

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-24-566

GOLDEN ANCHOR, L.C.,
Plaintiff-Appellee

v.

TOWN OF BAR HARBOR,
Defendant-Appellee,

CHARLES SIDMAN,
Proposed Intervenor Defendant-Appellant

**On Appeal from Business and Consumer Docket
Docket No. BCD-CIV-2024-00046**

BRIEF OF PLAINTIFF - APPELLEE

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I. INTRODUCTION

The instant litigation concerns a declaratory judgment action filed by Golden Anchor, the owner and operator of a privately owned pier located in the Bar Harbor, against the Town of Bar Harbor. Golden Anchor's suit was prompted by the Bar Harbor Town Council's recent adoption of an ordinance—the new Chapter 52 Disembarkation Ordinance—placing limits on the numbers of certain categories of persons who could disembark from cruise ships without penalty in a single calendar day.

Chapter 52 effectively superseded a citizen-initiated ordinance which Bar Harbor voters approved at a November 8, 2022 Town Meeting. That ordinance amended the Town of Bar Harbor's Land Use Ordinance—Chapter 125 of the Town Code—to limit the number of persons who could disembark from a cruise ship in single day, without penalty, to no more than 1,000. The amendment was codified at Section 77(H) of Chapter 125 of the Town Code.

Golden Anchor and other plaintiffs challenged the validity and constitutionality of the citizen-initiated ordinance in U.S. District Court. On March 1, 2024, the District Court ruled that the ordinance conflicted with a U.S Coast Guard rule protecting the disembarkation rights of crew members, entering judgment for Plaintiffs on that point. *Ass'n to Preserve and Protect Local Livelihoods v. Town of Bar Harbor*, 721 F.Supp.3d 56, 80-83, 98 (D. Me. 2024).

On June 18, 2024, the Town Council adopted a new ordinance which was codified in the Town Code in its own separate chapter—Chapter 52. On August 5, the Code Enforcement Officer issued a Notice of Violation to Golden Anchor for violating certain provisions of the Disembarkation Ordinance. A.80-81.

On September 10, 2024, Golden Anchor filed the declaratory judgment action which is the subject of this appeal, challenging the Disembarkation Ordinance’s validity and constitutionality. Despite Appellant Charles Sidman’s extensive arguments to the contrary, Golden Anchor is **not** challenging the validity of the citizen-initiated Cruise Ship Ordinance; rather, Golden Anchor is challenging the validity of Chapter 52—the Town Council-adopted Disembarkation Ordinance. (A.018-056).

The Business and Consumer Court correctly ruled that Mr. Sidman had failed to show that he should be allowed to intervene as of right in Golden Anchor’s declaratory judgment challenge to the validity and constitutionality of the Disembarkation Ordinance. Appellant’s appeal should be denied.

II. STATEMENT OF THE FACTS OF THE CASE

Initiative and Ordinance: The origins of the instant appeal trace back to a citizen initiative (“the Initiative”) which was approved by Bar Harbor residents on November 8, 2022 voting in a Town Meeting. Appellant, Charles Sidman, played a prominent role in drafting the Initiative and advocating for its approval.

The principal purpose of the Initiative was to limit to no more than 1,000, the number of persons who, without penalty, could disembark from a cruise ship and enter into the Town of Bar Harbor (“the Town”) in a single calendar day. The Initiative was framed as an amendment to the Town’s Land Use Ordinance—Chapter 125 of the Town Code.

The Initiative did not impose any penalties on individual disembarking persons above the 1,000-per-day limit. Nor did it impose any penalties on the cruise ships from which such persons would disembark. Rather, the Initiative limited its penalties to the owners and operators of the privately owned piers by which the disembarking persons enter the Town. In particular, the Initiative imposed a punitive regime under the authority of 30-A M.R.S. § 4452 which provided for fines ranging from \$100 to \$5,000 per each “excess unauthorized person.” On November 8, 2022, Bar Harbor voters approved the Initiative. Thereafter it was duly incorporated into the Land Use Ordinance—Chapter 125 of the Code—as Section 77(H) (hereafter “the Cruise Ship Ordinance” or “the Ordinance” or “Section 77(H)”). A.089-A090.

U.S. District Court Decision: Along with other Parties-Plaintiff, Golden Anchor challenged the validity of the Ordinance in U.S. District Court. *Association to Protect and Preserve Local Livelihoods et al. v. Town of Bar Harbor*, 1:22-cv-00416-LEW. Among their claims, Plaintiffs asserted that the Ordinance’s comprehensive application to all “persons” conflicted with a U.S. Coast Guard rule

(“the Seafarer Rule”)—33 C.F.R. 105.237—which guaranteed the right of crew members to disembark in all U.S ports of call. Plaintiffs asserted further that, by the force of the Supremacy Clause, the Seafarer Rule preempted the Ordinance and, as applied to disembarking crew members, invalidated it.

On March 1, 2024, following a foreshortened discovery period and a three-day bench trial in July of 2023, the District Court issued an Amended Order setting forth its rulings on Plaintiffs’ claims. *APPLL v. Town of Bar Harbor*, 721 F. Supp. 3d 56 (D. Me. 2024). Although ruling against Plaintiffs on most of their claims, the District Court agreed that the Ordinance’s undifferentiated application to “persons” necessarily included crew members and that, therefore and to that extent, the Ordinance conflicted with and was preempted by the Seafarer Rule. *Id.* at 80-83. The District Court then entered judgment for the Plaintiffs on this claim. *Id.* at 98.

The District Court did not supplement its judgment on this point with injunctive relief because, as it explained, both before and during the July 2023 trial, the Town had effectively acknowledged that the Seafarer Rule preempted the Cruise Ship Ordinance and pledged to cure this constitutional defect. *Id.* at 81 (“Bar Harbor has indicated that it will author a rule that limits the Ordinance by recognizing an exception for shore access for seafarers”); see also, A.104-105 (May 31, 2023 Town Memo acknowledging Ordinance conflict with Seafarer Rule).

The District Court’s withholding of injunctive relief in no way limited the effect of its judgment that the Ordinance conflicted with federal law and, to the extent of that conflict, was preempted thereby, and could not be enforced. The implications of the District Court’s preemption ruling for the actual application of the Ordinance were profound. That was because the word “person” was central to the whole purpose undergirding the Cruise Ship Ordinance. See, A.090 (Ch. 125, § 77(H)(2)) (imposing 1,000 **person** daily limit); §77(H)(3) (requiring Harbor Master to develop “a mechanism for counting and tracking the number of disembarking **persons** each day” (emphasis supplied)); § 77(H)(4) imposing penalties on pier owner for the disembarkation of “each unauthorized **person**” (emphasis supplied).

A review of the Cruise Ship Ordinance’s terms shows that its whole premise was to constrict the number of **persons** who, without penalty, could, in a single calendar day, disembark from cruise ships and enter Bar Harbor. A.090 (Section 77(H)), *passim*. Indeed, as the District Court found, the drafters of the Ordinance deliberately incorporated the word “persons” for the very purpose of ensuring there would be no exceptions to its application. 721 F.Supp.3d at 71, 81. Moreover, as an amendment to the Land Use Ordinance, the Ordinance necessarily incorporated the Land Use Ordinance’s broad definition of the word “person.” Ch. 125, § 109, “Person.”

