

COMMONWEALTH OF MASSACHUSETTS
THE SUPREME JUDICIAL COURT

WORCESTER, ss

No. DAR-30086

FUSS & O'NEILL, INC.

v.

SEAN MORRISON & others

On Appeal from an Order of the Worcester Superior Court
(Trial Court Docket No. 2085CV00491)

APPLICATION FOR DIRECT APPELLATE REVIEW

Submitted by the Appellant, Sean Morrison

Dated: May 6, 2025

Respectfully Submitted
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REQUEST FOR DIRECT APPELLATE REVIEW

The appellant, Sean Morrison, applies to the Supreme Judicial Court for direct appellate review. This appeal—filed under the doctrine of present execution—challenges whether the trial court properly disqualified Morrison’s trial lawyer on conflict-of-interest grounds in the context of competing derivative claims asserted by and between the two sole individual members of a limited liability company. A copy of the trial court’s disqualification order is included in the addendum to this application. [A:61-71].¹

¹ Citations in the form “[A: ____]” refer to the addendum to this application which, by rule, includes a copy of the trial court’s docket entries and a copy of the trial court’s order disqualifying Morrison’s attorney.

STATEMENT OF PRIOR PROCEEDINGS

Although the actual procedural history in this case is somewhat complex, Morrison offers the following simplified recitation of the events as relevant to the instant appeal. Additional procedural details are addressed in the statement of facts, *infra*.

In 2020, the original plaintiff in this case, Fuss & O'Neill, Inc., filed a complaint alleging various claims against three defendants arising out of a contract. The three original defendants were the co-appellant Cannaburg Cultivation Cooperative, LLC ("Cannaburg"), one of Cannaburg's two members (Robert Bujold), and 310 Broad Street II, LLC ("310 Broad Street"). Morrison was *not* an original party.

Collectively, the three original defendants filed an answer prepared by Attorney Christopher Ray and, thereafter, Attorney Ray was listed as counsel of record for Bujold, 310 Broad Street, *and Cannaburg*. In their answer, Bujold, 310 Broad Street, and Cannaburg impleaded Morrison (Cannaburg's other member). The claims against Morrison included

direct claims as well as a derivative claim asserted on behalf of Cannaburg.²

Morrison then filed crossclaims against Bujold and 310 Broad Street which also included direct claims and derivative claims asserted on behalf of Cannaburg. Morrison’s crossclaims—including the derivative claim asserted on behalf of Cannaburg against Bujold—were filed together in a pleading signed by Morrison’s attorney, Katherine Bierwas, in November of 2020.

All of the claims involving the original plaintiff, Fuss & O’Neill, were resolved prior to trial and were dismissed in June of 2022. Thus, the only claims still pending at the time of the disqualification order were the direct claims by and between Bujold, 310 Broad Street, and Morrison, and the competing derivative claims Bujold and Morrison each asserted against the other on behalf of Cannaburg.

² Although none of the claims against Morrison were expressly designated as derivative in the pleadings, the trial-court judge expressly noted in the disqualification order underlying this appeal that the “claim of breach of fiduciary duty against Morrison based on Morrison’s duty to Cannaburg . . . is . . . derivative” for purposes of the disqualification order. [A:67(n. 3)].

The litigation proceeded in the usual manner for nearly two more years until February of 2024 when Attorney Ray withdrew his appearance for Bujold, 310 Broad Street, *and Cannaburg*. Thereafter, a team of lawyers from the firm Kenney & Sams, P.C. entered their appearances on behalf of Bujold and 310 Broad Street, but *not Cannaburg*. At some point, Attorney Bierwas became identified on the trial court docket as Cannaburg’s attorney of record.³

Shortly after filing their appearances—and days before the start of trial—the Kenney & Sams team filed an emergency motion on behalf of their clients to disqualify Attorney Bierwas; claiming her dual roles as Morrison’s lawyer and “corporate litigation counsel” for Cannaburg created an impermissible conflict of interest. The allegation that

³ Indeed, the trial court record reflects significant uncertainty or confusion as to who represented Cannaburg in connection with the competing derivative claims. Initially, Attorney Ray was listed as Cannaburg’s counsel of record because he had answered Fuss & O’Neill’s complaint with respect to the direct claims against Cannaburg. The motion judge would later observe that “[f]ollowing Attorney Ray’s withdrawal, Bierwas, who represented Morrison, began representing Cannaburg”. [A:62(n. 1)]. But by the time of Attorney Ray’s withdrawal, the only open claims involving Cannaburg were derivative claims and, from that point forward, Cannaburg was only a nominal party in this case. *See*, pp. 27-32, *infra*.

Attorney Bierwas was “corporate litigation counsel” for Cannaburg was not clearly explained (or supported) in the emergency motion or subsequent papers filed, but it appears that Attorney Bierwas’s alleged role as “corporate litigation counsel” for Cannaburg arose from the derivative claims she filed in connection with her representation of Morrison, coupled with Attorney Ray’s withdrawal as Cannaburg’s original counsel of record.

The motion to disqualify Attorney Bierwas was addressed at two hearings, held on May 23, 2024 and June 26, 2024. The court (Yarashus, J.) rendered a decision disqualifying Attorney Bierwas on conflict-of-interest grounds on July 19, 2024. Morrison and Cannaburg filed a notice of appeal under the doctrine of present execution on August 15, 2024. Proceedings in the trial court were subsequently stayed pending the outcome of this appeal.

This appeal was entered in the Appeals Court on October 8, 2024. In light of the disqualification order below—and out of an abundance of caution—both Morrison and Cannaburg are being represented by independent counsel for purposes of this appeal.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

The Cannaburg Venture

Bujold formed Cannaburg as a single member LLC in 2018 with the objective of, inter alia, developing a lawful cannabis-related business in Fitchburg. In 2019, Bujold agreed to give Morrison a fifty-percent interest in Cannaburg (plus other consideration including a fifty-percent partnership interest in Bujold's real property at 310 Broad Street in Fitchburg) in exchange for consideration of \$100,000. Initially, after Morrison joined Cannaburg, Bujold remained in control of the entity as its managing member.⁴

Cannaburg's principal place of business is located at the 310 Broad Street property. In 2019, Bujold and Morrison, on behalf of Cannaburg, contacted Fuss & O'Neill—an architectural and engineering firm—seeking a proposal to convert the 310 Broad Street property into a

⁴ There is some indication in the record that Bujold and Morrison may have both been exercising various management rights and duties simultaneously for a time during 2019 and 2020. Bujold's lawyers would nevertheless acknowledge during one of the hearings on the disqualification motion that Morrison did not control Cannaburg when the parties filed their pleadings against one another in 2020.

cannabis cultivation facility. Bujold later authorized Fuss & O'Neill by email to begin the design work necessary for the conversion. The following day, Morrison executed a contract with Fuss & O'Neill on behalf of Cannaburg and paid Fuss & O'Neill a deposit toward the cost of the work. Fuss & O'Neill alleged that it performed the requested work in late 2019, but that Cannaburg breached its contractual obligations by failing to pay for the work. This led Fuss & O'Neill to initiate the instant suit.

The relationship between Bujold and Morrison eventually soured and, as discussed below, each of the two men allege that the other has breached various obligations and duties to each other and to the Cannaburg enterprise.

*Litigation Begins, the Parties
Appear, and Morrison Takes
Control of Cannaburg*

Fuss & O'Neill's amended complaint (filed before any responsive pleadings were served) asserted claims against Cannaburg, Bujold, and 310 Broad Street but not Morrison. At that time, Bujold was still in control of both Cannaburg and 310 Broad Street. Bujold hired Attorney Christopher Ray to represent himself as well as the two entities he controlled (Cannaburg and 310 Broad Street), and Attorney Ray

answered Fuss & O'Neill's complaint on the collective behalf of his three clients.

In addition to answering Fuss & O'Neill's claims, Attorney Ray also asserted various third-party claims against Morrison on his three clients' behalf. Among these third-party claims, Count V of the third-party complaint alleged that Morrison breached fiduciary duties to Cannaburg. Count V (and the factual allegations incorporated therein) generally alleged that Morrison was engaging in business activity in competition with Cannaburg, and was using equipment allegedly belonging to Cannaburg. Although the claim generally alleged that Morrison began operating a business in direct competition with Cannaburg, and that he was applying for a license in furtherance of that alleged endeavor, no specific details were offered. Morrison denies all of the allegations related to the breach of fiduciary duty claim alleged by Bujold in Count V.

The scope and legal nature of Count V—particularly, whether it constituted a direct claim against Morrison by Cannaburg, or a derivative claim by Bujold for the benefit of Cannaburg—would become a matter of some dispute as the litigation progressed. In his pleading, Bujold did not characterize his claim that Morrison breached fiduciary duties to

Cannaburg as a derivative claim. Indeed, Bujold would later expressly argue that his claims were *direct* claims by Cannaburg against Morrison.⁵ In support of this position, Bujold argued that he was Cannaburg's manager when the operative pleading was filed and, therefore, he was empowered to assert direct claims by Cannaburg against Morrison at that particular time. Morrison characterized Count V as derivative notwithstanding Bujold's failure and refusal to label it as such. The judge ultimately agreed with Morrison and characterized Count V as derivative. [A:67(n. 3)]. But regardless of the various characterizations, there can be no dispute that the allegations underlying Count V were made by *Bujold* through the lawyer *he hired*: Attorney Ray.

In response to Bujold's pleading filed by Attorney Ray, Morrison appeared, represented by Attorney Katherine Bierwas. Attorney Bierwas answered the third-party claims on behalf of Morrison and asserted various third-party counterclaims on his behalf. Among Morrison's third-party counterclaims was a derivative claim, asserted by Morrison on

⁵ Nevertheless, in his original disqualification motion, Bujold acknowledged that Cannaburg was pursuing direct *and* derivative claims against Morrison.

behalf of Cannaburg, alleging that Bujold breached *his* fiduciary duties to Cannaburg in multiple expressly-enumerated ways.⁶ Thus, once Morrison appeared in this case and filed his responsive pleading, both members of Cannaburg (representing one hundred percent of the ownership interest in the company) had alleged that each had breached their respective fiduciary duties to the other and to the enterprise.

Shortly after filing his answer and counterclaims, Morrison also moved for a preliminary injunction seeking, among other things, an order giving Morrison control of Cannaburg during the pendency of the litigation.⁷ In response to Morrison's preliminary injunction motion, Bujold and Morrison executed a "Standstill Agreement" on December 3, 2020 (filed with the court on December 14, 2020), undisputedly giving Morrison control of Cannaburg. Specifically, Bujold agreed that he would not hold himself out as an agent of Cannaburg, and that he would not

⁶ Unlike Bujold, Morrison expressly characterized his claim that Bujold breached fiduciary duties to Cannaburg as a derivative claim, and he specifically alleged that his claim was filed in full compliance with the law governing derivative claims.

⁷ Morrison also sought this particular form of injunctive relief in his pleading.

take any actions or make any decisions for Cannaburg without Morrison's express permission.

Bujold signed the Standstill Agreement in his individual capacity and in his capacity as member-manager of 310 Broad Street. Morrison signed the Standstill Agreement in his individual capacity and as member-manager of Cannaburg. Both Attorney Ray and Attorney Bierwas also signed the Standstill Agreement, although the respective capacities in which they each signed it were not otherwise specified. Thereafter, even though Bujold was no longer authorized to act on Cannaburg's behalf, his lawyer, Attorney Ray, continued to do so without authorization, and Ray also remained Cannaburg's as attorney of record per the docket in this case until March of 2024; more than *three years* after Morrison took control of Cannaburg pursuant to the Standstill Agreement.

*Cannaburg's Ongoing Role
After Fuss & O'Neill Settles*

Setting aside for the moment Bujold's claim that Morrison breached his fiduciary duties to Cannaburg, the only undisputedly direct claims

involving Cannaburg were Fuss & O'Neill's contract-based claims.⁸ Without authorization to do so on Cannaburg's behalf, Attorney Ray actively worked to settle those claims in May 2022. Fuss & O'Neill's claims were then dismissed by a Stipulation of Voluntary Dismissal filed on June 10, 2022. Even though Morrison had assumed control of Cannaburg a year-and-a-half earlier (via the Standstill Agreement), only *Bujold's* lawyer, Attorney Ray, signed the stipulation on behalf of Cannaburg. Thus, as of June 2022, Bujold's lawyer was still purporting to act on behalf of Cannaburg in this case despite the fact that both Bujold and Ray signed the Standstill Agreement.⁹

That said, there are indications in the record that lawyers aligned with Morrison were also purporting to represent Cannaburg in the case at or about that time. On or about June 7, 2022—three days before Fuss

⁸ As noted above, Bujold characterized his claim that Morrison breached his fiduciary duties to Cannaburg as direct, while Morrison and the motion judge characterized it as derivative.

⁹ Relatedly, in November of 2022, another lawyer, apparently hired by Bujold, filed a separate lawsuit against Fuss & O'Neill, purportedly on behalf of Bujold, 310 Broad Street *and Cannaburg*. Morrison was not a party to this suit, even though it was filed almost two years after Morrison took control of Cannaburg under the Standstill Agreement. Although part of a separate lawsuit, these procedural facts are established in the record of the instant appeal.

& O'Neill's claims were dismissed—Attorney Megan Sheehan filed an appearance in the case on behalf of both Morrison and Cannaburg.¹⁰ Additionally, Attorney Bierwas filed papers on behalf of Morrison and Cannaburg jointly at various times after the December 2020 Standstill Agreement. Nevertheless, Attorney Ray signed the June 2022 stipulation of dismissal on Cannaburg's behalf without obtaining signatures of either Attorney Bierwas or Attorney Sheehan, and there was no certificate confirming that Morrison, Bierwas, or Sheehan were even served with the stipulation. And Ray did so despite the fact that his client, Bujold, was no longer authorized to act on Cannaburg's behalf pursuant to the Standstill Agreement.

