STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. And-25-351

ZACHARY WILSON,
Plaintiff/Appellant

v.

ELIZABETH GURNEY, et al.
Defendants/Appellees

ON APPEAL FROM THE SUPERIOR COURT
ANDROSCOGGIN COUNTY

BRIEF OF PLAINTIFF/APPELLANT

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I. INTRODUCTION

On January 1, 2023, Zachary Wilson suffered severe personal injuries after he was shot by an uninvited guest of an out-of-control party hosted by Elizabeth Gurney. At the time of the party, Holly Gurney, Elizabeth's mother, left Elizabeth in control of their home for a few days, and despite Holly's instructions that she not have too many people over or consume alcohol there, Elizabeth opened her home to around 100 people, mostly underage, who were drinking and doing drugs. When the party became too "chaotic" and it was discovered that guests were doing drugs, Wilson attempted to help Elizabeth remove guests from her home when he was shot.

Wilson brought tort claims under multiple theories of negligence seeking damages against the party host, Elizabeth; her mother and premises owner, Holly; their neighbors, Brianna and Jennifer Desjardins, who were either at the party or knew of the party; a convenient store, NS, LLC, who was suspected of selling alcohol to underage party guests; and other party guests, all of whom were suspected to be and/or be friends with the individual who shot Wilson. Currently, none of these parties remain in the case, and the remaining issues on appeal are the claims of negligence under a theory of premises liability and negligent entrustment against Elizabeth and Holly Gurney.

Elizabeth and Holly Gurney filed their Partial Motion to Dismiss Count VI[1] and Motion for Summary Judgment, arguing that Wilson failed to set forth a prima facie case for (1) premises liability against the Gurney's as alleged in Count V of the Amended Complaint and (2) negligent entrustment against Holly as alleged in Count VI of the Amended Complaint.[2] The trial court granted the Gurney's Motion, finding that Wilson had not made a prima facie case for his negligence claims.

The trial court erred. Wilson has made a prima facie showing for his claims of premises liability and negligent entrustment against Holly and Elizabeth Gurney; and to the extent genuine issues of material fact exist regarding the creation of and reasonable foreseeability of Wilson's injury and whether a special relationship existed between Wilson and the Gurney's, those must be resolved by a jury. Furthermore, the Law Court should recognize the party-host and party-guest relationship as a "special relationship," and should extend the claim of negligent entrustment to real property, specifically, the Premises in this instance, based on Maine and other jurisdictions precedent and safety and policy considerations.

[1] Procedurally, Appellee's Partial Motion to Dismiss Count VI is treated as a Motion for Summary Judgment. See *Acadia Res., Inc. v. VMS, LLC*, 2017 ME 126, ¶ 6, 165 A.3d 365 ("Here, because matters outside the pleading [have been] presented to and not excluded by the court," the court must treat the motion "as one for summary judgment."); M.R. Civ. P. 12(b).

[2] It was also alleged that Wilson failed to set forth a prima facie case for negligent and/or reckless service of liquor by Elizabeth and Holly Gurney in violation of 28-A M.R.S. §§ 2506(1) & 2507(1) as alleged in Count VII of the Amended Complaint, to which Wilson conceded to on summary judgment. See A. at 16-26, 54-69.

Accordingly, the Law Court should vacate the trial court's order granting summary judgment.

II. STATEMENT OF THE FACTS AND PROCEDURAL HISTORY.

A. Statement of Facts.

The following material facts are undisputed. On the weekend of December 31, 2022, to January 2, 2023[3], Holly Gurney left her daughter, Elizabeth Gurney, alone at their home at 266 Pond Road in Lewiston, Maine ("Premises"). Appendix ("A.") at 72, ¶ 1. Holly Gurney ("Holly") told Elizabeth Gurney ("Elizabeth") that she could not have more than 10-15 friends over while she was gone, that no one was to drink at the Premises, and that Elizabeth's friends had to leave by 1:00am. *Id*., ¶ 2. On January 1, 2023, against Holly's orders, Elizabeth held a party at the Premises, ("Party"), expecting around 35-40 people there. *Id*., ¶ 3.