The District Court’s conflict preemption judgment rendered the Ordinance unconstitutional and unenforceable, and it would remain so until such time as it was validly and effectively amended to cure its conflict with the Seafarer Rule.

Chapter 52—The Disembarkation Ordinance: The District Court’s confidence that the Town would remedy the Ordinance’s conflict with the Seafarer Rule proved misplaced. When the Amended Decision was issued—nine months after the Town had acknowledged the conflict—the Town had done nothing. Faced with District Court’s conflict preemption ruling, the Town could delay no longer; it had to act.

The Town’s attempt at a solution emerged from the Town Council on June 18, 2024. On that day, in the exercise of its legislative power, the Town Council enacted an ordinance, titled the “Cruise Ship Disembarkation Amendment” which was then codified in a new chapter of the Town Code—Chapter 52. A.012. (hereinafter “the Disembarkation Ordinance” or “Chapter 52”).¹

Although mimicking several of the Cruise Ship Ordinance’s key terms, the new Disembarkation Ordinance differed from it in material respects. To begin with, in contrast to the Ordinance which clearly and intentionally amended Chapter 125 (the Town’s Land Use Ordinance), the Disembarkation Ordinance did not directly

¹In its Declaratory Judgment Complaint, Golden Anchor challenged the Town Council’s purported enactment of Chapter 52 as *ultra vires*. A.034-A.039 (Golden Anchor Complaint, Count I); see also, A.039-A.041 (Count II)

amend the text of Chapter 125 in general or the Cruise Ship Ordinance (at Chapter 125, Section 77(H)) in particular. Instead, the Town Council enacted it as a new, freestanding section of the Code—Chapter 52. Even so, and without expressly so providing, the Disembarkation Ordinance purported to change material terms in the Cruise Ship Ordinance. These changes included, in particular, an attempt to cure the Ordinance’s unconstitutional application to all disembarking “persons,” which necessarily included federal protected crew members.

The Disembarkation Ordinance purported to effect this cure by adopting a restrictive definition of the word “Persons” (with a capital “P”)² which, “[f]or the purposes of this Chapter and the enforcement of § 125-77(H)” applied to all disembarking persons other than crew members. A.178; see also, Chapter 52, § 5 “Persons.”³ Thus, Chapter 52 sought to override and change the meaning of the Land Use Ordinance in two ways: 1) by generally providing that Chapter 52 “govern[s]” Section 77(H)—that is, that Chapter 52 was to override all inconsistent provisions of Section 77(H) and 2) by overriding the meaning of “persons” as used throughout Section 77(H), overriding as well the Land Use Ordinance’s capacious,

² From this point forward, unless otherwise indicated, the word “Persons” with a capital “P” when appearing in bold type shall mean “Persons” as defined in in the Disembarkation Ordinance, Chapter 52, Section 5—“Persons.”

³ Chapter 52’s Definition of “Persons” reads in pertinent part as follows: “For purposes of this Chapter and the enforcement of § 125-77(H), ‘Persons’ means passengers of cruise ships and not those persons covered by 33 C.F.R. § 105.200 and 33 C.F.R. § 105.237.[i.e., the Seafarer Rule] [...] The word “person” (not capitalized) shall have the meaning provided by § 125-108 of the Town Code.” A178; Chapter 52, § 5, “Persons.” *See, also*, Chapter 125, § 109, “Persons.”

standing definition of “Persons” at Chapter 125, Section 109. A.177-178; Ch. 52 §§ 1, 5 (“Persons”).

The striking oddity of Chapter 52’s differentiation between “Persons” and “persons”, by itself, demonstrates that it was one thing to promise to solve the Ordinance’s preemption conflict with the Seafarer Rule—as the Town had done to the District Court—but it was quite another to draft a standards and procedures for differentiating between disembarking crew members and all other disembarking persons that could be consistently and reliably applied and also would be legally valid in all respects.

But when the means Chapter 52 employs to distinguish between federally protected crew members and other disembarking persons are examined, it becomes apparent that, in the end, the Town proved itself incapable of solving the preemption conflict at all. To the contrary, when faced with the very practical challenge of devising a solution, the Town Council simply punted. By operation of Section 7-A of Chapter 52, the Town ducked this thorny and inherently governmental task by attempting to delegate it to the private pier owners, including Golden Anchor. A.178-179 (Ch. 52, § 7(A)).

Chapter 52 seeks to accomplish this objective through a two-step procedure: First, without expressly so providing, Chapter 52 purports to revoke Golden Anchor’s right to operate the Golden Anchor pier as such as secured by both

longstanding Town-issued permits *and* by long, continuous use stretching over decades. Irrespective of any existing permits and such longstanding use, Chapter 52 provides that permits issued under its authority are indispensable to any operation of a privately owned pier. A.178, Ch. 52, § 6(A)-(B).

Second, as an essential precondition to obtaining a permit, Chapter 52 requires the private pier owner to draft a system of standards and procedures by which pier owners and Town officials could consistently and reliably distinguish between disembarking “Persons” and all others, including disembarking crew members. A.178-179, Ch. 52, § 7(A)-(B).⁴ Chapter 52 terms the means of making this distinction the “Counting Method.” *Id.* Ch. 52, § 7(A).⁵

⁴ Chapter 52’s daily ceiling on the entry of “Persons” into Bar Harbor implies that some “Persons” will be denied entry to Bar Harbor. That is the logic behind the harsh punitive regime Chapter 52 imposes on Golden Anchor. A.179, Ch. 52-8(A). Golden Anchor denies that it has the authority to bar the entry of disembarking “Persons” into Bar Harbor. Nor does Chapter 52 purport to provide Golden Anchor with such authority. A.177-179; Ch. 52, *passim*. In its declaratory judgment complaint, Golden Anchor challenged this aspect of the Disembarkation Ordinance. A.046-048 (*Complaint*, Count VI)

⁵ It is evident that the actual application of the Counting Method could result in denying or impeding the entry of some disembarking persons into Town. Such action could, in turn, impair a whole spectrum of constitutional rights held by those Persons subject to its discriminatory limitations. See, e.g., *Sheetz v. County of El Dorado, California*, 601 U.S. 267, 279 (2024) (listing examples of unconstitutional conditions and citing *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974)) for infringement of the right to travel). Given these risks, it is essential both for those enforcing the Disembarkation Ordinance and those subject to its application that the standards and processes governing the Counting Method meet basic due process requirements. See, e.g. *City of Rockford v. Grayned*, 408 U.S. 104, 109, n.3 (1974). Moreover, even if the Counting Method were enforced only by the private pier owners against disembarking Persons, it appears likely that, compelled by the Disembarkation Ordinance, the pier owners would be deemed to be acting “under color of law” within the meaning of 42 U.S.C. § 1983; see. e.g., *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937-39 (1982).

