, the facts in evidence do not support a conclusion that Ladd engaged in unfair or deceptive conduct.

CONCLUSION AND ORDER

For these reasons, I conclude that Bosch has not proven by a preponderance of the evidence that David Ladd or Ralph Ladd is liable under the New Hampshire CPA for unfair or deceptive acts or practices. Judgment shall enter in favor of the Ladds on these claims.

So ordered.



Christopher K. Barry-Smith
Justice of the Superior Court

DATE: August 23, 2024

Revised Statutes Annotated of the State of New Hampshire
Title XXXI. Trade and Commerce (Ch. 333 to 359-U) ([Refs & Annos](#))
Chapter 358-a. Regulation of Business Practices for Consumer Protection ([Refs & Annos](#))

This section has been updated. Click [here](#) for the updated version.

N.H. Rev. Stat. § 358-A:2

358-A:2 Acts Unlawful.

It shall be unlawful for any person to use any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce within this state. Such unfair method of competition or unfair or deceptive act or practice shall include, but is not limited to, the following:

- I. Passing off goods or services as those of another;
- II. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- III. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another;
- IV. Using deceptive representations or designations of geographic origin in connection with goods or services;
- V. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that such person does not have;
- VI. Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
- VII. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- VIII. Disparaging the goods, services, or business of another by false or misleading representation of fact;
- IX. Advertising goods or services with intent not to sell them as advertised;

358-A:2 Acts Unlawful., NH ST § 358-A:2

X. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

X-a. Failing to disclose the legal name, street address, and telephone number of the business under [RSA 361-B:2-a](#);

XI. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or

XII. Conducting or advertising a going out of business sale:

(a) Which lasts for more than 60 days;

(b) Within 2 years of a going out of business sale conducted by the same person at the same location or at a different location but dealing in similar merchandise;

(c) Which includes any goods, wares, or merchandise purchased or received 90 days prior to commencement of the sale or during the duration of the sale and which are not ordinarily sold in the seller's course of business;

(d) Which includes any goods, wares, or merchandise ordered for the purpose of selling or disposing of them at such sale and which are not ordinarily sold in the seller's course of business;

(e) Which includes any goods, wares, or merchandise consigned for the purpose of selling or disposing of them at such sale;

(f) Without conspicuously stating in any advertisement for any such sale, the date such sale is to commence or was commenced;

(g) Upon the conclusion of which, that business is continued under the same name or under a different name at the same location; or

(h) In a manner other than the name implies.

XIII. Selling gift certificates having a face value of \$100 or less to purchasers which contain expiration dates. Gift certificates having a face value in excess of \$100 shall expire when escheated to the state as abandoned property pursuant to RSA 471-C. Dormancy fees, latency fees, or any other administrative fees or service charges that have the effect of reducing the total amount for which the holder may redeem a gift certificate are prohibited. This paragraph shall not apply to season passes.

XIV. Pricing of goods or services in a manner that tends to create or maintain a monopoly, or otherwise harm competition.

358-A:2 Acts Unlawful., NH ST § 358-A:2

XV. Failure of a facility, as defined in [RSA 161-M:2](#), or person to comply with the provisions of RSA 161-M regarding the senior citizens bill of rights.

XVI. Failing to deliver home heating fuel in accordance with a prepaid contract.

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N.H. Rev. Stat. § 358-A:2, NH ST § 358-A:2

Current through Chapter 381 (End) of the 2024 Reg. Sess. Some statute sections may be more current, see credit for details.

End of Document

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MDSX SUP COURT 17- CV -00150

Bosch Third – Party Complaint against Ralph Ladd

Time for DML action logged to separate time entry account.

