SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. BCD-24-318

RICHARD P. OLSON, Trustee of the Promenade Trust
Plaintiff – Appellee

v.

PAMELA GLEICHMAN
GENERAL HOLDINGS, INC. AND ELLEN HANCOCK, TRUSTEE OF Hillman Norberg Trust
Defendants– Appellants

ON APPEAL FROM BUSINESS AND CONSUMER COURT

APPELLANTS' BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Pages**

STATUTES AND RULES OF PROCEDURE

OTHER AUTHORITIES

APPELLANTS' BRIEF

I. INTRODUCTION

In 1988 the Appellant Pamela Gleichman ("Gleichman") along with her husband Karl Norberg ("Norberg"), established The Promenade Trust (the "Trust") for the benefit of their three children, with Verrill Dana attorney Chris Coggeshall becoming Trustee. In 2012 in order to refinance her family home Gleichman assigned the economic interests she owned as general partner in three Maine limited partnerships (the "GP interests") to Ellen Hancock as Trustee of the Hillman Norberg Trust (the "HN Trust") for the benefit of Gleichman's and Norberg's youngest child – Hillman Norberg.[1]

In February of 2015 Appellee Richard P. Olson was substituted for Chris Coggeshall as the Trustee of the Promenade Trust (the "Trust"). Trial Transcript at 19:17-22 (hereinafter "Tr. Trans. at __"). In 2018 Olson commenced this case seeking to invalidate the transfers that had taken place six years earlier.

In a seventeen count Counterclaim Gleichman and Norberg asserted various claims arising principally from the Promenade Trust's agent having agreed with them in 2013 that the money judgments and writs of execution that Norberg had previously purchased and was assigning to the Promenade Trust would not be used

[1] In 2022 Mary Wolfson was substituted as the Trustee of the "HN Trust" due to Ellen Hancock's death.

in any way to the detriment of Norberg or Gleichman. The Counterclaim asserts that, after complying with that promise for years[2], the Promenade Trust under pressure from Gleichman's daughter (Rosa Scarcelli)[3], used those judgments against Gleichman and Norberg in violation of the agreement, including by using the judgments in the present case as the predicate for its claims to invalidate the 2012 conveyances to the HN Trust.[4]

In 2019 the Business and Consumer Court (the "BCD") dismissed all seventeen counts of the Counterclaim based upon its conclusion that Gleichman and Norberg had no standing to assert claims against the Trust or its Trustee. (App at 9-15). In 2022 the BCD granted the Appellee's Motion to Strike the Jury Demand filed on behalf of Gleichman, Norberg and Hancock. (App at 16-21). In February

[2] In 2016 Olson joined with Scarcelli in an Illinois lawsuit to foreclose on charging orders obtained in Maine to deprive Gleichman of her partnership interest in all of her limited partnerships. Both the original Trustee and the Successor Trustee of the Promenade Trust had initially opposed foreclosing upon Gleichman since it was unnecessary and would involve the Trust in using against Gleichman the judgments and writs that Gleichman and Norberg had entrusted to it. Olson's attorney in Illinois in fact filed pleadings to dismiss the action characterizing it as unnecessary "forum shopping". Tr. Trans. at 88:2 to 90:7 and Def. Ex 43 (App. 263- 273).

[3] See Ex 82 - App. at 280 (Scarcelli's counsel suggesting a fraudulent transfer claim may be brought against Gleichman and Hancock and copying Trustee Olson's counsel). See also Defs. Ex 84A (App. at 258).

[4] Apart from commencing this action, Appellee Olson joined a foreclosure effort in Illinois with Scarcelli to foreclose upon Gleichman's economic GP interests in 47 of the 50 projects that Gleichman owned in 2012; through the present action Olson seeks to obtain the interests in the three remaining projects. See Deposition of Richard Olson (Ex. 106) at 22:1 to 27:12 and 174:13 to 177:2.

of 2024 the BCD Court held a bench trial on the fraudulent transfer claims, and in June of 2024 entered findings and a judgment voiding the transfer of the 2012 transfers, concluding that either they should be deemed not to have been conveyed or (if conveyed) to have been conveyed in violation of Maine's Fraudulent Transfer Act. (App at 22-39).

This appeal taken by Gleichman, Wolfson and Norberg challenges: A) the denial of the right to a jury trial, B) the dismissal of the Amended Counterclaim and C) the post-trial judgment voiding the 2012 transfers.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

In 1970 Pam Gleichman moved to Franklin County after earning her master's degree in Fine Arts at the University of Pennsylvania. In 1974 she began working for the Maine State Housing Authority, ultimately advancing to become the head of its development division. Trial Transcript at 92:6-93:3. In 1977 Gleichman started her own housing development company, constructing housing through the Rural Development program of the U.S. Department of Agriculture as well as through the Maine State Housing Authority. She developed housing mostly in Maine – then extending her projects into Pennsylvania – with a few projects in Iowa and Illinois as well. Trial Transcript at 93:4-13.[5]

[5] Gleichman developed a total of approximately 100 low-income housing projects. Trial Transcript at 94:7-9. Gleichman was appointed by Governor Brennan in 1980 to the Board of

Early in her long career Gleichman formed three limited partnerships through which she developed three low-income housing projects in Maine known as Mallard Pond in Brunswick, formed in 1984, On The Green in Brunswick, formed in 1984, and Harbor Hill Apartments in Bar Harbor, formed in 1988 (hereinafter "the Maine Partnerships"). See Deposition of Pamela Gleichman 8/11/20 (Defendants' Exhibit 102), at 5:21 to 7:25. At the time of formation of these three Maine Limited Partnerships, Gleichman was the sole individual general partner and the sole owner of the corporate general partner of each partnership, Gleichman & Co., Inc.

In 2012 Gleichman conveyed her economic interests as General Partner in those three projects to a trust which was established at that time named the Hillman Norberg Trust (the HN Trust")[6] for the benefit of Gleichman's youngest son – Hillman Norberg. As part of the transaction, Ellen Hancock agreed to become the trustee of the new trust and to provide her personal guaranty toward the anticipated refinancing of the Gleichman family residence in Bar Harbor, Maine so it would

the Maine Guaranty Authority. See Defendants' Exhibit 3 (Gleichman Resume)(App. at 232-244).

[6] It was Gleichman's intent to convey her entire individual interest as well as the interest of her wholly owned corporation; however, the conveyance language in the HN Trust did not contain a separate signature space for the corporation's intended conveyance.

be brought into the trust.[7] At that time Gleichman was experiencing liquidity problems largely due to obstructionist actions by her daughter, Rosa Scarcelli, as she managed the projects and withheld from her mother sums owed to her and in otherwise preventing her from accessing the substantial equity she owned in her fifty project portfolio. See Tr. Trans at 111:2 to 112:14 and 126:2- 127-11; 132:22 to 133:7.[8]

The purpose of the transfer of Gleichman's general partner economic interests was to pay off the existing mortgage on the home through a refinancing. Tr. Trans. at 95:16 to 97:12. The parties' intent in that regard is set forth in the document establishing the Hillman Norberg Trust. App. 286. The combined trust/conveyance document dated October 23, 2012 was prepared by a respectable Illinois law firm and was executed by all parties in front of witnesses and a notary public.[9] No aspect of the transfer was concealed from anybody, see Tr. Trans 141:9

[7] The Gleichman/Norberg home overlooked Porcupine Island – with the main home known as the "Porcupine House" property, and the adjacent lodge property known as "the Vanderbilt Lodge". Tr. Trans. at 97:13 to 98:15.

[8] Eventually, in 2020, after a judicial settlement conference, Scarcelli agreed to pay her mother and stepfather $3.95 million. and to pay her two brothers $2.7 million over the course of 15 years. See Def. Ex 85.

[9] The trust document establishing the Hillman Norberg Trust was executed in 2012, reflecting on its face that Pam Gleichman signed it on October 23, 2012 and Ellen Hancock signed it on November 3, 2012. It also contained the signatures of the notary and two other witnesses as to each signature. Pl. Ex 1 (App. 152-167). See also Tr. Trans. at 57:2-17 and 59:4-24.

- 24, and in fact the trust/conveyance document was actually reviewed in advance by Promenade Trust's Trustee, attorney Chris Coggeshall, who at that point had served for twenty-four years as the trustee of the Promenade Trust and was a partner in a respected Portland law firm (Verrill Dana). Tr. Trans at 114:9 to 115:5.[10]

The anticipated refinancing was a sensible and realistic plan to save the family home. The plan called for new financing to be provided by the Bank of America – with the contemplated financing paying off the mortgage debt originally incurred with the local institution, Machias Savings Bank, but conveyed to a Connecticut hedge fund entity named Westport Capital. The trust document stated in Article 3 (at pages 2 and 3) that the Trust would be obligated to make monthly payments on the new loan ("a mortgage loan" being obtained "from Bank of America"), and that the trustee would use anticipated trust rental revenue to do so. Tr. Trans. at 101:4 to 102:22. The "Hillman Norberg Trust" was being funded initially through Ms. Gleichman's assigning into that Trust her economic interests as General Partner ("GP interests") in the Three Maine Projects; it would also would

[10] Trustee Coggeshall's review of the draft of the trust document is reflected in an email of the draft to him from Gleichman on September 24, 2012 – the draft reflecting that the Hillman Norberg Trust was to be funded through the transfers into it of all of Gleichman's economic rights in Gleichman's three Maine projects. Def. Ex 14 (App. 251); Tr. Trans.74:14 to 76:25. See also Ex. 88 App 286. Another email confirmed that Scarcelli's attorney was aware as of May 14, 2015 that Gleichman longer owned the economic interests as GP in the Harbor Hill partnership. See Def Ex 47 (274-275) at 2 ("Pam has no interest in GN Holdings and Harbor Hill and accordingly, these [distributions] were not applied..").

receive rental income from both the Porcupine House (with a rental history of $72,000 for just a few months) and the Vanderbilt Lodge. See Deposition of Gleichman (Ex. 102) at16:14 to 18:9. With the valuable guaranty of Trustee Hancock and the rights flowing from the interests conveyed to the new entity, refinancing was very likely. Tr. Trans. at 98:16 to 99:12. See also Tr Trans 113:6 to 114:8. The well thought out plan of refinancing was put together with Trustee Coggeshall's assistance and was in no respect a "dubious scheme" or an "ill-conceived" plan.[11] After much negotiation, the anticipated refinancing of the Porcupine House fell through, but Hancock was able to save the Vanderbilt portion of the property by advancing $225,000 of her personal funds. Tr. Trans 174:16-20 and Defs. Ex 104 Hancock Tr. at 45:7 to 47:20.