Thus, Chapter 52’s attempt to enlist Golden Anchor to solve the Ordinance’s conflict with the Seafarer Rule is intentionally coercive. It conditions the Town’s issuance of an entirely new and absolutely mandatory permit to Golden Anchor for its previously permitted pier operations—operations that long predated Golden Anchor’s ownership and operation of the Golden Anchor pier—on Golden Anchor’s submission to and compliance with two new requirements: (1) Golden Anchor must complete and file a new Chapter 52-mandated permit application and (2) Golden Anchor must draft and obtain Town approval for the “Counting Method”—that is, the now nonexistent standards and processes by which disembarking crew members can be consistently and reliably distinguished from all other disembarking persons. A.178-179 (Ch. 52, § 6(A)); see also, A.091-A.094 (mandatory applications).

In its Complaint, Golden Anchor challenged the constitutionality and otherwise the validity of all these aspects of Chapter 52. A.042-045 (Count IV—Unlawful Delegation of Governmental Power); A.048-051 (Count VI—Permit Applications Invalid); A.51-053 (Count VIII—Due Process/Equal Protection); A.053-0555 (Count IX—Unlawful Designation as Public Nuisance).

Notice of Violation—Declaratory Judgment Complaint: On August 5, 2024, the Town’s Code Enforcement Officer issued a Notice of Violation (“NOV”) to Golden Anchor alleging that on July 25, 2024, Golden Anchor had allowed “Persons” to disembark from a cruise ship without having first obtained a Chapter

52 permit. A080-081.⁶ Following the Code Enforcement Officer’s issuance of the NOV, Golden Anchor took two complementary but independent steps: 1) it filed an appeal under the Land Use Ordinance to the Bar Harbor Board of Appeals and 2) it filed a complaint in Superior Court for declaratory and injunctive relief. A.018-A056.

III. PROCEDURAL HISTORY

By motion dated October 28, Mr. Sidman sought to intervene in Golden Anchor’s declaratory judgment action.⁷ Golden Anchor opposed Mr. Sidman’s motion. A.184-218. The Town did not oppose Mr. Sidman’s motion to intervene but disputed certain of Mr. Sidman’s representations in support of his motion. A.157-167.

Before Mr. Sidman filed a reply brief, the Business Court denied his motion to intervene. A.011-014. Mr. Sidman moved to reconsider. A.068-078. Golden Anchor opposed Mr. Sidman’s reconsideration motion. A.219. Before the Court ruled on his reconsideration motion, Mr. Sidman filed a notice of appeal with this Court. Thereafter, the Town filed a response to Mr. Sidman’s reconsideration motion

⁶ The NOV characterized Chapter 52 “constitut[ing] **the rules** necessary to implement Section 125-77(H) of the Land Use Ordinance. A080 (emphasis supplied). In its Declaratory Judgment Complaint, Golden Anchor disputed this characterization. A032, ¶54; *id.* A034-039, ¶¶ 65-77. This Court need not decide this question to resolve the instant appeal.

⁷ In the meantime, Golden Anchor’s declaratory judgment complaint had been transferred to the Business Court and docketed as *Golden Anchor, LC v. Town of Bar Harbor*, Docket No. BCD-CIV-2024-00046.

disputing certain of Mr. Sidman's assertions. A.220-253. By Order dated January 8, 2025, the Business Court denied Mr. Sidman's motion to reconsider. A.015-017.

Mr. Sidman timely filed his Appellant's Brief and the Appendix. Appellee, Golden Anchor, now files its Appellee's Brief.

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. The Court did not commit error of law or abuse its discretion in determining that Charles Sidman had failed to meet the standards for intervention as a matter of right as provided in Rule 24(a) of the Maine Rules of Civil Procedure in Golden Anchor's challenge to the constitutionality and validity of Chapter 52, the Disembarkation Ordinance.
2. Charles Sidman waived his right to claim intervention as of right as provided in Rule 24(a) of the Maine Rules of Civil Procedure based on his supposed participation in the Town Council's consideration and adoption of Chapter 52, the Disembarkation Ordinance.
3. The Court did not commit error of law or abuse its discretion in determining that Charles Sidman had failed to show a sufficient property interest for intervention as a matter of right as provided in Rule 24(a) of the Maine Rules of Civil Procedure.
4. The Court did not commit error of law or abuse its discretion in determining that in its defense of Golden Anchor's challenge to the constitutionality and validity of Chapter 52, the Disembarkation Ordinance arising out of its enforcement action against Golden Anchor, the Town would adequately represent Appellant Sidman's interests.

V. SUMMARY OF ARGUMENT

When Appellant Sidman moved to intervene in Golden Anchor's declaratory judgment challenge to the validity and constitutionality of Chapter 52, he sought

intervention solely as of right under Rule 24(a). A.0570-A.067.⁸ He did not claim a statutory right to intervene, which meant that he had to demonstrate that he held an interest that “related to the property or the transaction” at issue and that his position was such that, “as a practical matter,” the court’s disposition of Golden Anchor’s claims might “impair or impede [Appellant’s] ability to protect that interest.” Rule 24(a), M. R. Civ. Pro.

Noting that Golden Anchor’s challenges to Chapter 52 had been prompted by the Town’s enforcement action, the Business Court correctly determined that Mr. Sidman had failed to make showings that satisfied either Rule 24(a)’s “interest” standard or its “disposition” standard. A.12-14; see also, A.15-17. It also correctly determined that the Town’s defense of the original ordinance⁹ coupled with the

⁸Mr. Sidman also sought “party-in-interest” status. A.066. The Appellant’s Brief did not raise that argument, so it has been waived.

⁹In its initial Order denying Mr. Sidman’s motion, the Business Court’s characterization of the District Court’s Amended Decision is curiously contradictory. On the one hand, the Business Court asserted that in the District Court litigation, “the Town and Sidwell (sic), working together, defeated the challenge to the Cruise Ship Ordinance.” *Id.*, A.012. And at another point, the Court flatly stated that, in their defense of the Ordinance, Mr. Sidman and the Town had “prevailed.” *Id.* at A.13. Yet, at still another point, the Court acknowledged the Town and Mr. Sidman had not won an unalloyed victory, noting that the District Court had upheld the Ordinance “**in nearly all respects.**” *Id.* at A.012, citing *APPLL v. Town of Bar Harbor*, 721 F.Supp.3d at 98 (emphasis and underscore supplied). The Court did not explain in what “respect” their joint defense of the Ordinance failed. But, as has been noted above, that “respect” was the District Court’s determination that the Ordinance’s central and repetitive use of the word “person” (and as augmented by the Land Use Ordinance’s broad definition at Section 109) conflicted with and was preempted by the U.S. Coast Guard’s Seafarer Rule. Indeed, for this point, the Business Court cited to *APPLL v. Town of Bar Harbor* at 721 F. Supp. 3d at 98. That was the point where the District Court entered **judgment for Plaintiffs** on their conflict preemption claim. That judgment rendered the Ordinance unconstitutional and unenforceable until the Ordinance’s preemption conflict was resolved.

Town's initiation of the enforcement action against Golden Anchor meant that, to the extent that Mr. Sidman has shown any cognizable interests, the Town would adequately represent Mr. Sidman's interests, such as they were. *Id.* at A.013.