The Party started at 9:00pm, but some of the guests Elizabeth invited, including Zachary Wilson ("Zach"), arrived around 8:45pm. A. at 73, ¶ 4. During the Party, Elizabeth provided Party guests with alcohol that she had on the kitchen table. *Id*., ¶ 5. According to Elizabeth, although she intended for the Party to be a small gathering, many uninvited people started showing up there. *Id*., ¶ 6. By 10:00pm, there were approximately 65-70 people at the Party. *Id*., ¶ 7. Brianna

[3] Wilson's Opposition to Elizabeth and Holly Gurney's Partial Motion to Dismiss and Summary Judgment Motion originally had the incorrect date, stating the Party occurred on the weekend of December 31, 2021, to January 2, 2022. This has been amended to the correct dates, December 31, 2022, to January 2, 2023, to accurately reflect and to not confuse the summary judgment record.

Desjardins ("Brianna"), who was at the Party, was worried it was getting out of control because of how many people were there. She left the Party around 10:45pm because she was tired, ready to leave, and it was "getting too chaotic." *Id.*, ¶ 8. Around 11:00pm, the Party evolved into a party of around 100 people. *Id.*, ¶ 9. By this time, Elizabeth was aware that many of the people there were not invited, but that someone at the Party had shared her address in a party group chat. *Id.,* ¶ 10.

At the Party, there were underage Party guests consuming alcohol, which Elizabeth knew about; there were Party guests getting sick as a result of consuming alcohol during the Party; and there were Party guests outside of the Premises and in a neighbor's yard screaming and running around. *Id.,* ¶¶ 11-13. Also, during the Party, there were four to five attendees selling and doing cocaine in Elizabeth's bedroom at the Premises ("Third Party" and/or "Third Parties"), which Elizabeth witnessed and knew about, as she was frightened by the fact that they were doing drugs there. A. at 75, ¶ 14. Elizabeth did not know who the Third Parties were; they were not invited by Elizabeth but were some of the 100 people that showed up at the Party; and they arrived to the Party wearing ski masks, which, Elizabeth admitted was concerning but dismissed as a "trend." *Id.,* ¶¶ 15-17.

After witnessing the Third Parties doing cocaine at the Party, Elizabeth tried to kick them out herself, as she did not want to call the police because she did not want to get in trouble. *Id.,* ¶ 18. Regardless, eventually Elizabeth became worried

the police were going to come to the Party, so she wanted everyone to leave. *Id.,* ¶ 19. At some point after that, Elizabeth noticed that the Third Parties had re-entered the Party, even though she kicked them out. A. at 76, ¶ 20. This made Elizabeth angry, so she got up on a chair and yelled at the Third Parties that they needed to leave the Party and the Premises. *Id.,* ¶ 21.

In response to being yelled at, the Third Parties laughed and shrugged Elizabeth off without responding, so she stepped off the chair to "fight one of them of hit one of them or something," but was pulled back by a few other Party guests. *Id.,* ¶ 22. After that, it took Elizabeth, two of her friends, and Zach to get the Third Parties out of the Party. *Id.,* ¶ 23. To help, Zach told the Third Parties to leave and escorted them out of the Premises on behalf of Elizabeth. *Id.,* ¶ 24. When Zach got one of the Third Parties outside of the Party, he pushed off of Zach's chest and ran down the driveway. When he got to the end of the driveway near the mailbox, the Third Party turned around and pulled a gun out of his waistband. *Id.,* ¶ 25. The Third Party fired shots at Zach, severely injuring him. *Id.,* ¶ 26.

Elizabeth never intended for the Party to get that big. *Id.,* ¶ 27. She admitted that she thought the Party was getting out of hand and acknowledged that, although she thought she was in control of the Party, that it only took moments for that to change. A. at 77, ¶¶ 28-29.

B. Procedural History.

On August 2, 2023, Wilson filed his Amended Complaint, initiating a civil lawsuit for an incident arising at the home of Holly and Elizabeth Gurney on January 1, 2023. A. at 28-39. Holly and Elizabeth Gurney filed their Partial Motion to Dismiss Count VI and Motion for Summary Judgment with Incorporated Statement of Material Facts Not in Dispute and Memorandum of Law on January 31, 2025. A. at 40-53. Wilson filed his Opposition to the Gurney Defendant's Motion for Summary Judgment on March 11, 2025, to which the Gurney Defendant's filed their Reply on March 31, 2025. A. at 54-76.