With Fuss & O'Neill's direct claims against Cannaburg dismissed, the record is murky as to what role, if any, Cannaburg continued to have in this case beyond simply being the subject of the ongoing disputes between its two individual members: Bujold and Morrison. It is clear, however, that the uncertain nature of Cannaburg's ongoing role in the

¹⁰ Attorney Sheehan would eventually withdraw her appearance for Morrison and Cannaburg in September of 2024.

case did not become a problem until Bujold hired a new legal team on the eve of trial in 2024.

*Bujold's New Lawyers Appear and Move
to Disqualify Attorney Bierwas*

As of the start of February 2024, the remaining claims in this case—including the derivative breach of fiduciary duty claims Bujold and Morrison asserted against each other—were scheduled to begin trial a little over a month later, on March 11, 2024. On February 9, 2024, three lawyers from Kenney & Sams filed appearances on behalf of Bujold and 310 Broad Street but *not* on behalf of Cannaburg.¹¹ Soon thereafter, Attorney Ray withdrew his appearance for Bujold, 310 Broad Street *and Cannaburg*. In his motion to withdraw, Attorney Ray expressly acknowledged that he was still listed on the docket as counsel for Cannaburg along with Attorney Sheehan.¹²

¹¹ A fourth lawyer from Kenney & Sams appeared on behalf of Bujold and 310 Broad Street on April 12, 2024.

¹² Attorney Ray's motion to withdraw made no similar reference to Attorney Bierwas then representing Cannaburg.

Within a week of appearing, Bujold's new lawyers moved to continue the March 11, 2024 trial date. On February 23, 2024, the court granted a short continuance to May 23, 2024. In the weeks that followed, a significant number of motions were filed by the parties in advance of trial, but, as of May 7, 2024, trial was still set to begin on May 23, 2024.

On May 23, 2024 (the first day of the rescheduled trial), Bujold and 310 Broad Street filed and served an emergency motion to disqualify Attorney Bierwas on conflict-of-interest grounds.¹³ The motion alleged that Morrison and Cannaburg were both clients of Attorney Bierwas. The motion also alleged that Morrison and Cannaburg had directly adverse interests in connection with this case in violation of Mass. R. Prof. C. 1.7(a)(1).¹⁴

¹³ Interestingly, the motion did *not* suggest that Attorney Sheehan was similarly conflicted.

¹⁴ As an alternate theory, Bujold's motion also cited Mass. R. Prof. C. 1.7(a)(2) which provides that a concurrent conflict of interest will also exist if a lawyer's representation of one or more clients is materially limited by the lawyer's responsibilities to another client. But beyond merely citing the rule, Bujold did not press this alternate theory in any meaningful way, and the motion judge did not rely upon it when disqualifying Attorney Bierwas.

As grounds for his motion, Bujold claimed he had just obtained newly-discovered evidence purporting to show that Morrison had breached his fiduciary duty to Cannaburg in a manner not previously known. Specifically, Bujold claimed that Morrison started pursuing a competing opportunity to grow and sell cannabis in Fitchburg in October of 2019. Based on these particular allegations, Bujold argued that Attorney Bierwas now had an unwaivable, concurrent conflict of interest that disqualified her from representing either Morrison or Cannaburg in this case. Bujold couched this as a new claim even though his third-party complaint against Morrison—filed almost four years earlier, in August 2020—had already generally alleged that Morrison was pursuing a competing opportunity.

Attorney Bierwas was first served with the motion seeking to disqualify her at the courthouse when she appeared for trial on May 23, 2024. Despite recognizing that Attorney Bierwas had no reasonable opportunity to review or respond to the motion, the judge required initial arguments from the parties that day. No formal evidence was taken. The judge then set a schedule for the parties to brief the issue, and scheduled a further hearing. The judge also postponed the trial a second time.

On June 26, 2024, the parties and counsel returned to court. At that hearing, the judge heard further oral arguments from the parties on the disqualification issue but, again, no formal evidence was taken. The judge then took the matter under advisement.

On July 19, 2024, the judge allowed Bujold's motion to disqualify Attorney Bierwas. In so doing, the judge issued an 11-page decision and order which explained her rationale, but did *not* include any formal findings of fact. [A:61-71]. Rather, the general "Background" section of the judge's decision simply recited basic facts that were otherwise apparent on the record, and noted certain allegations made by the parties in their motion papers. [A:62-64]. Indeed, the "Background" section of the decision expressly notes that "[t]he court recites the underlying factual *allegations* only insofar as they are relevant to the instant motion". [A:62] (emphasis added). To the extent the judge purported to make any sort of finding at all, she made a single statement concerning the seriousness of the alleged breach of fiduciary duty claim against Morrison. [A:69]. Specifically, she noted, "[i]n the instant situation, the court *finds* that particularly with this newly discovered evidence, the claim does indeed involve serious charges of wrongdoing by those in control of the

organization”. [A:69] (emphasis added). But notwithstanding the lack of formal findings, the judge did take note of certain key points.

First, the judge recognized that the claims against Morrison were driven by Bujold; expressly stating that “*Bujold* impleaded and alleged third-party claims against Morrison on behalf of Bujold personally and in his capacity as manager of Cannaburg and [310] Broad Street”. [A:63] (emphasis added). She also noted that “*Bujold* alleged that Morrison breached his fiduciary duties to Cannaburg . . .”. [A:63] (emphasis added). And as alluded to above, she agreed that the operative count of Bujold’s third-party complaint against Morrison (Count V, alleging breach of fiduciary duty) was a *derivative* claim pressed by Bujold on behalf of Cannaburg. [A:67(n. 3)].

Second, the judge acknowledged that Cannaburg was initially represented by Bujold’s lawyer (Attorney Ray) from the outset until he withdrew on the eve of trial in early 2024. [A:62(n. 1)]. She incorrectly asserted, however, that it was only “[f]ollowing Attorney Ray’s withdrawal . . .” that Attorney Bierwas “began representing Cannaburg”, and she mistakenly noted that “[a]lthough originally Cannaburg and Morrison were not represented by the same attorney (Atty. Bierwas),

they are now”. [A:62(n. 1), 63]. But the record reflects that Attorney Bierwas filed an answer and counterclaims on behalf of Morrison and cross-claims on behalf of Cannaburg derivatively on November 5, 2020. Accordingly, Attorney Bierwas represented Cannaburg from the outset as a nominal party in connection with Morrison’s derivative claim, just as Attorney Ray had represented Cannaburg as a nominal party in connection with Bujold’s derivative claim.

The judge also made note of the new allegations against Morrison which were purportedly based on newly discovered evidence. [A:63-64]. Specifically, Bujold and 310 Broad Street had discovered “a Special Permit Application filed with the Town of Fitchburg” which suggested Morrison was “allegedly pursuing a competing opportunity” at a time when he owed a fiduciary duty to Cannaburg. [A:64]. The judge appears to have understood that these new allegations remained unproven for purposes of the motion to disqualify. [A:67(n. 4)].¹⁵ Still, she viewed the

¹⁵ For example, when addressing Morrison’s counter arguments in connection with respect to the breach of fiduciary duty claim based on the newly discovered evidence, the judge noted “[w]hether Morrison’s alleged actions caused harm to Cannaburg is a question that cannot be resolved at this stage”. [A:67(n. 4)].

application as “some evidence of Morrison’s divided loyalty at a time when he owed a duty of utmost good faith and loyalty to Cannaburg”. [A:64]. And the judge considered the allegation to represent a “serious” charge of wrongdoing committed by Morrison. [A:69].

Because Bujold made what the judge considered to be a serious allegation that Morrison may have breached his fiduciary duty to Cannaburg, the judge concluded that “Cannaburg’s interests are directly adverse to Morrison” in the context of this case. [A:66-67]. And based on this conclusion, the judge deemed Attorney Bierwas’s disqualification to be “necessary”. [A:71].

Missing from the judge’s decision, however, is any discussion or analysis of the nature of Cannaburg’s independent interest in the outcome of this case. [A:61-71].¹⁶ While the judge acknowledged that “Morrison and [Bujold] each own fifty percent of Cannaburg, and each has been a managing member at various times”, [A:62];¹⁷ she did not even

¹⁶ This omission is significant, and is addressed throughout the Argument section of this application and in the appellants’ brief.

¹⁷ In the quoted passage, the judge actually stated that “Morrison and *Cannaburg* each own fifty percent of Cannaburg . . .”, [A:62] (emphasis added); but this appears to be a typographical error.

attempt to address how this particular ownership and management arrangement would affect the nature of the various interests implicated by the derivative claims Bujold and Morrison asserted against one another. [A:61-71]. Likewise, although the judge acknowledged that, as a matter of law, disqualification is only warranted when a lawyer's continued participation in the case "taints" the proceedings, [A:65]; she did not endeavor to address how Attorney Bierwas's continued participation in the case would taint the proceedings in light of the particular interests actually involved here. [A:61-71].

ISSUES OF LAW RAISED BY THE APPEAL

The primary legal issue addressed in this application is whether (or the extent to which) competing derivative claims asserted by and between the two sole owners of a limited liability company can give rise to a concurrent conflict of interest for one owner's lawyer such that the lawyer should be disqualified from the litigation. This primary issue was directly raised in the context of Bujold's motion to disqualify Attorney Bierwas, and it was addressed by Morrison in opposition to said motion. The issue is presently appealable under the doctrine of present execution.

Two additional, related issues are raised by Morrison's appeal: (a) whether the judge abused her discretion by disqualifying Attorney Bierwas without taking evidence or making relevant fact findings in light of settled law that disqualification orders require a searching review of the facts to determine whether the lawyer's continued participation would taint the proceedings; and (b) whether the judge abused her discretion by failing to consider whether Bujold's motion was filed as a tactical maneuver designed to interfere with Morrison's ability to litigate.

ARGUMENT

The disqualification of counsel is “a drastic measure which courts should hesitate to impose except when absolutely necessary”. *Adoption of Erica*, 426 Mass. 55, 58 (1997) (internal quotation marks omitted); *see*, *Commonwealth v. Scanlon*, 493 Mass. 1020, 1022 (2024) (observing that the “[d]isqualification of counsel is not a measure to be taken lightly”). Disqualification raises “intensely fact specific” questions that warrant a “searching review” of the facts to determine whether the lawyer’s continued participation “taints” the proceedings. *Scanlon*, 493 Mass. at 1022 and cases cited therein.

Here, the motion judge disqualified Attorney Bierwas after concluding that Bierwas had a concurrent conflict of interest in violation of Rule 1.7(a)(1) of the Massachusetts Rules of Professional Conduct based on Cannaburg and Morrison’s purported directly adverse interests. But in so ruling, the judge failed to conduct a “searching review” of the relevant facts. As a result, her decision does not demonstrate that Cannaburg had *any* identifiable interest directly adverse to Morrison’s interests. Morrison contends that no directly adverse interests exist in the circumstances of this case. And absent directly adverse interests,

there was no basis in the record to conclude that Attorney Bierwas's continued involvement in the case would taint the proceedings such that disqualification was necessary.

*Concurrent Conflicts of Interest
Based on Direct Adversity*

In appropriate circumstances, a lawyer can be disqualified from representing a client when a concurrent conflict of interest with another client exists. *Bryan Corp. v. Abrano*, 474 Mass. 504, 516 (2016). For an impermissible concurrent conflict of interest to exist here, either: (1) Morrison and Cannaburg must have “directly adverse” interests; or (2) there must be a significant risk that Attorney Bierwas's representation of one of them would be materially limited by her responsibilities to the other. *Id.* at 510-11 quoting Mass. R. Prof. C. 1.7(a). The trial-court judge expressly based her disqualification order on direct adverseness and not on a material limitation.¹⁸

“Representation is directly adverse in violation of rule 1.7(a)(1) when a lawyer acts as an advocate in one matter against a person the

¹⁸ Morrison contends that the record would not support disqualification on material limitation grounds, and has addressed the matter in his appellate brief. But since the material limitation question was not addressed by the judge, it is beyond the scope of this application.

lawyer represents in some other matter, even when the matters are wholly unrelated”. *Maling v. Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*, 473 Mass. 336, 341 (2015) and *Bryan Corp.*, 474 Mass. at 511, both quoting Mass. R. Prof. C. 1.7 comment 6 (internal quotation marks and alterations omitted). This means that “[a] law firm that represents client A in the defense of an action may not, at the same time, be counsel for a plaintiff in an action brought against client A . . .”. *McCourt Co. v. FPC Properties, Inc.*, 386 Mass. 145, 145 (1982); *Maling*, 473 Mass. at 341. But more particularly, “direct adverseness requires a conflict as to the legal rights and duties of the clients, not merely conflicting economic interests”. *Maling*, 473 Mass. at 341-42 quoting American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Op. 05–434, at 140 (Dec. 8, 2004) (ABA Op. 05–434) (internal quotation marks and alterations omitted).

Here, before disqualifying Attorney Bierwas, the judge never even *attempted* to identify Cannaburg’s independent legal rights, duties, or interests in the context of this case, let alone explained how such interests (if any) might be in conflict with Morrison’s interests. Rather, the judge simply presumed that Morrison and Cannaburg had directly

adverse interests in light of Bujold’s derivative claim, and she further presumed that these otherwise unidentified adverse interests were significant enough to require the extreme step of disqualifying of Attorney Bierwas. The judge’s lack of appropriate findings to support her conclusion renders her ultimate decision erroneous. *See, Coke v. Equity Residential Properties Trust*, 440 Mass. 511, 516 (2003) (observing that motions to disqualify counsel raise “intensely fact specific” questions); *Scanlon*, 493 Mass. at 1022 (noting that, “[i]n considering whether to disqualify counsel, a judge must closely scrutinize the facts before him or her to determine whether a lawyer’s continued participation as counsel taints the legal system”) (internal quotation marks and alterations omitted). And, as discussed below, the record does not support the ultimate result in any event because Cannaburg has no independent interest that is directly adverse to Morrison.