For the reasons set forth below, in denying Mr. Sidman's motion to intervene, the Business Court did not abuse its discretion or commit error of law. *State v. MaineHealth*, 2011 ME 115, ¶ 7, 31 A.3d 911.

VI. PERTINENT LEGAL STANDARDS

A. JURISDICTION—STANDARDS OF REVIEW

Although this is an interlocutory appeal of the Court's denial of Appellant's motion to intervene, it is properly before this Court. *Francis v. Dana-Cumming*, 2007 ME 16, ¶ 15, 915 A.2d 412, citing *Donna C. v. Kalamaras*, 485 A.2d 222, 222-223 (Me. 1984).

The Law Court reviews a trial court's denial of a motion to intervene for errors of law and abuse of discretion. *In re Children of Mary J.*, 2019 ME 2, ¶ 8, 199 A.3d 231; *MaineHealth*, 2011 ME 115, ¶ 7. If the trial court's decision turns on a question of law, this Court reviews the issue de novo. *Id.*

B. MANDATORY INTERVENTION—RULE 24(a)

Rule 24(a) makes intervention mandatory where a statute confers that right.¹⁰ It also provides for mandatory intervention,

¹⁰ Appellee Sidman did not premise his Motion to Intervene on statutory authority.

“when an applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest.”

M.R. Civ. P. 24(a).

Importantly, Rule 24(a) modifies these standards with the proviso that mandatory intervention is not warranted where “the applicant’s’ interest is adequately represented by the existing parties.” *Id.*; *see also, In re Children of Mary J*, 2019 ME 2, ¶ 6.

VII. ARGUMENT

A. THE “PROPERTY OR TRANSACTION” AT ISSUE IS GOLDEN ANCHOR’S CHALLENGE TO CHAPTER 52, ITS PEREMPTORY AND MANDATORY PERMIT APPLICATIONS.

Rule 24(a) requires that an evaluation of Appellant’s motion to intervene begin with a determination of the “property or transaction” at issue. That review must begin with the claims set forth in Golden Anchor’s complaint for declaratory judgment and injunctive relief.

Although the Town’s issuance of the NOV prompted Golden Anchor to file its Complaint, it bears emphasis that Golden Anchor’s declaratory judgment claims were not and are not dependent on the Town’s NOV enforcement action. A review of Golden Anchor’s Complaint makes clear that **all** of Golden Anchor’s claims could have been brought following Chapter 52’s enactment and the Town’s issuance of

Chapter 52’s permit applications *even if the Town had never issued an NOV*. A.018-056, *passim*.

Golden Anchor’s Complaint alleges that since 2000 Golden Anchor has owned and operated a pier abutting West Street in Bar Harbor. A.022 (*Complaint* at ¶ 7). It alleged further that from 2001 to 2008, Golden Anchor secured and had long held permits issued by the Town for, among other things, the disembarkation of persons from cruise ships into the Town and that those Town-issued permits had remained in effect ever since. *Id.* (*Complaint* at ¶ 9).

The Complaint then refers to the Town Council’s June 18, 2024, adoption of the Disembarkation Ordinance and Code Enforcement Officer’s issuance of the NOV on August 5 to Golden Anchor pursuant to the Disembarkation Ordinance’s specific authority. A.028 (*Complaint* at ¶¶ 33-35); A.032-033 (*Complaint* at ¶¶ 53-59). Following its recitation of these and other foundational facts, the Complaint sets forth its challenges to the Disembarkation Ordinance in nine separate counts—claims which first begin with the assertion that the Town Council had adopted it in violation of the Town Charter and the Land Use Ordinance and, as such, was an *ultra vires* act and therefore void *ab initio* and ultimately concludes with the assertion that its categorial labeling of disembarking “Persons” in numbers greater than 1,000 constituted a public nuisance lies outside the Town’s powers—and outside the concept of a public nuisance. A.018-A.056 (*Complaint*, Counts I-IX).

The Golden Anchor Complaint makes plain that it is directed at and disputes the validity of Chapter 52's enactment, the validity and constitutionality of certain of its terms, the validity of its confiscatory terms, the validity of its mandatory and peremptory pier permits, and the validity of the basis for the NOV issued under Chapter 52's authority. It does **not** challenge any other ordinance; it does **not** challenge any Town acts undertaken under any authority other than the Disembarkation Ordinance at Chapter 52.

Therefore, for purposes of Rule 24(a), the "property or transaction" at issue in Golden Anchor's complaint are 1) the validity and constitutionality of Chapter 52 as a whole and as well as certain of its provisions and 2) the validity of the permit applications that the Town has issued under Chapter 52's authority. In Golden Anchor's view, if Golden Anchor prevails in any of its challenges to Chapter 52, it would likely result in the invalidation of the NOV, either as a whole or in material part.

B. THE BUSINESS COURT DID NOT COMMIT ERROR OF LAW OR ABUSE ITS DISCRETION IN DETERMINING THAT APPELLANT SIDMAN HAD NOT SHOWN AN INTEREST SUFFICIENT TO WARRANT HIS INTERVENTION IN GOLDEN ANCHOR'S CHALLENGE TO CHAPTER 52.

Legislative Standing: Mr. Sidman's Motion to Intervene set forth a detailed account of his assertedly pivotal role in the formulation and adoption of the Ordinance at the November 8, 2022 Town Meeting. A.058-059, A.064-065. Relying

on his involvement in the formulation of and support for the proposal that ultimately became the Ordinance, Mr. Sidman argued to the Business Court that “[a]s an opponent of ‘carte blanche’ control over Bar Harbor’s cruise ship policies that the Town has handed to Golden Anchor, and as the principal advocate for the adoption of the Ordinance,” he had demonstrated a sufficient interest to intervene in this litigation. A.065. On appeal, Mr. Sidman has again recited and relies on his involvement with the development and Town Meeting approval of the Ordinance. Appellant’s Br. at 12-13, 27.

In touting both his role in devising and his commitment to protecting the Ordinance, it appears that Mr. Sidman is seeking what has been termed “legislative standing.” *See, Raines v. Byrd*, 521 U.S. 811, 819 (1997); *see also, Yniguez v. Arizona*, 939 F.2d 727, 733, n. 3 (9th Cir. 1991).¹¹ As is explained below, and with due respect to the District Court, Golden Anchor does not concede that Mr. Sidman’s prominence in the formulation and adoption of the Ordinance warranted his status as an intervenor in *APPLL v. Town of Bar Harbor*. Nor does Golden Anchor

¹¹ Although Mr. Sidman cited *Yniguez v. Arizona* in his motion to intervene (A.065), it is not apposite. In that case, a popular initiative was challenged in court and, as the litigation proceeded, the Governor of Arizona decided not to appeal a lower court ruling adverse to the statute and the Attorney General was estopped from defending it. With the State not defending the statute, the court allowed a proponent group to intervene and defend the statute. 939 F.2d at 739-740. On appeal, the Supreme Court expressed “grave doubts” about the Ninth Circuit’s ruling on this point. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 66 (1997)

concede that “legislative standing” is even a valid basis for intervention under Rule 24(a).