Ellen Hancock was in no sense a passive "straw" in a sham transaction, and this is clear from her detailed description of how her involvement progressed over the years. See Tr. Trans 145:13 to 149:7. Ms. Hancock was a very successful and highly regarded businessperson whose involvement was vital to the financing plan since she had agreed to guaranty the refinancing debt, thus virtually guarantying its

[11]The BCD's comments at pages four and five of its judgment that it was "unsurprising" that the refinancing "never closed" because it was an "ill-conceived plan" and "a dubious scheme to save the Porcupine House" were unsupported and clearly erroneous findings. Even Plaintiff Olson did not make any such argument or assert that the refinancing plan was not undertaken in good faith in a serious effort to save the family home. See Plaintiff's Post Trial Brief dated April 1, 2024 at 2; Plaintiff's Post Trial Reply Brief dated May 16, 2024 at 3-4.

success. Ms. Hancock was among the most highly successful female businesspersons from the 1980's through the 2000's, spending 29 years as an executive at I.B.M. and then at National Semiconductor for two years, followed by Apple and Exodus Communications. Def Ex 1 (App. 230-231). See also Tr Trans at 144:1 to 145:8. Ms. Hancock held many Board of Director positions with non-profits and Colleges and non-profits, including one facilitating female involvement in venture capital.[12] Ms. Hancock became a friend of Pam Gleichman as a result of their joint involvement in the "Committee of 200" (an organization of preeminent international business women), and she developed a special affinity towards Hillman Norberg – serving in many ways as his mentor. Tr. Trans. at 104:21 to 106:16.[13]

[12] Pam Gleichman had become acquainted with Ellen Hancock in the 1990's as a result of their involvement with the organization named "The Committee of 200" which was dedicated toward facilitating women in their careers in business. See Deposition of Pamela Gleichman, at 20:12 - 22; Deposition of Ellen Hancock, Trustee at 9:1 to 10:22. Ellen Hancock resided in Ridgefield, Connecticut and also had homes in New York City, Long Island, Ireland and in Southwest Harbor, Maine. Ellen had a Master's degree in math from Fordham University; she served as an executive for the IBM Company for 29 years (becoming Senior Vice President), then worked in the Office of the President of National Semiconductor and then at Apple as an executive in charge of Operating Systems Assurance; then as CEO and Board Chairman of the public company - Exodus Communications (EXDS); then forming a special acquisition company with Steve Wozniak and Gil Amelio and until her death serving as a Board member for three not-for-profits as well as a company that facilitates women in obtaining venture capital. See Deposition of Ellen Hancock, Trustee at 5:13 to 6:1 and 7:19 to 8:18.

[13] Hancock served for many years as the Trustee attempting to save the home that young Hillman had grown up in. Despite asking for no compensation, she continued for years in her joint efforts with Gleichman to save the family's Bar Harbor home - ultimately lending $225,000 of her own funds to rescue the "Vanderbilt Lodge" residence which was adjacent to the Porcupine House.[13] See Deposition of Ellen Hancock at 45:16 through 47:20. See also Deposition of Pamela Gleichman at 12:16 to 13:10; 22:6-12 and 35:23 to 36:20 and 108:13 to 111:20.

As of the time that Hancock entered into the arrangement with Gleichman to save the family home in 2012, Karl Norberg was the owner of substantial judgments and writs of execution valued at over $10 million owing by Pam Gleichman. Tr. Trans. at 70:24 to 73:20. Norberg obtained assignments of those judgments over the course of years as he settled (and paid) mostly contractor claims made in connection with the various developments. Only at a point in late 2013 (well after Hancock had obtained interests in the three Maine projects involved in this case) did Norberg transfer his judgments and writs to the Promenade Trust.[14] Tr. Trans. at 70:2 -23. That transfer occurred after Attorney Coggeshall and Norberg agreed that the judgments being conveyed to the Promenade Trust were

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[14] The BCD's commentary at page 13 of its decision suggesting that Norberg was undeserving of owning the judgments is not only irrelevant, but also unsupported in the record. There was no evidence that Norberg came to be the holder of the liens using funds that he had "misappropriated from the Promenade Trust". Norberg obtained the judgments by settling claims by contractors obtaining the judgments at a discount sum in accordance with standard and proper professional legal advice that he do so for potential use in protecting his wife in the future; transferring them to Promenade Trust's Trustee for the same purpose. See Tr. Trans. at 186:6 to 187:7 and 190:12 – 22 and 198:8 to 199:199:6. Even the trial judge during the trial found that the genesis of Norberg having obtained the judgments was irrelevant. See Tr. Trans. at 199:4-6 (cutting off questioning by Olson's counsel – stating that no one is arguing that Norberg does not own these judgments).

The Appellee who is a lawyer admitted at trial that purchasing judgments to create a wall of debt is a proper method of protecting one's client and that he had set up walls of debt to protect his own clients. See Olson trial testimony at 69:3 to 70:1 (have "a friendly creditor acquire the claims of other creditors and have them hold on to those. And effectively, that blocks the efforts of other creditors to be able to come in and foreclose and take control of your assets;" this gives the client time and a chance to try to liquidate and "to make sure assets go where you want them to go" and "protects the cash flow").

being conveyed solely so that they would be used by the Promenade Trust as a means of protecting Pam Gleichman and Karl Norberg against any creditors pursuing Gleichman or Norberg.[15]

As of October of 2012 Gleichman's general partner interests were fully encumbered by Norberg's perfected judgments against all of Gleichman's assets (including her economic interests as the GP in the three partnerships involved in this case). Norberg owned writs of execution that were fully perfected through UCC filings with Maine's Secretary of State's Office and which had a face value far exceeding the value of the economic interests that were conveyed at that time into the HN Trust. Def Ex. 5 (App. 245-250) and Def Ex 109 (App. 288 - 297).

As for the value apart from encumbrances, Olson hired no valuation expert to opine as to the complex matter of what these economic interests were worth at the time of transfer, Tr. Trans. at 54:6-19, and admitted that there had been "very few distributions" from these three partnerships since 2012 and that he was not even sure whether the projects had been able to pay management fees from their rental income, Tr. Trans. at 63:4 -16, admitting as well that there were numerous other

[15] See Transcript of Chris Coggeshall (Def. Ex.101). at 123:13-21(purchased claims from Karl to use so that "third-party creditors" would have "to think twice" about collecting against Pam); 141:12 to 143:20 (describing joint efforts to protect Pam by using the claims obtained from Karl). The "wall of debt" was established with Norberg's judgments in the hands of the Trustee of the Promenade Trust in order to "protect family assets from creditors." Deposition of Chris Coggeshall, at 24:1 - 17 and to 53:1 to 55:18 and 63:2 to 64:24.

factors diminished the value of the three projects. Tr. Trans. at 65:2 to 69:2. See also Gleichman testimony Tr Trans. at 131:2 – 24. Valuation Expert hired by Scarcelli - Mark Purvis - prepared an opinion of value concluding that the projects had no value. Tr. Trans. at 142:1-16. The BCD made no finding as to the value of the Gleichman's GP economic interests as of the date of the transfers, finding merely that the projects would have "value, although the exact value of the interests is difficult to ascertain" and that they have "substantial future value if the properties are ever taken out of the Rural Development program". Judgment Following Bench Trial at 14 (App. at 33-35).

III. STATEMENT OF THE ISSUES FOR REVIEW

A. WHETHER JURY TRIAL ISSUES EXISTED AS TO THE FRAUDULENT TRANSFER COUNTS, THE UNPLED COMMON LAW CHALLENGE TO THE TRANSFER AND THE COUNTS OF THE COUNTERCLAIM

B. WHETHER THE BCD ERRED IN DISMISSING EACH OF THE SEVENTEEN COUNTS OF THE AMENDED COUNTERCLAIM BASED UPON ITS CONCLUSION THAT TRUSTS ARE NOT TANTAMOUNT TO ENTITIES THAT CAN BE SUED THROUGH ACTIONS AGAINST THEIR TRUSTEES FOR WRONGS COMMITTED BY OR COMMITMENTS MADE BY ITS TRUSTEES

C. WHETHER THE BUSINESS COURT MISCONSTRUED THE PROVISIONS OF THE FRAUDULENT TRANSFER STATUTE AS TO WHAT A "VALID LIEN" IS AND ERRED IN NOT REQUIRING APPELLEE OLSON TO MEET HIS BURDEN OF PROVING THAT THE GP ECONOMIC INTERESTS TRANSFERRED TO THE HN TRUST WERE

WORTH MORE THAN THE "VALID LIENS" ENCUMBERING THOSE INTERESTS AT THE TIME OF THE TRANSFERS

D. WHETHER OLSON'S UNPLED THEORY TO UPSET THE ASSIGNMENT THAT BOTH THE ASSIGNOR AND ASSIGNEE AGREED OCCURRED IMPROPERLY EXTENDS THE REACH OF THE PROVISIONS OF MUFTA AND VIOLATES THE REQUIREMENT TO EXHAUST LEGAL REMEDIES

IV. SUMMARY OF ARGUMENT

The BCD erred in denying Appellant the right to have a jury determine the facts as to the fraudulent transfer claims. Claims to reverse conveyances were under Maine common law in 1820 heard by juries – particularly where the claim involved voiding of transfers of personal property interests (such as ownership interests in entities), giving rise to a jury trial right as to the Complaint as well as the counts of the Amended Counterclaim.