The Superior Court (Androscoggin County, *Archer, J.*) granted Holly and Elizabeth Gurney's Partial Motion to Dismiss Count VI and Motion for Summary Judgment on May 23, 2025. A. at 16-26. At this time, Wilson dismissed his claims against all Defendants other than Holly and Elizabeth Gurney, except for Defendant Benjamin Stanicki and Defendant Melissa Carey, who were dismissed from this action by Court Order on July 17, 2025. A. at 27, 92-95.

This timely appeal followed.

III. STATEMENT OF THE ISSUE PRESENTED FOR REVIEW.

This appeal presents the following issues:

(1) Whether a special relationship exist between Zach Wilson and Elizabeth and Holly Gurney so as to impose a duty on the Gurney's as party-hosts; and why the relationship between a party-host and party guest should be considered a "special relationship" under Maine Law.

(2) Whether the shooting and resulting damages of Zach Wilson were created by Elizabeth Gurney and were reasonably foreseeable under the circumstances of an out-of-control Party hosted by Elizabeth Gurney so as to impose a duty on the Gurney's as party-hosts.

(3) Whether Holly Gurney negligently entrusted the Premises to Elizabeth Gurney as an underage individual hosting an out-of-control Party; and why the Law Court should extend the claim of negligent entrustment to real property in this instance.

IV. STANDARD OF REVIEW.

"We review the grant of a motion for summary judgment de novo." *Lever v. Acadia Hosp. Corp.*, 2004 ME 35, ¶ 2, 845 A.2d 1178. "In our review, we consider the evidence and reasonable inferences that may be drawn from the evidence in the light most favorable to the party against whom the summary judgment has been granted in order to determine if the parties' statements of material facts and referenced record evidence reveal a genuine issue of material fact." *Id.* A genuine issue of material fact exists when sufficient evidence supports a factual contest requiring a fact-finder to choose between competing versions of the truth through a trial. *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573; *Donovan v. City of Portland*, 2004 ME 70, ¶¶ 2-3, 850 A.2d 319. In order to survive the motion for summary judgment, Klemens "must establish a prima facie case for each element of his cause of action. *Burdzel*, 2000 ME 84, ¶ 9, 750 A.2d 573.

We have noted that the filing and docketing of a stipulated dismissal of all remaining pending claims in a civil case pursuant to Maine Rule of Civil Procedure

41(a)(1)(ii) can create an appealable final judgment without any action by the court. *Fournier v. Flats Indus.,* 2023 ME 40, ¶ 13, 298 A.3d 810*; see, e.g., Larrabee v. Penobscot Frozen Foods, Inc.*, 486 A.2d 97, 98-99 (Me. 1984); *Camplin v. Town of York*, 471 A.2d 1035, 1037 n.5 (Me. 1984). Accordingly, this appeal was brought upon the trial court's grant of Appellee's summary judgment motion and the dismissal of the remaining Defendants, pursuant to the Law Court's reasoning.

V. ARGUMENT.

Wilson has made a prima facie showing for his claims of negligence on a theory of premises liability and negligent entrustment against Holly and Elizabeth Gurney as the summary judgment record contains evidence satisfying the elements of each cause of action, discussed in turn below. The Gurney's owed Wilson a duty of care because they had a special relationship with him as a guest of their dangerous, out-of-control Party, and because the Gurney's created the dangerous Party that caused him to be shot and injured. Because the remaining elements of premises liability and negligent entrustment are questions of fact for the factfinder, and genuine issues of material fact exist regarding said elements, the Law Court should vacate the trial court's order granting summary judgment. Additionally, the Law Court should extend

A. Zach Wilson Has Set Forth a Prima Facie Case for Premises Liability Against the Gurneys, Who Owed Him a Duty by Their Special Relationship and by Hosting the Party.

To survive a defendant's motion for a summary judgment in a negligence action, a plaintiff "must establish a prima facie case for each of the four elements of negligence: duty, breach, causation, and damages." *Davis v. R C & Sons Paving, Inc.*, 2011 ME 88, P10; 26 A.3d 787 (quoting *Quirion v. Geroux*, 2008 ME 41, P 9, 942 A.2d 670. The existence of a duty of care is a question of law, issues of breach of a duty are usually questions of fact, and issues of foreseeability and proximate causation are generally questions of fact. *Reid v. Town of Mt. Vernon,* 2007 ME 125, ¶ 14; 932 A.2d 539; *Perron v. Peterson,* 593 A.2d 1057, 1058 (Me. 1991).

