STATE OF MAINE

SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

LAW DOCKET NO. BCD-25-301

GENERAL HOLDINGS, INC.
Plaintiff – Appellee

v.

PAMELA GLEICHMAN AND MARY WOLFSON, TRUSTEE OF THE HILLMAN MATHER ADAMS TRUST AND THE HILLMAN NORBERG TRUST

Defendants– Appellants

ON APPEAL FROM JUDGMENT OF THE BUSINESS AND CONSUMER COURT

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

The Defendants Pamela Gleichman ("Gleichman") and Mary Wolfson, Trustee of the Hillman Mather Adams Norberg Trust and Hillman Norberg Trust, ("Wolfson") submit this reply to the arguments set forth in the brief of the appellee General Holdings, Inc. dated November 12, 2025 (the "Red Brief").

The Red Brief fails to respond to the central legal errors which led to the erroneous decision below. Most significantly, it does not even discuss the fact that the Business Court erroneously concluded that Maine's current dissociation statute did not apply to these partnerships. The erroneously disregarded statute directly addresses the issue at hand in that it establishes clearly that a partner's management rights in a limited partnership are separate from that partner's economic rights and that a creditor foreclosing upon a general partner's interest can obtain only the **economic** rights – and **cannot** obtain the rights to be a **manager** in the partnership. The dissociation provision of the current statutes that was also erroneously disregarded which precludes dissociation unless **the event** that causes that dissociation is specifically **identified** in the partnership agreement. The Red Brief discusses neither of these provisions and in fact does not even address the principle underlying them – which is that dissociation should be guarded against because it disrupts the bedrock "pick your own partner" principles by allowing non-chosen (and perhaps hostile) parties to force their way into the partnership.

The Red Brief also fails to direct the Court to any partnership agreement provision in any of the forty-eight limited partnership that provides for the taking over of (or the elimination of) a partner's management interests upon the loss of a partner's economic rights. The Red Brief fails to address the earlier decision by the Business Court in a related case pointing out that at least several of these agreements contain provisions which impose procedural preconditions to removing any partner even when there is thought to be cause to remove a partner – including requiring unanimous partner consents and requiring that the removed partner maintain a special status in the partnership even if the partner is removed.

In regard to the Red Brief's response regarding the purported removal of Gleichman as a **limited** partner, there is no response explaining how Gleichman could be dissociated when there exists no statute applicable to these nine limited partnerships that allows for the concept of dissociating a limited partner.

Opting to avoid discussion of each of these critical legal issues, the Red Brief instead is entirely dedicated to promoting the notion that a **federal housing regulation** which governs the magnitude of the financial commitment that partners **jointly** must invest in a project should be construed as instead being a regulation that overrules or preempts the contractual relationship established among parties who have formed a partnership under **state law.** See Red Brief at 10 – 11, 13 – 15, 19 - 35 The Red Brief contends that the federal regulation governing application

for assistance from the Farmer's Home Administration impliedly preempts both: A) the state statutes that govern the relations among general partners (including dissociation) as well as; B) limited partnership agreements that define if and when one partner can remove another partner and what process must be afforded to the partner being removed. The Red Brief fails to point to any regulatory language or history reflecting any intent to preempt any state law or contract provision; and it fails to direct the Court to any aspect of the federal regulation indicating an intent to have that federal agency become enmeshed in disputes between partners or in dissociating partners. It points only to the percentage combined commitment to the project of the partners as a group, but directs the Court to nothing that suggests that a minimum economic commitment of each partner was required. See Red Brief at 25 - 26. And the Red Brief concedes that Rural Development never expressed any concern about the extent of the commitments of Gleichman (or of the partners jointly) to maintaining and promoting any of the many projects she built. See Red Brief at 24.

II. STATEMENT OF THE ISSUES FOR REVIEW

A. WHETHER THE BUSINESS COURT ERRED IN DECLARING THAT GLEICHMAN HAD BEEN REMOVED AS A GENERAL PARTNER

B. WHETHER THE BUSINESS COURT ERRED IN DECLARING THAT GLEICHMAN HAD BEEN REMOVED AS A LIMITED PARTNER

III. ARGUMENT

A. THE BUSINESS COURT ERRED IN DECLARING THAT GLEICHMAN HAD BEEN REMOVED AS A GENERAL PARTNER

1. Flawed Procedural Arguments in The Red Brief

The Red Brief attempts to "re-frame" the issues presented in this appeal with three interrelated procedural arguments premised on the notion that the appeal merely challenged factual findings and the notion that the Business Court relied upon some basis for dissociating apart from the supposed violation of the federal regulation.