The Amended Counterclaim was dismissed in error based upon an erroneous legal conclusion that a trustee cannot be sued for benefits gained by a trust or wrongs done by a trust – even when he is sued in his representative capacity. Trusts are in the nature of entities (not just relationships) and as such they act through their agents (i.e. their trustees) and may be sued in that representative capacity for wrongs done by the trust or benefits unfairly acquired by the trust. A trust cannot be allowed to escape or avoid its commitments by simply changing its trustee.

As for the post trial rulings, the BCD erroneously applied the law defining

what liens to deduct when determining whether any equity actually was transferred. Under the provisions of Maine's fraudulent transfer act since there was no unencumbered equity conveyed since the interests were fully encumbered at the time of transfer. There also was uncontroverted testimony that both the transferor and transferee had completed the assignment of Gleichman's economic interests – evidenced by a contemporaneous writing reflecting the transfer of the economic rights to Hancock as Trustee - with both parties (the assignor and the assignee) agreeing they had a meeting of the minds in that regard and had effected the unconditioned transfer.

V. ARGUMENT

A. JURY ISSUES EXISTED AS TO THE FRAUDULENT TRANSFER COUNTS, THE UNPLED COMMON LAW CHALLENGE TO THE TRANSFER AND THE COUNTS OF THE COUNTERCLAIM

The standards for assessing whether there is a right to a jury trial as to a civil claim require the exercise of great caution to avoid impinging upon that right, with the Court employing strict standards to assure that the right remains "inviolate."[16] Trial by jury - if either party seeks such - is "the normal and preferable mode of

[16] The standard of review on this issue is whether under the "common law or in the statutory law of Massachusetts as they existed prior to the adoption of the Maine Constitution in 1820" the counterclaim "defendants in a case such as the instant one would have been denied the right to a jury trial." City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987)(recognizing Maine's longstanding commitment to civil jury trials and modifying its then existing, short-lived test in the 1983 Anton decision and the Fort Halifax Packing decision from 1986).

disposing of issues of fact in civil cases," and any curtailment must be "scrutinized with the utmost care."[17] Maine Courts must apply the "unmistakable import of [the] language [of section 20 of Article 1] [which] obviates resort either to nice semantic distinctions or to wooden interpretative principles" – recognizing that the right must be preserved "inviolate".[18]

ARTICLE I SECTION 20. Article 1, section 20 of the Maine Constitution grants the right to a jury trial in all civil actions - subject to a single "exception". That one exception is for "cases where it has heretofore been otherwise practiced." Maine's Constitution guarantees an affirmative right to a civil jury, unless the opponent to having a jury case satisfies his or her burden to establish that the

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[17] [T]rial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law as well as in criminal cases. Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

Dimick v. Schiedt, 293 U.S. 474, 485 (1935). Earlier this year the U.S. Supreme Court again emphasized the vital importance of affording litigants their right to jury trials in civil cases, that case involving a claim by the SEC seeking to impose civil penalties for alleged securities fraud violations. See SEC v. Jarkesy, 144 S. Ct. 2117, 2127 -2131, 219 L. Ed 2d 650 (June 27, 2024).

[18] Maine Rule of Civil Procedure Rule 38(a) provides that the right to a jury trial as declared by the Constitution or by statutes "shall be preserved to the parties inviolate." See M.R.Civ P 38(a). Under Rule of Civil Procedure 39(b) the Court retained the discretion to require that an entire case be resolved by the jury since there is no right to a "non-jury" trial. See State v. Bleyl, 435 A.2d 1349, 1366-67 (Me. 1981). Former Rule 38(c) provided a mechanism for requesting a non-jury trial – but that provision was eliminated from the Rules of Civil Procedure in 1974. That rule provided that a party could serve a demand that an issue or issues be heard without a jury if he believed it was not triable of right by a jury. The Advisory Committee Note for the 1974 Amendment notes that from 1959 when the rules were first adopted, all cases were set for jury trial absent "an affirmative waiver".

exception applies – that is, that it was "otherwise practiced" in 1820.[19] DiCentes v. Michaud, 1998 ME 227, ¶¶7-8 719 A.2d 509 (Me. 1998)("guarantee of a right to a jury in all civil cases except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury").[20]

THE GRANFINANCIERA DECISION. In 1989 the United States Supreme Court conducted a detailed historical analysis of the right to have a jury trial in fraudulent transfer cases, concluding that such cases were "legal" cases at common law as of the date when the Seventh Amendment to the United States Constitution was adopted – which was 29 years before Maine became a State in 1820. See Granfinanciera, S. A. v. Nordberg 492 U.S. 33, 46-47 (1989), 109 S.Ct. 2782 ("Granfinanciera"). While acknowledging that "courts of equity sometimes

[19] See Liegner, Carolyn, "A Modern Look at the Right to A Civil Jury Trial Under the Maine Constitution" 69 Me.L.Rev.168, 176 (January, 2017). See also Petruccelli & McKay, "The Right to Jury Trial Under the Maine Constitution", 1 Maine B.J. 240, 245-46 (1986). In the DePaolo decision in 1987 this Court held that a right to a civil jury trial does exist in a case "unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820." City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987). That decision was further solidified two years later in the Law Court's decision in North Sch. Congregate Hous. v. Merrithew which made it clear that the burden had been shifted from the party seeking a jury trial to the party opposing it. This "considerably strengthened the jury trial right" in light of the sheer "complexity of the analysis required to determine whether such right was available in 1820". See 69 Me.L.Rev.168, 170 (January, 2017).

[20] See also N. Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me.1989)(addressing the right to a jury trial for FED proceedings; the burden of proof lies with the party moving to strike a jury demand; the right to a civil jury trial exists "unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.")

provided relief in fraudulent conveyance actions" (Granfinanciera, 492 U.S. at 43)[21], the Supreme Court concluded that fraudulent transfers of money were not "typically or indeed ever entertained by English courts of equity when the Seventh Amendment was adopted" in 1791. Id. at 44. The U.S. Supreme Court concluded that the fraudulent conveyance action "plainly seeks relief traditionally provided by law courts or on the law side of courts having both legal and equitable dockets" and therefore a jury right existed. Id. at 49, fn. omitted.

In reviewing the history of fraudulent transfer actions at law and in equity prior to 1791 the Supreme Court pointed out that the proper form of suit depended on the nature of the property that the claimant was seeking to recover – with only land recoveries being purely equitable proceedings. The Court wrote: "If the subject matter is a chattel, and is still in the grantee's possession, an action in trover or replevin would be the trustee's remedy; and if the fraudulent transfer was of cash, the trustee's action would be for "money had and received". Such actions at law are as available to the trustee today as they were in the English courts of long ago." Id. at 44.

[21] The Supreme Court wrote that a claimant challenging a transfer as having been fraudulent at common law in 1791 "would have had to bring his action to recover an alleged fraudulent conveyance of a determinate sum of money at law in 18th-century England, and . . . a court of equity would not have adjudicated it." See Granfinanciera, S. A. v. Nordberg 492 U.S. 33, 46-47 (1989), 109 S.Ct. 2782 ("Granfinanciera").

HISTORIAL TREATMENT IN MAINE AND MASSACHUSETTS. Several published decisions from the 1800s confirm that the jurisprudence in Massachusetts was in accord with the common law practices of trying fraudulent transfer cases to juries in those years. Among those decisions is a Massachusetts decision from 1817 and two Maine decisions issued within a decade or so after Maine became a State (from 1832 and 1834) as well as three decisions a couple decades after Maine became a State (i.e. in 1846, 1857 and 1858).[22] Decisions from the 1900's and up through 2005 are consistent with the practices reflected in the decisions from the 1800's, in that juries continued to be involved in resolving fraudulent transfer claims up through the 2000's[23]and beyond.[24] Likewise, in Massachusetts there are reported

[22]These cases include the decision in Ricker v. Ham, 14 Mass. 137 (1817) in which the jury found that certain land had not been fraudulently conveyed. See also Blanchard v. Baker, 8 Me. 253, 268 (1832); Blake v. Howard, 11 Me. 202 (1834)(allegations that a conveyance had been fraudulent "as against creditors" was tried to a jury); Eastman v. Fletcher, 45 Me. 302, 305 (1858) (the defendant contended that the plaintiff was not entitled to a writ of entry because plaintiffs purported title had been fraudulently conveyed to the plaintiff). Other early Maine cases where allegations of fraudulent transfers were made also support the conclusion that fraudulent transfers did generate issues for a jury trial. See, e.g., Porter v. Seavey, 43 Me. 519 (1857) (writ of entry); Brown v. Osgood, 25 Me. 505 (1846) (writ of entry).

