

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. YOR-24-205

FAIR FRIEND ENTERPRISE CO, LTD,

Plaintiff/Appellee

v.

CNC SYSTEMS, INC.

Defendant/Appellant

**ON APPEAL FROM YORK COUNTY
SUPERIOR COURT**

REPLY BRIEF OF APPELLANT CNC SYSTEMS, INC.

November 12, 2024

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TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES	3
INTRODUCTION	4
ARGUMENT	5
1. The preceding, overlapping California Action is relevant to FFE’s subsequent inspection request in Maine and the Superior Court’s orders under review in this appeal.	5
2. CNC presented sufficient evidence to the trial court related to the California Action.	8
3. CNC’s appeal lies from a final judgement and is not interlocutory.	9
A. The trial court granted all available statutory relief sought by FFE pursuant to Title 13-C.	9
B. Alternatively, the Judicial Economy exception is applicable.	12
CONCLUSION	13
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

Case(s)	Pg(s)
<i>Bruesewitz v. Grant</i> , 2007 ME 13, ¶ 6, 912 A.2d 1255	12
<i>Coastal Ventures v. Alsham Plaza, LLC</i> , 2010 ME 63, ¶ 18, 1 A.3d 416	10
<i>Cutting v. Down East Orthopedic Assocs., P.A.</i> , 2021 ME 1, ¶ 18, 244 A.3d 226	12
<i>Est. of Dore v. Dore</i> , 2009 ME 21 ¶ 12, 965 A.2d 862	10
<i>Fournier v. Flats Indus., Inc.</i> , 2023 ME 40, ¶11, 298 A.3d 810, 814	10
<i>Holdsworth v. Goodall-Sanford, Inc.</i> , 143 Me. 56, 55 A.2d 130 (1947)	11, 12
<i>In re Adoption of Matthew R.</i> , 2000 ME 86, ¶ 4, 750 A.2d 1262	10, 11
<i>Liberty v. Bennett</i> , 2012 ME 81, ¶ 22, 46 A.3d 1141	13
<i>Marks v. Marks</i> , 2021 ME 55, ¶ 10, 262 A.3d 1135	10, 12

STATUTES

13-C M.R.S. § 1602.....	10
13-C M.R.S. § 1604.....	9, 10, 11, 12
13-C, R.S. 1944 Ch. 49.....	11

INTRODUCTION

Pursuant to Maine Rule of Appellate Procedure 7A(c), Appellant CNC Systems, Inc. (“CNC”) submits this reply brief to address new arguments raised in the brief of the Appellee Fair Friend Enterprises, Co., Ltd. (“FFE”).

Appellee FFE has raised the following new arguments:

First, FFE presents argument directed at whether the trial court abused its discretion both in declining to stay the Maine Action and in awarding expenses to FFE. FFE suggests that this appeal is based upon a “faulty premise,” arguing that its inspection rights under Title 13-C were not “waive[d]”¹ and that “nothing” in Title 13-C “makes shareholder information rights contingent upon the absence of litigation in other jurisdictions.” (Appellee Brief, at 18, 20-21.) More specifically, FFE argues that its “information rights as majority shareholder of CNC Systems, are no less valid or effective just because [it], along with two other parties (MAG and DMC) have filed suit against CNC Systems seeking damages” in California. (Appellee Brief, at 21.)

Second, FFE argues that no “evidence” was presented to the trial court in support of CNC’s requests to stay the Maine Action or in opposition to FFE’s request for attorney’s fees.

¹ Whether FFE *waived* any right to inspect records was not at issue before the trial court and is not at issue before this Court. CNC sought from the trial court a temporary stay of this Maine Action, pending resolution of the existing California Action.

Lastly, FFE briefly argues that CNC's pending appeal is interlocutory and premature. (Appellee Brief, at 38.)

ARGUMENT

1. The preceding, overlapping California Action is relevant to FFE's subsequent inspection request in Maine and the Superior Court's orders under review in this appeal.

FFE's contention that this appeal is based upon a "faulty premise" is without merit. FFE's Brief ignores and fails to distinguish any of the relevant cases at issue throughout this Maine Action, which cases bear directly on when and whether a shareholder is permitted to inspect records amid ongoing litigation against a corporation. (*See* CNC Brief, at 15-16.)