2017

OCT 3 – Review file and prepare outline for Deposition –	5.0
OCT 4- DEPO PREP – review docs, edit outline –	6.0
OCT 5 – DEPO, review notes, mark EXH,	2.0
OCT 6 – prepare Motion for Sanctions on account of Bosch non- appearance	1.2
OCT 7- prepare Motion – affidavit of Counsel –	4.7
OCT 16 – work on Motion on behalf of Ralph –	1.1
OCT 18 – edit Motion papers on behalf of Ralph --	.4
OCT 23 – edit Ralph Ladd DRAFT affidavit and follow up with client re same -	1.0
NOV 18 – meet with Ralph and Caroline Ladd re defending claims asserted by Bosch –	2.5
NOV 19 – work on Motion For Summary Judgment –	4.0
NOV 20 – review of Bosch Claims as directed against Ralph Ladd -	.9
NOV 20 – work on SJ Papers /RVL	12.4
NOV 21 – work on SJ Papers / RVL	10.6
NOV 28 – review email from op atty re Motion, follow up with op atty, follow up with client -	2.2
NOV 29 – prepare memo to client re DEPO Prep / talking points –	2.3

NOV 30 – work on Response to DEF Motion and edit proposed order —	3.6
DEC 3 – review & edit response to DEF Motion –	1.1
DEC 5 – work on response to Discovery Motion -	.8
DEC 8 – review file, DEPO Prep, organize notes to meet with client –	2.3
DEC 9 – meet with Ralph Ladd re DEPO Prep –	3.5
DEC 18 – meet with Ralph - attend DEPO / Ralph Ladd- memo to file re same	8.0

2018

JAN 3 – review law re SJ issues, prepare opposition to cross motion -	7.8
JAN 4 – review EXHS re SJ and work on opposition cross motion	8.3
JAN 5 – work on Motion To Compel	8.0
JAN 6 – meet with RVL / CML –	3.0
JAN 7 – work on opposition cross motion	4.2
JAN 8 – prepare 9A filings, organize desk notes, memo to file re status & action items	5.2
JAN 10 – work on review DEPO RVL	3.1
JAN 12 – work on errata Sheet and follow up with client —	7.4
JAN 15 – work on transcript review and follow up with client re errata Sheet-	2.7
JAN 16 – review case law cited by Bosch in re Rule 12 MTD, memo to file re same –	4.0
JAN 17 – review and prepare response to DEF Motion to dismiss RVL counterclaim	6.7
JAN 19 – work on review of reported decisions of concern to abuse of process, further review of emails exchanged prior to litigation and edit amended counterclaim to address ulterior motive as well as legally compensable damages	7.1
JAN 23 – work on review of case law re Abuse Of Process, edit Amended Answer And Counterclaim, follow up with op atty and memo to file re same —	5.8
JAN 25- Review Motion papers, prep for Hearing, attend Hearing –	2.5

JAN 26 – review Bosch opposition on Motion To Compel, assemble papers, prepare List of Documents, Notice Of Filing, transmittal Letter re 9A package for Clerk, follow up with Ralph and Caroline re status report - 1.6

FEB 13 – review renewed Motion To Dismiss and prepare opposition to same – 4.3

FEB 13 – email to Haverty re Open Discovery – 1.3

FEB 16 – follow up email to op atty re impasse in discovery .8

FEB 16 – confer with Rockland Trust - .5

FEB 16 – confer w Caroline & follow up email re same - .2

FEB 18 – prepare DRAFT – Motion Quash / Terminate DEPOS – 8.2

FEB 22 – conf w op atty - .4

FEB 22 – work on Motion to Quash 1.9

FEB 23 – review and respond to emails from Haverty of concern to Bosch pressing against Ralph – 2.8

FEB 25 – work on outline of Talking Points Re Op Atty request for another 9C seeking to require Ralph Ladd to submit to 2nd Day Of DEPO, respond to bogus allegation of False Testimony by Ralph of concern to NH project, seek explanation as to why Ralph is being sued for hundreds of thousands of dollars, support Motion to protect Ralph from further abusive conduct – 8.0

FEB 26 – work on memo to respond to op atty in re Errata Sheet – 3.0

FEB 27 prepare memo to file, email to op atty re Demand To Depose Ralph 2nd time, objection to same and follow up w clients – 4.0