[23] See Whitehouse v. Bolster, 50 A. 240, 241-244, 95 Me. 458 (1901) ("Whether a fraudulent conveyance as thus defined has been proved is for the jury, and that question was not withdrawn from the consideration of the jury by the instructions complained of"). See also Huber v. Williams, 2005 ME 40, ¶ 8 and fn 1, 869 A.2d 737, 739 (2005) ("court's judgment entered on a jury verdict in favor of Donna L. Williams on Huber's UFTA claim against her," "Huber's claim against Donna proceeded to a jury trial to determine whether the transfers in which Donna was involved were fraudulent"; "The jury's role was to determine whether Alan and Donna's transfers were fraudulent pursuant to the statute"; "Donna testified at trial that she made the transfer without Alan asking her to do so. The jury could reasonably have believed Donna").

[24]Jury trials were being held to resolve these claims even as recently as last year in the BCD. Belyea v. Campbell, 2024 ME 62 ¶ 11 (Count 6 claim for fraudulent transfer was "tried

decisions as recent as 2014 reflecting jury involvement in resolving fraudulent transfer claims, consistent with the practices of the early 1800's.[25]

OLSON'S ARGUMENT THAT THE "PRIMARY FOCUS" OF HIS CLAIM WAS TO VOID THE TRANSFERS DOES NOT AVOID THE RIGHT TO A JURY SINCE MUFTA LIABILITY IS A PRELIMINARY JURY QUESTION AND THE ISSUE IS NOT WHAT IS PRIMARILY SOUGHT

The jury right issue in this case is clear based upon the above historical analysis. Claims like those brought by Olson were decided as of 1820 by juries. The claim here was not for the recovery of land, but rather for the rights to economic interests.[26] Moreover, a jury right attaches if any aspect of a claim was non-equitable in 1820, regardless of what might be considered the "primary" goal of the case.

In striking the jury demand the BCD accepted Olson's argument that no jury right should be held to exist in this case because Olson was "primarily" seeking

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before the jury" in BCD on October 23, 2023). In fact, it was a routine practice to list all civil cases for jury cases until 1974.

[25]In Bakwin v. Mardirosian, 6 N.E.3d 1078,1083 467 Mass. 631, (2014), the jury found that the transfer constituted "a fraudulent transfer of Robert's one-half interest in the home", and the jury valued his interest at $531,300. The judge entered equitable relief as a result of the fraudulent transfer decided by the jury.)

[26] This action was not seeking to recover land. The claim sought to recover a chattel which was in Ellen Hancock's possession. Economic general partner interests in a limited partnership are not interests in land; instead, they constitute personal property interests, having been specifically defined as such by the Legislature when they were created. Title 31 M.R.S.A. §1381 provides as follows: "Partner's transferable interest. The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property."

"equitable relief" by seeking to avoid the transfer of Gleichman's economic interests. But Olson filed no pleadings waiving his claims for damages or limiting them, and in fact in his motion to strike he affirmatively stated that he was also asserting an entitlement to damages – admitting in his motion that "damages are also mentioned as an alternative or supplemental remedy." [27]. App. 147 - 149. His Complaint invoked damages provisions of Maine's fraudulent transfer statute, including the prayer for monetary damages under section 3578(1)(C).[28]

Even if Olson had effectively "withdrawn" or dismissed his claim to damages, the pertinent inquiry would remain a jury matter – that is, whether there was any basis to find the transfer to be "voidable" within the definition of that term as used in MUFTA. Proving that a transfer satisfies the complex definitions as to what is "voidable" is the preliminary step that one must satisfy before one can obtain any relief under MUFTA, and that presents a jury question. In this respect MUFTA is structured in accordance with the long recognized principle that

[27] Id. at 1 and 3 (Olson claiming that "the thrust of the suit is avoiding the transfers because they are "a judicial nullity" or because they violate "Maine's fraudulent transfer statute").

[28] Olson's sought "damages"- a word defined in MUFTA as including an award for attorney's fees. 14 M.R.S. § 3578(1)(A) – (C). Section 3578(1)(A) sets out the avoidance remedy while 3578(1)(C) set forth the damages remedy. 14 M.R.S. § 3579(2) provides that "to the extent a transfer is voidable in an action by a creditor under section 3578, subsection 1, paragraph A, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less."

equitable relief is not available unless the award of damages is determined to be inadequate.[29] One seeking relief for a statutory civil action cannot by-pass establishing liability and go directly to seeking injunctive or other equitable relief on a generalized theory of what might be considered "equity".[30] The provisions of MUFTA in fact contemplate an initial assessment of the value of what was

[29]It has long been a basic principle of equity jurisprudence that equitable remedies are not available to a plaintiff who has an adequate remedy at law. WahlcoMetroflex,Inc. v. Baldwin, 2010 ME 26, ¶ 15-19, 991 A.2d 44. This principle precluding equitable relief until legal relief has been fully exhausted was recently argued in great detail by counsel for Appellee Olson in a separate appeal pending before this Court. See Core Finance Team Affiliates, LLC v. Maine Medical Center et al. Law Docket BCD-23-440 (argued September 10, 2024)(appellant hospitals arguing that they were deprived of their right to a jury trial due to Business Court's legal error in granted equitable relief under unjust enrichment principles to a party that had lost on its claims for legal relief under the contract and waived its claim for legal relief under the quantum meruit doctrine). See Brief of Appellants dated March 22, 2024 at 2-3, 10, 12-19, 26-27, 38 and 45("It has been and remains a settled cornerstone of our jurisprudence that equitable remedies are not available to a plaintiff who has an adequate remedy at law;" "The error of law is the Business Court's disregard of that fundamental cornerstone principle and permitting Appellee to waive its legal remedy and elect recourse to an equitable remedy not available to it.") and Reply Brief of Appellants dated May 28, 2024 at 2 and 6 -7, 10 - 11 ("The history is irrefutable and demonstrates that a party with an available remedy at law had no recourse to any equitable remedy"; courts cannot be "free to deny jury trials by mischaracterizing the theory of the case" and claimants cannot "deny defendants their right to trial by jury simply be electing to seek an equitable remedy").

[30] See also Massachusetts Eye and Ear Infirmary v. Qlt, Inc., 495 F.Supp.2d 188, 199 (D. Mass. 2007)("Under well-established Supreme Court precedent, the jury determination of legal claims resolves equitable claims to the extent that the claims factually overlap"; "the jury's chapter 93A determination controls the unjust enrichment claim. The Court must therefore defer to the jury's factual findings with respect to both claims"). See also Wootten v. Ivey 877 So.2d 585, 588-590 (Ala. 2003) (the factual issue of whether the operation of a hog farm constituted a nuisance was an issue common to both the plaintiffs' legal claim and their equitable claim; the trial court was required to submit the issue first to the jury and its decision was binding on whether any injunctive relief could be granted); Deep Photonics Corp. v. LaChapelle, 368 Or 274 (Or. 2021)("the breach of fiduciary duty claims brought by shareholders... were properly tried to a jury, rather than to the court..."; our confidence in the result is bolstered … by its consistency with closely analogous Supreme Court decisions, such as Ross and Dairy Queen.")

transferred and what the creditor was owed.[31] Equity will not countenance a claim to void a transfer absent a finding that a complete remedy was not available at law.[32]

Therefore, Olson's claim as to what the primary focus of his claim was is beside the point. The standard for assessing whether there is a "jury right" is whether any aspect of the action gives rise to a jury right. This Court – like the U.S. Supreme Court[33] - long ago rejected arguments attempting to avoid the right to a

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[31] In resolving the damages issues, the jury would first assess the "amount necessary to satisfy the creditor's claim" since the claimant could receive no more than that amount as provided in section 3579(2). The jury would also have to assess the value of the economic interests that were conveyed. That is because the statute caps the damages available under 14 M.R.S. § 3578(1)(C)(3) at "an amount not to exceed double the value of the property transferred or concealed." See also Samsara Mem'l Trust v. Kelly, Remmel & Zimmerman, 2014 ME 107, ¶48 102 A.3d 757 (Me. 2014)(statute provides that in any action for relief against a transfer, a creditor may obtain "[d]amages in an amount not to exceed double the value of the property transferred or concealed." In essence, this provision precludes a creditor from recovering fees and costs beyond the equity value of the property that was fraudulently transferred. Id. ¶¶48-49).

[32] The Supreme Court Granfinanciera likewise observed that a case should be heard at law when "a complete remedy is available at law, and equity will not countenance an action when complete relief may be obtained at law." Granfinanciera, supra, 492 U.S. at p. 49, fn. 7. See also Dairy Queen, Inc. v. Wood, 369 U.S. 469, 473 n.8 ("It would make no difference if the equitable cause clearly outweighed the legal cause so that the basic issue of the case taken as a whole is equitable. As long as any legal cause is involved, the jury rights it creates control.") See also Beacon Theatres, Inc. v. Westover, 79 S. Ct. 948, 359 U.S. 500, 3 L.Ed.2d 988, (1959)(a creditor required to proceed at law since a creditor could not be allowed to pursue his relief in equity and, thereby, deny to his adversary the right to a jury under the Seventh Amendment.)