FFE takes the position that its requests to inspect certain corporate records under Title 13-C "are no less valid or effective just because [it], along with two other parties (MAG and DMC) have filed suit against CNC Systems seeking damages" in California. (Appellee Brief, at 21.) In making this argument, FFE attempts to distinguish the California Action by characterizing it as a "a separate multi-party lawsuit pending in California" or as "separate litigation involving multiple parties in another jurisdiction." (Appellee Brief, at 2, 27.) To be sure, FFE concedes that the Maine Action was commenced over four months after FFE commenced the California Action. (Appellee Brief, at 7.) FFE likewise does not dispute in its Brief (nor did it before the trial court) that FFE and the two other parties in the California

Action, DMC and MAG, are all members of the “Fair Friend Group.” (CNC Brief, at 1.) In fact, FFE even alleged in its California Complaint that FFE, DMC, and MAG are “sister companies under common ownership.” (CNC Brief, at 3; A. 67.) FFE also does not dispute that a representative of MAG, submitted the July 18, 2022, request to inspect records in Maine and that this same individual, Paul Chen, submitted the affidavit in support of FFE’s later Application. (CNC Brief, at 4.) FFE has likewise never disputed in this Maine Action that FFE had received many of the documents it sought through its July 18 Letter as part of discovery proceedings in California. Similarly, FFE does not dispute the procedural posture of the California Action, including the information presented to the trial court, which information included a California court order expressly stating that CNC’s “cross-complaint . . . focused on multiple misrepresentations FFE allegedly made to CNC and the [Intervenors] during negotiations of the acquisition” of its shares. (CNC Brief, at 7; A. 270.)

Thus, the California Action is more than simply a “separate multi-party lawsuit.” The issues being litigated in the California Action include issues that directly relate to whether, in fact, FFE is shareholder of CNC. All of this information relating to FFE’s relationship with MAG and DMC and the information relating to the California Action were presented to the trial court as part of this Maine Action. As is set forth in CNC’s Brief, CNC contends that the trial court abused its discretion

in reviewing this information presented and failing at any time to stay this Maine Action.

Indeed, FFE's attempts to minimize the California Action do not make the parallel litigation a "faulty premise" upon which to request a stay or oppose FFE's request for its expenses in this Maine Action. Numerous courts have determined that parallel litigation between a shareholder and corporation is a proper basis to stay or deny a shareholder's *subsequent* and separate request to inspect records—FFE's Brief does not mention or attempt to distinguish much of the relevant caselaw addressing when a shareholder may be refused immediate inspection of certain corporate records.² (CNC Brief, at 15-16; *see* A. 16-17.)

In short, FFE's "faulty premise" argument is without merit. Sufficient information was presented to the trial court, both by CNC and FFE, to demonstrate that the California Action and Maine Action were sufficiently related that a stay in Maine was necessary and appropriate, pending resolution of the California Action. For the reasons stated in CNC's Brief, the trial court abused its discretion when it repeatedly refused to stay the Maine Action and when it awarded FFE its expenses as part of this Maine Action.

² FFE appears to suggest that a stay would be appropriate and warranted only if there were an existing, parallel action in another jurisdiction "addressed to CNC Systems' obligation to provide access to books and records under Maine law." (Appellee Brief, at 25.) However, this apparent contention is unsupported and is contrary to the relevant caselaw cited above.

2. CNC presented sufficient evidence to the trial court related to the California Action.

FFE contends that CNC failed to support its requests to stay this Maine Action with “any countervailing evidence or affidavits sufficient to create contested facts,” arguing that this “necessarily means” that CNC could not “prove[] that it refused inspection in good faith.” (Appellee Brief, 30-34.)