There is no general obligation to protect others from the actions of third parties, even where one knows the third party is or could be dangerous. *DeCambra v. Carson*, 2008 ME 127, ¶ 11; 953 A.2d 1163. There are, however, exceptions to this general proposition: an actor has a duty to protect those with whom (1) he stands in a special relationship and (2) those facing harm created by the actor." *Gniadek v. Camp Sunshine at Sebago Lake, Inc.,* 2011 ME 11, ¶ 17, 11 A.3d 308; *Fortin v. Roman Catholic Bishop of Portland*, 2005 ME 57, ¶ 25 n.5, 871 A.2d 1208.

i. Zach Wilson and the Gurney's Had a Special Relationship as Party Host and Party Guest, Which the Law Court Should Recognize

For purposes of a negligence claim, special relationships are grounded in the notion that a person owed the plaintiff a fiduciary duty. *DeCambra*, 2008 ME 127, ¶ 13, 953 A.2d 1163. A fiduciary duty is found to exist where "the law will recognize both the disparate positions of the parties and a reasonable basis for the placement

of trust and confidence in the superior party in the context of specific events at issue." *Id.* The summary judgment record contains evidence that the Gurney's owned the Premises; Elizabeth was in control of and hosted the Party from the Premises; Elizabeth invited Zach as a guest of the Party; and Zach came to Elizabeth's aid when the party got "chaotic" and out of control. A. at 41, ¶¶ 1-2; 72, ¶ 3; 73, ¶¶ 4, 8-11; 74, ¶¶ 12-16. This sufficiently establishes a special relationship between the Gurneys and Wilson.

The Law Court has not recognized a "special relationship" under the bar-bar patron (or similar) relationship. *See Belyea v. Shiretown Motor Inn*, 2010 ME 75, 2 A.3d 276. However, special relationships have been recognized between an innkeeper-guest and a store-customer. *See Kaechele v. Kenyon Oil Co.,* 2000 ME 39, 747 A.2d 167. The Law Court has stated that a "proprietor of an inn, hotel, motel, restaurant, or ***similar establishment*** is liable for an assault upon a guest or patron by another guest, patron, or third person where he has reason to anticipate such assault and fails to exercise reasonable care under the circumstances to prevent the assault or interfere with its execution." *Id. at* ¶ 8 (emphasis added) (*quoting Brewer v. Roosevelt Motor Lodge*, 295 A.2d 647, 651 (Me. 1972)). Maine Courts have also recognized this rule with respect to liability of the proprietor of a theater or amusement enterprise and with the operator of tourist or overnight cabins. *See Hawkins v. Maine & New Hampshire Theaters Co*., 1933, 132 Me. 1, 164 A. 628;

Walker v. Weymouth, 154 Me. 138, 145 A.2d 90 (1958). Finally, Restatement (Second) of Torts § 314A(3) recognizes a duty of care by possessors of land who hold their property open to the public for entrants on the premises, and, while a social gathering is generally not open to the public, it was in the context of the Party.

While Maine Courts have not yet recognized this rule with the relationship of "party hosts to party guests," these enumerated relationships where the Court does recognize a duty follow the exact same exact principle: the "host" (innkeeper, restaurant server, or theatre owner) invites another (guest, patron, or customer) onto their property for entertainment or enjoyment provided and planned by them – just like the host of a party to their party-guests– and then is held to a level of reasonable responsibility to that person because of said relationship.