[33]Since at least as far back as 1974, the U.S. Supreme Court has made that it views it as pointless to try to assess what the primary purpose of a lawsuit is or to assess what relief might be deemed "incidental" relief in any particular case, writing in 1987 as follows: "[I]f a 'legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as "incidental" to the equitable relief sought.' " Tull v. United States, 481 U.S. 412, 426, 425 (1987) citing Curtis v. Loether (1974) 415 U.S. 189, 196, fn. 11; Granfinanciera, S. A. v. Nordberg 492 U.S. at 43-44.

jury trial by claiming that the "primary focus" of the case was upon seeking equitable relief.[34] It was error to strike the jury demand.[35]

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[34] Courts are not required to become enmeshed in the oftentimes murky business of attempting to divine what the primary focus of a claim is when it seeks both equitable and legal remedies. In Maine since the DePaolo decision in 1987 the Court has applied an enlightened and workable standard of review that preserves the right to a jury unless the matter was exclusively "equitable" as of 1820; the result is not dependent on whether some cases may have been heard in an equity court, but rather, upon whether the cases were decided exclusively in equity in 1820. The Court concluded that there was no longer a need to determine precisely what "label" to place on a case. See Sirois v. Winslow, 585 A.2d 183, 188-189 (Me. 1991)(Justice Collins summarizing the change effected by DePaulo – writing that DePaolo had overruled Anton "in sweeping terms" overruling "any intimations or statements in our earlier cases that are incompatible with the broad view of the guarantee of a jury trial in civil cases" guaranteeing to "parties in all civil suits the right to a jury trial, except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury.")

[35] The same principles discussed above provide for a right to a jury trial as to the Counterclaim counts for the claim for breach of contract (Count VII), the claim for breaches of fiduciary duties (and aiding and abetting the same) (Counts V and VI), the claims for fraudulent inducement and fraudulent misrepresentation and concealment (Counts III and IX), and the claim for intentional, reckless and negligent infliction of emotional distress (Count X and XI) and for conversion (Count XII) and the four counts for fraudulent transfers by the Promenade Trust (Counts XV -XVII). There is no right to a jury trial for the count seeking an award for unjust enrichment or for the two counts to impose a constructive or resulting trust.

Finally, those same principles support the right to a jury trial as to Olson's unpled claim that no transfer from Gleichman was actually effected. See also Whitehouse v. Bolster, 50 A. 240, 241-242, 95 Me. 458, 461 (1901) (addressing a preliminary question in a fraudulent transfer case seeking to invalidate the gifting of bank deposits from the defendant to his wife; that question was whether the funds transferred were subject to a prior parole trust under which the defendant held the pursuant to an oral trust created by the couple's daughter upon heading out to a voyage "across the ocean" in the winter of 1896 when she told them that all of her funds were to go to her mother if she died). In the Whitehouse case, this Court agreed with the appellant that the fraudulent transfer jury instructions "given to the jury entirely removed from their consideration the question whether there was in fact a trust". The Court rejected the contention that the determination of "whether a trust had been created" was a non-jury issue, concluding: "We think that this complaint is well grounded, and that the exceptions upon this point must be sustained, if there was any evidence, or legitimate inferences from the evidence, that tended to support the claimant's contention as to the fact of a trust." The Court went further, holding that even if the evidence was undisputed as to whether a trust had been created, there still was a jury question "if different legitimate inferences might be drawn from the evidence….. If there were any warrantable inferences to be drawn from the evidence, tending to support the contention of the [mother], the question should have been submitted to the jury.

B. THE BCD ERRED IN DISMISSING EACH OF THE SEVENTEEN COUNTS OF THE AMENDED COUNTERCLIAM BASED UPON ITS CONCLUSION THAT TRUSTS ARE NOT TANTAMOUNT TO ENTITIES THAT CAN BE SUED THROUGH ACTIONS AGAINST THEIR TRUSTEES FOR WRONGS COMMITTED BY OR COMMITTMENTS MADE BY THE TRUST

On July 17, 2019 the BCD (Murphy, J) granted a motion to dismiss the Amended Counterclaim, concluding that a trustee cannot be sued in his representative capacity[36] for acts taken by, or commitments made by, a prior trustee of the same trust. See Order on Motion to Dismiss at 5-6 App at 12-15. [37]

The BCD's dismissal decision is contrary to the modern view of trusts[38] which views them as being in the nature of entities (not just relationships) and views them

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[36]The BCD also ordered dismissal of the portions of the claim that were commenced against Olson individually – i.e. in his personal capacity. Order on Motion to Dismiss at 3-5. The Appellants are not appealing from that aspect of the dismissal order.

[37] The standard for reviewing the dismissal of claims made under M.R.Civ.P. 12(b)(6) is de novo. Fuhrmann v. Staples the Office Superstore East, Inc., 2012 ME 135 ¶22. The Court views "the complaint in the light most favorable to the [counterclaim] plaintiff," Dragomir v. Spring Harbor Hospital, 2009 ME 51, P 15, 970 A.2d 310, 314-15, treating the material allegations "as admitted to determine whether [each count] alleges the elements of a cause of action against the defendant or alleges facts that could entitle the plaintiff to relief under some legal theory." Id. P 15, 970 A.2d at 314-15 (quotation marks omitted).

[38] Bogert on Trusts has observed that in modern times statutes have been construed to "give tort victims a right to satisfaction from the trust assets that may be asserted in an action against the trustee in his or her fiduciary capacity". Bogert's Trusts and Trustees, § 735 (2016). Maine, like many other jurisdictions, has modernized its trust laws - adopting the "entity concept" set forth in the Third Restatement of Trusts, determining that the trust corpus should in essence be subject to suit through its representative just like a corporation or other legal entity would be. See, e.g., Denver Found, v. Wells Fargo Bank, N.A., 163 P.3d 1116, 1125 (Colo. 2007). "The provisions of the [Uniform Trust Code] addressing trustee relations with third persons are built on the premise that third persons should approach transactions with trustees the same way they approach any other

as entities that act through their agents (i.e. their trustees) and which therefore can be held responsible for acts taken by, or commitments made by prior trustees – provided the remedies are enforceable through actions against the current trustee A) only in his or her representative capacity and B) only to the extent of the trust's assets.[39]

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commercial deal. The theory is that trust beneficiaries are helped more by the free flow of commerce than they were by the largely ineffective protective features of former law." See Jackson v. Brown, 801 S.E.2d 194, 204 (W. Va. 2017), quoting David M. English, The Uniform Trust Code (2000): Significant Provisions and Policy Issues, 67 Mo. L.Rev. 143, 209 (2002) (emphasis added).

[39] The Restatement of Trusts reflects the modern move away from conceiving of a trust as merely a "fiduciary relationship" (as suggested in the Restatement (Second)) and toward recognizing a trust as an entity – as reflected in the Restatement (Third) of Trusts, which refers to "the trust res" and the fiduciary relationship as actually being a legal entity (i.e., "the trust"). The "trust as an entity" concept is reflected in Restatement (Third) § 2 cmt. (a), which provides as follows:

> Increasingly modern common-law and statutory concepts and terminology tacitly recognize the trust as a legal "entity," consisting of the trust estate and the associated fiduciary relation between the trustee and the beneficiaries. This is increasingly and appropriately reflected both in language (referring, for example, to the duties or liability of a trustee to "the trust") and in doctrine, especially in distinguishing between the trustee personally or as an individual and the trustee in a fiduciary or representative capacity.

Restatement (Third) § 2 cmt. (a).

The historical progression of the common and statutory law of trusts toward recognizing the trust as a legal "entity" is thoroughly detailed in a decision from the Montana Supreme Court in 1941, see Tuttle v. Union Bank & Trust Co. 112 Mont.568, 572- 579, 119 P.2d 885 (1941)("trust estate responsible for contracts" even though contract did not result in benefit to the trust estate"), as well as in a more recent California Appeals Court decision. See Galdjie v. Darwish 113 Cal. App. 4th 1331, 7 Cal. Rptr. 3d 178, 187 – 191 (2003). See also Lujan v. J.L.H. Trust, 2016 Guam 24, 41 -49 (2016).

This issue is resolved through consideration of the statutory language used in Maine's Trust statutes.[40] Maine's trust statutes by their plain terms recognize trusts as being legal entities controlled by a fiduciary.[41] The reference to them as entities strongly suggests that trusts can be sued (and recoveries had to the extent of the trust's assets) when any of the Trust representatives has made agreements or promises with others. [42]

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[40]This Court interprets the language of statutes *de novo* by first examining their plain meaning and the context in which the provision exists within an over-all statutory scheme to determine the legislative intent of the provisions. Kimball v. Land Use Regulation Comm'n, 2000 ME 20, ¶ 18, 745 A.2d 387. When a statute is ambiguous, the Court looks beyond that language to examine "the statute's history and its underlying policy." HL 1, LLC v. Riverwalk, LLC, 2011 ME 29, ¶ 17, 15 A.3d 725. "A statute is ambiguous if it is reasonably susceptible to different interpretations." Estate of Joyce v. Commercial Welding Co., 2012 ME 62, ¶ 12, 55 A.3d 411.

[41] Numerous provisions of Title 18-B refer to trusts as entities – not merely as relationships. For example, section 201 of Title 18-B (captioned "Role of Court in Administration of Trust"), refers to the court "intervening" in the "administration of a trust." 18-B M.R.S.A §201(1). The same section discusses "A trust…not [being] subject to continuing judicial supervision unless ordered". Tellingly, this statute does not merely refer to the court having supervisory authority over the trustee. 18-B M.R.S.A §201(2). And the third subsection of section 201 refers to "[a] judicial proceeding involving a trust." 18-B M.R.S.A §201(3). The trust statutes contain provisions governing such matters as: A) how the trust is created or modified (sections 401 – 407 and 414-417); B) when a trust is created and what certifications will issue as to the trust's existence and requiring a taxpayer ID, (see section 1013) ; C) when accountings and reports will be required as to the entity's assets (see section 813); D) when distributions must occur (see section 506, 817); E) how and when a liquidating or terminating of the entity will occur (see section 411) and F) when and under what circumstances the person running the entity will be removed or trust provisions modified, (see section 706, 1217). These varied provisions in Maine's Trust Code, similar to business corporation provisions, and repeatedly referencing a trust as being a legal entity controlled by a trustee, make it clear that Maine has adopted the modern "entity view" of trusts.