Clear Error Standard Applies

The Red Brief's procedural arguments start with its unsupported claim that this Court should review the trial court's conclusion that a dissociation occurred not under a de novo standard of review but rather under a clear error standard – arguing that the appeal merely constitutes a challenge to the factual finding that Gleichman had been properly dissociated. See Red Brief at 16 and 17. But the decision was clearly based entirely upon a statutory or contractual or regulation interpretation which all are legal conclusions – not factual findings.

The Red Brief offers not a single case to support its argument that the decision to declare a partner dissociated from each of her many partnerships should be treated as if it were merely a factual finding. See Red Brief at 16 (no cases cited or discussed

as to the clear error argument). The pertinent caselaw fully supports the Appellants' position that appeals raising issues as to the interpretation of, and the application of, statutes and contractual provisions, are reviewed under the de novo standard of review. The pertinent Maine decisions were cited at page 16 that the Blue Brief – and left unaddressed in the Red Brief - while asserting merely that the Blue Brief contains only a "sparse explanation of the standard of review." See Red Brief at 16 – 17.[1]

The Red Brief fails to identify any true factual finding that should be deferred to; the issues presented are purely legal interpretations or questions of applying the law to the facts, which likewise require de novo reviews. See Oceanic Inn, Inc. v. Sloan's Cove, LLC, 2016 ME 34, ¶ 26, 133 A.3d 1021 (stating that when the material facts are not in dispute, we review de novo the trial court's application of the law).

[1] The Red Brief fails to discuss the decisions cited at pages 27 and 28 of the Blue Brief. See Testa's, Inc. v. Coopersmith, 2014 ME 137, ¶ 11, 105 A.3d 1037. See also Gen. Holdings, Inc. v. Eight Penn Partners, L.P., 2025 ME 20, ¶ 10, 331 A.3d 445 (unambiguous language is construed de novo). These and many other Law Court cases make it clear that de novo review is the proper standard as to all issues involved in this appeal. See Est. of Nickerson v. Carter, 2014 ME 19, ¶ 12, 86 A.3d 658; Smith v. Hawthorne, 2006 ME 19, ¶ 18, 892 A.2d 433. Even when the trial court has erroneously labeled as "a finding of fact" what is truly in substance "a conclusion of law", appellate courts review such "findings" on a de novo basis as conclusions of law. See also O'Neal v. Burley, 884 S.E.2d 462, 469 (N.C. 2023)(the trial court's decision apportioning insurance proceeds to the Partners based on the respective leases was "a conclusion of law" - although stated to be a finding of fact). See also In re Estate of Sharpe, 258 N.C. App. 601, 605, 814 S.E.2d 595, 598 (2018)("If the lower tribunal labels as a finding of fact what is in substance a conclusion of law, we review that 'finding' as a conclusion *de novo*.").

Rule 52 Does Not Apply

Likewise without merit is the Appellee's procedural argument that further findings should have been sought below – or that there should be some presumption that all facts were found to support the dissociation decision.

But the reasoning of the Business Court below was crystal clear; the Court ruled that the current Maine law regarding dissociation did not apply and that a federal regulation was incorporated by reference into each of the partnership agreements and that the regulation required that each partner have and maintain some level of economic interest in each project – failing which the partner was to be deemed automatically removed as a partner. See App. 9, 22 -25. There would have been no point in asking for further findings. Rule 52 does not require any such motion under these circumstances and such a motion likely would have been seen as dilatory where the Business Court had already detailed its reasoning. Rule 52 does not require parties to burden the Court with unneeded motions when the practice will only clog the progress of the case and provide no assistance to the Law Court. The purpose of M.R. Civ. P. 52(b) "is to present a clear statement of the basis for the trial court's judgment to an Appellate Court." Hatch v. Hatch, 596 A.2d 1006, 1007 (Me. 1991) (quoting Conger v. Conger, 304 A.2d 426, 429 (Me. 1973)).

No Briefing Waiver

Finally, the Red Brief at pages 17 and 34 makes its third procedural argument – claiming that the issue of whether Gleichman was dissociated under the provisions of the partnership agreements has been waived because it was not briefed. But that claim is entirely without merit. The brief contains extensive legal discussions of the partnership agreements and how they contain provisions requiring unanimity – that is, the "pick your own partner" principles as well as many procedural impediments in the agreements to eliminating a partner. See Blue Brief at 8, 10 – 12, 16 – 20, 22 -23, 25 -27, 28 -34, 41 – 42, 45 – 47.