*Cannaburg’s Role as a Nominal
Party Does Not Create Any Interest
Directly Adverse to Morrison*

There are currently no direct claims by or against Cannaburg in this case. When there were direct claims involving Cannaburg (prior to the settlement with Fuss & O’Neill), Cannaburg was represented by

Attorney Ray who was affiliated with *Bujold*. Today, in light of the parties' standstill agreement, Cannaburg is under Morrison's day-to-day control. As such, Morrison's lawyer, Attorney Bierwas, eventually became Cannaburg's counsel of record.¹⁹ But once Fuss & O'Neill settled, Cannaburg's role in the case became limited to that of a nominal party in connection with the derivative claims Bujold and Morrison have asserted against one another.

In cases involving derivative claims, the company's role is typically that of a nominal party requiring no defense. *Crowley v. Commc'ns For Hosps., Inc.*, 30 Mass. App. Ct. 751, 762 (1991). In derivative cases involving *closely held* companies (like Cannaburg), the company's nominal role is marginalized even further because "the concept of a corporate injury that is distinct from any injury to the shareholders *approaches the fictional* in the case of a firm with only a handful of shareholders". *Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc.*, 970 P.2d 1273, 1280-81 (Utah 1998) quoting Principles of Corporate Governance:

¹⁹ As noted in the statement of facts above, the status of Cannaburg's representation throughout this litigation was never particularly clear; especially after Fuss & O'Neill settled its direct claims against Cannaburg.

Analysis and Recommendations § 7.01(d) (American Law Inst. 1994) (emphasis added, internal quotation marks omitted). Thus, there is a growing trend toward permitting the owners of a closely-held business to litigate against one another directly rather than derivatively. *Id.*; *Trieweiler v. Sears*, 689 N.W.2d 807, 837-38 (Neb. 2004); *Saunders v. Briner*, 221 A.3d 1, 25-27 (Conn. 2019); *see, Durham v. Durham*, 871 A.2d 41, 46 (N.H. 2005) (observing that “the derivative/direct distinction makes little sense when the only interested parties are two individuals or sets of shareholders, one who is in control and the other who is not”) (internal quotation marks and alterations omitted).

This case illustrates the wisdom of the emerging trend. Bujold and Morrison are the sole owners of Cannaburg; each owning a fifty-percent interest in the company. Both men have asserted direct and derivative claims against each other in connection with the Cannaburg enterprise, and both men have even been in control of Cannaburg at various points during the course of this litigation.

Without question, Morrison’s interests are directly adverse to *Bujold*; just as Bujold’s interests are directly adverse to Morrison. But only the rights and duties of Bujold and Morrison are at issue in this case

because no other interests are present. Assume, arguendo, that Bujold breached his fiduciary duty to Cannaburg. The harm caused by Bujold's breach would certainly flow through Cannaburg to Morrison (and arguably to Bujold himself), but to no other person. Through Cannaburg, there are no other separate interests to be protected in the particular circumstances of this case, and no separate or distinct rights and duties are implicated. It is only Morrison and Bujold that have interests at stake here, and both were, at all times relevant, adequately represented and actively advocating with respect to their respective legal rights and duties. There simply is no third interest (that of Cannaburg as a separate entity) at stake in the context of this particular case beyond the "fictional". *Aurora Credit Servs., Inc.*, 970 P.2d at 1280-81.

When summarily concluding that Attorney Bierwas had a concurrent conflict of interest based on direct adverseness, the judge did not examine the true nature of Cannaburg's interests. She neither explored the nature of Cannaburg's "rights and duties" with respect to the operative claims nor explained how those rights and duties (if any) were in conflict with Morrison's own rights, duties, and interests. *Maling*,

473 Mass. at 341-42. Had she done so, it would have become clear to her that those separate rights, duties, and interests simply do not exist here.

At most, the judge noted that some of Bujold’s unproven allegations against Morrison “involve serious charges of wrongdoing”. [R-II:227-28].²⁰ In *some* situations involving serious charges of wrongdoing, “a conflict *may* arise between the lawyer’s duty to the organization and the lawyer’s relationship with . . .” those in control of the organization. Mass. R. Prof. C. 1.13 comment 14 (emphasis added). But whether a conflict is *actually* created in any particular set of circumstances is still governed by the foundational requirements of Rule 1.7. *Id.* And, as argued above, this means that Cannaburg would still need to have identifiable rights,

²⁰ It appears from the record that the judge drew this conclusion entirely based on the bare nature of the newly-asserted claim against Morrison. [A:69]. She offered no analysis of the underlying factual allegations Bujold made in support of this new claim, and she failed to explain why the particular facts and circumstances alleged were egregious enough to support her conclusion. She also did not address how these new allegations were any different than the allegations that were part of Count V from the outset in 2020. Thus, the judge’s conclusion that the new allegations against Morrison were “serious” enough to create an eleventh-hour conflict of interest is suspect, regardless of whether Cannaburg even had a separate, identifiable interest at stake here.

duties, and interests in conflict with Morrison before disqualification would be warranted based on direct adverseness.

Without making evidence-based findings, the judge simply presumed that there would be a “concurrent conflict of interest” based on direct adverseness because of the allegation that one of Bierwas’s clients (Morrison) allegedly harmed the other (Cannaburg). In this manner, the judge failed to conduct the requisite “searching review” into the intensely fact-specific questions that were most relevant to the issue. *Scanlon*, 493 Mass. at 1022.

Given Cannaburg’s nominal role, and the fictitious nature of Cannaburg’s independent interests generally, the record offers no factual basis to conclude that Cannaburg and Morrison have directly adverse interests. The real dispute here is between Bujold and Morrison: Cannaburg’s two sole owners; both of whom were adequately represented by independent counsel. If the judge had conducted a “searching review” into the facts relevant to these issues, she would have seen that the record reflects this reality. Ultimately, the disqualification order based on a direct-adversity concurrent conflict was erroneous as a matter of law and, as such, it constituted an abuse of discretion. It must be reversed.

REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This application satisfies all three requirements for direct appellate review pursuant to Rule 11(a) of the Massachusetts Rules of Appellate Procedure.

First this appeal raises questions of first impression or novel questions of law which should be submitted for final determination to the Supreme Judicial Court. Specifically, Morrison is unaware of any reported Massachusetts decision addressing whether a lawyer can properly be disqualified on conflict-of-interest grounds where the allegedly conflicting interests arise out of derivative claims between the two sole owners of a closely-held business entity and where the lawyer for one owner also represented the company at various points in time. The growing trend in other jurisdictions is to permit the owners of closely-held business to litigate against one another directly (rather than derivatively) because “the concept of a corporate injury that is distinct from any injury to the shareholders *approaches the fictional* in the case of a firm with only a handful of shareholders”. *Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc.*, 970 P.2d 1273, 1280-81 (Utah 1998) quoting Principles of Corporate Governance: Analysis and Recommendations §

7.01(d) (American Law Inst. 1994) (emphasis added, internal quotation marks omitted). If, as a matter of law, Cannaburg has no independent interest at stake in this case, then there would have been no basis for the lower court to determine an impermissible conflict of interest existed such that disqualification of counsel was necessary. And, as a practical matter, it makes no sense to require independent counsel to represent every closely-held company when its owners are in dispute and have asserted derivative claims against each other. The SJC should take direct appellate review of this case to address this novel issue of first impression in light of the circumstances presented and in light of the trend recognized by other jurisdictions.

Second, this appeal raises questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth. Specifically, the Appeals Court has recognized that “parties have a *constitutional right* to retain counsel in a civil case” on due process grounds. *R.G. v. Hall*, 37 Mass. App. Ct. 410, 412 (1994) (emphasis added); *see also, Gorgens v. McGovern*, 71 Mass. App. Ct. 1124, 2008 WL 1988566 at *1 (2008) (citing *R.G.* for the proposition that “[c]ivil

litigants have a constitutionally protected right to retain counsel rooted in the due process clause of the Fifth Amendment to the United States Constitution”). In the criminal context, the scope of constitutional protection goes beyond the mere right to retain counsel and “encompasses the right to private counsel of one’s choice . . .”. *Commonwealth v. Francis*, 485 Mass. 86, 95 (2020); *Wheat v. United States*, 486 U.S. 153, 159, 108 S. Ct. 1692, 1697, 100 L. Ed. 2d 140 (1988) (observing that “the right to select and be represented by one’s preferred attorney is comprehended by the Sixth Amendment . . .”). Although Morrison is unaware of any case where the SJC directly addressed whether the right to counsel of choice has constitutional implications in a civil case, the Court has certainly recognized the significance of this right in the context of civil actions. *See, Smaland Beach Ass’n, Inc. v. Genova*, 461 Mass. 214, 220 (2012) (recognizing “the severe consequence of stripping a party of chosen counsel”); *Attorney General v. Brockton Agricultural Society*, 390 Mass. 431, 436 (1983) (“*Brockton Agricultural*”) (acknowledging “[t]here is no question that the [intervenors] may have counsel of their own choosing”); *Mailer v. Mailer*, 390 Mass. 371, 373 (1983) (recognizing “the right of a person to counsel of his choice”); *McCourt Co. v. FPC Properties, Inc.*, 386

Mass. 145, 151 (1982) (recognizing a party's "interest in having counsel of its own choosing"). Based on these authorities, the issues raised in this appeal at least touch upon constitutional questions such that it would be appropriate for this Honorable Court to take direct appellate review.

Finally, this appeal raises questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. As noted above, this Honorable Court has frequently recognized the significance of a party's right to select counsel of his own choosing, even in civil cases. *Smaland Beach Ass'n*, 461 Mass. at 220; *Brockton Agricultural*, 390 Mass. at 436; *Mailer*, 390 Mass. at 373; *McCourt*, 386 Mass. at 151. In fact, the important public policy concerns at issue in cases involving the disqualification of counsel provide a foundation for the immediate appeal of such cases under the doctrine of present execution. *See, Draganescu v. First Nat. Bank of Hollywood*, 502 F.2d 550, 551 n. 1 (5th Cir. 1974) (noting that "[a]n order erroneously depriving a party of its chosen counsel during the course of the trial would also frustrate public policy in a way which a posttrial appeal could not mitigate"); *S.C.*, 421 U.S. 929, 95 S. Ct. 1655, 44 L. Ed. 2d 86 (1975) (adopting the facts and opinion of the Fifth Circuit when denying

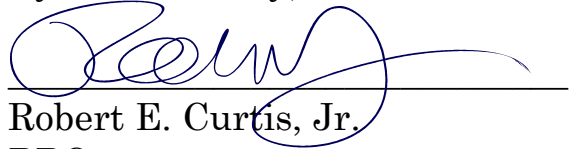
certiorari); *Borman v. Borman*, 378 Mass. 775, 780 (1979) (citing *Draganescu* for this principle in one of the earliest Massachusetts cases applying the doctrine of present execution to rulings disqualifying counsel of choice). Ultimately, this case involves “the severe consequence of stripping a party of chosen counsel”, *Smaland Beach Ass’n*, 461 Mass. at 220; *Bridgeman v. Dist. Att’y for Suffolk Dist.*, 471 Mass. 465, 488 (2015). As such, the issues raised in this appeal are ripe for direct appellate review because of their impact on the public interest.

CONCLUSION

For the foregoing reasons, Plaintiff asks this Honorable Court to accept this case for direct appellate review.

Dated: May 6, 2025

Respectfully Submitted,
The Appellant, Sean Morrison
By His Attorney,

A handwritten signature in blue ink, appearing to read "R. Curtis, Jr.", is written over a horizontal line.

Robert E. Curtis, Jr.
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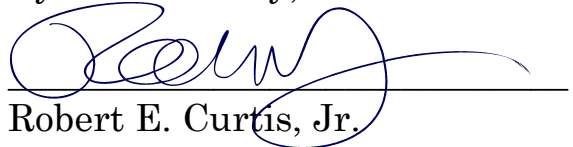
CERTIFICATE OF COMPLIANCE
[Mass. R. A. P. 16(k)]

1. I hereby certify that this application complies with the rules of court that pertain to the filing of applications for direct appellate review.

2. This application complies with the length limit of Rule 11(b) because it was prepared using Microsoft Word 2016 with a Century Schoolbook, 14 pt. font, and the argument contains a total of 1,805 words.