Other jurisdictions explicitly recognize the social-host and social-guest relationship as a special one based on similar principles and safety concerns. For instance, Tennessee accepts the relationships between an "innkeeper and guest, common carrier and passenger, possessors of land and guests, social host and guest, and those who have custody over another" as special relationships imposing a duty, placing social hosts on the same level as innkeepers (under Maine law). *Downs ex rel. Downs v. Bush,* 263 S.W.3d 812, 820 (2008). The Supreme Court held that an adult who hosted a teenage drinking party did owe a duty to protect his guests from harm, concluding that public policy considerations favor finding that the party-host

had a special relationship to his guests such that he had a duty to ensure their safety, as well as to prevent them from driving while intoxicated. *Biscan v. Brown*, 160 S.W.3d 462, 481 (2005). Furthermore, New Jersey courts have held that, when a social host serves alcohol to visibly intoxicated guests who they know may be driving, the host may owe a duty of care to third parties injured by the intoxicated guest's driving. *Kelly v. Gwinnell*, 96 N.J. 538, 476 A.2d 1219 (1984). In concluding that, the court emphasized the foreseeability of harm, the hosts' ability to prevent it by ceasing service, and the public policy interest in deterring drunk driving. *Id.*

This same party-host and party-guest relationship, foreseeability of harm, and public policy interests are contemplated in this case. Here, Elizabeth invited Party guests onto the Premises for an event and entertainment, and it was only at said event, the Party, where one of her invited guests, Wilson, was injured in a dangerous situation and assault: being shot. A. at 72, ¶¶ 1-4; 75, ¶ 26. At the time of Wilson's injury, the Party had gotten "chaotic" and "out-of-hand" after unknown, ski-mask wearing guests were doing drugs on the Premises and were "kicked out" of the Party, giving Elizabeth reason to anticipate such an assault. A. at 73, ¶ 8; 74, ¶¶ 14-18; 76, ¶ 28. Thus, based on comparable pre-existing Maine law, other jurisdictions law, and safety considerations, the Law Court should recognize a party-host and party-guest relationship here and vacate the trial court's order, as Wilson and the Gurneys

had said special relationship so as to impose a duty on them as party-hosts, and they breached their duty to Wilson, sufficiently stating a prima facie case for negligence.

ii. Elizabeth Gurney Created Zach Wilson's Harm by Hosting the Party and The Shooting was Reasonably Foreseeable.

An actor is required to guard against the intentional misconduct of others "where the actor's own affirmative act has created or exposed the other to a recognizable high degree of risk of harm through such misconduct, which a reasonable man would take into account." *Gniadek v. Camp Sunshine at Sebago Lake, Inc*., 2011 ME 11, ¶ 29; 11 A.3d 30; Restatement (Second) of Torts § 302B. Thus, where an injury to a plaintiff was reasonably foreseeable and caused by the acts of a defendant, there may be a duty to exercise reasonable care. *See Quinn v. Moore*, 292 A.2d 846, 850. In other words, if a reasonably prudent and careful person – in this case, a party host – should have anticipated under all of the existing circumstances that someone would probably be injured from their conduct, then they owe said someone a duty to proceed in the exercise of reasonable care. *Id.*

In *Reid,* a man was killed after he fell into an open dumpster at the local transfer station while he and his brother were dumping items into the dumpsters. 2007 ME 125, ¶ 17, 932 A.2d 539. The plaintiff, the decedent's wife, argued on summary judgment that the brother owed the decedent a duty of care stemming from his knowledge that there was an open dumpster that posed a hazardous condition, and from the fact that he backed his truck up when the decedent was between his

vehicle and the dumpster. *Id.* ¶ 16. The Court reasoned that the law imposed no duty to act affirmatively to protect another from danger unless said person created the dangerous situation, and because the plaintiff "has not asserted any facts which show that [the defendant] created the dangerous situation" that plaintiff had not established a prima facie case for liability, and summary judgment for defendant was affirmed. *Id.* ¶¶ 17, 19.

As mentioned above, issues of foreseeability are generally questions of fact to be resolved by the jury and "each case must turn on its own facts and the jury as triers of the facts must apply its ordinary human experience to the facts revealed by the evidence." *Perron,* 593 A.2d at 1058; *AMES v. DIPIETRO-KAY CORP.,* 617 A.2d 559, 561 (Me. 1992) (quoting *Jackson v. Frederick's Motor Inn,* 418 A.2d 168, 174 (Me. 1980)). Furthermore, the Law Court has stated that:

> The reasonable foreseeability of injury to others from one's acts or from one's failure to act raises a duty in law to proceed in the exercise of reasonable care. **It is not necessary that the precise type of injury be foreseen, nor the specific person injured. The orbit of danger may be undefined in terms of time, space or persons.** Nevertheless, if a reasonably prudent and careful person should have anticipated under all the existing circumstances that a person in the situation of the plaintiff would probably be injured as a proximate result of the negligent conduct of the defendant, then such risk of injury reasonably to be apprehended raises the legal duty to proceed in the exercise of reasonable care commensurate with the danger of injury in order to avoid the same. *Quinn,* 292 A.2d at 850 (*emphasis added*).