The Supreme Court addressed “legislative standing” as an Article III question in *Hollingsworth v. Perry*, 570 U.S. 704 (2013). Similarly to Mr. Sidman, the petitioners in *Hollingsworth* asserted that they were the “official ‘proponents’ of Proposition 8” and deserved standing as such *Id.* at 707. The *Hollingsworth* Court disagreed noting that “once Proposition 8 was approved by the voters, the measure became ‘a duly enacted constitutional amendment or statute’. *Id.* The Court noted further that, upon the initiative’s enactment, “[p]etitioners [had] no role—special or otherwise—in the enforcement of Proposition 8.” *Id.* (emphasis supplied).

Without such a role, the Court concluded that Petitioners had “no ‘personal stake’ in defending [Proposition 8’s] enforcement that is distinguishable from the general interest of every citizen of California.” *Id.*, quoting in part, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992); see also, *Raines v. Byrd*, 521 at 829-830 (denying Article III standing to legislators).

Chapter 52 at Issue: More to the point, even assuming, *arguendo*, that Mr. Sidman might have “legislative standing” if Golden Anchor were challenging the Cruise Ship Ordinance, the Golden Anchor Complaint makes clear that that is simply not the case. Indeed, as the Business Court correctly found, Golden Anchor is not challenging the Cruise Ship Ordinance at all. A.013 (“this action challenges the

Disembarkation Ordinance, **not** the Cruise Ship Ordinance.”) (emphasis supplied).¹²

As the Business Court saw it, “what is at stake is **not** the 1,000 per day passenger limitation, but whether and how enforcement of the 1,000 per day passenger [*i.e.*, “**P**erson”] can be imposed on a private company such as Golden Anchor.” *Id.* (emphasis supplied).¹³ As the Court noted further, “especially in light of the Notice of Violation”, Golden Anchor’s claims “involve[] an essentially private dispute.” *Id.*

While relying on his advocacy and solicitude for the Ordinance, Mr. Sidman also tacitly acknowledged that he could make no such claim with respect to Chapter 52. His motion to intervene makes this clear in that it not only failed to advance such a claim, but it also failed to even mention Chapter 52 **at all**. A. 057-A.067, *Motion to Intervene, passim*.

Consequently, in determining that, to the extent Mr. Sidman based his motion to intervene on his involvement with the Ordinance, he had not shown that he had a

¹² This also answers Mr. Sidman’s assertion that the Cruise Ship Ordinance is really at issue because the Disembarkation Ordinance merely constitutes the implementing “rules” for the Cruise Ship Ordinance. Appellant’s Br. at 16-17, 22. Although as has been noted above Golden Anchor disputes Mr. Sidman’s characterization of the Disembarkation Ordinance, which the Town Council enacted pursuant to its legislative authority, as constituting “rules,” this Court need not resolve this question to decide Mr. Sidman’s appeal.

¹³ Golden Anchor does not agree with the Business Court’s summary of its claims as quoted above. Golden Anchor is challenging the validity of the Town Council’s adoption of the Disembarkation Ordinance as well as certain of its provisions. A.034-055. Golden Anchor’s claims do not ask the Business Court to decide whether the Town could ever validly impose such restrictions on Golden Anchor. Rather, Golden Anchor contends that, due to its many legally disabling infirmities, the Town cannot do so under the authority of Chapter 52. *Id.*

right to intervene in Golden Anchor’s challenge to Chapter 52, the Business Court did not commit any error of law or abuse its discretion.

C. APPELLANT SIDMAN HAS WAIVED ANY CLAIM TO THAT HE HAS A RIGHT TO INTERVENE BASED ON HIS INVOLVEMENT WITH CHAPTER 52—THE DISEMBARKATION ORDINANCE.

Although it is not altogether clear, it appears that in his appellate brief, Mr. Sidman may be seeking to augment his claim to “legislative standing” by belatedly claiming special involvement with the ordinance that is actually at issue in this case—Chapter 52. In particular, Mr. Sidman asserts that he “was the architect of the Ordinance and, at the request of the Town Council and staff, he **collaborated with the Town and participated in fashioning Chapter 52 and the Town permit applications.**” Appellant Br. at 24 (emphasis supplied). He then makes several assertions that the Ordinance and Chapter 52 are interrelated. *Id.* 24-25.

This Court has long held that claims and arguments not raised at the trial court level are not preserved for appeal. *Foster v. Oral Surgery Associates, P.A.*, 2008 ME 21, ¶ 22, 940 A.2d 1102, 1107. As has been noted above, in denying Mr. Sidman’s motion to intervene, the Business Court observed that the motion was based on the Cruise Ship Ordinance, but that the Golden Anchor claims were directed at the Disembarkation Ordinance. A.013. Not having raised the Disembarkation Ordinance below in support of his quest for legislative standing, Mr. Sidman cannot do so now. That ship has sailed.

In his Appellant's Brief, Mr. Sidman urges that Section 77(H) and Chapter 52 have several terms in common (or at least quite similar). Appellant's Br. at 22-24. He asserts that "[Golden Anchor's] Complaint is replete with allegations concerning the Ordinance and its requirements." *Id.* at 24. That is true, but Golden Anchor's references to Section 77(H) do not challenge any of its terms; rather they provide context for Golden Anchor's challenges to the validity and constitutionality of the Disembarkation Ordinance.

In fact, Golden Anchor is not challenging the Ordinance for good reason. That is, by its plain terms, Chapter 52 was intended to relegate the original Cruise Ship Ordinance into a mummified state, subordinated to Chapter 52 as the operative law. This is evident from the many ways in which Chapter 52 purports to override and effectively govern the Ordinance's terms. The most prominent example of Chapter 52's intent and effect in this regard is its novel definition of "Persons" which, as has been discussed above, is expressly intended to override and govern the word "person" in the Ordinance and as defined in Section 109 of the Land Use Ordinance. See, A.178, Ch. 52, § 5 ("Persons").

Given Golden Anchor's concentrated focus on Chapter 52, if Golden Anchor were to prevail on some or all of its claims, any court decision on Golden Anchor's claims and any court-ordered relief would be directed at Chapter 52 alone. The Ordinance would not be affected one whit.

That is not to say that the invalidation of the Disembarkation Ordinance in whole or in material part would not create challenges for the Town. It very probably would. But such challenges as might arise would likely stem from District Court's decision that the Ordinance conflicts with and is preempted by the Seafarer Rule. Since Chapter 52 was drafted to resolve that conflict, its invalidation would leave the Ordinance's conflict with the Seafarer Rule intact and, as such, the Ordinance would continue to be, as it is now, unconstitutional and unenforceable.

Finally, assuming *arguendo* that, notwithstanding the lateness of the hour, it is in order to consider Mr. Sidman's supposed involvement in Chapter 52 in support of his motion to intervene, his argument still fails. That is because, as has been discussed above, it is questionable whether Mr. Sidman has "legislative standing" with respect to the Cruise Ship Ordinance.

Where the Disembarkation Ordinance is concerned, however, he can sustain no claim to this species of supposed "standing." Among other things, that is because, unlike the Ordinance, which was adopted by Bar Harbor voters meeting in Town Meeting, the Disembarkation Ordinance was not a citizen initiative—it was adopted by the Town Council through the exercise of its legislative power.