None of the issues on appeal are being raised for the first time in this reply brief; in fact, the Blue Brief thoroughly addressed the federal regulation, the decision to incorporate that regulation by reference into the partnership agreements and the fact it applies to the partners in the aggregate. The language discussed in section iii of the Business Court's decision is the same five per cent language taken from the federal regulation and that incorporate language expressly states that it is the "aggregate ownership interest" in the assets that "the General Partners" must maintain. See App. at 25 -28 (Order Entering Judgment at 18 - 21).[2]

[2] In truth, **it is the Red Brief** which avoids addressing the central legal issues on appeal such as the applicable Maine statutes which preclude creditor take-over of management positions and the underlying principles protecting the right to choose one's own partner principles. For example, the Red Brief does not even mention the decision of the Business Court in a related case construing the language of some of the same partnership agreements as are involved in this case in a manner at odds with the automatic removal theory that is the premise of the Appellee's theory of dissociation. See Wolfson v. Blair House Associates Ltd. Partnership, BCD-CIV-2021-00052, cited at pages 22-23 and 33 of the Blue Brief.

2. General Holdings Avoids Addressing The Failure of The Business Court To Apply the Applicable Dissociation Provisions of the ULPA

The Red Brief also fails to respond in any way to the fact that the Business Court erroneously concluded that Maine's current dissociation statute (section 1373(4) of Title 31) does not apply to these partnerships. See Blue Brief at 28 – 29 and footnote 18. That fundamental error was asserted as a central issue in this appeal.[3] Nevertheless the Red Brief contains absolutely no response – not even in a footnote.

The Red Brief likewise simply ignores the Maine statutes which provide explicitly that a creditor cannot obtain a partner's management rights in a limited partnership and that a creditor foreclosing on charging orders obtains only the economic rights of a partner. See Blue Brief at 32 and 39-40. Entirely avoiding these issues, the Red Brief contains not a single citation to these statutes. It fails to put forth any rationale to uphold the Business Court's legal error in concluding these statutes do not apply to these partnership agreements. See App. at 21, 25 and 27. The Red Brief does not cite to either the applicability section (section 1453(3)) or to the provisions precluding the taking of management interests (sections 1382)

[3] In its very first argument section, the Blue Brief emphasized that the Business Court had erred in construing Maine law by concluding that the entire statute defining the grounds for dissociating general partners does not apply to these partnerships. See Blue Brief 28 – 29, citing the Order Entering Judgment, at footnotes 18, 20 and 24. (App. 21, 25 and 27). As pointed out by the Blue Brief, only two of the eleven subsections in the dissociation statute do not apply to the partnerships involved in this case.

or to the section that states that the taking of "economics" does not dissociate a partner. (section 1383). See Table of Authorities in the Red Brief (containing no citations to sections 1382, 1383 or 1453 (Red Brief at 4).

The Red Brief steers clear of these important provisions because not only is it clear that the relevant sections are applicable, but those statutes contain no provisions stating that a partner is dissociated when that partner loses her economic interests and instead explicitly provides that dissociation does **not** occur when a partner has lost all of that partner's economic interests – and that a foreclosing creditor **cannot** take over a partner's management rights.

General Holdings provides no explanation as to what the identified event was that constitutes "[a]n event agreed to in the partnership agreement as causing the person's dissociation as a general partner." Blue Brief at 32 – 34. None of the agreements contain a provision identifying the loss of economic interests as a specific, identifiable event – that is, an "agreed event" - that would result in an immediate and automatic loss of management interests – i.e. dissociation.

Instead of providing any statutory analysis, the Red Brief merely invokes a section that does not apply in this case and which in any event requires the unanimous consent of all partners (including limited partners) for a removal. See Red Brief at 29 – citing section 1373(4)(B) of Title 31 for the notion that the loss

of a partner's economic interests "gives other partners the right to expel the general partner entirely".

The Red Brief provides no reasoned construction of the five per cent commitment rule to be anything other than an aggregate requirement. The use of the plural "partners" cannot be otherwise explained; it does not suggest that there must be some percentage committed by each partner. That strained construction does not satisfy the statutory requirement that the partner being removed have violated an agreed event identified in the partnership agreement.[4] Finally, Scarcelli's argument that she was pressured by circumstances to take action to dissociate and send K-1's to her mother is not accurate and provides no basis for disregarding the contractual and statutory prerequisites to removal.[5]

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[4] The Red Brief speculates as to the meaning of this joint requirement based upon what it concedes is merely a "sparse regulatory history". That speculative search for intent does not comport with Maine's statutory requirement that the dissociating event be an "event agreed to in the partnership agreement as causing the person's dissociation." See Red Brief at 24 through 27.