MAR 10 -review of opposition on Motion to Quash and Terminate Depositions together with Cross Motions and related EXHS, memo to file re outline on same – 3.4

MAR 13 – work on Affidavits in Opposition to Bosch Demand for further discovery from Ralph Ladd and Ralph Ladd financial date - 14.7

MAR 15 – work on opposition to compel further Deposition Testimony – 3.2

MAR 17 – meet with client, review Ralph Ladd Errata Sheet, discussions with client re statement of reasons for revisions, follow up re same 4.0

MAR 26- file review / hearing pending-prep outline -	2.6
APR 13 – Rule 9C conference, memo to file re same --	.7
APR 21- work on review of Ralph Ladd Transcript, memo to file re same	2.4
APR 23—work on review of EXHS ---	2.7
MAY 5—prep for meeting, meet w Caroline and Ralph re Bank Records, memo to file re same -	2.0
MAY 16 – Hearing in MDSX on Motion To Quash Bank Subpoena directed to Rockland Trust -	2.5
MAY 17 – call from Giordano re scheduling -	.2
MAY 18 – follow up with Rockland Trust re renewed Subpoena from Bosch -	.2
MAY 18- follow up with client re defending 3 rd Party Claim --	.8
MAY 18 – conference and memo to file re same --	.3
MAY 18- follow up with Ralph	.1
MAY 18 – review of records requested and follow up re same -	.3
MAY 22- Review email from Ralph re Discovery and follow up re same -	.1
JUN 5 – discovery conference with counsel concerning demand for production of any and all bank records of Ralph Ladd, memo to file re same -	.3
JUN 5 – follow up email from Giordano re Keeper of Records for Ralph Ladd’s Banker- Rockland Trust, reply to same -	.4
JUN 6 – work on Motion to Quash Bank Subpoena directed to Rockland Trust seeking any and all bank records of Ralph Ladd in 2016 –	7.3
JUN 7 – review and edit Motion To Quash and prepare same for service upon Giordano --	.8
JUN 13 – prepare for Deposition of Alina Bosch on behalf of Ralph Ladd, work on review of documents produced by Bosch in support of Counterclaims, review of Structural Engineering Reports together with statements of Bosch’s completing contractor (Copia), activity by Peniel that Bosch wants to charge to Ralph Ladd, billings from Anollette Builders against Ralph Ladd, Einstein Plumbing records contending negligent performance by Ralph Ladd , work on outline for examination points-	8.4
JUN 15- work on DEPO outline, review and edit, further review of Bosch Production ---	4.2

JUN 20 – Bosch DEPO HBMH FRM	9.0
JUN 20 – review of Emergency Motions and Request for short Order of Notice demanding Records from Rockland and Ralph Ladd, follow up with client re same	.8
JUN 21- prepare opposition to Emergency Motion -	5.2
JUN 22- prepare Subpoenas to Copia and Peniel...	2.8
JUN 25 - work on Outline re Discovery Requests/ Document Production Items directed to Copia/Peniel	1.9
JUN 25 - Confer with Caroline Ladd re documents requested of Ralph Ladd1
JUN 26 - trip to MDSX Clerk of Court/confer with Clerk re filing of Opposition on behalf of Ralph Ladd to Bosch's Emergency Motion to Compel as scheduled for JUL 2 by Judge Leibensperger. file opposition papers and serve op atty --	1.8
JUN 26 - confer with Process server for DEPO Subpoenas on behalf of Ralph Ladd to be served upon Peniel / Copia - review instructions due to concern that Deponent may attempt to avoid service and confirming email re same4
JUN 27 - review email from Caroline Ladd re Bank of America records of Ralph Ladd as concern Bosch NH Project	1.2
JUN 28 – prepare discovery on behalf of Ralph Ladd, follow up Interrogatories to BOSCH, follow up Request For Production to Bosch, Request for Entry on to Land	7.8
JUN 29 – review Motion papers and related Affidavits submitted on behalf of Bosch seeking to compel Ralph Ladd to turn over all banking Records in 2016 from Rockland Trust, work on outline re same and prep for Hearing	3.6
JUL 2 – attend hearing in MDSX Superior Court Re Bosch Emergency Motion seeking to compel Production of Ralph Ladd’s 2016 Rockland Trust Bank Records together with further documents in Response to Bosch’s Claims	3.0
JUL 2 –Confer with Caroline Ladd re Court Hearing and plans for moving forward with Defense of Ralph Ladd	.9