Dated: May 6, 2025

Respectfully Submitted,
The Appellant, Sean Morrison
By His Attorney,



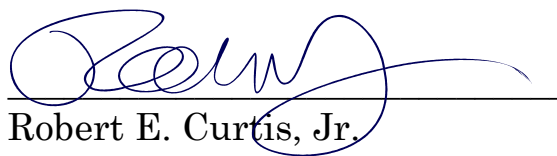
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CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I served the foregoing Application for Direct Appellate Review upon the appellees, Robert Bujold and 310 Broad Street LLC via efileMA, if available, or otherwise via email (by agreement) to the appellees' attorneys of record as follows:

Anthony B. Fioravanti (Email: abfioravanti@kslegal.com)
David Viens (Email: dviens@kslegal.com)
Kenney & Sams, P.C.
Reservoir Nine
144 Turnpike Road
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Dated: May 6, 2025


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ADDENDUM TO APPLICATION

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2085CV00491 Fuss & O'Neil, Inc. vs. Cannaburg Cultivation Cooperative LLC et al

- Case Type:
- Contract / Business Cases
- Case Status:
- Open
- File Date
- 05/11/2020
- DCM Track:
- F - Fast Track
- Initiating Action:
- Services, Labor and Materials
- Status Date:
- 05/11/2020
- Case Judge:
-
- Next Event:
- 11/18/2025

All Information Party Subsequent Action/Subject Event Tickler Docket Disposition

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- (413)770-7624

[More Party Information](#)

Subsequent Action/Subject

<u>Description</u>	<u>Status</u>	<u>Status Date</u>	<u>Pleading Party</u>	<u>Responding Party</u>	<u>Judgments</u>	<u>SA/Subject #</u>
3rd Party Complaint	Open	08/17/2020	Bujold, Robert J	Morrison, Sean	0	1
Counterclaim	Open	11/10/2020	Morrison, Sean	Bujold, Robert J	0	2

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
08/19/2020 11:30 AM	Civil D	WOR-4th FL, CR 25 (SC)	Hearing for Real Estate Attachment	Frison, Hon. Shannon	Held as Scheduled
12/03/2020 10:00 AM	Civil B	WOR-4th FL, CR19 (SC)	Hearing on Preliminary Injunction	Ritter, Hon. William J	Not Held
06/30/2022 02:00 PM	Civil C	WOR-4th FL, CR 26 (SC)	Hearing on Preliminary Injunction	Bell, Hon. Karin	Held - Under advisement
08/16/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Manitsas, Hon. James M	Rescheduled
09/22/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Manitsas, Hon. James M	Held as Scheduled
10/11/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Reardon, Jr., Hon. James G	Held as Scheduled
11/03/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing to Compel	Reardon, Jr., Hon. James G	Rescheduled
11/03/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing to Compel	Reardon, Jr., Hon. James G	Rescheduled
12/01/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing to Compel	Reardon, Jr., Hon. James G	Rescheduled
12/01/2022 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing to Compel	Reardon, Jr., Hon. James G	Rescheduled
01/17/2023 02:00 PM	Civil D		Motion Hearing to Compel	Bucci, Hon. Jeremy C	Held - Under advisement
01/17/2023 02:00 PM	Civil D		Final Pre-Trial Conference	Bucci, Hon. Jeremy C	Held as Scheduled
03/24/2023 09:30 AM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Bucci, Hon. Jeremy C	Held as Scheduled
02/23/2024 10:00 AM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing	Yarashus, Hon. Valerie A	Held - Under advisement
03/05/2024 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Final Trial Conference	Yarashus, Hon. Valerie A	Rescheduled
03/11/2024 09:00 AM	Civil D	WOR-4th FL, CR 25 (SC)	Jury Trial	Yarashus, Hon. Valerie A	Rescheduled

A:44

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
04/30/2024 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Final Trial Conference	Yarashus, Hon. Valerie A	Rescheduled
05/13/2024 09:30 AM	Civil D	WOR-4th FL, CR 25 (SC)	Hearing on Motion(s) in Limine	Yarashus, Hon. Valerie A	Held - Under advisement
05/23/2024 09:00 AM	Civil D	WOR-4th FL, CR 25 (SC)	Jury Waived Trial	Yarashus, Hon. Valerie A	Not Held
06/24/2024 09:00 AM	Civil D	WOR-4th FL, CR 25 (SC)	Trial Assignment Conference	Yarashus, Hon. Valerie A	Rescheduled
06/26/2024 09:00 AM	Civil D	WOR-4th FL, CR 25 (SC)	Trial Assignment Conference	Yarashus, Hon. Valerie A	Held as Scheduled
08/27/2024 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Motion Hearing	Manitsas, Hon. James M	Held as Scheduled
09/10/2024 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Manitsas, Hon. James M	Held as Scheduled
01/09/2025 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Yarashus, Hon. Valerie A	Held as Scheduled
11/18/2025 02:00 PM	Civil D	WOR-4th FL, CR 25 (SC)	Conference to Review Status	Tingle, Hon. Brent A	

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	05/11/2020	08/10/2020	91	07/09/2020
Answer	05/11/2020	09/08/2020	120	08/18/2020
Rule 12/19/20 Served By	05/11/2020	09/08/2020	120	01/17/2023
Rule 12/19/20 Filed By	05/11/2020	10/08/2020	150	01/17/2023
Rule 12/19/20 Heard By	05/11/2020	11/09/2020	182	01/17/2023
Rule 15 Served By	05/11/2020	09/08/2020	120	01/17/2023
Rule 15 Filed By	05/11/2020	10/08/2020	150	01/17/2023
Rule 15 Heard By	05/11/2020	11/09/2020	182	01/17/2023
Discovery	05/11/2020	08/01/2022	812	
Rule 56 Served By	05/11/2020	04/06/2021	330	01/17/2023
Rule 56 Filed By	05/11/2020	08/30/2022	841	01/17/2023
Final Pre-Trial Conference	05/11/2020	09/27/2022	869	01/17/2023
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Under Advisement	06/30/2022	07/30/2022	30	08/11/2022
Under Advisement	01/17/2023	02/16/2023	30	01/18/2023
Under Advisement	02/23/2024	03/24/2024	30	02/23/2024
Under Advisement	05/13/2024	06/12/2024	30	05/14/2024