Here, unlike *Reid* and following the Court's reasoning in *Quinn,* the summary judgment record contains evidence about the circumstances and context of the Party

to establish a prima facie case that Elizabeth and Holly Gurney owed Wilson a duty of care because they hosted the dangerous Party that caused him to be shot and injured, and that the shooting was reasonably foreseeable. From this, a jury could find both that Elizabeth created the dangerous situation and that it was reasonably foreseeable that an out-of-control Party with underage drinking and drugs could lead to this type of injury. A. at 72, ¶¶ 2-3; 73, ¶¶ 6-11; 74, ¶¶ 12-14, 16-19; 76, ¶¶ 28-29. Specifically, Elizabeth threw a Party she was not supposed to have, invited a large group – 30 to 40 – of people to the Premises for the Party, and admitted that the Party evolved to around 100 people in a few hours; she was aware that many Party attendees were not invited by her, but had gotten the invite from a "party group chat" where her address was posted; and she violated her mother's rules, as she was not allowed to invite more than 10-15 friends, could not have any alcohol, and had a curfew of 1:00 AM. A. at 72, ¶¶ 2-3; 73, ¶¶ 6-10. Elizabeth did not need to foresee the exact nature of the harm – that Wilson would be shot by another party attendee – as under the circumstances of the Party, she should have anticipated that a guest at her "chaotic" Party, with underage drinking and too many people, would be harmed as a result. These facts show that Elizabeth hosted an out-of-control party, and knew it, proving it was reasonably foreseeable that a Party guest was injured as a result, regardless of how they were injured.

Additionally, Elizabeth knew there was dangerous behavior occurring at the Party, as she was aware that Party guests were underage drinking; that Party guests were getting sick outside; that Party attendees were using and/or distributing cocaine; and that Party attendees who were not invited were showing up in ski masks. A at 73, ¶ 11; 74, ¶¶ 12, 14, 16-17. Elizabeth also knew that the Party was escalating and getting "out of hand," as by 11:00pm, there were over 100 people there and she began attempting to start getting people to leave the Party; she had attempted to kick the Third Parties out of the Party for doing illegal drugs but she knew they had re-entered the Party; and, despite all this, she did not want to contact the police because she was worried about getting in trouble for hosting the Party. A. at 73, ¶¶ 7-9; 74, ¶¶ 18-19; 75, ¶ 20; 76, ¶ 28. Finally, although Elizabeth knew the Third Parties had arrived wearing ski masks and knew they had used and sold cocaine at the Party, she did not ensure they were off the Premises after kicking them out. A. at 74, ¶¶ 14, 17-29; 75, ¶ 20. When they returned to the Party, Elizabeth was no angry she had to be held back, and the Third-Parties ignored her while under the influence of drugs when she told them to leave again. A. at 75, ¶¶ 21-22. Despite Elizabeth's knowledge of this and their unwillingness to listen to her and to leave, she asked Wilson for assistance in getting the Third Parties out of the Party. A. at 75, ¶¶ 23-24. It was as Wilson was kicking them out of the Party, again, on behalf of Elizabeth when he was shot. A. at 75, ¶¶ 25-26.

Again, from these facts, a jury could find that it was reasonably foreseeable that, as a result of the dangerous behaviors ongoing at the Party – guests getting sick from drinking, drugs, and uninvited strangers in ski masks – which Elizabeth knew about and tried, but failed, to handle on her own, that someone could get hurt. Elizabeth acknowledged that it only took moments for the Party to get "out of hand," further showing it was reasonably foreseeable that the Party was a dangerous situation that led to foreseeable damages for a Party guest, in this case, Wilson. A. at 76, ¶¶ 28-29. Therefore, the Gurneys owed Wilson a duty for creating the dangerous Party that led to his reasonably foreseeable injury, and Wilson has again sufficiently stated a prima facie case for negligence against the Gurneys. The Law Court should vacate the trial court's grant of summary judgment accordingly.