JUL 3 – follow up with Op atty in Re Court Order Compelling Production—10 emails with 15 attachments / 300 pages of materials in supplemental production in response to Bosch Claim	6.7
JUL 4—review transmittals of JUL 3 for purposes of confirming completeness	1.6
JUL 4 – prepare follow up email to op atty re located 2 additional pages / forward same ---	.3
JUL 4 – prepare follow up email to Counsel for Bosch for purposes of cataloguing JUL 3 delivery, confirming all responsive files have now been produced and illustrating Bosch is wrongfully withholding records of significance to defending claims as were asserted against Ralph Ladd	.8
JUL 4 – email re status/ view AUG 23 --	.1
SEPT 2 – review pleadings	.6
SEPT 4 –review docket	.4
SEPT 4 – review court orders on discovery, extensions and orders to compel	.6
SEPT 4 – prepare memo to file re excerpts from docket for purposes of preparing motion for sanctions	.8
SEPT 5 – review Bosch DEPO Transcript	1.8
SEPT 6 – work on DRAFT Motion for Sanctions	4.3
OCT 21-edit motion for sanctions	2.7
OCT 21- review law-	2.2
NOV 16 – review and edit motion for sanctions	2.4
DEC 20- work on MIL – review and edit	4.2
DEC 20 – review of case law re damage issues and memo to file re same	1.4
DEC 30 – review and edit MIL	3.7

2019-2021 Time To be Processed – Not Included in Totals – Pending TBD Professional Courtesy

01/28/2019 Defendant, Plaintiff in a Counterclaim, Plaintiff in a 3rd Party Claim Alina Bosch's Assented to Motion to continue / reschedule an event 01/29/2019 02:00 PM

01/29/2019 Event Result:: Hearing: Strike scheduled on: 01/29/2019 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. Helene

01/29/2019 Endorsement on Motion to Continue January 29, 2019 Hearing (#77.0): ALLOWED (Dated: 1-28-19) notice sent 1/29/19 Judge: Kazanjian, Hon. Helene

01/30/2019 The following form was generated: Notice to Appear Sent On: 01/30/2019 15:59:32

01/30/2019 The following form was generated: Notice to Appear Sent On: 01/30/2019 16:14:18

01/11/2019 Attorney appearance On this date Russell Haverty, Esq. dismissed/withdrawn as Private Counsel for Other interested party Copia Real Estate, Inc

01/11/2019 Attorney appearance On this date Russell Haverty, Esq. dismissed/withdrawn for Defendant Alina Bosch

04/25/2019 Event Result:: Hearing: Strike scheduled on: 04/29/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Christopher

04/25/2019 The following form was generated: Notice to Appear Sent On: 04/25/2019 12:05:18

05/13/2019 The following form was generated: Notice to Appear Sent On: 05/13/2019 13:20:58

05/17/2019 Defendant Alina Bosch's Joint Motion to amend tracking order, filed in court

05/17/2019 Matter taken under advisement: Hearing: Strike scheduled on: 05/17/2019 02:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith

05/17/2019 Defendant Alina Bosch's Joint Motion to amend tracking order, filed in court

05/17/2019 Matter taken under advisement: Hearing: Strike scheduled on: 05/17/2019 02:00 PM Has been: Held - Under advisement Hon. Christopher K Barry-Smith