[5] The Red Brief suggests misleadingly on page 6 that it was not vindictiveness that led Scarcelli to declare that her mother had been dissociated and to send out the many K-1's imposing a heavy tax burden on her mother. Scarcelli concedes that since Gleichman had agreed as part of the global settlement not to interfere with day to day property management of projects, it was "largely a non-issue" whether or not to dissociate her. See Red Brief page 6. See Blue Brief at 12-14. Scarcelli claims that her mother breached by not assisting her when she claimed she wanted to rebuild the Blair House project in the face of HMAN Trusts' demands that she honor her fiduciary duties to it by accepting and disbursing the fire insurance proceeds after that project burned down. See Blue Brief at 15 -17. See Wolfson as Trustee v. Blair House Assocs. Ltd. P'ship, BCD CIV-2021-00052, 2024 Me. Bus. & Consumer, LEXIS 11, Order dated February 13, 2023 at 4 (Plaintiff's Exhibit 37). Scarcelli eventually agreed to liquidate and obtained Rural Development's consent to do so. Id. at 7.

The Business Court has rejected Scarcelli's claim that Gleichman interfered with the management of the burned down (and unoccupied) Blair House apartments. In June of 2024

3. The RD Regulation Was Not Violated and In any Event Does Not Preempt Maine Law Governing the Removal of General Partners

The Red Brief cites to no law or legislative history (nor even any comment from any governmental official) stating (or even implying) that 7 C.F.R. section 3560.55(d)(2) ("the Five Per Cent Regulation") has the meaning that Scarcelli seeks to attribute to it. While the Red Brief is almost entirely dedicated to reviewing the history and purposes of the Five Percent Regulation, it cites to no caselaw or legislative or regulatory history or course of dealing supporting the notion that the rule was intended to impose a minimum threshold for each partner. See Red Brief at 23-24 (commentary that "the applicants" should furnish the 3% or 5% "from their own resources").

The Red Brief in fact highlights the lack of merit to its strained theory of dissociation by admitting that its construction of the regulation depends upon expanding the requirement expressly addressed to the partners jointly to instead impose a condition upon each partner individually. See Red Brief at 26. The Red Brief acknowledges that its theory begs the question – "why would the federal

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after a bench trial the Business Court also rejected Scarcelli's specious claims that the settlement agreement required that Gleichman agree to dissociate herself from all partnerships and help Scarcelli in the Blair House case. This Court can take judicial notice of that final decision and judgment in Gleichman v. Scarcelli, BCD-CIV-21-54 and BCD-CIV-23-4, awarding Gleichman and her husband, Karl Norberg a judgment totaling $267,813.26 as of 8/12/24 together with attorney's fees of $86,867. See Order Awarding Damages for Breach of Settlement Agreement dated June 13, 2024; Order on Bill of Costs and Request for Interest Assessment dated August 12, 2024 and Order on Request For Attorney's Fees dated August 15, 2024.

regulators have not simply stated "that each general partner must have an economic interest, with the aggregate being at least 5%, if that was intended." Red Brief at 26. The logical answer to this question lies in basic rules of construction – i.e. in the plain unambiguous[6] language in the regulation (together the long accepted logical interpretation principle - *expressio unius est exclusio alterius*[7]); leading to the conclusion that the regulation applies only to the aggregated commitment of the applicant partnership.[8] The express mention of the minimum financial interest of "the general partners" (one concept) means the exclusion of the other concept which

[6] The Red Brief identifies no ambiguous language in the regulation that would suggest that the agency was seeking to insinuate itself into dictating the contractual relations between two partners or among many partners in the projects doing business with the agency. The language used unambiguously references the total investor commitment being made by the group that is borrowing. See section 3560.55(d)(2)("The general partners must maintain…"). Nothing in the language or history suggests that there was any intent to regulate how the equity owners of the borrower partnership must divide up the burden or the responsibility or the liability as regards any project.

[7] This maxim reflects a "well-settled" rule of construction useful for the interpretation of ambiguous language in statutes and other documents "that [the] express mention of one concept implies the exclusion of others not listed." Musk v. Nelson, 647 A.2d 1198, 1201-02 (Me. 1994) (applying the maxim to interpret a statute); see also Stone v. U.S. Envelope Co., 119 Me. 394, 396-97, 111 A. 536 (1920) (applying the maxim to interpret corporate bylaws that lacked express provisions on the disputed issue).