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/11/2020	Complaint electronically filed.	1	
05/11/2020	Civil action cover sheet filed.	2	
05/11/2020	Case assigned to: DCM Track F - Fast Track was added on 05/11/2020		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/09/2020	Service Returned for Defendant Cannaburg Cultivation Cooperative Llc: Service through person in charge / agent; Service made on 07/06/20	3	 Image
07/24/2020	Plaintiff Fuss & O'neil, Inc.'s Notice of Amended complaint	4	 Image
07/24/2020	Amended: original complaint filed by Fuss & O'neil, Inc.	5	 Image
07/24/2020	Plaintiff Fuss & O'neil, Inc.'s EX PARTE Motion for Real Estate	6	 Image
07/24/2020	Affidavit in support of motion for real estate	6.1	 Image
07/24/2020	Proposed Filings/Orders	6.2	 Image
07/24/2020	Plaintiff Fuss & O'neil, Inc.'s Request for Hearing	6.3	 Image
08/05/2020	The following form was generated: Notice to Appear Sent On: 08/05/2020 10:50:27 Notice Sent To: Michael Lushan, Esq. Lushan, McCarthy & Goonan 132 Charles St Suite 301, Newton, MA 02466		
08/05/2020	Endorsement on Motion for Real Estate Attachment (#6.0): Summons and Order of Notice to issue SON to issue; returnable 8/19/2020 at 11:30AM. Counsel to contact the clerk with phone info for phone conference. Notices mailed 8/6/2020 Judge: Frison, Hon. Shannon		 Image
08/17/2020	3rd Party Complaint filed.		 Image
08/17/2020	Pleading titled, Summons, filed with the court on 08/17/2020, returned to Christopher D Ray, Esq. Must use Court-Provided Summons/Third-Party Summons		
08/18/2020	Answer to amended complaint and Third Party Complaint	7	 Image
08/18/2020	Attorney appearance electronically filed.		 Image
08/18/2020	Received from Defendant Cannaburg Cultivation Cooperative Llc: Answer to amended complaint;		
08/18/2020	Attorney appearance On this date Christopher D Ray, Esq. added for Defendant Cannaburg Cultivation Cooperative Llc		
08/18/2020	Received from Defendant 310 Broad Street II LLC: Answer to amended complaint;		
08/18/2020	Attorney appearance On this date Christopher D Ray, Esq. added for Defendant 310 Broad Street II LLC		
08/18/2020	Received from Defendant Bujold, Robert J: Answer to amended complaint;		
08/18/2020	Attorney appearance On this date Christopher D Ray, Esq. added for Defendant Robert J Bujold		
08/19/2020	Event Result:: Hearing for Real Estate Attachment scheduled on: 08/19/2020 11:30 AM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. Shannon Frison, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/19/2020	Endorsement on Motion for a Real Estate Attachment (#6.0): ALLOWED No Objection. notices mailed 08/20/2020.		 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/20/2020	Findings and Order for Approval of Plaintiff(s) Fuss & O'neil, Inc.'s Motion (#6.0) for an Attachment as to Defendant 310 Broad Street II LLC in the amount of \$100,000.00. Writ of attachment issued. mailed 08/20/2020	8	 Image
08/24/2020	Exhibits/Appendix	9	 Image
09/23/2020	Defendant Cannaburg Cultivation Cooperative Llc's Request for summons		 Image
09/29/2020	General correspondence regarding Summons mailed to Defendant		 Image
11/05/2020	Attorney appearance electronically filed.		 Image
11/05/2020	Civil action cover sheet filed.	10	 Image
11/05/2020	Answer to the third party complaint	11	 Image
11/05/2020	Attorney appearance On this date Katherine J Bierwas, Esq. added for Defendant Sean Morrison		 Image
11/10/2020	Received from Defendant Morrison, Sean: Answer to the Third Party Complaint;		
11/10/2020	Counterclaim filed.		
11/12/2020	Affidavit of service pursuant to MRCP 4(F)	12	 Image
11/24/2020	Reach & Apply Defendant(s) Sean Morrison's Motion for Short Order of Notice	13	 Image
11/24/2020	Defendant in a 3rd Party Claim(s) Sean Morrison's Motion for a Preliminary Injunction (with Request for Hearing)	14	 Image
11/24/2020	Sean Morrison's Memorandum in support of Motion for Preliminary Injunction (with Request for Hearing)	14.1	 Image
11/25/2020	Endorsement on Motion for Short Order of Notice on Motion for Preliminary Injunction (#13.0): Summons and Order of Notice to issue Returnable Thursday December 3, 2020 to the "B" session @ 10:00am. Parties shall contact Assistant Clerk Gail Dempsey for zoom invitation @ gail.dempsey@jud.state.ma.us. Judge: Ritter, Hon. William J		 Image
12/03/2020	Event Result:: Hearing on Preliminary Injunction scheduled on: 12/03/2020 10:00 AM Has been: Not Held For the following reason: Joint request of parties Hon. William J Ritter, Presiding Staff: Gail Dempsey, Assistant Clerk Magistrate		
12/08/2020	Defendant in a 3rd Party Claim Sean Morrison's EX PARTE Motion for Preliminary Injunction and to Immediately Return the Matter to the List	15	 Image
12/14/2020	Answer to the counterclaim and cross-claims (E-FILED) Applies To: Cannaburg Cultivation Cooperative Llc (Defendant); 310 Broad Street II LLC (Defendant); Bujold, Robert J (Defendant); Morrison, Sean (Defendant)	16	 Image
12/14/2020	Opposition to to Third Party Defendant Sean Morrison's Ex Parte Motion for Preliminary Injunction and to Immediately Return the Matter to the List (E-FILED) filed by Cannaburg Cultivation Cooperative Llc, 310 Broad Street II LLC, Robert J Bujold, Sean Morrison	17	 Image
12/14/2020	Party(s) file Agreement Standstill Agreement re: Preliminary Injunction (E-FILED) Applies To: Cannaburg Cultivation Cooperative Llc (Defendant); 310 Broad Street II LLC (Defendant); Morrison, Sean (Defendant)	18	 Image
11/11/2021	Defendant in a 3rd Party Claim Sean Morrison's Motion to extend tracking deadline(s) (E-FILED)	19	 Image
11/22/2021	Endorsement on Motion of Administratively Amend the Tracking Order (#19.0): ALLOWED With assent of all parties, ALLOWED except as to proposed trial schedule. Trial date will be set at time of pre-trial conference. Tracking order amended. Notices mailed 12/6/21		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Sullivan, Hon. Susan E		
05/04/2022	Defendant in a 3rd Party Claim, Plaintiff in a Crossclaim Sean Morrison, Cannaburg Cultivation Cooperative Llc's Assented to Motion to Administratively Amend the Tracking Order (E-FILED)	20	 Image
05/06/2022	Endorsement on Motion to Administratively Amend the Tracking Order (#20.0): ALLOWED Notices mailed 5/26/22 Judge: Yarashus, Hon. Valerie A		 Image
05/06/2022	ORDER: AMENDED TRACKING ORDER- (See Order) Copies mailed 5/26/22 Judge: Yarashus, Hon. Valerie A	21	 Image
05/26/2022	The following form was generated: Notice to Appear Sent On: 05/26/2022 11:42:01		
06/08/2022	Attorney appearance electronically filed. On this date Megan E Sheehan, Esq. added for Defendant Sean Morrison Applies To: Cannaburg Cultivation Cooperative Llc (Defendant)		 Image
06/10/2022	Plaintiff in a Counterclaim, Defendant in a 3rd Party Claim Sean Morrison's EMERGENCY Motion for preliminary injunction. (E-FILED)	22	 Image
06/10/2022	Party(s) file Stipulation of voluntary dismissal of plaintiffs claims set out in Counts 1 through 10 in the amended complaint shall be dismissed with prejudice and without costs. All parties waive any rights of appeal. (E-FILED) Applies To: Fuss & O'Neil, Inc. (Plaintiff); Cannaburg Cultivation Cooperative Llc (Defendant)	23	 Image
06/10/2022	Party status: Plaintiff Fuss & O'Neil, Inc.: Dismissed by agreement of parties;	41	
06/21/2022	Endorsement on Motion for Preliminary Injunction (#22.0): Summons and Order of Notice to issue Returnable 6/30/22 @ 2:00pm in Room 26. Notices mailed 6/21/22 Judge: Yarashus, Hon. Valerie A		
06/22/2022	Defendant Sean Morrison's Assented to Motion for Virtual Hearing (E-FILED)	24	 Image
06/27/2022	Endorsement on Motion for a Virtual Hearing (assented to) (Thursday June 30, 2022) (#24.0): ALLOWED Zoom Meeting : 161 960 8414 Passcode: 233497 e-document sent 06/27/2022 Judge: Bell, Hon. Karin		 Image
06/28/2022	Plaintiff in a Counterclaim, Plaintiff in a Crossclaim Sean Morrison, Cannaburg Cultivation Cooperative Llc's Response to Robert Bujold's opposition to counterclaim plaintiff, Sean Morrison's and cross-claim plaintiff, cCannaburg Cultivation Cooperative LLC's second motion for preliminary injunction. (E-FILED)	25	 Image
06/30/2022	Opposition to P#22 filed by Robert J Bujoldto Plaintiff's Emergency Motion for Preliminary Injunction (E-FILED)	26	 Image
06/30/2022	Defendant Robert J Bujold's Certificate of Service (E-FILED)	26.1	 Image
06/30/2022	Matter taken under advisement: Hearing on Preliminary Injunction scheduled on: 06/30/2022 02:00 PM Has been: Held - Under advisement Comments: FTR 26 Hon. Karin Bell, Presiding Staff: Anne O'Connor, Assistant Clerk		
08/11/2022	Endorsement on Motion for Preliminary Injunction (#22.0): DENIED See memorandum and order of even date. Notices mailed 8/12/22 Judge: Bell, Hon. Karin		 Image
08/12/2022	MEMORANDUM & ORDER: DENYING THIRD PARTY DEFENDANT, COUNTERCLAIM PLAINTIFF SEAN MORRISON AND	27	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	DEFENDANT, CROSS-CLAIM PLAINTIFF CANNABURG CULTIVATION COOPERATIVE, LLC'S MOTION FOR A PRELIMINARY INJUNCTION- ORDER: In light of the foregoing, it is hereby ORDERED that the motion for a preliminary injunction is DENIED. Entered and Copies mailed 8/12/22 Judge: Bell, Hon. Karin		
08/12/2022	Defendants Cannaburg Cultivation Cooperative Llc, Robert J Bujold's Assented to Motion for a Virtual Hearing (E-FILED)	28	 Image
08/15/2022	Event Result:: Conference to Review Status scheduled on: 08/16/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
08/15/2022	Endorsement on Motion for Virtual Hearing (#28.0): Other action taken Conference to Review Status to be rescheduled. Notices mailed 8/15/22 Judge: Manitsas, Hon. James M		 Image
08/15/2022	The following form was generated: Notice to Appear Sent On: 08/15/2022 11:18:16		
09/22/2022	Event Result:: Conference to Review Status scheduled on: 09/22/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
10/11/2022	Event Result:: Conference to Review Status scheduled on: 10/11/2022 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
10/11/2022	Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to Compel and for Sanctions Applies To: Morrison, Sean (Defendant)	29	 Image
10/12/2022	The following form was generated: Notice to Appear Sent On: 10/12/2022 10:19:20		
10/12/2022	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 10/12/2022 12:26:29		
10/27/2022	Defendant in a 3rd Party Claim Sean Morrison's Submission of Third-Party Defendant Morrison, and Morrison in Derivative Cross-Claim on Behalf of Cross-Plaintiff Cannaburg Cultivation LLC's Motion to Compel and for Sanctions (E-FILED)	30	 Image
10/27/2022	Opposition to P#30 filed by Robert J Bujold, 310 Broad Street II LLC to Third-Party Defendant Morrison, and Morrison in Derivative Cross-Claim on Behalf of Cross-Plaintiff Cannaburg Cultivation LLC's Motion to Compel and for Sanctions (E-FILED)	30.1	 Image
10/27/2022	Reply/Sur-reply to Defendant Opposition to Third-Party Defendant Morrison, and Morrison in Derivative Cross-Claim on Behalf of Cross-Plaintiff Cannaburg Cultivation LLC's Motion to Compel and for Sanctions (E-FILED) Applies To: Cannaburg Cultivation Cooperative LLC (Defendant); Morrison, Sean (Defendant)	30.2	 Image
11/01/2022	Defendant in a 3rd Party Claim Sean Morrison's Assented to Motion to Continue the Motion to Compel (E-FILED)	31	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/01/2022	Affidavit of Counsel in Support of Motion to Continue the Motion to Compel (E-FILED) Applies To: Bierwas, Esq., Katherine J (Attorney) on behalf of Morrison, Sean (Defendant)	31.1	 Image
11/01/2022	Endorsement on Motion to Continue the Motion to Compel (#31.0): ALLOWED Notices mailed 11/1/22 Judge: Reardon, Jr., Hon. James G		 Image
11/02/2022	Event Result:: Motion Hearing to Compel scheduled on: 11/03/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
11/02/2022	Event Result:: Motion Hearing to Compel scheduled on: 11/03/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
11/07/2022	The following form was generated: Notice to Appear Sent On: 11/07/2022 09:06:24		
11/10/2022	Plaintiff in a Counterclaim, Defendant in a 3rd Party Claim Sean Morrison's Motion to continue hearing on Motion to compel (E-FILED)	32	 Image
11/30/2022	Event Result:: Motion Hearing to Compel scheduled on: 12/01/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
11/30/2022	Event Result:: Motion Hearing to Compel scheduled on: 12/01/2022 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. James G Reardon, Jr., Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
11/30/2022	The following form was generated: Notice to Appear Sent On: 11/30/2022 09:10:40		
11/30/2022	Endorsement on Motion to Continue Hearing on Motion to Compel (#32.0): ALLOWED Notices mailed 12/1/22 Judge: Reardon, Jr., Hon. James G		 Image
01/16/2023	Joint Pre-Trial Memorandum filed: Pre-Trial Memorandum [E-FILED]	33	 Image
01/16/2023	Conference Memorandum	34	 Image
01/17/2023	Event Result:: Final Pre-Trial Conference scheduled on: 01/17/2023 02:00 PM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. Jeremy C Bucci, Presiding		
01/17/2023	Matter taken under advisement: Motion Hearing to Compel scheduled on: 01/17/2023 02:00 PM Has been: Held - Under advisement Comments: FTR - rm 25 Hon. Jeremy C Bucci, Presiding		
01/18/2023	Scheduled: Event: Jury Trial Date: 03/11/2024 Time: 09:00 AM Result: Rescheduled		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/18/2023	The following form was generated: Notice to Appear Sent On: 01/18/2023 12:29:41		
01/18/2023	The following form was generated: Notice to Appear Sent On: 01/18/2023 12:34:59		
01/18/2023	The following form was generated: Notice to Appear Sent On: 01/18/2023 12:38:53		
01/18/2023	The following form was generated: Notice to Appear Sent On: 01/18/2023 12:39:36		
01/18/2023	Endorsement on Motion to Compel and for Sanctions (#30.0): Other action taken Allowed in part; Denied in part. See memorandum of decision and order. Notices mailed 1/19/23 Judge: Bucci, Hon. Jeremy C		 Image
01/19/2023	MEMORANDUM & ORDER: ON MORRISON'S MOTION TO COMPEL- (See Order) Entered and Copies mailed 1/19/23 Judge: Bucci, Hon. Jeremy C	35	 Image
03/24/2023	Event Result:: Conference to Review Status scheduled on: 03/24/2023 09:30 AM Has been: Held as Scheduled Comments: FTR - rm 25 Hon. Jeremy C Bucci, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
02/09/2024	Attorney appearance electronically filed. Applies To: Sams, Esq., Michael Paul (Attorney) on behalf of 310 Broad Street II LLC, Bujold, Robert J (Defendant)	36	 Image
02/09/2024	Attorney appearance electronically filed. Applies To: Viens, Esq., David (Attorney) on behalf of 310 Broad Street II LLC, Bujold, Robert J (Defendant)	37	 Image
02/09/2024	Attorney appearance electronically filed. Applies To: Madden, Jr., Esq., M. Matthew (Attorney) on behalf of 310 Broad Street II LLC, Bujold, Robert J (Defendant)	38	 Image
02/16/2024	Plaintiff in a 3rd Party Claim Robert J Bujold, 310 Broad Street II LLC's EMERGENCY Motion to Continue Trial and Amend Pretrial Memorandum [E-FILED]	39	 Image
02/20/2024	Endorsement on Motion to Continue Trial and Amend Pretrial Memorandum (#39.0): DENIED Hearing on the motion to occur 2/23/24 at 10:00am by zoom (Meeting: 160 3640 8112) Any opposition must be filed on or before 2/22/24. Notices mailed 2/20/24 Judge: Yarashus, Hon. Valerie A		 Image
02/22/2024	Opposition to P#39 filed by Sean Morrison to the "Emergency" Motion to Continue Trial and to "Amend" [Joint] Pretrial Memorandum and Morrison's Request to Permit a Surreply Should Bujold File a Reply (E-FILED)	40	 Image
02/22/2024	Sean Morrison's Memorandum of Law in Opposition to the "Emergency" Motion to Continue Trial and to "Amend" [Joint] Pretrial Memorandum and Morrison's Request to Permit a Surreply Should Bujold File a Reply (E-FILED)	40.1	 Image
02/22/2024	Affidavit of Sean Morrison (E-FILED)	40.2	 Image
02/23/2024	Matter taken under advisement: Motion Hearing scheduled on: 02/23/2024 10:00 AM Has been: Held - Under advisement Comments: FTR; rm 25		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
02/23/2024	Event Result:: Final Trial Conference scheduled on: 03/05/2024 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
02/23/2024	Event Result:: Jury Trial scheduled on: 03/11/2024 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
02/23/2024	Endorsement on Motion to continue trial and amend pretrial memorandum (#39.0): Other action taken See order dated 2/23/2024. e-document sent 02/23/2024 Judge: Yarashus, Hon. Valerie A		 Image
02/23/2024	ORDER: ON THIRD-PARTY PLAINTIFF'S MOTION TO CONTINUE THE TRIAL AND WITHDRAW AGREED UPON FACTS IN JOINT PRE-TRIAL MEMORANDUM The parties will be required as part of the final trial conference to exchange proposed detailed findings of fact and rulings of law. in addition, the parties will be required to argue their motions in limine, with oppositions through the Rule 9A process, at the final trial conference. Any party requesting that the court strike an agreed upon paragraph in the 88 paragraphs should file it as part of a motion in limine, with specific reasons (i.e., a sentence or two each, with reference to anticipated evidence) that it would be in the interests of justice to relieve that party from the agreed upon fact. The parties should keep in mind the rulings in 7(a) through (c) above, to the extent that this narrows the need to do so. (see Order) Entered and copies mailed 02/23/2024	42	 Image
02/28/2024	Defendant Robert J Bujold, 310 Broad Street II LLC's Notice of motion for leave to withdraw (E-FILED)	43	 Image
02/28/2024	Defendant Robert J Bujold, 310 Broad Street II LLC's Motion for leave to withdraw (E-FILED)	44	 Image
02/28/2024	Affidavit of compliance with certificate of service (E-FILED)	44.1	 Image
03/05/2024	General correspondence regarding mail returned for Atty: Viens/ mailed back with correct address		
03/08/2024	Endorsement on Motion for Leave to Withdraw (#44.0): ALLOWED Notices mailed 3/11/24 Judge: Yarashus, Hon. Valerie A		 Image
03/08/2024	Attorney appearance On this date Christopher D Ray, Esq. dismissed/withdrawn for Defendant 310 Broad Street II LLC		
03/08/2024	Attorney appearance On this date Christopher D Ray, Esq. dismissed/withdrawn for Defendant Robert J Bujold		
03/08/2024	Attorney appearance On this date Christopher D Ray, Esq. dismissed/withdrawn for Defendant Cannaburg Cultivation Cooperative LLC		
04/12/2024	Attorney appearance electronically filed. Applies To: Fioravanti, Esq., Anthony B (Attorney) on behalf of 310 Broad Street II LLC, Bujold, Robert J (Defendant)	45	 Image
04/25/2024	Defendants Robert J Bujold, 310 Broad Street II LLC's Motion in limine Concerning Disputed Pretrial Memorandum "Agreed Facts" (E-FILED)	46	 Image
04/25/2024	Opposition to P#46 filed by Sean Morrison, Cannaburg Cultivation Cooperative LLC to Robert J. Bujold and 310 Broad Street II, LLC's Motion in Limine Concerning Disputed Joint Pretrial Memorandum "Agreed Facts" [Document not scanned; too large] (E-FILED)	46.1	 Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/25/2024	Defendants 310 Broad Street II LLC, Robert J Bujold's Motion in limine to preclude Evidence Requiring Expert Testimony for Which Sean Morrison has not Disclosed a Testifying Expert (E-FILED)	47	 Image
04/25/2024	Objection to P#47 filed by Sean Morrison to Counterclaim Defendant Robert J. Bujold and 310 Broad Street II, LLC's Motion in Limine to Preclude Expert Evidence Requiring Expert Testimony for Which Sean Morrison has not Disclosed a Testifying Expert & Request to Take Judicial Notice of Adjudicative Fact (E-FILED)	47.1	 Image
04/25/2024	Defendants 310 Broad Street II LLC, Robert J Bujold's Submission of Rule 9A Affidavit and Notice of Filing Regarding Motions in Limine (E-FILED)	47.2	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to exclude the admissibility of or reference to any evidence refuting the existence of a contract between Morrison, Cannaburg, 310 Broad Street and Bujold	48	 Image
04/25/2024	Opposition to to motion in limine to exclude the admissibility of or reference to any evidence refuting the existence of a contract between Morrison, Cannaburg, 310 Broad and Bujold (p#48) filed by Robert J Bujold, 310 Broad Street II LLC	48.1	 Image
04/25/2024	Reply/Sur-reply Third Party Defendant/Counterclaim Plaintiff Sean Morrison and Defendant/Cross Claim Plaintiff Cannaburg Cultivation Cooperative LLC's reply to opposition to motion in limine to exclude the admissibility of or reference to any evidence refuting the existence of a contract between Morrison, Cannaburg, 310 Broad and Bujold (p#48) filed by Robert J Bujold, 310 Broad Street II LLC	48.2	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to exclude the admissibility of or reference to any evidence regarding affirmative defenses	49	 Image
04/25/2024	Opposition to to motion in limine to exclude the admissibility of or reference to any evidence regarding affirmative defenses (p#49) filed by Robert J Bujold, 310 Broad Street II LLC	49.1	 Image
04/25/2024	Reply/Sur-reply Third Party Defendant/Counterclaim Plaintiff Sean Morrison and Defendant/Cross-Claim Plaintiff Cannaburg Cultivation Cooperative LLC's reply to opposition to motion in limine to exclude the admissibility of or reference to any evidence regarding affirmative defenses	49.2	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to exclude the admissibility of, or reference to, Morrison failing to pay Bujold \$100,000.00	50	 Image
04/25/2024	Opposition to motion in limine to exclude the admissibility of or reference to Morrison failing to pay Bujold \$100,000.00 (p#50) filed by Robert J Bujold, 310 Broad Street II LLC	50.1	 Image
04/25/2024	Reply/Sur-reply Third Party Defendant/Counterclaim Plaintiff Sean Morrison and Defendant/Cross Claim Plaintiff Cannaburg Cultivation Cooperative LLC's reply to opposition to motion in limine to exclude the admissibility of or reference to Morrison failing to pay Bujold \$100,000.00	50.2	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to exclude the admissibility of or reference to any evidence asserting fraud or misrepresentation by Morrison or Cannaburg Cultivation Cooperation LLC	51	 Image
04/25/2024	Opposition to Motion in limine to exclude the admissibility of or reference to any evidence asserting fraud or misrepresentation by Morrison or Cannaburg Cultivation Cooperation LLC (p#51) filed by Robert J Bujold, 310 Broad Street II LLC	51.1	 Image
04/25/2024	Reply/Sur-reply Third Party Defendant/Counterclaim Plaintiff Sean Morrison and Defendant/Cross Claim Plaintiff Cannaburg Cultivation Cooperative LLC's reply to opposition to motion in limine to exclude the admissibility of or reference to any evidence asserting fraud or misrepresentation by Morrison or Cannaburg Cultivation Cooperation LLC	51.2	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to amend Morrison and Cannaburg's complaints against Bujold and 310 Broad Street II	52	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion in limine to exclude the admissibility of or reference to Bujold's attempt to recover funds paid to resolve claims by Fuss & O'Neill, Inc. against Cannaburg Cultivation Cooperative LLC	53	 Image
04/25/2024	Opposition to (1) motion in limine to exclude the admissibility of or reference to Bujold's attempt to recover funds paid to resolve claims by fuss & O'Neil and (2) motion in lime to amend complaints against Bujold and 310 Broad Street II (p#52 and 53) filed by Robert J Bujold, 310 Broad Street II LLC	53.1	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/25/2024	Reply/Sur-reply Sean Morrison and Cannaburg Cultivation Cooperative LLC's reply objection motion in limine to exclude the admissibility of or reference to Bujold's attempt to recover funds paid to resolve claims by Fuss & O'Neil and motion in limine to amend complaints against Bujold and 310 Broad Street II	53.2	 Image
04/25/2024	Rule 9A list of documents filed.	53.3	 Image
04/25/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Submission of Master Exhibit List	53.4	 Image
04/30/2024	Event Result:: Final Trial Conference scheduled on: 04/30/2024 02:00 PM Has been: Rescheduled For the following reason: Not reached by Court Hon. Valerie A Yarashus, Presiding Staff: Paul Mullan, Assistant Clerk Magistrate		
05/06/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion to Continue the Trial and for Scheduling Arguments on the Motions in Limine (E-FILED)	54	 Image
05/06/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Submission of Conditionally Assented to Motion for Short Order to Hear a Motion to Continue and to Schedule Hearing on the Motions in Limine (E-FILED)	55	 Image
05/06/2024	Opposition to motion to continue trial (p#54) filed by Robert J Bujold, 310 Broad Street II LLC (E-FILED)	56	 Image
05/07/2024	ORDER: RE: Motion to Continue Trial Copies emailed to counsel by ACM 5/8/24 Judge: Yarashus, Hon. Valerie A	57	 Image
05/07/2024	Endorsement on Motion to Continue the Trial and for Scheduling Arguments on the Motions in Limine (#54.0): Other action taken See order. Notices mailed 5/10/24 Judge: Yarashus, Hon. Valerie A		 Image
05/07/2024	Endorsement on Motion for Short Order to Hear a Motion to Continue and to Schedule Hearing on the Motions in Limine (#55.0): Other action taken See order. Notices mailed 5/10/24 Judge: Yarashus, Hon. Valerie A		 Image
05/08/2024	Defendants Cannaburg Cultivation Cooperative LLC, 310 Broad Street II LLC, Sean Morrison, Robert J Bujold's Submission of Waiver of Detailed Findings (E-FILED)	58	 Image
05/13/2024	Matter taken under advisement: Hearing on Motion(s) in Limine scheduled on: 05/13/2024 09:30 AM Has been: Held - Under advisement Comments: FTR; rm 25 Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
05/13/2024	Defendant in a 3rd Party Claim, Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's Motion to Substitute a Witness Due to Scrinever's Error in the Pretrial Memorandum (E-FILED)	59	 Image
05/14/2024	Proposed Filings/Orders Verdict Slip of Robert J. Bujold and 310 Broad Street II, LLC (E-FILED)	60	 Image
05/14/2024	Endorsement on Motion in Limine to Exclude the Admissibility of or Reference to Any Evidence Refuting the Existence of a Contract (#48.0): DENIED Denied to the extent requested by the moving party, as the terms of the alleged contract are one of the ultimate issues for trial. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/14/2024	Proposed Filings/Orders Stipulated Order Concerning Waiver of Attorney-Client Privilege of Cannaburg Cultivation Cooperative LLC Concerning Trial Testimony of Attorney Marvin Cable (E-FILED)	61	 Image
05/14/2024	Endorsement on Motion in Limine Concerning Disputed Pretrial Memorandum "Agreed Facts" (#46.0): Other action taken See order. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Preclude Evidence Requiring Expert Testimony for Which Sean Morrison has not Disclosed a Testifying Expert (#47.0): Other action taken See order. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Exclude the Admissibility of or Reference to Any Evidence Regarding Affirmative Defenses (#49.0): Other action taken See order. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Exclude the Admissibility of, or Reference to, Morrison Failing to Pay Bujold \$100,000.00 (#50.0): DENIED Denied, for the reasons set forth in the limited opposition (#50.1). Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Exclude the Admissibility of or Reference to Any Evidence Asserting Fraud or Misrepresentation by Morrison or Cannaburg Cultivation Cooperative LLC (#51.0): DENIED In light of the discovery and stage of the case, as well as the anticipated contested evidence, DENIED. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Amend Morrison and Cannaburg's Complaints Against Bujold and 310 Broad Street II (#52.0): ALLOWED Similar to the reasoning in allowing the opposing parties to amend their answer on the eve of trial, this request to amend is also ALLOWED regarding the statute of frauds. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Motion in Limine to Exclude the Admissibility of or Reference to Bujold's Attempt to Recover Funds Paid to Resolve Claims by Fuss & O'Neill, Inc. Against Cannaburg Cultivation Cooperative LLC (#53.0): DENIED All parties may offer evidence on this issue at trial. Notices mailed 5/14/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Opposition to P#59 filed by Robert J Bujold to Sean Morrison's "Motion to Substitute Witness Due to Scrivener's Error in the Pretrial Memorandum" (E-FILED)	62	 Image
05/14/2024	ORDER: RULING ON MOTION IN LIMINE #46- MOTION TO STRIKE CERTAIN AGREED FACTS- (See Order) Copies mailed 5/14/24 Judge: Yarashus, Hon. Valerie A	63	 Image
05/14/2024	ORDER: RULING ON MOTION IN LIMINE #47- (See Order) Copies mailed 5/14/24 Judge: Yarashus, Hon. Valerie A	64	 Image
05/14/2024	ORDER: RULING ON MOTION IN LIMINE #49- STATUTE OF FRAUDS- (See Order) Copies mailed 5/14/24 Judge: Yarashus, Hon. Valerie A	65	 Image
05/14/2024	Endorsement on Motion to Substitute a Witness Due to Scrivener's Error in the Pretrial Memorandum (#59.0): DENIED However, as stated in another order issued today regarding a different real estate agent, this person may potentially be called as a rebuttal witness under the same circumstances. Notices mailed 5/21/24 Judge: Yarashus, Hon. Valerie A		 Image
05/14/2024	Endorsement on Submission of Stipulated Order Concerning Waiver of Attorney-Client Privilege of Cannaburg Cultivation Cooperative LLC Concerning Trial Testimony of Attorney Marvin Cable (#61.0): ALLOWED Notices mailed 5/21/24		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Judge: Yarashus, Hon. Valerie A		
05/17/2024	Plaintiff in a 3rd Party Claim Robert J Bujold, 310 Broad Street II LLC's Submission of PROPOSED Witness List (E-FILED)	66	 Image
05/17/2024	Defendants Cannaburg Cultivation Cooperative LLC, Sean Morrison's Submission of Witness List (E-FILED)	67	 Image
05/20/2024	Defendants Robert J Bujold, 310 Broad Street II LLC's Response to PROPOSED Witness List for Cannaburg and Sean Morrison (P#67) (E-FILED)	68	 Image
05/20/2024	Self-Represented Defendant Robert J Bujold, 310 Broad Street II LLC's EMERGENCY Motion to Strike Doug Kelleher from Sean Morrison's Witness List (P#67) (E-FILED)	69	 Image
05/20/2024	Plaintiff in a 3rd Party Claim Robert J Bujold, 310 Broad Street II LLC's EMERGENCY Motion to Amend Answer and Third-Party Complaint (E-FILED)	70	 Image
05/21/2024	Opposition to P#69 filed by Sean Morrison to Robert J. Bujold and 310 Broad Street II, LLC's EMERGENCY Motion to Strike Doug Kelleher from Sean Morrison's Witness List (E-FILED)	71	 Image
05/21/2024	Affidavit of Rebecca G. Rothrock (E-FILED)	71.1	 Image
05/22/2024	Reply/Sur-reply of Third-Party Defendant/Counterclaim Plaintiff Sean Morrison and Defendant/Cross-Claim Plaintiff Cannaburg Cultivation Cooperative LLC's to Bujold's Response to Proposed Witness List (E-FILED)	72	 Image
05/22/2024	Opposition to P#70 filed by Sean Morrison, Cannaburg Cultivation Cooperative LLC to Bujold and 310 Broad Street II LLC's EMERGENCY Motion to Amend Answer and Third-Party Complaint and in the Alternative to Postpone the Trial and Allow Morrison Limited Discovery (E-FILED)	73	 Image
05/22/2024	Plaintiff in a 3rd Party Claim Robert J Bujold, 310 Broad Street II LLC's Submission of Amended Witness List (E-FILED)	74	 Image
05/22/2024	Defendant in a 3rd Party Claim Sean Morrison's EMERGENCY Motion to Vacate Rulings in Order of May 14, 2024 and/or for Clarification [E-FILED] Applies To: Cannaburg Cultivation Cooperative LLC (Defendant); Morrison, Sean (Defendant)	75	 Image
05/22/2024	Defendant in a 3rd Party Claim Sean Morrison's EMERGENCY Motion to Continue the Trial to Avoid Prejudice to Morrison (E-FILED)	76	 Image
05/22/2024	Reply/Sur-reply of Robert Bujold's in Support of His Motion to Strike Douglas Kelleher as a Witness (E-FILED)	77	 Image
05/23/2024	Event Result:: Jury Waived Trial scheduled on: 05/23/2024 09:00 AM Has been: Not Held For the following reason: Court Order Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
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05/24/2024	Endorsement on Motion to Amend Answer and Third-Party Complaint (#70.0): ALLOWED See combined order. Notices mailed 5/28/24 Judge: Yarashus, Hon. Valerie A		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/24/2024	Endorsement on Motion to Continue the Trial to Avoid Prejudice to Morrison (#76.0): ALLOWED See combined order. Notices mailed 5/28/24 Judge: Yarashus, Hon. Valerie A		 Image
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06/07/2024	Opposition to P#78 filed by Sean Morrison, Cannaburg Cultivation Cooperative LLC to Bujold's EMERGENCY Motion to Disqualify Katherine Bierwas Morrison and Cannaburg's Counsel (E-FILED)	80	 Image
06/07/2024	Defendant Sean Morrison's EMERGENCY Motion for a Surreply to Bujold's EMERGENCY Motion to Disqualify Morrison and Cannaburg's Counsel (E-FILED)	81	 Image
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06/10/2024	Sean Morrison's Memorandum in support of his Court Rule 20(2)(h) waiver of detailed findings dated May 8, 2024 & for Judge Yarashus to relinquish jurisdiction of this case (E-FILED)	82.1	 Image
06/11/2024	Opposition to to Morrison's "Emergency" motion to vacate his Superior Court Rule 20(2)(h) waiver of detailed findings dated May 8, 2024 & for Judge Yarashus to relinquish jurisdiction of this case (p#82) filed by Robert J Bujold, 310 Broad Street II LLC (E-FILED)	83	 Image
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06/20/2024	Defendants Cannaburg Cultivation Cooperative LLC, Sean Morrison's EMERGENCY Motion for Specific Relief: Additional Time, Scheduling of Due Dates, Consolidating Matters for Hearing and Staying Substantive Rulings until Chief Justice Ricciuti's Decision [E-FILED]	86	 Image
06/21/2024	Affidavit of Megan E. Sheehan [E-FILED]	86.1	 Image
06/21/2024	Opposition to P#86: Morrison's "Emergency" Motion for Specific Relief filed by Robert J Bujold [E-FILED]	87	 Image
06/21/2024	Event Result:: Trial Assignment Conference scheduled on: 06/24/2024 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
06/21/2024	Reply/Sur-reply Reply to Bujold's Opposition to Morrison's Emergency Motion for Specific Relief [E-FILED]	88	 Image
06/24/2024	Affidavit two (2) of Katherine J. Bierwas in Support of Morrison's EMERGENCY Motion to Vacate His Superior Court Rule 20(2)(h) Waiver of Detailed Findings Dated May 8, 2024 & for Judge Yarashus to Relinquish Jurisdiction of this Case (E-FILED) (In RE: #82)	89	 Image
06/24/2024	Affidavit Three (3) of Katherine J. Bierwas in Support of Morrison's Surreply in Opposition to Bujold's Reply to His EMERGENCY Motion to Disqualify Katherine Bierwas (E-FILED)	90	 Image
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	as Counsel (E-FILED)		
06/25/2024	Defendant Robert J Bujold, 310 Broad Street II LLC's Motion to vacate standstill agreement (E-FILED)	92	 Image
06/25/2024	Robert J Bujold, 310 Broad Street II LLC's Memorandum in support of motion to vacate standstill agreement (E-FILED)	92.1	 Image
06/25/2024	Affidavit of compliance with Rule 9A (E-FILED)	92.2	 Image
06/25/2024	Defendant Robert J Bujold, 310 Broad Street II LLC's Notice of filing (E-FILED)	92.3	 Image
06/25/2024	Defendants Sean Morrison, Cannaburg Cultivation Cooperative LLC's EMERGENCY Motion to Strike Bujold and 310 Broad Street's Affidavit of Compliance with Rule 9A and Associated Pleadings as it Violates Rule 11 and MRCP 1.2 (in re: P#92.2) [E-FILED]	93	 Image
06/26/2024	Event Result:: Trial Assignment Conference scheduled on: 06/26/2024 09:00 AM Has been: Held as Scheduled Comments: FTR; rm 25 Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
06/26/2024	Opposition to P#92 filed by Sean Morrison, Cannaburg Cultivation Cooperative LLC to Bujold's Motion to Vacate the Standstill Agreement (E-FILED)	94	 Image
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06/26/2024	Affidavit of Katherine Bierwas in Support of Opposition to Bujold's Motion to Vacate the Standstill Agreement (E-FILED)	94.2	 Image
06/26/2024	Endorsement on Motion to Strike Bujold and 310 Broad Street's Affidavit of Compliance with Rule 9A and Associated Pleadings as it Violates Rule 11 and MRCP 1.2 Filed by Sean Morrison & Cannaburg (#93.0): Other action taken Allowed in part and denied in part. The 9A certificate and pleadings are not stricken. However, paragraph b of the requested relief is granted, so that Morrison may have the extension of time requested. Notices mailed 7/1/24 Judge: Yarashus, Hon. Valerie A		 Image
06/28/2024	Endorsement on Motion for Specific Relief: Additional Time, Scheduling of Due Dates, Consolidating Matters for Hearing and Staying Substantive Rulings Until Chief Justice Ricciuti's Decision (#86.0): Other action taken As stated on the records, the relief requested in paragraphs a-e is ALLOWED, and the relief requested in paragraph f is DENIED. Notices mailed 7/1/24 Judge: Yarashus, Hon. Valerie A		 Image
07/11/2024	Defendant Robert J Bujold's EMERGENCY Motion for protective order concerning four subpoenas (E-FILED)	95	 Image
07/11/2024	Robert J Bujold's Memorandum in support of his emergency motion for protective order concerning four subpoenas (E-FILED)	95.1	 Image
07/15/2024	Endorsement on Motion for Protective Order Concerning Four Subpoenas (#95.0): Other action taken The keeper of the records for Klein Group, Epsilon, Granite State and Velocity Commercial are temporarily relieved, until a ruling from the court, of any obligation to produce records in response to the 7/3/24 subpoenas. No other action shall be taken on Bujold's emergency motion. Bujold is to serve and all parties are to proceed pursuant to Rule 9A and 9C regarding the motions for protective order. Notices mailed 7/16/24 Judge: Manitsas, Hon. James M		 Image
07/18/2024	ORDER: ON ENTRY #75- (See Order) Copies mailed 7/23/24 Judge: Yarashus, Hon. Valerie A	99	 Image