05/20/2019 Endorsement on Motion to amend the Tracking Order (#78.0): ALLOWED New dates at (a) - (f) on pp. 1 & 2 are adopted. (Dated: 5/17/19) notice sent 5/20/19

05/20/2019 Endorsement on Motion of Third Party Defendant Ralph V. Ladd to Strike Objections to Production of Business Records and to Compel Production of Documents Motion allowed in part and denied in part. See Order P#79. (Dated: 5/17/19) notice sent 5/20/19 Judge: Barry-Smith, Hon. Christopher K

05/20/2019 Endorsement on Motion of Third-Party Defendant Ralph V. Ladd Seeing to Have Objections to Production of Business Records Over-Ruled and to Compel Production of Documents Barry-Smith, Hon. Christopher K

05/20/2019 Endorsement on Motion of Third-Party Defendant Ralph Ladd to Strike Objections to Interrogatories Served Upon Third-Party Plaintiff and Compel Good Faith Responses sent 5/20/19 Judge: Barry-Smith, Hon. Christopher K

05/20/2019 Endorsement on Motion of Plaintiff David M. Ladd DBA Ladd Property Development Seeking to Strike Discovery Objections and Compel Further Responses sent 5/20/19 Judge: Barry-Smith, Hon. Christopher K

05/20/2019 Endorsement on Motion of Third-Party Defendant Ralph V Ladd Doing Business as Ladd Plumbing and heating's for Protective Order Together with Assessor's Subpoenas and October 2, 2018 Of Judge Sullivan Denying Plaintiff-in-Counterclaim's Emergency Motion to Compel Substantially Similar Scope of Record Production action taken Motion allowed insofar as the scope of any subpoenas and motion to sanctions is denied. See Order. (Dated: 5/17/19) notice sent 5/20/19

07/20/2019 ORDER: On Motions Numbered 71, 72, 73, 74 and 76 Pleading No. 71 is allowed as to Request Nos. 12, 15, 17, 20, 21, and 23. The motion is allowed and otherwise denied. Pleading No. 72 is denied. Pleading No. 73 is allowed as to Interrogatories 3 and 11, where Ms. Bosch must provide a narrative answer incorporated in these answers, if she would like to rely on Rule 33(c). The motion is otherwise denied. Pleading No. 74 is denied. Pleading No. 76 is allowed project that is the subject of this litigation and not any other projects or operations of the plaintiff. Plaintiff's motion for sanctions (Pleading No. 76) is denied.

07/05/2019 Defendant Alina Bosch's Motion for Leave to Extend Time to File Opposition and Cross-Motion Late

12/12/2019 Endorsement on Motion to (#80.0): Extend Time to File Opposition and Cross-Motion Late ALLOWED Rule 9A is designed to avoid these extension motions 12/19/19 to respond to Ladd motion. (Dated: 12/12/19) notice sent 12/12/19 Judge: Barry-Smith, Hon. Christopher K

12/12/2019 Attorney appearance On this date Sophia E Kyziridis, Esq. added as Private Counsel for Defendant Alina Bosch

01/21/2020 Defendant Ralph V Ladd Doing Business as Ladd Plumbing and heating's Motion in Requesting Issuance of Sanctions Against Third-Party Plaintiff, Alina Bosch

01/21/2020 Opposition to Motion Requesting Issuance of Sanctions and other Appropriate Relief for Unexcused and Extended Non-Compliance with prior Discovery

01/21/2020 Defendant Alina Bosch's Cross Motion for Extension of Discovery Deadlines and to Amend Tracking Order

01/21/2020 Opposition to Cross-Motion Seeking Extension of Discovery Deadlines and to Amend Tracking Order filed by Ralph V Ladd Doing Business as Ladd Plumbing and heating

01/21/2020 Certificate of Compliance Superior Court Rule 9C Applies To: Sullivan, Esq., Patrick J (Attorney) on behalf of Ralph V Ladd Doing Business as Ladd Plumbing and heating