Mr. Sidman does not claim that he was a Town Councilor when the Town Council approved Chapter 52. But, even if he had been a member of the Town Council, he would not have had standing to intervene alongside the Town to defend

Chapter 52 from Golden Anchor’s declaratory judgment claims. See discussion above; see also, *Raines*, 521 U.S. at 829-830.

Moreover, he has not provided this Court with any basis to conclude that his participation in the drafting and Town Council adoption of the Disembarkation Ordinance, whatever it may have been, was somehow materially distinct from the role that any citizen could have played. See, e.g., *Nergaard v. Town of Westport Island*, 2009 ME 56, ¶¶ 19-22, 973 A.2d 735.¹⁴

To the extent Appellant is seeking to sustain his intervenor application on his involvement in the Town Council’s adoption of Chapter 52, Golden Anchor respectfully contends that this Court should reject his claim.

D. THE BUSINESS COURT DID NOT COMMIT ERROR OF LAW OR ABUSE ITS DISCRETION IN DETERMINING THAT APPELLANT SIDMAN HAD NOT DEMONSTRATED PROPERTY OR COMMERCIAL INTERESTS THAT WOULD BE IMPAIRED BY JUDICIAL DISPOSITION OF GOLDEN ANCHOR’S CLAIMS.

In addition to claiming intervenor status based on his involvement with the Ordinance (and possibly, Chapter 52), Mr. Sidman also claims that his economic interests are “adversely affected by cruise ship passenger disembarkation.” A.063

¹⁴ In his Appellant’s Brief, Mr. Sidman notes that the District Court concluded that the Ordinance was “intended to remedy the harms caused by cruise ship passengers—namely congestion, overtaxed public facilities, and crowded sidewalks and businesses.” Appellant’s Br. at 26, n. 9, citing *APPLL*, 721 F.3d at 73, 96-97. The District Court’s findings at these points in its decision, however, all concern impacts that affect the public as a whole. Thus, as far as Mr. Sidman is concerned, they are insufficient to sustain his Motion to Intervene. See, *Nergaard*, 2009 ME 56, ¶¶ 19-22.

(“His properties and business are, and have been, adversely affected by continued excessive cruise ship disembarkations”). *See also*, A.064; *see also*, A.107, ¶ at 6 (Sidman Affidavit). But Mr. Sidman’s claims of economic injury fare no better than his claims of legislative standing.

Economic Harm: To begin with, in considering Mr. Sidman’s economic harm claims, basic standing principles are revealing. To have standing in a civil case, one must show that one has a property, pecuniary, or personal right that may be adversely affected by the litigation’s outcome. *Anderson v. Swanson*, 534 A.2d 1286, 1288 (Me. 1987). “A person suffers a particularized injury only when that person suffers injury or harm that is ‘in fact distinct from the harm experienced by the public at large.’” *Nergaard*, 2009 ME 56, ¶ 15, quoting *Ricci v. Superintendent, Bureau of Banking*, 485 A.2 645, 647 (Me. 1984). When held against these standards, Mr. Sidman’s claims of economic injury as justification for his intervention in this case fail altogether.

In his Motion to Intervene, Mr. Sidman broadly asserted that his business, Argosy II, an art gallery located at 6 Mount Desert Street, was “adversely affected by the large crowds of cruise passengers who disembark into Bar Harbor between May and October each year” and that those passengers “cause wide congestion and

overcrowding leading to the inundation of local services, amenities, and attractions.” A.058, A.065, citing A. 107, at ¶¶ 6-11 (Sidman Affidavit).¹⁵

Mr. Sidman also claimed that due to cruise ship visitation, “[Argosy II] has suffered[]—and if Golden Anchor succeeds, will continue to suffer—concrete harm in the form of lost clientele and sales.” A.064. In his Appellant’s Brief, Mr. Sidman has broadly claimed that cruise ship visits work an inverse effect on Argosy II and Golden Anchor in which “Golden Anchor’s business depends on more passengers downtown [and] Mr. Sidman’s business depends on less (sic) passengers downtown.” Appellant’s Br. at 26. Mr. Sidman caps his cause-and-effect claims with the flat assertion that “Mr. Sidman’s interest in the litigation is simple and direct: his business rises and falls with Golden Anchor’s ability to disembark cruise ship passengers into downtown Bar Harbor.” *Id.*

In sum, Mr. Sidman argued to the Business Court and now argues to this Court that the cruise ship visitors pose a mortal peril to Argosy II and, in accordance with

¹⁵ Mr. Sidman’s singular focus on cruise ship visitors may explain a notable omission in his brief. He credits Bar Harbor’s “small-town charm” as being “[i]n large part responsible” for its attraction as a “popular tourist destination [which] has been frequented by an increasingly large number of cruise ships.” Appellant’s Br. at 10. Notably absent from Mr. Sidman’s account of Bar Harbor’s powers of attraction, is its proximity to Acadia National Park. Indeed, nowhere in his brief does Mr. Sidman even mention Acadia National Park. Appellant’s Br., *passim*. The importance of Acadia National Park was not lost on the District Court, however, which found that, “[o]ver the past 15 years, Bar Harbor has experienced a steady growth in its tourist season, due **chiefly** to its proximity to Acadia National Park. In 2021, **Acadia National Park** attracted roughly four million visitors many of which would visit downtown Bar Harbor.” *APPLL*, 721 F.Supp.3d at 69 (emphasis supplied).

Rule 24(a), this peril mandates his intervention on Golden Anchor's declaratory judgment action. But a review of Mr. Sidman's Motion to Intervene and the Appellant's Brief reveals that on this critical point, Mr. Sidman's unrestrained contentions are long on vigor but short on particulars.

Examples of these shortcomings, include but are not limited to the following: that although Mr. Sidman asserts that his customers are deterred from patronizing Argosy II on cruise ship days, he does not identify these customers either by name or by volume; that although claiming specific cause and effect loss of business due to cruise ship visits, he presents no numbers (or documentary support for such numbers) showing those claimed economic losses; and, that he fails to explain how, with Argosy II having been throttled by the lethal cruise ship visits, it has nonetheless remained in business for **twenty-nine unbroken years**. A.107 (Sidman Affidavit, ¶ 7).

Without more, Mr. Sidman's lack of specificity as to the particulars of his claims of economic harm might only be puzzling (while also being fatal to his Motion to Intervene), but there is more. Mr. Sidman advanced similar claims of economic harm to Argosy II in his successful quest for intervenor status in the *APPLL* case. **After** Mr. Sidman attained intervenor status and discovery commenced, his claims of economic harm were put to the test.

In a discovery deposition on May 15, 2023, Mr. Sidman was questioned about his economic harm claims. First, he was shown a copy of his motion to intervene in the APPLL litigation where he told the District Court that cruise ship visitors had caused Argosy II economic harm. A.205 (*Golden Anchor Opposition, Attachment A* at 27:5-28:12). He was then pressed to describe that economic harm, but Mr. Sidman had to concede that he could not quantify that “harm” in any way. *Id.* at 32:7-34:8.