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07/19/2024	Endorsement on Motion to Vacate His Superior Court Rule Rule 20 (2) (h) Waiver of Detailed Findings Dated May 8, 2024 & for Judge Yarashus to Relinquish Jurisdiction of This Case (#82.0): Other action taken See order dated 7/19/24. Notices mailed 7/23/24 Judge: Yarashus, Hon. Valerie A		 Image
07/19/2024	ORDER: ON DOCKET ENTRY #82- (See Order) Copies mailed 7/23/24	97	 Image
07/19/2024	Endorsement on Motion to Disqualify Katherine Bierwas as Counsel to Any Defendant Due to a Non-Waivable Conflict of Interest (#78.0): Other action taken See decision and order dated 7/19/24. Notices mailed 7/23/24 Judge: Yarashus, Hon. Valerie A		 Image
07/19/2024	ORDER: DECISION AND ORDER ON DEFENDANTS ROBERT J. BUJOLD'S AND 310 BROAD STREET II, LLC'S EMERGENCY MOTION TO DISQUALIFY KATHERINE BIERWAS AS COUNSEL- ORDER: For the foregoing reasons, it is hereby ORDERED that the motion to disqualify Attorney Katherine Bierwas as counsel for Cannaburg and Morrison is ALLOWED. Copies mailed 7/23/24 Judge: Yarashus, Hon. Valerie A	98	 Image
07/19/2024	Attorney appearance On this date Katherine J Bierwas, Esq. dismissed/withdrawn for Defendant Cannaburg Cultivation Cooperative LLC		
07/19/2024	Attorney appearance On this date Katherine J Bierwas, Esq. dismissed/withdrawn for Defendant Sean Morrison		
07/22/2024	Defendant Sean Morrison, Cannaburg Cultivation Cooperative LLC's EMERGENCY Motion to quash, and extend the time to file the new preliminary injunction until the decisions under advisement have been rendered (E-FILED)	96	 Image
07/22/2024	ORDER: DENYING REQUEST FOR SPECIAL ASSIGNMENT- After due consideration of the request for special assignment in the above-captioned case, said request is hereby DENIED. The Clerk's office will notify all counsel of record. Copies mailed 7/25/24 Judge: Ricciuti, Michael	100	 Image
08/07/2024	Endorsement on Motion to Stay the Decision on the Motion to Quash, and Extend the Time to File the New Preliminary Injunction Until the Decisions Under Advisement Have Been Rendered (#96.0): DENIED Denied as decisions have issued. Notices mailed 8/12/24 Judge: Manitsas, Hon. James M		 Image
08/15/2024	Notice of appeal filed (E-FILED) Applies To: Bierwas, Esq., Katherine J (Attorney) on behalf of Cannaburg Cultivation Cooperative LLC, Morrison, Sean (Defendant); Sheehan, Esq., Megan E (Attorney) on behalf of Cannaburg Cultivation Cooperative LLC, Morrison, Sean (Defendant)	101	 Image
08/15/2024	Defendants Sean Morrison, Cannaburg Cultivation Cooperative LLC's EMERGENCY Motion to Stay All Proceedings Pending the Outcome of the Appeal of the Order Disqualifying Morrison and Cannaburg's Counsel of Record (E-FILED)	102	 Image
08/19/2024	Endorsement on Motion to Stay All Proceedings Pending the Outcome of the Appeal of the Order Disqualifying Morrison and Cannaburg's Counsel of Record (#102.0): Other action taken See Order dated 8/19/24. Notices mailed 8/20/24 Judge: Yarashus, Hon. Valerie A		 Image
08/19/2024	ORDER: ON DOCKET ENTRY #102- (See Order) Copies mailed 8/20/24 Judge: Yarashus, Hon. Valerie A	103	 Image
08/22/2024	Defendants Sean Morrison, Cannaburg Cultivation Cooperative LLC's EMERGENCY Motion for Clarification of Order on Motion to Stay All Proceedings Pending the Outcome of the Appeal of the Order Disqualifying Morrison and Cannaburg's Counsel of Record	104	 Image
08/27/2024	Event Result:: Motion Hearing scheduled on: 08/27/2024 02:00 PM Has been: Held as Scheduled Comments: FTR; rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
08/27/2024	Endorsement on Motion for Clarification of Order on Motion to Stay All Proceedings Pending the Outcome of the Appeal of the Order Disqualifying Morrison and Cannaburg's Counsel of Record (#104.0): ALLOWED After further review, see revised ruling. Notices mailed 9/4/24 Judge: Yarashus, Hon. Valerie A		 Image
08/28/2024	Certification/Copy of Letter of transcript ordered from Court Reporter 05/23/2024 09:00 AM Jury Waived Trial, 06/26/2024 09:00 AM Trial Assignment Conference Applies To: Bierwas, Esq., Katherine J (Attorney) on behalf of Cannaburg Cultivation Cooperative LLC (Defendant); Sheehan, Esq., Megan E (Attorney) on behalf of Cannaburg Cultivation Cooperative LLC (Defendant)	105	 Image
08/28/2024	ORDER: REVISED ORDER ON DOCKET ENTRY #102- (See Order) Copies mailed 9/4/24 Judge: Yarashus, Hon. Valerie A	106	 Image
09/09/2024	Defendants Cannaburg Cultivation Cooperative LLC, Sean Morrison's Motion to Withdraw of Attorney Megan E. Sheehan (E-FILED)	107	 Image
09/10/2024	Event Result:: Conference to Review Status scheduled on: 09/10/2024 02:00 PM Has been: Held as Scheduled Comments: FTR; rm 25 Hon. James M Manitsas, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		
09/10/2024	Endorsement on Motion to Withdraw by Attorney Megan E. Sheehan (#107.0): ALLOWED Notices mailed 9/11/24 Judge: Manitsas, Hon. James M		 Image
09/10/2024	Attorney appearance On this date Megan E Sheehan, Esq. dismissed/withdrawn for Defendant Cannaburg Cultivation Cooperative LLC		
09/10/2024	Attorney appearance On this date Megan E Sheehan, Esq. dismissed/withdrawn for Defendant Sean Morrison		
09/16/2024	CD of Transcript of 05/23/2024 09:00 AM Jury Waived Trial, 06/26/2024 09:00 AM Trial Assignment Conference received from Approved Court Transcriber Caitlin Sheils.	108	
09/17/2024	Pursuant to Mass. R. App. P. 8 (b)(3), the parties are hereby notified that all transcripts have been received by the clerk's office and that the record will be assembled pursuant to Mass. R. Civ. P. 9(e).		
09/27/2024	Notice of assembly of record sent to Counsel	109	 Image
09/27/2024	Docket Note: Assembly of record on appeal emailed to Appeals Court (14102)		
10/08/2024	Appeal entered in Appeals Court on 10/08/2024 docket number 2024-P-1159	110	 Image
01/09/2025	Event Result:: Conference to Review Status scheduled on: 01/09/2025 02:00 PM Has been: Held as Scheduled Comments: FTR; rm 25 Hon. Valerie A Yarashus, Presiding Staff: Laurie Jurgiel, Assistant Clerk Magistrate		