[42]Apart from these trust statutes reflecting adoption of the view that trusts should be treated as entities, Maine's real estate statutes likewise treat trusts as entities for purposes of holding title to land. For example, in Title 33 the provision regarding the holding of title to land owned by a trust specifically states that the name of the trustee need not even be included in a deed to or from a trust, deeding in the name of the trust. See 33 MRS section §851-A. ("Conveyances to or from trusts without naming trustee.")

The provisions of Title 18-B explicitly authorize the commencement of actions against the trust by commencing an action against the trust's trustee in his "fiduciary capacity".[43] Section 1010(3) of that Title provides that claims may be brought in judicial proceedings in Maine "against the trustee in the trustee's fiduciary capacity" if "based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property or on a tort committed in the course of administering a trust".[44]

This Court has applied these statutes in a manner making it clear that Maine has adopted the modern view that a trust is subject to suit through an action brought against its trustee in his "fiduciary capacity". See Maine Shipyard & Marine Ry. v. Lilley, 2000 ME 9, ¶14-15, 743 A.2d 1264, (2000)(delineating rules for finding both the trust and the trustee liable - under both common law principles and under Maine's trust statutes).[45]

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[43] Sullivan v. Kodsi, 359 Ill. App. 3d 1005, 1010, 836 N.E.2d 125, 296 Ill. Dec. 710 (2005)(trusts are sued through their trustees in a representative capacity).

[44] That provision is set forth in 18-B M.R.S.A §1010 along with two other provisions setting forth the circumstances in which a trustee may have personal liability for contracts and for torts.

18-B M.R.S.A §1010. Limitation on personal liability of trustee

1. Not personally liable on contract; exception. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

[45] In Maine Shipyard & Marine Ry. v. Lilley, 2000 ME 9, ¶¶14-15, 743 A.2d 1264, 1268 (2000), this Court wrote as follows about this right to relief against trustees: "Equitable remedies are also available against the trustee. See Haley v. Palmer, 107 Me. 311, 315, 78 A. 368, 370 (1910) (applying equitable liability to trustee for debts of beneficiary); TRUSTS & TRUSTEES, § 717

The counts of the Amended Counterclaim asserted tort and contract claims as to the actions taken by – and promises made by - the two trustees on behalf of the trust corpus and what was being contributed to it – that is, actions taken "in the trustee's fiduciary capacity." The claims included claims based upon a contract entered into by a trustee acting "in the trustee's fiduciary capacity" and based upon "obligation[s] arising from ownership or control of trust property or on a tort committed in the course of administering a trust". 18-B M.R.S.A. § 1010(2). See e.g. Amended Counterclaim, paras. 1-2, 5-6, 19-20, 61-62, 65 – 68, 86, 90 -97, 117 – 121, 147-151, and 160 - 168. Each count contained allegations satisfying all required elements of those claims under Maine law.

C. THE BCD MISCONSTRUED THE PROVISION DEFINING "VALID LIENS" IN THE FRAUDULENT TRANSFER STATUTE AND ERRED IN NOT REQUIRING OLSON TO MEET HIS BURDEN OF PROVING THAT THE GP ECONOMIC INTERESTS TRANSFERRED TO THE HN TRUST WERE WORTH MORE THAN THE LIENS ENCUMBERING THOSE INTERESTS AT THE TIME OF THE TRANSFERS

Maine's fraudulent transfer act only applies to property transfers to the extent that such property is not encumbered by a perfected security interest or a properly perfected judgment lien as of the date of the transfer being challenged (the "Transfer Date"). Under the Uniform Act, property that is fully encumbered by a

(discussing specific performance against trustee); TRUSTS & TRUSTEES, § 725 (stating that "equity will shape its remedies to meet the facts of each particular situation in order to prevent unjust enrichment.").

valid lien is outside the scope of the statute. A clear example of how that principle is applied is in a 2004 decision by the First Circuit Court of Appeals in which the Court concluded that no claim could be brought involving a transfer of real estate worth $150,000 because the property was fully encumbered by a first mortgage with $168,000 owing on it together with several tax liens. For that reason, no "asset" was transferred for purposes of Rhode Island's Fraudulent Transfer Act ("MUFTA"). See In re Valente, 360 F3d 256 (1st Cir. 2004).[46] Fully encumbered assets are exempted from MUFTA in accord with the policy of allowing creditors

[46]There are innumerable other decisions applying the same language in this same way, including the following: Mullins v. TestAmerica, Inc., 564 F.3d 386, 413-417 (5th Cir. 2009)("these definitions exempt from TUFTA an alleged fraudulent transfer of property to the extent that such property is encumbered by a security interest"; $3.2 million in proceed were all encumbered by Fleet's security interest and thus not assets); Nielsen v. Logs Unlimited, Inc., 839 N.W.2d 378, 384 (S.D. 2013) (an "asset" cannot include the disposal of " '[p]roperty to the extent it is encumbered by a valid lien[.]'"); Bd. of Cty. Com'ns of Cty. of Park v. Park Cty. Sportsmen's Ranch, LLP, 271 P.3d 562, 571 (Colo. App. 2011)(property transferred was worth about $1.1 million, but the property was subject to a deed of trust with a balance of approximately $1.6 million on it.); Webster Industries, Inc. v. Northwood Doors, Inc., 320 F.Supp.2d 821, (N.D. Iowa 2004)("if a 'transfer' involves only property encumbered by a valid lien, it cannot be a 'fraudulent transfer' within the meaning of either the UFTA or Iowa common law, because there is no 'asset' involved, and if there is no 'asset' involved, the intent of the parties to the transfer is irrelevant"); Epperson v. Entertainment Express, Inc., 338 F.Supp.2d 328, 343 (D.Conn.2004) (property and note encumbered by security interests that exceeded their value were not assets under Connecticut's Uniform Fraudulent Transfer Act), aff'd, 159 Fed.Appx. 249 (2d Cir.2005); Farstveet v. Rudolph ex rel. Eileen Rudolph Estate, 630 N.W.2d 24, 34 (N.D.2001) ("Property which is encumbered by valid liens exceeding the value of the property is not an asset ... and is not subject to a fraudulent transfer."); Jecker v. Hidden Valley, Inc., 27 A.3d 964, 968, 971 (N.J. App. Div. 2011) ("Hence a transfer of fully encumbered property does not involve an asset of the debtor and ... it is not a 'transfer' at all within the meaning of the [UFTA]," citing numerous other decisions).

to recover only what they would have actually been able to recover had the transfer not occurred.[47]

The BCD made clear in its decision that it was premised upon its interpretation of the word "valid lien," writing at page 12 of its decision that the "[t]he key" to its decision rested on construing the definition of the term "valid lien" in such a way that Norberg's liens were deemed invalid.[48] See Post Trial Judgment at 12-13 - App at 33-34.[49] Rather than addressing the quality of the

[47]See Barkley Clark & Barbara Clark, The Law of Secured Transactions Under the Uniform Commercial Code § 4.15: "Sham Foreclosure Sales and Successor Liability" (2010) ("This result makes policy sense, because the purpose behind fraudulent conveyance law is to allow creditors to recover what they would have recovered had the transfer not taken place."). See also Richman v. Leiser, 18 Mass. App. Ct. 308, 465 N.E.2d 796, 798 (Mass. App. Ct. 1984) ("A conveyance is not established as a fraudulent conveyance upon a showing of a fraudulent intention alone; there must also be a resulting diminution in the assets of the debtor available to [unsecured] creditors.").

[48]The BCD misconstrued the provision of MUFTA defining what should be considered a "valid lien" to be deducted from the value of the asset transferred. Section 3572(13) of MUFTA defines the term "valid lien" as "a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process." Post Trial Judgment at 12 (App at 33). This definition of "valid lien" ties validity to how the lien would be treated under the Bankruptcy Code or whether it would be given priority treatment under Maine law. Those liens which encumber equity in a property prevent general unsecured creditor from accessing such property. Since such validly encumbered equity would not be available to general unsecured creditors in any event, attempts to claw back such amounts is beyond the purview of MUFTA. The words "valid lien" have no relevance upon the actual dealings between creditors - but rather just the hypothetical treatment such a lien would receive. Norberg's judgment lien were perfected by the UCC -11 filings, and therefore superior to the hypothetical claim that an unsecured creditor may have obtained by obtaining a judicial lien subsequent to the recording of the judgments.

[49]The BCD proceeded with its misunderstanding of this provision to assess whether the claimant (Olson) was seeking priority over a subsequent creditor (which of course it was not). The BCD concluded its "key" finding with the ipse dixit that since Olson was not attempting to

Norberg's liens in terms of whether they were perfected or whether they would defeat a subsequent hypothetical lien creditor, the BCD wrote that statute called for the Court to assess whether the asset transferred had "equity value over and above the amount encumbered by a subsequent, separate, priority judicial lien."[50] App 34. Rather than comparing Norberg's perfected lien with a hypothetical lien creditor, the BCD erred by comparing the lien with a particular claimant liens – that is, the Promenade Trust's liens obtained from Norberg subsequent to the transfer at issue.[51]

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gain priority over "lienholders with superior priority" – but rather that "the liens are being challenged by themselves," therefore of course the subsequently purchased judgments were not to be deducted from the value of the economic interests transferred.