He was shown a “splash page” from Argosy II’s website which, upon review, he confirmed had been posted in December of 2022. A. 212-213 (34:24-25-35:1-25); *see also*, Golden Anchor Br., Attachment A.¹⁶ The “splash page” was dated December 2002 and proclaimed:

“Once again our artists join us in a huge thanks for another splendid season. We are tantalizingly close to last year’s record.”

Attachment A.

Using the “splash page” as a reference, Mr. Sidman conceded that while the 2021 season—a season without cruise ship visits due to COVID-19—had been the best year Argosy II had ever had, the 2022 season—the season in which, after the COVID-19 had been lifted and the cruise ships returned to Bar Harbor—was close

¹⁶Attachment A is the Argosy II “splash page” that was shown to Mr. Sidman during his discovery deposition. It was included with Golden Anchor’s Opposition to Mr. Sidman’s Motion to Intervene but was apparently inadvertently omitted from the Appendix. See. A.184-218. Golden Anchor has included it as an Attachment to this brief in accordance with Rule 7A(f)(2) of the Maine Rules of Appellate Procedure.

to 2021's record season. A.214-215 (36:7-36:25—37:8). Mr. Sidman then acknowledged that, for Argosy II, 2022 had been “a fine year.”

Mr. Sidman's deposition testimony in the *APPLL* case showed a stark difference between his forceful and emphatic claims of economic harm to Argosy II as advanced in his pleadings and his tepid and elusive descriptions of cruise ship-visitor economic harm to Argosy II when under oath. Unfortunately, in Golden Anchor's declaratory judgment litigation, Mr. Sidman has continued that tradition.

As has been seen, in his Motion to Intervene and his Appellant's Brief, Mr. Sidman contends that there was a direct and demonstrable link between cruise ship visits and economic harm to Argosy II. A.064 (“Mr. Sidman, through his business, **has suffered**—and if Golden Anchor succeeds—will continue to suffer—**concrete** harm in the form of **the loss of clientele and sales**. (emphases supplied)); Appellant's Br. at 25-26. But in the sworn affidavit he submitted in support of his motion—where one might expect to find detailed recitation of Argosy II's travails on cruise ship days—there is next to nothing. . Instead, in his affidavit, limited himself to vaguely asserting that cruise ship visits had “adversely affected” Argosy II. A.107 (Sidman Affidavit at ¶ 9).

The disparity between Mr. Sidman's pleadings and his statements under oath warrants the inference that Mr. Sidman has concluded that, where pleadings are concerned, less rigor is required. Under these circumstances, this Court would be

justified in completely disregarding Mr. Sidman’s claims of economic harm as set forth in his pleadings and, instead, relying solely on statements he has made while under oath. If this Court followed this approach—and Golden Anchor urges this Court to do so—the record would be devoid of anything other than rhetorical support for Mr. Sidman’s claims of economic harm.

Even if Mr. Sidman’s claims in his pleadings were to be given weight, however, they would still fail to meet Rule 24(a)’s standards. That is because, although actual economic damage may warrant intervention, broad, unsupported assertions simply will not do. As the First Circuit Court of Appeals observed, “[i]t is settled beyond peradventure, however, that an undifferentiated, generalized interest in the outcome of an ongoing action is too porous a foundation on which to premise intervention as of right.” *Public Service Co. of New Hampshire, v. Patch*, 136 F.3d 197, 206 (1st Cir. 1998).¹⁷ But Mr. Sidman gave the Business Court nothing more than general, albeit perfervid, claims of economic harm. Such claims do not satisfy the requirement to show particularized injury. *Nergaard*, 2009 ME 56 ¶ 15.

Given his testimony and assertions under oath in the *APPLL* litigation, Mr. Sidman cannot (and does not specifically) claim that cruise ship visitors harmed Argosy II in the 2022 season. That leaves, the 2023 and 2024 seasons. But Mr.

¹⁷ As has been noted above, Mr. Sidman also has no explanation for the glaring fact that, although cruise ships have been visiting Bar Harbor for decades, Argosy II has been in business without interruption for 29 years. A.107, at ¶ 7.

Sidman makes no makes no particular representations as to either of those years. Without such representations, neither the Business Court nor this Court has sufficient evidence to conclude that disembarking “persons” or “Persons” have caused any economic harm to Argosy II.

Despite having had ample opportunity to do so, Mr. Sidman failed to demonstrate any economic damage to Argosy II, much less particularized damage, caused by cruise ship visitation. The District Court did not err in denying his motion for failure to meet this test.

Abutting Property: Mr. Sidman devotes a great deal of space to the claim that the Business Court should have granted his motion to intervene because the Argosy II gallery at 6 Mount Desert is an *abutter* to the Golden Anchor pier at 55 West Street. Appellant’s Br. at 31-32. But, as Mr. Sidman, himself, effectively acknowledged, Argosy II does not abut the Golden Anchor pier. Indeed, in his affidavit, he advised the Business Court that Argosy II, located at 6 Mount Desert Street, was “less than one-half mile, just a few blocks from the [Golden Anchor] pier located at 55 West Street.” A. 107 (Sidman Affidavit at ¶ 8).¹⁸

¹⁸ By contrast, in his representations to this Court in his Appellant’s Brief, Mr. Sidman asserts that Argosy II’s 6 Mount Desert Street address is “less than a quarter mile away from where Golden Anchor disembarks passengers.” Appellant’s Br at 11. Thus, it would appear that in the months that followed Mr. Sidman’s motion to intervene, the distance between these two fixed points somehow narrowed.

Mr. Sidman's affidavit clearly establishes that the Argosy II gallery at 6 Mount Desert Street not only does not abut but, in fact, is far removed from the Golden Anchor Pier.¹⁹ This being so, the plethora of abutter cases Mr. Sidman cited in his brief avails him nothing. *Id.* Therefore, the Business Court's failure to find that Mr. Sidman met Rule 24(a) standards as an abutter was not error.

Interest of Public at Large: As has been seen, Mr. Sidman's claims to intervention as of right based on legislative standing, economic harm, and proximity to the Golden Anchor pier all fail. Mr. Sidman also argues that he is entitled to intervention as of right because an applicant for intervention need only show that representation of the applicant's interests by parties to the litigation "may be inadequate, not that it is inadequate." Appellant's Br. at 35, quoting, *Conversation Law Foundation v. Mosbacher*, 966 F.2d 39, 44 (1st Cir 1992).