Case Disposition

Disposition	Date	Case Judge
Pending		

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT
CIVIL ACTION
NO. 2085CV491D

CANNABURG CULTIVATION COOPERATIVE, LLC
Cross-claim Plaintiff,

v.

310 BROAD STREET II, LLC and
ROBERT J. BUJOLD,
Third party Plaintiff(s)
Counterclaim Defendant(s)
Cross-claim Defendants(s)

v.

SEAN MORRISON,
Third party Defendant,
Counterclaim Plaintiff

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**DECISION AND ORDER ON DEFENDANTS ROBERT J. BUJOLD'S AND 310
BROAD STREET II, LLC'S EMERGENCY MOTION
TO DISQUALIFY KATHERINE BIERWAS AS COUNSEL**

This case arises out of litigation concerning a cannabis business, which has resulted in crossclaims and counterclaims involving some of the original parties as well as a third-party defendant. The matter is now before the court on the motion of defendants and third-party plaintiffs Robert J. Bujold ("Bujold") and 310 Broad Street II, LLC ("Broad Street") to disqualify Attorney Katherine Bierwas ("Atty. Bierwas") from representing both Cannaburg Cultivation Cooperative, LLC ("Cannaburg"), and third-

Copies Mailed 7/23/24

party defendant, Sean Morrison (“Morrison”). A portion of the case (involving an unrelated party) has resolved, and the parties remaining before the court are the four parties reflected in the caption of this decision and order. This motion to disqualify counsel relates primarily to the third-party claims asserted by defendants and third-party plaintiffs Bujold and Broad Street against Morrison with respect to allegations that he breached his fiduciary duty and other obligations to Cannaburg. In light of this claim, and particularly in light of new evidence of breach of this fiduciary duty, the third-party plaintiffs move to disqualify Atty. Bierwas based on a non-waivable conflict of interest in violation of Rule 1.7 of the Massachusetts Rules of Professional Conduct. For the reasons discussed below, the motion to disqualify is **ALLOWED**.