01/27/2020 The following form was generated: Notice to Appear Sent On: 01/27/2020 12:18:39

02/06/2020 Reply/Sur-reply Defendant Bosch's reply memorandum to the opposition of third-party defendant, Ralph V. Ladd to cross-motion of third-party defendant, Alina Bosch

03/04/2020 The following form was generated: Notice to Appear Sent On: 03/04/2020 14:45:47

03/04/2020 Event Result:: Motion Hearing scheduled on: 03/04/2020 02:00 PM Has been: Held as Scheduled Hon. Helene Kazanjian, Presiding Staff: Helene Kazanjian

03/11/2020 ORDER: SCHEDULING ORDER: (which see 1 page) Helene Kazanjian Associate Justice, Superior Court Dated: 3/4/20 Entered and copied

09/28/2020 Event Result:: Rule 56 Hearing scheduled on: 10/14/2020 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date

10/14/2020 Matter taken under advisement: Rule 56 Hearing scheduled on: 10/14/2020 02:30 PM Has been: Held - Under advisement Hon. Helene Kazanjian

10/15/2020 Endorsement on Motion for summary judgment, MRCP 56 (#15.0): on Behalf of Plaintiff David M. Ladd and Third-Party Defendant Ralph V. Ladd Doing Business as Ladd Plumbing and heating dispute. This is underscored by plaintiffs' and third party defendants' own memorandum filed in support of this motion. (Dated: 10-15-20) no

- 10/15/2020 Endorsement on Motion of Defendant Alina Bosch For Partial Summary Judgment as to Liability Alone on Counts I and II (Breach of Contract) summary judgment on Counts I and II is DENIED. There remain genuine issues of material fact as to whether the defendant breached the contract.
- 02/08/2021 The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 02/08/2021 09:17:27 Notice Sent To: Patrick J. Giordano & Company, P.C. 47 Winter St Suite 800, Boston, MA 02108 Notice Sent To: Sophia E Kyziridis, Esq. Reed and Giordano, P.A. 47 Winter St Suite 800, Brighton, MA 02135 Notice Sent To: Philip Matthew Giordano, Esq. Giordano & Company, P.C. 47 Winter St Suite 800, Boston, MA 02108
- 03/19/2021 Conference Memorandum Joint pre-trial memorandum Applies To: David Ladd Doing Business as Ladd Property Development (Plaintiff); B...
- 03/24/2021 Party status: Other interested party Ladd, William: Inactive;
- 03/24/2021 Party status: Other interested party Copia Real Estate, Inc: Inactive;
- 03/24/2021 Event Result:: Final Pre-Trial Conference scheduled on: 03/24/2021 03:15 PM Has been: Held as Scheduled Hon. Helene Kazanjian, Presi...
- 03/24/2021 Scheduled: Event: Jury Trial Date: 06/21/2021 Time: 09:00 AM Result: Rescheduled
- 03/25/2021 The following form was generated: Notice to Appear for Trial Sent On: 03/25/2021 08:30:19 Notice Sent To: Patrick J Sullivan, Esq. Attorney at Law P.C. 47 Winter St Suite 800, Boston, MA 02108 Notice Sent To: Sophia E Kyziridis, Esq. Reed and Giordano, P.A. 47 Winter St Suite 800, Boston, MA 02135 Sent To: William Ladd No addresses available
- 04/14/2021 Attorney appearance On this date Sophia E Kyziridis, Esq. dismissed/withdrawn as Private Counsel for Defendant Alina Bosch
- 04/14/2021 Defendant Alina Bosch, Ralph V Ladd Doing Business as Ladd Plumbing and heating's Notice of Withdrawal
- 05/20/2021 Attorney appearance electronically filed.
- 05/20/2021 Attorney appearance On this date Thomas A Bockhorst, Esq. added as Private Counsel for Defendant Alina Bosch
- 05/21/2021 Defendant, Plaintiff in a Counterclaim, Plaintiff in a 3rd Party Claim Alina Bosch's Motion to Continue Trial and Related Dates
- 05/21/2021 Certificate of Compliance Superior Court Rule 9C Applies To: Giordano, Esq., Philip Matthew (Attorney) on behalf of Bosch, Alina (Defendant)
- 05/28/2021 Event Result:: Jury Trial scheduled on: 06/21/2021 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon...
- 05/28/2021 Event Result:: Final Trial Conference scheduled on: 06/16/2021 02:30 PM Has been: Rescheduled For the following reason: Request of De...
- 05/28/2021 Endorsement on Motion to continue trial and related dates (#89.0): ALLOWED and June 21 2021 trial is cancelled. Clerk will schedule trial a...
- 05/28/2021 The following form was generated: Notice to Appear Sent On: 05/28/2021 09:47:09 Notice Sent To: Patrick J Sullivan, Esq. Attorney at Law P.C. 47 Winter St Suite 800, Boston, MA 02108 Notice Sent To: Thomas A Bockhorst, Esq. Giordano and Company, P.C. 47 Winter St Suite 800, Boston, MA 02108 Notice Sent To: Philip Matthew Giordano, Esq. Giordano and Company, P.C. 47 Winter St Suite 800, Boston, MA 02108 Notice Sent To: William Ladd No addresses available
- 06/24/2021 Event Result:: Trial Assignment Conference scheduled on: 06/24/2021 02:45 PM Has been: Held as Scheduled Hon. Christopher K Barry-S...
- 06/25/2021 Scheduled: Event: Jury Trial Date: 02/08/2022 Time: 09:00 AM Result: Rescheduled-Covid-19 emergency