For this part of his argument, Mr. Sidman relies heavily on the *Mosbacher* decision. Appellant's Br. 35-37. But *Mosbacher* is entirely inapposite. *Mosbacher* concerned a consent agreement that the Conservation Law Foundation had reached with the Secretary of Commerce that would govern the operations of commercial

¹⁹This Court may take judicial notice of the definition of "Abutting" as set forth Section 109 of Chapter 125, the Town's Land Use Ordinance. The definition of "Abutting" as set forth therein reads as follows: "Having a common border with, or being separated from such common border by an alley, easement, street, road, public way or private way." Ch. 125, § 109. It is evident from Mr. Sidman's affidavit that Argosy II is not an "abutting" property to the Golden Anchor pier. As noted above, in his affidavit, Mr. Sidman acknowledged that, the Argosy II property is several blocks and at least ½ mile away from the Golden Anchor pier. A.107 (Sidman Affidavit at ¶ 8).

fishermen. 966 F.2d at 40. The groups of commercial fishermen sought to intervene to challenge the consent agreement because, under its terms, they would be the “regulated group.” *Id.*

The *Mosbacher* Court observed that “[t]o justify intervention as of right, the interests must be ‘significantly protectable.’” *Id.* at 41, quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Considering the fishing groups’ claims of interest, the Court noted that, the Conservation Law Foundation, itself, conceded that, “if the Foundation prevails, by its own admission, the fishing groups’ economic interests will be substantially affected.” *Id.* at 43.

The Conservation Law Foundation’s concession that the consent agreement would increase the fishing groups’ cost of doing business contrasts sharply with the evidence that Mr. Sidman has adduced in support of his motion to intervene. His claims of economic harm lack the barest specificity and, despite (rhetorically at least) having crept closer to the Golden Anchor pier, a quarter of a mile (or so) continues to separate Argosy II from the pier. With these asserted interests failing Rule 24(a)’s standards, Mr. Sidman has done little more than raise concerns that it appears that he shares with some, but not all, of the public at large. Therefore, for these and other reasons stated above, despite his heavy reliance on it, *Mosbacher* does not support Mr. Sidman’s appeal.

Under these circumstances, the Business did not commit error of law or abuse its discretion in denying Mr. Sidman's Motion to Intervene.

E. TO THE EXTENT APPELLANT SIDMAN HAS INTERESTS AT ISSUE IN GOLDEN ANCHOR'S DECLARATORY JUDGMENT LITIGATION, THE TOWN ADEQUATELY REPRESENTS THOSE INTERESTS.

Assuming for the sake of argument that Appellant Sidman otherwise met the standards for mandatory intervention set forth in Rule 24(a), those interests are adequately represented by the Town. The Business Court correctly determined that Mr. Sidman's interests, whatever they might be, are adequately represented by the Town. A.014. Mr. Sidman disputes this determination at length. Appellant's Br. at 44.

Mr. Sidman notes the presumption that the government will adequately represent the interests of the applicant-intervenors but adds that "that presumption 'means no more in this context than calling for an adequate explanation as to why what is assumed—here adequate representation—is not so.'" Appellant's Br. at 35-36, quoting *State of Maine v. Director of U.S. Fish and Wildlife Service*, 262 F.3d 13, 19 (1st Cir. 2001). But as the discussion set forth above amply demonstrates, in making his argument to the Business Court, Mr. Sidman stumbled at the threshold because he simply failed to identify with the requisite specificity the legislative, economic or property interests that were particular to him and that were at issue in Golden Anchor's declaratory judgment litigation.

Moreover, to the extent that Mr. Sidman is premising his claimed interest on his contention that the Town is not serious about defending Chapter 52, the NOV, or the permit applications mandated by Chapter 52, one need look no further than the Town's decision to exercise its enforcement discretion and issue the NOV. Taking such an affirmative—and entirely discretionary—step is simply incompatible with Mr. Sidman's contention that the Town is indifferent to Chapter 52's validity or the enforcement of the NOV.

This being so, Mr. Sidman has failed to demonstrate that, without his participation as a party, the Town will adequately represent his interests in its defense of Golden Anchor's claims.²⁰ This Business Court did not commit error of law or abuse its discretion in so finding.

VIII. CONCLUSION

In its Declaratory Judgment Complaint, Golden Anchor has advanced several challenges to the validity of Chapter 52. With the exception of Golden Anchor's challenge to the permit application forms which the Town, acting on Chapter 52's authority, is requiring Golden Anchor to complete in order to operate the Golden

²⁰ The Business Court duly noted First Circuit precedent imposing a presumption against private party intervention where a governmental entity is defending governmental action. A.014, n.4, citing *State of Maine v. Director, U.S. Fish and Wildlife*, 262 U.S. F.3d 13, 19 (1st Cir. 2001). The Court noted that it had not applied that presumption to Mr. Sidman's motion, but then observed, Mr. Sidman "would not have been able to overcome the presumption, regardless of how low the bar is set." *Id.*, citing, *B. Fernandez & Hnos, Inc. v. Kellogg, USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006).

Anchor pier at all, all of Golden Anchor's claims are directed at the validity and constitutionality of Chapter 52 or certain of its provisions. None of these claims was dependent on the Town's issuance of the NOV. Nonetheless, if Golden Anchor prevails on any of its claims, the NOV would also be rendered invalid.

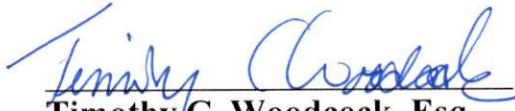
Mr. Sidman failed to provide the Business Court with sufficient evidence of an interest, whether "legislative", economic, or property-based, to warrant his entry into this case as an intervenor pursuant to Rule 24(a) of the Maine Rules of Civil Procedure. In short, Mr. Sidman did not provide the Business Court with evidence that he held any discernible interest in this litigation that was distinct from that held by members of the public at large.

Finally, with the Town having taken the affirmative—and wholly discretionary—step to enforce the Disembarkation Ordinance, Mr. Sidman failed to show the Business Court that his interests in this litigation, whatever they might be, would not be adequately represented by the Town.

Therefore, and for the reasons set forth at length above, the Business Court did not commit error of law or abuse its discretion in denying Mr. Sidman's motion to intervene. Appellee, Golden Anchor, respectfully requests that Mr. Sidman's appeal be denied.

Dated June 25, 2025

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Browse the site's online database of available paintings which emphasize the scenic beauty of Maine's Coast, Mt. Desert Island and Acadia National Park.

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GALLERY NEWS

December 2022: Once again our artists join us in a huge thanks for another splendid season. We are tantalizingly close to last year's record.

On the local news front, next year's show will be called "A Next Generation". It will feature the work of seven of our younger artists, regulars and past guests. The exhibition dates are July 29 and 30, with the reception at the Bar Harbor Inn on Saturday evening, the 29th. As always, we hope you will join us. The show will then continue in the gallery. Special thanks to everyone who attended this year's particularly lively event with ten artists on hand.

Our other news is that, after 27 years, we are leaving the small Main St. space and consolidating at 6 Mt. Desert St. Facing the Village Green, it is more spacious, visible and tranquil. We look forward to many more years of welcoming visitors there.

Our artists always put a high priority on offering our customers their best work. Since late September they've given us approximately 100 new paintings for winter browsing.

September 2022: A huge thank you to everyone for the spectacular opening of the "Acadian Eleven" show. Well over 200 visitors enjoyed the full exhibition at the Bar Harbor Inn, and many of these also spent time at the gallery. Guests came from near and far, from all over the Northeast as well as hometowns in PA, VA, GA and TX.

In turn, nine of the eleven featured artists enjoyed meeting "their" collectors at the lively evening reception. They and we (Charlie and myself) are most grateful for the friendship of these collectors and their strong support during the show and