[50] See Korth v. Luther 935 N.W.2d 220, 241 ("A blanket security agreement does not convey an "'asset'" under the UFTA if everything subject to ownership that is described as collateral therein is fully encumbered by other creditors with superior claims at the time of the alleged "'transfer"; creditors must "show in a concrete way that they were injured by the transaction they are seeking to set aside. A transfer of property in which the debtor has no equity cannot be the subject of a fraudulent transfer action because the creditors cannot show they would have received anything by avoiding the transfer and were injured thereby"; section defining "valid lien" addresses whether a creditor had "perfected choate liens, i.e., liens that identified with specificity the identity of the lienor, the property subject to the lien, and the amount of the lien"). See also Zurich Am. Ins. Co. v. MB Fin. Bank, N.A., 2020 IL App. (1st) 190767-U102 U.C.C. Rep. Serv. 2d (The "valid lien" was in place when the defendant made the challenged payment; thus, "we find the funds at issue were subject to a valid lien and therefore not an "asset" of Prate, Inc. that could be the subject of a fraudulent transfer under the IUFTA").

[51] This Court reviews the trial court's decision as to errors of law under a de novo standard of review. Petillo v. City of Portland, 657 A.2d 325, 326 (Me. 1995). The meaning and construction of a statute is a question of law. Community Telecomm. Corp. v. State Tax Assessor, 684 A.2d 424, 426 (Me. 1996). When interpreting a statute, this Court examines the plain meaning of the statutory language "to give effect to the legislative intent", remaining "'mindful of the whole statutory scheme, of which the section at issue forms a part, so that a harmonious result may be achieved.'" Rackliffe v. Northport Village Corp. 1998 ME 114, P.6, quoting Daniels v. Tew Mac Aero Servs., Inc., 675 A.2d 984, 987 (Me. 1996). Maine statutes should be construed to avoid absurd, illogical, or inconsistent results. Estate of Whittier, 681 A.2d 1, 2 (Me. 1996).

The BCD's error in interpretation becomes clear when one looks at the plain meaning of the statutory language used in context, giving effect to the legislative intent reflected in the statutes and keeping in mind "the whole statutory scheme, of which the section at issue forms a part." The plain meaning of the word "asset" as defined in 14 M.R.S.A. § 3572(2)(A)(1)[52] contemplates a calculation being made to deduct from the value of the property transferred any amount that "is encumbered by a valid lien". That threshold calculation requires the application of simple arithmetic (asset value less encumbrances). And the valuation is clearly not a fluctuating value over time, but rather a determination made as the specific date of the transfer that is being challenged.

It is critical to the integrity of the statutory scheme as a whole to make an assessment of assets and liabilities (as reduced by encumbrances) as of the Transfer Date. The fundamental premise of MUFTA is to assess what (if any) equity may have existed as of the Transfer Date which would have been available for distribution to creditors if they had taken enforcement actions and obtained a judicial lien as to

[52] MUFTA defines the word "asset" as meaning property of a debtor [making the challenged transfer], excluding the following:

> A. "Property to the extent that it is encumbered by a valid lien"; or
> B. "Property to the extent that it is generally exempt under non bankruptcy law".

14 M.R.S.A. § 3572(2).

their claims as of that date. The purpose of fraudulent transfer statutes is to make sure that any equity that existed on Transfer Date is not diverted to a single creditor (to the detriment of other creditors) or hidden away from all creditors.[53]

The liens that were perfected as of the date of transfer render the encumbered assets unavailable to creditors. Those having perfected liens have rights in the transferring debtor's property superior to the rights of general creditors. If the perfected encumbrances were not subtracted, the statute would have the absurd result of fictitiously assuming assets were available to creditors when they were not in fact available.

Therefore, all valid perfected liens are subtracted, and the reference to "subsequent creditor" in the definition of Valid Lien" in 14 M.R.S.A. § 3572(13)[54] is a reference to a "hypothetical UCC priority contest" that must be performed to determine whether a lien is "perfected" – that is, to assess whether the lien at issue (here, Norberg's perfect writs) would take priority over a hypothetical lien creditor

[53] Comment 2 to Section 3 of the UFTA states that "Value" is to be determined in light of the purpose of the Act to protect a debtor's estate from being depleted to the prejudice of the debtor's unsecured creditors. Consideration having no utility from a creditor's view-point does not satisfy the statutory definition." See also Consove v. Cohen (In re Roco Corp.), 701 F.2d 978, 982 (1st Cir. 1983) (in analyzing stock redemption under § 548(a)(2), the value to be assessed is the value received by debtor, not the value forfeited by transferee).

[54] That term is defined as follows: "13. Valid lien. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings." 14 M.R.S.A. § 3572(13).

who might try to subsequently challenge it.[55] If the existing lien on the debtor's property would have defeated the hypothetical "judicial lien subsequently obtained" and leave no equity, there has been no "transfer."[56]

The definition of "valid lien" (and its use of the word "subsequent") is merely intended to bring clarity to which liens are eligible to be subtracted from the asset value as of the time of transfer; it is language designed to make clear that only perfected liens should be deducted – that is, liens which are recorded in time and place so that they take priority over subsequent recordings.[57] Only those sorts of

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[55] See Thermo Credit, LLC v. DCA Servs. 755 Fed. Appx. 450, 455; 2018 FED App. 0542N (6th Cir. 2018) (the lien granted by the bankruptcy court qualifies as a "valid lien" exempting payments from the definition of "assets" in Oregon's version of the UFTA; the payments were encumbered because the order had given a lien over the debtor's "assets—including its cash—that would be "effective against the holder of a judicial lien subsequently obtained.") See also Navient Sols., LLC v. BPG Off. Partners XIII Iron Hill LLC, 315 A.3d 1164, 1180 ("Pursuant to Section 9-317, Lender, as a prior perfected secured creditor, has priority over Navient, as a subsequent lien creditor"); In re Ariman, 653 B.R. 685, 691 (Bankr. M.D.Fla.) ("the creditor would hold only an unsecured claim because it failed to perfect its security interest against a subsequent lien creditor by completing a fixture filing financing statement.").

[56] See also Bash v. Textron Fin. Corp. (In re Fair Fin. Co.), 13 F.4th 547,553-554 (6th Cir. 2021)("By measuring validity by referencing a dispute between two security interests, section 1336.01(M)'s valid-lien definition creates a hypothetical priority dispute between the interest being tested (here, Textron's perfected interest) and "a judicial lien subsequently obtained"; "And if the payments are not "transfers," they cannot be fraudulent ones. So if Textron's lien is valid, payments encumbered by the 2002 security interest fall outside the reach of the trustee's avoidance powers").

[57] Rupp v. Moffo, 2015 UT 71 ¶ 17, 358 P.3d 1060 ("the transfer of fully-encumbered property does not constitute a fraudulent transfer under the Act is consistent with the Act's purpose. The Act provides a remedy for creditors who are actually harmed when a debtor transfers property; it does not provide a remedy in cases of only theoretical harm".)

liens would take the asset out of the hands of general unsecured creditors. If there existed any equity available from the debtor's assets which was not covered by a perfected lien, those assets would be subject to a MUFTA action to recover them. If there were no equity after deducting the perfected liens, there can be no recovery under MUFTA – neither damages nor avoidance of the transfer.[58]

The BCD's rationale for not deducting Norberg's liens would be contrary to the overall purpose of the statute which does not contemplate any consideration of subsequent dealings between actual creditors; instead, requiring the court to assess the "value" issue as of the time of the transfer involved and the validity and perfection of liens based on conditions as of that date – not after any subsequent events.

[58] The definition of "asset" makes it clear that MUFTA regulates only transfers of property that have realistically affected the ability of creditors of the transferor to collect on their claims by actually diminishing what they could have received had the transfer not taken place. The definition of "asset" in MUFTA excludes from creditor claims under MUFTA property of a debtor that would have had no value to a creditor, such as property that was fully encumbered with no net equity value. Thus, MUFTA defines "assets" that are subject to recovery, either in kind or by value, as property that is worth more than the amount of any encumbrances on that property. See 14 M.R.S.A. section 3572, Official Maine Comment 2 (a conveyance of an asset not available to pay an unsecured debt is not fraudulent), citing Pulsifer v Hussey, 97 Me. 434 (1903)(assignment of insurance policy to daughter could not be challenged as fraudulent transfer; "it had no value as to creditors, for it was absolutely exempt from their claims under the bankrupt act and the State statute"). Debtors with such fully encumbered properties are free to convey them in any way they wish, and conveyance of such property cannot be unwound, nor can damages be claimed under MUFTA.