2022

JAN 3 – review and edit MIL, prep for service on op atty	2.8
JAN 4 – memo to client re status and trial prep	.5
JAN 4 – follow up w C Bamberg	.4
JAN 5 e-mail from DML and follow up re same	.1

JAN 5 confer with CML re trial prep / related concerns	.7
JAN 8 – review MIL served by AB	1.0
JAN 8 – prepare draft outline MIL reply	3.0
JAN 11 – confer w CML / RVL	1.0
JAN 11 – confer w CEB	.5
JAN 12 – receipt and review of five more MIL	2.3
JAN 13 – work on opposition to five new MIL	5.6
JAN 13 – confer with CML	.8
JAN 13 – confer with DML	.2
JAN 14 – review of law cited by op atty	3.6
JAN 14 – work on op to MIL	4.7
JAN 18 – review opposition to DML MIL	4.0
JAN 18 – follow up w filing MIL PKG w Court	1.2
JAN 20 – prepare memo re talking points for JAN 25 hearing	6.8
JAN 21 – further review of 16 MIL and edit memo to file re talking points	5.9
JAN 22 – review POD	4.7
JAN 22 – review POD by AB	6.1
JAN 23 – Work on outline for MIL hearing	4.3
JAN 24 – follow up with CML	.5
JAN 24 – review of EXHS to various motions file by AB	3.4
JAN 24 – review of deposition transcripts	4.2
JAN 25 – prepare for hearing / MIL review	4.0
JAN 25 – conference with MDSX CT	.2
JAN 25 – e-mail to client re status	.3