B. Zach Wilson Has Set Forth a Prima Facie Case for Negligent Entrustment Against Holly Gurney, Which the Law Court Should Recognize.

Count VI of the Amended Complaint sufficiently states a claim for negligent entrustment against Holly for entrusting her home, the Premises, to Elizabeth, when the entrustment was unreasonable as her underage daughter used it to host a party with underage drinking and drugs. To prevail on a negligent entrustment claim, it is the plaintiff's burden to show that the defendant had the right to control the property in question, which they entrusted to a third party on the occasion when the accident occurred, under circumstances that made that entrustment unreasonable. *Reid v. Town of Mt. Vernon,* 2007 ME 125, ¶ 32, 932 A.2d 539.

The summary judgment record contains sufficient evidence that Holly had the right to control the Premises, as it was the home she owned and occupied; that Holly entrusted the Premises to her daughter Elizabeth on the night of January 1, 2023, when Plaintiff was shot and seriously injured at the Premises; and that said entrustment of the Premises to Elizabeth was unreasonable under the circumstances as Elizabeth, against her mother Holly's rules and wishes, provided alcohol to Party guests, opened the Premises to close to 100 people, some of which were underage drinking, getting sick and vomiting outside due to drinking, were using and allegedly distributing illegal drugs on the Premises, and were yelling and running around out in the street at the time of the Party. A. at 41, ¶¶ 1-2; 72, ¶¶ 1-3; 73, ¶¶ 5-11; 74, ¶¶ 12-18. These facts, read in a light most favorable to Wilson, make clear that Holly negligently entrusted the Premises to Elizabeth, as all of the requisite elements are satisfied. Accordingly, Wilson has sufficiently set forth a prima facie case for negligent entrustment. The remaining issue, then, is that Maine courts, including the Law Court, have not yet found that a negligent entrustment claim applies to anything other than "chattels", which are not real property as the Premises is in this case. However, the Law Court should extend a claim for negligent entrustment to real property here.

i. The Law Court Should Extend Negligent Entrustment Claims To Real Property In This Instance Based on Maine and Other Jurisdictions Case Law and Standards.

Generally, Maine courts recognize a cause of action for negligent entrustment with chattels, most commonly involving claims where one entrusts an automobile to another and said person causes injuries to someone with the vehicle entrusted to them. *See State Farm Mut. Auto. Ins. Co. v. Koshy*, 2010 ME 44, 995 A.2d 651; *Sweet v. Austin*, 158 Me. 90, 179 A.2d 302 (1962). In *Sweet*, the Law Court cited with approval §390 of the Restatement (Second) of Torts, expressly adopting its definition of negligent entrustment. *Kunkel v. Alger*, 10 Mass. App. Ct. 76, 81-82, 406 N.E.2d 402 (1980). Under that standard, "[o]ne who supplies...a chattel for the use of another whom the supplier knows or has reason to know to be likely...to use it in a manner involving unreasonable risk of physical harm to others...is subject to liability for physical harm resulting" *Id.;* Restatement (Second) of Torts §390. This standard applies to automobiles because of the inclusion of the word "chattels"; but, automobiles are not too distinct from real property or homes, as both can be entrusted to others and involve unreasonable risk of harm, and if "chattels" was removed from the standard, it would apply directly to the case at hand.

While Maine courts have not yet applied negligent entrustment to real property, certain case analogies indicate that the concept might extend to it. In *Cullinan v. Tetrault*, the Law Court implied that a property and business owner could be liable for entrusting the care of real property, a drugstore, to an obviously unfit person, a 17-year-old boy, after the boy sold a dangerous alcohol to the plaintiff, a

customer, thinking it was liquor, and the plaintiff died as a result. 123 Me. 302, 122 A. 770 (1923). This scenario did not involve a chattel, like an automobile, but rather entrusting responsibility over a premise**.** *Id.* at 303-304. The case turned on joint enterprise issues, but the Law Court's discussion of liability for entrusting a premise to an incompetent agent implies that Maine's approach focuses on the entrustor's negligence in selecting an entrustee rather than on the nature of the property.