Applying the definition correctly, it is clear that the Appellants proved[59] with uncontradicted evidence, that Norberg did properly perfect his judgment liens as of the Transfer Date by making (and updating) the required UCC-11 filings with Maine's Secretary of State's Office. See Defendants' Joint Exhibits 5, 9, 10 and 109 (App. at 245 – 250 and 288 – 297) and Trial Transcript at 188:5 to 193:9. See App. 288 – 297. Due to the appropriate and timely filings, Norberg's judgment liens were "effective against the hypothetical holder of any "judicial lien subsequently obtained by legal or equitable process," and therefore "valid liens" as defined in 14 M.R.S.A. § 3572(13).[60] Norberg owned perfected judgments against

[59]The burden actually rested with the Appellees, but they offered virtually no proof as to either value of the encumbrances. A creditor challenging the validity of any transfer under MUFTA must prove that the conveyance was fraudulent - including the "value" element and do so through clear and convincing evidence, giving the fact-finder an abiding conviction that the factual contentions are "highly probable. See, e.g., Achille Bayart & Cie v. Crowe, 238 F.3d 44, 48-49 (1st Cir. 2001) (under Maine UFTA, plaintiff must prove determinable amount of value in assets over and above secured debt; where the district court determined that plaintiff failed to meet that burden, motion for judgment as a matter of law was properly granted); Ed Peters Jewelry Co., Inc. v. C&J Jewelry Co., Inc., 124 F.3d 252, 262 (1st Cir. 1997) (where plaintiff failed to establish that the value of property exceeded the amount due to a secured creditor, there was no "transfer"). See also Morin v. Dubois, 1998 ME 160, ¶ 3, 713 A.2d 956; F.D.I.C. v. Proia, 663 A.2d 1252, 1254 n. 2 (Me.1995) (clear and convincing evidence necessary under Maine Fraudulent Transfers Act, 14 M.R.S.A. §§ 3571-3582. See also In re Maine Poly, Inc., 317 B.R. 1, 9 n. 8 (Bankr. D. Me. 2004) ("So, a transfer can occur under UFTA only to the extent unencumbered value is conveyed.").

[60] Appellee Olson conceded at trial that there were not just encumbrances on the assets of the partnership (i.e. the mortgages) – but also conceded that there were recorded execution liens of record in Augusta against the personal property of Pam Gleichman (which includes her GP interests) and that those liens totaled over $10 million in 2012. Trial Transcript at 54:6 to 55:13 and 62:1 to 73:20 and 77:14 to 79:7. They were properly perfected as is made clear by 14 M.R.S. §4651-A(2)(Lien on Personal Property). Olson in effect conceded in his testimony that unless he could prove that the GP interests had a value over $10 million – he had no valid claim.

all of Gleichman's assets (including her economic interest as GP in the three partnerships) with a face value of over $10 million as of the Transfer Date in 2012.[61] Trial Transcript at 192:1-23.

Since the judgments were valued far in excess of the highly uncertain value of the economic interests in the partnerships[62], there was no basis for any relief under MUFTA.

D. OLSON'S UNPLED THEORY TO UPSET THE ASSIGNMENT THAT BOTH THE ASSIGNOR AND ASSIGNEE AGREED OCCURRED IMPROPERLY EXTENDS THE REACH OF THE PROVISIONS OF MUFTA AND VIOLATES PROPERTY RIGHTS AND THE REQUIREMENT TO EXHAUST LEGAL REMEDIES

[61] The Promenade Trust entirely failed to satisfy its burden to prove that the property transferred, i.e. the GP Interests, had a value in excess of the liens encumbering these interests. Norberg's perfected writs of execution recorded in the office of the Maine Secretary of State as of the Transfer Date encumbered the GP interests to the extent of over $10 million. The Promenade Trust failed to present evidence of the value of the GP Interests or the amount of the encumbrances on the GP Interests. The Maine Uniform Commercial Code expressly permits the existence and enforcement of security interests in all forms of personal property; *Maine law provides that a filing with the Secretary of State's office of an execution against a debtor perfects the security interest of the judgment creditor in the assets of the debtor – and as of the time of Norberg's filings it lasts 20 years. See* 14 M.R.S.A. § 4651-A(2) and (9). It provides that the amount of the lien is "in the amount sufficient to satisfy the judgment together with interests and costs". See 14 M.R.S. §4651-A(4). There is no dispute but that the execution held by Norberg against Gleichman was recorded in the office of the Maine Secretary of State prior to the transfer of the GP Interests by Gleichman, and therefore encumbered all of Gleichman's assets, including the GP Interests when transferred.

[62] Instead of making any finding as to the value of the economic rights, the BCD concluded that there was no need to determine what the value was of the interests conveyed since the only relief sought was the avoidance of the economic interests that had been conveyed. App. at 35. The BCD concluded that it need only find that there was "some value" to the GP economic interests and no need to define what that value amounted to. App. at 35 – 36.

The BCD's alternative ground for voiding the transfers was its declaration that the transfers were "legally void" because they were "never effectuated". Judgment at 10. App. 31. This theory of relief was argued by Olson who claimed that it had been implicitly pled in the Amended Complaint.

The Court should reverse this aspect of the judgment since it effectively extends MUFTA far beyond the limits set forth by the Legislature in that statute. It places no bounds on the interferences with property rights that courts may impose. There is no recognized common law theory of relief available to Promenade Trust, and in fact none was ever alleged. This Court should not allow untethered avoidance actions when there are carefully crafted legal remedies designed to cover such creditor rights matters .

Promenade Trust never was required to identify a recognized form of action that would give them standing to void this transfer of economic interests. It has cited no non MUFTA cases providing for courts – at the behest of an unsecured creditor which acquired its claim after a transfer - to declare void a transfer freely made between two parties to a contract – both of whom agree that a transfer of the property rights occurred. And her the transfer was documented at the time of the transfers and the order voiding the transfers is being entered twelve year after the transfer.

Absent some statutory action such as provided for in MUFTA or other legitimate and recognized basis for standing, property interests should be wide open

to challenge by non-parties years after they occurred. Property rights are constitutional rights, and are not subject to defeasance under vague – untethered – principles of "equity". Since MUFTA could not be established, there should have been no basis for entering the equitable relief of voiding the transfers.

Only in very limited situations should the Court allow for the voiding of agreed to property transfers, and none existed here. The contract was not an illegal contract. Promenade Trust was not a partner in any of the three partnerships and was not a party to the contract for the transfer.[63] And Promenade Trust had no standing to assert whatever rights regulators might have had to challenge the assignment of economic rights. There was no claim asserted for common law fraud. Nor was the Promenade Trust even a creditor of Gleichman's as of the transfer date. Nor did the Promenade Trust have any standing that a regulator might have in regard to asserted violations of regulations; and in any event the transfer of GP interests only transfers the economic (not the management) interests[64], and therefore regulators have no concerns about such non-management assignments.

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[63] Promenade Trust did not have "party standing" to challenge whether a transfer had occurred; this sort of standing might exist where a party could assert that a contract was conditional or incomplete or should be rescinded or that some other remedy should be entered due to a failure of consideration or a breach of a condition.

[64] The Promenade Trust had no standing to assert the rights of Rural Development nor of any limited partners. Gleichman only conveyed to the HN Trust her "economic interests" in these three limited partnerships which is all that can be transferred under the provisions of 31 M.R.S. sections 1381-1382. "Transferable interests" are defined as strictly economic interests, e.g. the right to receive distributions from the limited partnership. See 31 M.R.S.A. section 1382. There

Here, the buyer/assignee (Hancock) and the seller/assignor (Gleichman) agreed that the right to the economic benefits flowing from the three projects on account of Gleichman's general partner interests would flow to Hancock as trustee instead of to Gleichman or her company.[65] There was no flow of income after the transfer, and no K-1's were issued to Hancock[66] - and therefore quite understandably no tax returns were filed by Hancock.

Allowing Olson to take the economic rights conveyed by Gleichman when she was the sole general partner would be violate basic property rights and exhaustion principles. Promenade Trust had no standing to invalidate her completed transfers of property. Vague and amorphous standards of "equity" cannot be allowed to render superfluous the detailed and carefully crafted provisions of

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was therefore no change in the General Partner of these partnerships; but rather a mere assignment of economic rights. There is no law requiring approval or consents in order to assign economic rights, nor is there any provision of the limited partnership agreements for obtaining the consent of a limited partner upon the transfer of the economic rights of a general partner.

[65]This was far beyond a mere plan of a transfer. The transfer is in writing and occurred contemporaneously with the formal setting up of the HN Trust; and the writing was even reviewed at the time by the Appellee's then trustee. Nothing in the writing or otherwise suggests that either of the parties to the agreement intended the vesting of the rights to economic benefits would occur at some future date or that the vesting was contingent upon any future event. The notarization and witnessing of the signatures of the assignor and the assignee make it indisputable as to the date of the transfer (with no back-dating of any documents as Olson had originally suggested).

[66] There were no earnings (and no issued K-1's) from the projects in the years subsequent to 2012 and therefore no reason for Hancock to file any tax returns reflecting such – receiving no K-1's . Tr Trans 152:15 -23.

MUFTA which defines exactly what parties may seek to interfere with the transfer of rights between two private contracting parties and what must be proved to do so.[67]

IV. CONCLUSION

For each of these reasons, the Court should conclude that there was a misapplication of the law or clear error by the BCD in voiding the transfers that were completed over twelve years ago - in 2012 and should reinstate the Counterclaim Counts and remand to require a jury trial as to all issues.

Dated this 10th day of October, 2024, at Portland, Maine.

Respectfully submitted,

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[67] Upholding the decision of the BCD would extend an interference in property rights well beyond the bounds that were so carefully designed in enacted by the Legislature. Interfering with asset transfers implicates important rights to property ownership – including the rights of parties to contracts to structure their affairs freely. General unsecured creditors acquire no specific interest in any of the debtor's property, and the debtor does not hold her estate in trust for general creditors – particularly for future creditors.

CERTIFICATE OF SERVICE

I John S. Campbell hereby certify that two copies of the above brief were hand delivered on October 10, 2024 to Gerald Petruccelli, Esq. at Two Monument Square, Portland, Maine. In addition, a digital copy was emailed to Attorney Petruccelli on the same date to gpetruccelli@pmhlegal.com.

October 10, 2024

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