As noted above, much of the information relevant to the California Action was presented to the trial court through the Affidavit of Paul Chen. Additionally, and perhaps more importantly, CNC presented to the trial court the parties’ pleadings in the California Action, as well as the parties’ initial discovery requests. This “evidence” was presented to the trial court as part of CNC’s November 14, 2022, motion for a stay of this Maine Action. (CNC Brief, at 5; A. 138-141; *Record*, November 14, 2022, Motion for Stay, Exhibits A-D.) As part of its second, supplemental motion for a stay, CNC presented to the trial court additional pleadings from the California Action, as well as the California court’s order on another shareholder’s motion to intervene. (CNC Brief, at 6; A. 254-274, *Record*, September 7, 2023, Supplemental Motion to Stay, Exhibit 3.) The California court’s order provided additional context to the trial court about the nature of the dispute in California and about the parties to that action. (CNC Brief, at 6-7; A. 270-72) Of course, FFE was in possession of these same documents both before and during the

Maine Action, and did not at any time dispute the authenticity of these documents or the substance contained therein.

In short, there was sufficient “evidence” presented to the trial court about the nature of the California Action, why a stay was warranted in the circumstances, and why FFE was not entitled to its expenses for prosecuting the Maine Action.

3. CNC’s appeal lies from a final judgment and is not interlocutory.

FFE briefly argues that CNC did not appeal from a final judgment, suggesting that the pending appeal was “premature.” (Appellee Brief, at 38.) Again, FFE’s argument is without merit.³

A. The trial court granted all available statutory relief sought by FFE pursuant to Title 13-C.

In the Superior Court, the trial court granted all available statutory relief requested by FFE, including the court’s March 8, 2023, order permitting the “inspection and copying of the records demanded” and April 30, 2024, order awarding FFE’s “expenses incurred to obtain the [inspection] order.” 13-C M.R.S. § 1604(1)-(3). As a result, all available statutory claims pursued by FFE under Title

³ Separately, FFE posits, without any support, that CNC’s current appeal was “presumably aimed at having to account for its failure to produce 2022 Financial Statements” at a July 1, 2024, status conference. (Appellee Brief, at 38.) Yet, FFE likewise concedes that it has since received the 2022 Financial Statement and that this Statement was not yet completed or otherwise available for production as of July 1, 2024. (Appellee Brief, at 39) To this point, FFE’s Brief also suggests that the Financial Statement is “curiously” dated July 30, 2024, but not provided to FFE until September 27, 2024. However, FFE’s Brief omits that counsel for FFE was previously informed that the Statement was not released by the accountants to CNC until September 6, 2024, and was not received at the office of CNC’s counsel until September 25, 2024.

13-C have been resolved.

“Generally, only final judgments are ripe for appellate review.” *In re Adoption of Matthew R.*, 2000 ME 86, ¶ 4, 750 A.2d 1262 (quotation marks omitted). “The final judgment rule is a prudential rule, designed to avoid piecemeal litigation and to preserve [this Court’s] limited judicial resources.” *Id.* (quotation marks omitted); *Marks v. Marks*, 2021 ME 55, ¶ 10, 262 A.3d 1135. “An appealable final judgment is a trial court decision that resolves all claims against all parties.” *Fournier v. Flats Indus., Inc.*, 2023 ME 40, ¶ 11, 298 A.3d 810, 814; *see Est. of Dore v. Dore*, 2009 ME 21, ¶ 12, 965 A.2d 862. When “litigation results in several trial court judgments, [this Court] review[s] each to determine at what point the court fully decided and disposed of the whole matter leaving nothing further for the consideration and judgment of the trial court, and no subsequent proceedings in the case will render the appellate court’s decision immaterial.” *Coastal Ventures v. Alsham Plaza, LLC*, 2010 ME 63, ¶ 18, 1 A.3d 416 (quotation marks and alterations omitted).

As relevant here, 13-C M.R.S. § 1604 permits a shareholder to seek court-ordered inspection of certain corporate documents and to request an award of expenses incurred in obtaining such an order. A shareholder may “apply” to the trial court for an order permitting inspection of certain corporate records when it is alleged that a corporation has not allowed inspection in accordance with Section 1602(2)-(4). *See* 13-C M.R.S. § 1604(1)-(2). If the trial court orders inspection, the

statute also permits the court to “order the corporation to pay the shareholder’s expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.” *Id.* § 1604(3).