Again, in *Reid,* the plaintiff made a negligent entrustment claim against a waste management company after the decedent fell into a dumpster at the transfer station and died. 2007 ME 125, ¶ 5, 932 A.2d 539. The complaint alleged the defendant was negligent in its failure to provide adequate safety measures around the dumpers and in their placement but did not allege that the defendant exercised control over the dumpsters at the transfer station. *Id*. ¶ 33. Based on that omission, the court dismissed the negligent entrustment claim. *Id*. Here, similarly to *Cullinan*, although the Court determined the case on other grounds and did not expressly mention negligent entrustment applied to real property, it was implied the Court would consider doing so, as the transfer station, even if the dumpsters inside were considered "chattels" is a set, stationary building, thereby real property.

Finally, courts in other jurisdictions have confronted the question of applying negligent entrustment to real property. In Ohio, an appellate court essentially

recognized a claim for negligent entrustment of real property in high-risk circumstances when a defendant lessor leased a gas station building to an "incompetent" lessee. *Benlehr v. Shell Oil Co.*, 62 Ohio Ct. App. 2d 1, 9, 402 N.E.2d 1203 (1978). The court held "where a lessor seeks to lease property for a use which is inherently dangerous or has highly dangerous potentialities involving a substantial risk to the general public, and such danger or risk...may be foreseen by the lessor, the lessor owes a duty of reasonable care in selecting and entrusting such property." *Id.* This rule mirrors Maine's Restatement § 390 standard, substituting "property" and "lessee" for "chattel" and "borrower." The court's rationale was that the public should be protected from foreseeable dangers when another entrusts an inherently hazardous operation on the premises to someone unfit. *Id.* In New Mexico, although it was overturned, the Court of Appeals recognized negligent entrustment of real property after plaintiff's child almost drowned in a wave pool operated by the lessee of a water park, contemplating negligent entrustment as a cause of action because of the "inherently dangerous" nature of the events on the property and the lessee's incompetent management of said property. *Gabaldon v. Erisa Mortg. Co.,* 124 N.M. 296, 1997-NMCA-120, 949 P.2d 1193.

Based on the above, Maine precedent does not expressly limit negligent entrustment to non-real property, as the cause of action's elements in Maine center on the entrustor's knowledge of the risk and the causal link to the injury. *Kunkel v.*

Alger, 10 Mass. App. Ct. 76, 82-83, 406 N.E.2d 402 (1980). There is nothing in Maine case law definitively foreclosing an argument that real property could what was entrusted. This is supported by case law from other jurisdictions, as discussed, especially in high-danger situations, such as an underage defendant throwing an out-of-control house party with underage drinking, drugs, 100 people, and gunfire. Accordingly, the Law Court should extend negligent entrustment to real property in this instance and vacate the trial court's ruling.

VI. CONCLUSION.

Based on the above, Appellant Zachary Wilson has made a prima facie showing for his claims of premises liability, Count V of the Amended Complaint, and negligent entrustment, Count VI of the Amended Complaint, against Appellees Holly and Elizabeth Gurney. To the extent genuine issues of material fact exist regarding the creation of and reasonable foreseeability of Wilson's injury and whether a special relationship existed between Wilson and the Gurney's, those must be resolved by a jury. Finally, Furthermore, the Law Court should recognize the party-host and party-guest relationship as a "special relationship," and should extend the claim of negligent entrustment to real property based on Maine and other jurisdictions precedent and safety and policy considerations. Thus, the trial court erred when it granted Appellee's Elizabeth and Holly Gurney's Summary Judgment Motion, and the Law Court should vacate the trial court's ruling accordingly.

Dated this 3rd day of October, 2025.

Respectfully submitted,

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STATE OF MAINE	SUPREME JUDICIAL COURT Sitting as the Law Court DOCKET NO.: And-25-351
ZACHARY WILSON, Plaintiff/Appellant VS. ELIZABETH GURNEY, et al., Defendants/Appellees	CERTIFICATE OF SIGNATURE AND COMPLIANCE

I am filing the electronic copy of a brief with this certificate. I will file the paper copies as required by M.R. App. P. 7(A)(i). I certify that I have prepared (or participated in preparing) the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in the M.R. App. P. 7A(f), and conform to the form and formatting requirements of M.R. App. P. 7A(g). For this Certification, I relied on the word count function of the word-processing software used to prepare this brief (Microsoft Word 365), which has counted 5969 words in this brief.

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