BACKGROUND

The court recites the underlying factual allegations only insofar as they are relevant to the instant motion. Bujold formed Cannaburg in July 2018, and Morrison was added as a manager of Cannaburg in September 2019. Morrison and Cannaburg each own fifty percent of Cannaburg, and each has been a managing member at various times.¹ Cannaburg intended to develop a cannabis cultivation and sale business in Fitchburg, Massachusetts. The original plaintiff, Fuss & O’Neill, Inc. alleged in its

¹ Bujold also asserts claims in his capacity as manager of Broad Street, but those claims are not relevant to this motion. Atty. Bierwas did not represent Cannaburg at the time Bujold filed the third-party complaint asserting claims on behalf of Cannaburg. The attorney who was then representing Cannaburg, Bujold, and Broad Street (Attorney Christopher Ray), subsequently withdrew from the matter. Following Attorney Ray’s withdrawal, Bierwas, who represented Morrison, began representing Cannaburg.

complaint that Cannaburg (and Bujold as its manager) failed to pay monies due for professional design services it rendered. In the Answer and Third-Party Complaint filed on August 18, 2020, Bujold impleaded and alleged third-party claims against Morrison on behalf of Bujold personally and in his capacity as manager of Cannaburg and Broad Street. The claims in this case expanded considerably under the third party complaint. In particular, Bujold alleged that Morrison breached his fiduciary duties to Cannaburg by diverting resources to a new and competing business (Count V). During the course of the litigation, the day-to-day control of Cannaburg changed so that due to a stipulation filed in court ("Standstill Agreement"), Morrison is now the sole member/manager entitled to exercise control over Cannaburg. Although originally Cannaburg and Morrison were not represented by the same attorney (Atty. Bierwas), they are now.

In addition to the prior allegations, the moving parties also now allege that Morrison diverted corporate opportunities to a separate and competing venture. Bujold and Broad Street allege that they learned on the eve of trial in May 2024 that beginning in October 2019, a critical time for Cannaburg's business, Morrison was pursuing a competing opportunity to grow and sell cannabis in Fitchburg. This is apparently new information which was different than Morrison had testified to at his deposition, and which had not otherwise become known during discovery until the eve of trial. The moving parties allege that Morrison was diverting corporate opportunities in

partnership with Robert Wotton, who was supposed to be Cannaburg's cultivation specialist. They have submitted to the court a Special Permit Application filed with the Town of Fitchburg. In the document, Morrison is identified as an eighty-five percent owner of the entity seeking the license, B.O.T. Realty, LLC, for the type of business that would have resulted in direct competition with Cannaburg. Thus, at a time when Morrison owed a fiduciary duty to Cannaburg, he was allegedly pursuing a competing opportunity. Morrison does not deny that he filed this application but responds, in effect, that because the application did not succeed, it did not cause any harm. At the very least, however, it represents a corporate opportunity that Morrison appears to have failed to pursue through Cannaburg. Further, it is some evidence of Morrison's divided loyalty at a time when he owed a duty of utmost good faith and loyalty to Cannaburg.²

DISCUSSION

Bujold and Broad Street argue that because Cannaburg's and Morrison's interests are directly adverse, Atty. Bierwas must be disqualified from representing either party.

The owners of a closely held corporation owe each other "and the corporation itself . . . a [fiduciary] duty of 'utmost good faith and loyalty,'" and therefore "may not 'act out of avarice, expediency or self-interest'" toward each other. *Koshy v. Sachdev*, 477

² The court notes that while both Bujold and Morrison seek to cast the other as the villain, the court does not recite all of the allegations in full because it is only Morrison who is seeking to proceed with this case using the same attorney who is representing Cannaburg.

Mass. 759, 772 (2017), quoting *Donohue v. Rodd Electrottype Co. of New England*, 367 Mass. 578, 593 (1975). Members of a closely held LLC owe fiduciary duties of loyalty to each other and to the LLC itself. See *Allison v. Eriksson*, 479 Mass. 626, 627 (2018). Clearly, Morrison owed a fiduciary duty of good faith and loyalty to Cannaburg at all relevant times, and whether he breached that duty has been put at issue in this case.

Mindful that “a court should not lightly interrupt the relationship between a lawyer and her client,” *Adoption of Erica*, 426 Mass. 55, 58 (1997), the “interest in having counsel of [one’s] own choosing . . . is not absolute and must yield” in some circumstances. *McCourt Co. v. FPC Properties, Inc.*, 386 Mass. 145, 151 (1982).

“Disqualification of counsel is not a measure to be taken lightly.” *Commonwealth v. Scanlon*, 493 Mass. 1020, 1022 (2024). “In considering whether to disqualify counsel, a judge must closely scrutinize the facts before [the judge] to determine whether a lawyer’s continued participation as counsel taints the legal system” (quotation marks omitted). *Id.*, quoting *Smaland Beach Ass’n v. Genova*, 461 Mass. 214, 224-225 (2012).

In some circumstances, “[a] lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents,” however, this remains “subject to the provisions of [Mass. R. Prof. C.] 1.7.” Mass. R. Prof. C. 1.13(g). Rule 1.7 prohibits a lawyer from representing a client if the representation is “directly adverse to another client.” Mass. R. Prof. C. 1.7(a)(1). “By prohibiting the simultaneous representation of clients with adverse interests absent

informed consent, rule 1.7 fosters a sense of trust between the lawyer and client that promotes the lawyer's ability to competently represent the client's interests." *Bryan Corp. v. Abrano*, 474 Mass. 504, 511 (2016).

"Representation is 'directly adverse' within the meaning of rule 1.7(a)(1) when a lawyer 'act[s] as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.'" *Id.*, quoting Mass. R. Prof. C. 1.7 comment 6. "Thus, '[t]he undivided loyalty that a lawyer owes to [her] clients forbids [her], without the clients' consent, from acting for client A in one action and at the same time against client A in another.'" *Id.*, quoting *McCourt Co.*, 386 Mass. at 146. "This principle operates with equal force where client A is a corporation, and it is 'irrelevant [to our analysis] that the lawsuits are unrelated in subject matter and that it appears probable that client A will not in fact be prejudiced by the concurrent participation of the law firm in both actions.'" *Id.* at 512, quoting *McCourt Co.*, 386 Mass. at 146. "Indeed, the rules are clear that where a lawyer represents an organizational client his or her loyalty is owed to the organization, and not the constituents through whom the organization acts." *Id.* See Mass. R. Prof. C. 1.13 comment 1 ("An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents").

Here, in his capacity as manager of Cannaburg, Bujold has asserted a claim based on Morrison's alleged breach of the fiduciary duty he owed to Cannaburg as a member

and manager.³ Thus, Cannaburg's interests are directly adverse to Morrison's with regard to the breach of fiduciary duty claim. See *Bryan Corp.*, 474 Mass. at 510-515 (law firm's representation of corporation in action against corporation for alleged unpaid fees and representation of shareholder with regard to corporation's alleged violation of Wage Act was directly adverse and violated both duty of loyalty to corporation and prohibition against simultaneous representation of clients with directly adverse interests). In Morrison's opposition to the motion to disqualify, Atty. Bierwas takes the position that her client, Cannaburg, has no viable claim against her other client, Morrison.⁴ This illustrates the very problem Rule 1.7 seeks to prevent.⁵

³ "[W]hether a claim asserted by stockholders of a Massachusetts corporation is one that may be pursued directly by them against the corporation's directors or must be pursued derivatively depends on whether the harm they claim to have suffered resulted from a breach of duty owed directly to them, or whether the harm claimed was derivative of a breach of duty owed to the corporation." *International Brotherhood of Elec. Workers Loc. No. 129 Benefit Fund v. Tucci*, 476 Mass. 553, 558 (2017). Here, among other claims, Bujold asserts a claim of breach of fiduciary duty against Morrison based on Morrison's duty to Cannaburg, and it is therefore derivative. Whether Bujold may also assert direct claims against Morrison based upon any fiduciary duty owed by Morrison to Bujold is outside the scope of this decision.

⁴ Morrison argues that the claim of breach of fiduciary duty fails as a matter of law because there was no harm to Cannaburg where the special permit application was later withdrawn. Whether Morrison's alleged actions caused harm to Cannaburg is a question that cannot be resolved at this stage. However, the court notes that the third-party complaint contains other allegations relevant to this question, e.g., that Morrison allegedly took equipment from Cannaburg to use at his competing business and was responsible for Cannaburg's alleged failure to pay the plaintiff for its design services.

⁵ Morrison makes other arguments that the court finds unconvincing. He argues that as to the alleged agreement between Morrison and Bujold, Bujold's material breach excused Morrison's performance—this is inapposite regarding the breach of fiduciary duty claim, which is based on a duty owed to a corporation by a member/manager of the corporation and is not premised on the performance of an agreement. He also argues that he was authorized to employ Atty. Bierwas on behalf of Cannaburg. Morrison's authority is not in dispute; what is in dispute is whether Atty. Bierwas can simultaneously represent Cannaburg and Morrison without running afoul of the rules of professional conduct.

Bujold and Broad Street allege in this litigation not only that Morrison was diverting corporate resources and opportunities from Cannaburg; they also contend that there is a financial conflict created by this representation. Morrison, rather than Bujold, is now the managing member of Cannaburg. The moving parties point out:

“The role Attorney Bierwas plays will influence the decision as to whether Mr. Morrison is found to have acted in good faith such that he is entitled to reimbursement of his legal expenses. If Mr. Morrison is not found to have acted in good faith, then he is not entitled to any reimbursement from Cannaburg. Thus, to the extent that Cannaburg obtains a judgment, the allocation of that judgment amount will be impacted by Attorney Bierwas’ role in the litigation and possibly behind the scenes as counsel to the company.” [#78, p.4].

In certain circumstances (not present here), if a conflict arises under rule 1.7, the conflict may be waivable where the affected clients give informed consent. See Mass. R. Prof. C. 1.7 comment 6 (“Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed consent.”). Among other requirements, such a conflict is waivable only where “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and . . . each affected client gives informed consent, confirmed in writing.” Mass. R. Prof. C. 1.7(b)(3)-(4). Here, Cannaburg and Morrison are on opposite sides of the third-party claim, and both are represented by Atty. Bierwas. See Mass. R. Prof. C. 1.13 comment 14 (“Most derivative actions are a normal incident of an organization’s affairs, to be defended by the organization’s lawyer like any other suit. However, *if the claim involves serious*

charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization" [emphasis added].). In the instant situation, the court finds that particularly with this newly discovered evidence, the claim does indeed involve serious charges of wrongdoing by those in control of the organization. Regardless of which party or parties ultimately prevail at trial, there has been a substantial showing of serious charges of wrongdoing by an individual (Morrison) who owed a duty of loyalty to Cannaburg.

Moreover, where an "organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders." Mass. R. Prof. C. 1.13(g). Thus, Morrison cannot consent to the dual representation on behalf of Cannaburg. The court concludes that Rule 1.7 prohibits Atty. Bierwas from representing both Cannaburg and Morrison, as their interests are directly adverse and the conflict cannot be waived.

"Disqualification is appropriate in concurrent representation scenarios even where the client seeking disqualification 'will not in fact be prejudiced by the concurrent participation of the law firm in both actions.'" *Bryan Corp.*, 474 Mass at 516 (no abuse of discretion to disqualify law firm to remedy ethical violations where firm

simultaneously represented corporation and shareholders whose interests were directly adverse). Here, after Morrison was alleged to have breached his fiduciary duty to Cannaburg (in a motion filed by prior counsel for Cannaburg), and after Cannaburg's attorney withdrew, Morrison hired his own attorney to simultaneously represent Cannaburg in the same action. The prejudice resulting from the simultaneous representation of these parties appears obvious.⁶

While Bujold and Broad Street knew for some time that Atty. Bierwas simultaneously represented Morrison and Cannaburg, as noted above, the Rules of Professional Conduct recognize that an attorney for an organization may also represent an officer or shareholder. A conflict may not arise until there are "serious charges of wrongdoing by those in control of the organization." See Mass R. Prof. C. 1.13 comment 14. When the third-party complaint against Morrison was filed in August 2020, Atty. Bierwas did not yet represent Cannaburg, and Bujold and Broad Street were represented by their prior counsel. At the hearing on this motion, current counsel for Bujold and Broad Street represented that they had been aware that Morrison was involved in a retail-only cannabis business, but this presented less direct competition with Cannaburg. It was not until they obtained a particular document from the Town of Fitchburg that they learned that Morrison had allegedly applied for a permit on behalf

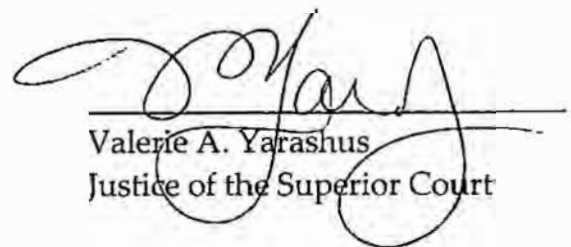
⁶ This is not a case involving "the appearance of impropriety alone," which "is not sufficient grounds for disqualifying an attorney" See *Bryan Corp.*, 474 Mass. at 516.

of his other business entity to cultivate and sell cannabis, which would put this other business in direct competition with Cannaburg. They learned this additional information in late May, days before trial. Given the relatively recent appearance of counsel for Bujold and Broad Street in the case and the late revelation of the extent of Morrison's allegedly competing business activities, the court concludes that the motion to disqualify Atty. Bierwas should not be denied because of its timing.

The court concludes that disqualification of Atty. Bierwas from representing either Cannaburg or Morrison is necessary, in light of the nature of the conflict of interest and the prohibition on concurrent representation of clients with directly adverse interests.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the motion to disqualify Attorney Katherine Bierwas as counsel for Cannaburg and Morrison is **ALLOWED**.



Valerie A. Yarashus
Justice of the Superior Court

DATED: July 19, 2024