JAN 26-MAR 8, 2022

MOTIONS LIMINE EXPUNGE – To Be Processed

MAR 9 – review opposition, Cross-motion, affidavit and Exhibits Filed on behalf of Bosch re expunge	.8
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MAR 9 – prepare opposition to cross-motion	.2
MAR 9 – prepare 9A package, Notice of filing, list of documents and certificate of service	.4
MAR 9 – follow up with e-filing	.4
MAY 11- review docket and motion / prep for hearing	3.0
MAY 12 – organize notes and prepare taking points	1.7
MAY 12 – hearing in MDSX CT	2.5
AUG 19 - e-mail from op atty with 2 more MIL -----	.5
AUG 22 -draft reply to 2 new MIL	2.8
AUG 22 – follow up with clients	.1
AUG 26 – review, edit, finalize and serve opposition to 2 new MIL	1.0
SEPT 2 – review legal issues / reported decisions	2.8
SEPT 3 – review case law cited by op atty -multiple states	4.6
SEPT 4 – work on draft jury instructions	5.7
SEPT 5 – review caselaw cited by op atty / multiple states	3.4
SEPT 6 – further review case law cited by Bosch	4.1
SEPT 7 -confer w CML	.3
SEPT 7 – draft motion continue	2.2
SEPT 8 – confer w CML	.3
SEPT 8 – finalize motion	.8
SEPT 10 – confer w CML	.3
SEPT 10 – work on jury instructions	3.1
SEPT 11 – review MIL	2.4
SEPT 12 – confer w CML	.3
SEPT 12 – DRAFT reply memo for RVL re MTC	2.0
SEPT 13 – e-mails w clerk of court	.2
SEPT 13 – hearing MDSX SUP CT	2.0
SEPT 13 – confer w CML	.3
SEPT 13 – confer w DML	.2
OCT 26 – meet with Attorney Slaughter re RVL	2.5
OCT 26 – confer with CML re status	.5

OCT 27 – review file and follow up with SS re various deliverables as discussed	1.5
NOV 28 – e-mail exchange with op atty remotion to permit remote testimony	.5
DEC 3 -prepare opposition to motion to seek admission of remote testimony	3.0
DEC 4 – work on op SJ	2.7
DEC 5 – review and edit SJ papers	3.2
DEC 6 - - work on SJ memo of law	3.8
DEC 7 – work on SJ statement facts	3.6
DEC 16 -m review file re designate trial exhibits	6.7
DEC 17 – prepare outline direct testimony RVL	4.6
DEC 18 – prepare outline direct testimony DML	3.8
DEC 18 – review admits from RVL to AB	1.8
DEC 21 – meet w clients re trial prep	4.0
DEC 21 – review file re Trial EXHS	4.0
DEC 27 – review POD / Discovery re Trial prep	8.2
DEC 28 – work on review of Trial EXHS	7.8
DEC 29 – review Trial EXHS and memo to file re same	.4
DEC 30 – work on review MIL ---	3.7
DEC 30 – confer w DML and memo to file re same	6.1
DEC 30 – confer with CML and memo to file re same	.7
DEC 31- confer with DML ---	.3
DEC 31 – review Trial EXHS	1.8
DEC 31- e-mail to PMG ---	.4

2023

JAN 2- review POD archives	4.2
JAN 3 – review Bosch DEPO transcript	3.4
JAN 4 – review Giordano opposition and e-file motion	.3
JAN 4- meet with RVL / CML in Andover at SS office	5.0

JAN 5 – APR 30, 2023 - To Be Processed

TRIAL - MAY 2023

PJS - 132 HOURS MAY 2023 Trial Phase - \$350 /hour = \$46,200

TOTALS AS OF MAY 28, 2023 - \$232,715

Avg - 3 weeks per year~ - for 6+ years

2017 = \$19,005

2018 = \$87,115

2019 ----- To Be Processed

2020 ----- To Be Processed

2021 ----- To Be Processed

2022 = \$68,565

2023 = \$50,715

Total Paid to Shannon Slaughter By PJS As of May 28, 2023

MAR 7 - \$4,960

APR 14 -- \$1,365

MAY 28 - \$15,000

TOTAL = \$21,325

Payments received by PJS from RVL as of May 28, 2023 = \$96,895

\$232,715 - \$96,895 = \$135,820 + \$21,325 = \$157,145 OPEN - As of May 28, 2023

ABUSE OF PROCESS DAMAGES = 250K +

REMAINDER ESTIMATED PJS / SS --- MAY 28, 2023 FORWARD TBD

+ MISC COSTS \$2,500 + COPLEY REPORTING, STAPLES, COPYING, POSTAGE, SUPPLIES