[8] The total commitment of both the partners in this case never dropped below the threshold and never was of concern to any federal government authority. No one ever suggested that Gleichman had to be removed based upon having insufficient "skin in the game". The regulators were well aware of Gleichman's long history with RD developments – including her building and maintaining over the course of decades many successful projects – and never expressed any concerns about her commitment. At all times all economic interests remained in her family – with Gleichman's economic interests being protected by having been transferred to the family trust that she had established with her husband for the benefit of her three children.

is not set out – that is, a minimum financial interest for each general partner.[9] See also Red Brief at 25 (pointing out that an LLC - but not a limited partnership - must designate a managing member with at least a 5% financial interest as its authorized agent – implying no such requirement was needed as to individual general partners). And a further basis to reject the theory of the Red Brief is that it leaves entirely unclear what is required to satisfy the minimum level of financial individual commitment. Would a remaining interest of .1% suffice?

The Red Brief contains no authorities suggesting that the Five Per Cent Regulation was intended to be enforced by automatically eliminating any general partner whose economic interest fell below a certain level.[10] And the Constitutional issues such an interpretation would give rise to are left unaddressed.[11]

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[10] The Regulation in no way implies that it should be enforced by imposing a direct and automatic remedy directly against one or more of the partners. When a federal regulation has arguably been violated - the administrative remedy is typically the commencement of an enforcement action – not the imposition of an automatic adverse collateral consequence. The decision to seek an appropriate remedy (if any) is thereby left to the discretion of the interested party – i.e. the regulators who could commence an administrative proceeding against the Partnership itself if sufficiently concerned about the level of financial commitment. This allows the interested party (here, RD) to articulate any legitimate concerns and provides due process to any person or entity that RD wished to sanction.

[11] The draconian construction that Scarcelli advocates for not only runs contrary to the plain meaning of the language used in the regulation, but it would not comport with constitutional strictures – yet another issue that the Red Brief neglects to address. The Red Brief's interpretation implicates substantive due process principles since it suggests taking away with no process the valuable property interests that existed in Gleichman's management interests in her many partnerships – doing so with no statutory authority, no process to defend against such an automatic taking and merely a strained construction of a regulation.

C. THE BUSINESS COURT ERRED IN DECLARING THAT GLEICHMAN HAD BEEN REMOVED AS A LIMITED PARTNER

As regards Gleichman's limited partner interests, the Red Brief fails to identify any law or partnership agreement provision allowing for the drastic action of unilaterally eliminating and replacing a limited partner. While conceding that limited partners "may have rights" even if distributions have been attached or foreclose upon, Red Brief at 35, and emphasizing the tax consequences of failing to maintain limited partnership status so as not to resemble a corporation, see Red Brief at 29 – 33 and 36 – 38, the Red Brief fails to discuss the incongruity of casually allowing a single general partner to unilaterally eliminate and replace a limited partner and ignores the tax impact certification pre-requisites.[12] The Brief also fails to reconcile its position with the unanimous consent requirements that it quotes from four of the agreements. See Red Brief at 36-38. Finally, the Red Brief's argument invokes without explanation a dissociation statute (section 1371) that does not apply

[12] General Holdings fails to invoke any law or partnership provision under which Gleichman would have been automatically removed under the law that applied prior to July 1, 2007. The Red Brief cites to no pre-July 2007 common law providing for a limited partner to be removed by one or two general partners; limited partners instead had the right to remain as partners in accordance with the partnership agreement. None of the provisions in any partnership agreement allowed for a limited partner to be removed because of a creditor action such as an attachment made against his or her rights to receive distributions.

to these limited partnerships – and which even if applicable requires unanimous general partner action. See Blue Brief at 44-47 and Red Brief at 38.[13]

IV. CONCLUSION

The Court should enter judgment declaring that Gleichman remains as a General Partner in each of the 48 partnerships and as a limited partner in nine.

Dated this 2nd day of December, 2025, at Portland, Maine.

Respectfully submitted,
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[13] The current dissociation statute provides that when a limited partner has lost all of his or her transferable interests in the partnership, there still must be a unanimous consent of all of the partners before any dissociation becomes effective. See 31 MRSA, section 1371(2)(D)(2).

CERTIFICATE OF SERVICE

I, John S. Campbell, Esq., hereby certify that a digital copy of this Appellant's Reply Brief was emailed to Attorney James D. Poliquin, Esq. on this date to jpoliquin@nhdlaw.com and that two copies of the reply brief will be placed in the mail to James Poliquin, Esq. at 220 Middle Street Portland, ME 04112-4600 in accordance with the Rules of Appellate Procedure.

December 2, 2025

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