Here, in the Superior Court, the court granted FFE’s Application and ordered, by way of its March 8, 2023, order, that CNC permit the “inspection and copying of the records demanded.” Through its April 30, 2024, order, the trial court granted FFE’s motion for attorney’s fees and awarded FFE its “expenses incurred” in obtaining the inspection order. As such, under 13-C M.R.S. § 1604, there is no additional relief that the trial court may award to FFE as part of the statutory request for inspection of corporate records and award of expenses. CNC’s appeal does not present “piecemeal litigation” to this Court for appellate review. *Matthew R.*, 2000 ME 86, ¶ 4, 750 A.2d 1262 (quotation marks omitted). Rather, CNC seeks review of the statutory relief the trial court afforded to FFE, which, together, constitute a final judgment on FFE’s requested statutory relief under Title 13-C. *See, e.g., Holdsworth v. Goodall-Sanford, Inc.*, 143 Me. 56, 55 A.2d 130 (1947) (appeal of trial court action ordering inspection of records by corporation under the predecessor of Title 13-C, R.S. 1944 Ch. 49).

Accordingly, the trial court orders constitute a final judgment because the orders have “resolve[d] all pending claims” and provided all relief available to FFE.

Marks, 2021 ME 55, ¶ 10, 262 A.3d 1135; *see Holdsworth*, 143 Me. 56, 55 A.2d 130; 13-C M.R.S. §1604.

B. Alternatively, the Judicial Economy exception is applicable.

To the extent that the Court concludes that the trial court’s orders entered under 13-C M.R.S. § 1604 do not resolve all claims and the available relief sought by FFE, appellate review of the trial court’s orders nonetheless falls under the “judicial economy” exception to the final judgment rule. FFE appears to concede as much. (Appellee Brief, at 38 n. 13.) The judicial economy exception permits review of an otherwise interlocutory order if such review “establishes a final, or practically final, disposition of the entire litigation, and the interests of justice require that an immediate review be undertaken.” *Bruesewitz v. Grant*, 2007 ME 13, ¶ 6, 912 A.2d 1255. This exception may be invoked when “when there are particularly unique circumstances in the history of a case such as exceedingly long litigation, multiple pending proceedings involving the same party, or litigation subject to inordinate delay.” *Cutting v. Down E. Orthopedic Assocs., P.A.*, 2021 ME 1, ¶ 18, 244 A.3d 226 (quotation marks omitted). Here, as noted above and in CNC’s initial Brief, the trial court has afforded all requested and available statutory relief to FFE. In the trial court, CNC repeatedly raised the parties’ parallel, ongoing California litigation as a defense to FFE’s application to inspect records and later request for attorney’s fees. Given the parallel proceedings involving the parties in two forums, this Court’s

resolution of CNC’s contentions related to FFE’s corporate records request in Maine amid the parties’ ongoing litigation in California present the “unique circumstances” necessary for application of the judicial economy exception to the final judgment rule. *Liberty v. Bennett*, 2012 ME 81, ¶ 22, 46 A.3d 1141. Indeed, in the event that this matter is remanded to the trial court as interlocutory, the only additional action FFE apparently intends to pursue is the enforcement of a subpoena to a third-party, presumably for the same records FFE has already received. (*See Appellee Brief*, at 38.)

Therefore, to the extent that this Court determines that this appeal is not the result of a final judgment under Title 13-C, CNC respectfully requests that the Court nonetheless apply the judicially economy exception and reach the merits of this appeal.

CONCLUSION

For all the foregoing reasons, and for those reasons stated in its initial Brief, CNC Systems, Inc. respectfully requests that this Court vacate the trial court’s order awarding FFE its attorney’s fees and remand this Maine Action to the trial court with instructions to stay proceedings pending resolution of the ongoing California Action.

Dated at Portland, Maine this 12th day of November, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Russell B. Pierce, Jr., Esq., Attorney for Defendant-Appellant CNC Systems, Inc., hereby certify that I have served an electronic copy of the Reply Brief of Appellant with the Law Court and counsel for the Plaintiff-Appellee, and further certify that I have served two copies of the Reply Brief of Appellant upon all counsel of record, by depositing same in the United States Mail, postage prepaid, as follows:

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