

**MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Docket No. Was-24-227

Charles Samuel Keegan

Plaintiff-Appellant

v.

Estate of Phyllis C. Bradbury, et al.

Defendants-Appellees

On appeal from the Maine Superior Court, Washington County

APPELLANT'S APPEAL BRIEF

*Attorneys for Appellant
Charles Samuel Keegan:*

James A. Hopkinson, Esq.
Gerald B. Schofield, Jr., Esq.
Hopkinson & Abbondanza, P.A.
Six City Center, Suite 400
Portland, Maine 04101
(207) 772-5845

*Attorney for Appellees Estate of Phyllis
C. Bradbury, William E. Bradbury, and
Barbara Anne Shuffler:*

Barry K. Mills, Esq.
Hale & Hamlin LLC
4 State Street, P.O. Box 729
Ellsworth, Maine 04605
(207) 667-2561

*Attorney for Appellees Craig J. Holmes
and Melissa M. Holmes:*

Benjamin P. Campo, Jr., Esq.
Douglas McDaniel & Campo LLC, P.A.
490 Walnut Hill Road
North Yarmouth, Maine 04097

TABLE OF CONTENTS

	Page
TABLE OF CASES, STATUTES, AND AUTHORITIES.....	ii
I. STATEMENT OF THE CASE.....	2
II. STATEMENT OF FACTS.....	2
III. PROCEDURAL HISTORY.....	4
IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	7
V. SUMMARY OF APPELLANT’S ARGUMENT.....	7
VI. STANDARD OF REVIEW.....	7
VII. APPELLANT’S LEGAL ARGUMENT.....	8
A. THE UNDERLYING AGREEMENT BETWEEN THE ESTATE AND MR. KEEGAN PROVIDED MR. KEEGAN WITH AN ENFORCEABLE RIGHT OF FIRST REFUSAL ON THE SALE OF 1 LOWER HIGH STREET.....	9
B. COUNT I OF THE UNDERLYING ACTION SETS FORTH A COGNIZABLE CLAIM TO RELIEF UNDER MAINE’S DECLARATORY JUDGMENTS ACT.....	13
C. THE SUPERIOR COURT ERRONEOUSLY DISMISSED COUNT II OF MR. KEEGAN’S COMPLAINT.....	15
D. THE SUPERIOR COURT ERRED IN CONCLUDING THAT THE ESTATE DID NOT BREACH THE UNDERLYING CONTRACT BECAUSE THERE WAS NO ENFORCEABLE RIGHT OF FIRST REFUSAL.....	17
VIII. CONCLUSION.....	19
CERTIFICATE OF SERVICE.....	20

TABLE OF CASES, STATUTES, AND AUTHORITIES

CASES

Calnan v. Hurley, 2024 ME 30, 314 A.3d 267.....8

Doe v. Bd. of Osteopathic Licensure, 2020 ME 134, 242 A.3d 182.....8

Saunders v. Tisher, 2006 ME 94, 902 A.2d 830.....8

Am. Prot. Ins. Co. v. Acadia Ins. Co., 2003 ME 6, 814 A.2d 989.....9, 12

Apgar v. Commercial Union Ins. Co., 683 A.2d 497.....9

Peerless Ins. Co. v. Brennon, 564 A.2d 383 (Me. 1989).....9

Portland Valve, Inc. v. Rockwood Sys. Corp., 460 A.2d 1383 (Me. 1983).....9

Villas by the Sea Owners Ass'n v. Garrity, 2000 ME 48, 748 A.2d 457.....9, 11, 12

Town of Lisbon v. Thayer Corp., 675 A.2d 514 (Me. 1996).....10

Bangor Publ'g Co. v. Union St. Mkt., 1998 ME 37, 706 A.2d 595.....10, 11

Interstate Indus. Unif. Rental Serv., Inc. v. F.R. Lepage Bakery, Inc., 413 A.2d 516 (Me. 1980).....10, 12

Farrington Owners' Ass'n v. Conway Lake Resorts, Inc., 2005 ME 93, 878 A.2d 504.....12

Foster v. Foster, 609 A.2d 1171 (Me. 1992).....12

Acadia Ins. Co. v. Buck Constr. Co., 2000 ME 154, 756 A.2d 515.....12, 13

SC Testing Tech., Inc. v. Department of Env'tl. Protection, 688 A.2d 421 (Me. 1996).....13

Tobin v. Barter, 2014 ME 51, 89 A.3d 1088.....15

STATUTES

14 M.R.S.A. § 5951, *et seq.*.....5, 13
14 M.R.S.A. § 6051, *et seq.*.....5

MAINE RULES OF COURT

M. R. Civ. P. 12(b)(6).....5, 6, 7, 8

MISCELLANEOUS

Latent ambiguity, <https://www.merriam-webster.com/legal/latent%20ambiguity>
(last visited July 12, 2024).....12
Material, Cornell Law School Legal Information Institute,
<https://www.law.cornell.edu/wex/material> (last visited July 11, 2024).....16

MAINE SUPREME JUDICIAL COURT

**Sitting as the Law Court
DOCKET NO. WAS-24-227**

CHARLES SAMUEL KEEGAN,)
)
 Appellant,)
 v.)

APPELLANT’S APPEAL BRIEF

ESTATE OF PHYLLIS CLARKE)
BRADBURY,)
)

(Title to Real Estate Is Involved)

WILLIAM E. BRADBURY,)

BARBARA ANNE SHUFFLER,)
 and)

CRAIG J. HOLMES and)
MELISSA M. HOLMES,)

Appellees.)

NOW COMES the Appellant, **CHARLES SAMUEL KEEGAN** (“Appellant”), by and through undersigned counsel, in that matter related to Appellees, **THE ESTATE OF PHYLLIS CLARKE BRADBURY** (the “Estate”), **WILLIAM E. BRADBURY**, individually, and in his capacity as Personal Representative of the Estate (“Bradbury”), **BARABARA ANNE SHUFFLER**, individually, and in her capacity as Personal Representative of the Estate (“Shuffler”), and **CRAIG J. HOLMES and MELISSA M. HOLMES** (“Holmes”), and hereby appeals the Superior Court’s Orders on the Estate’s and the Holmes’ respective Motions to Dismiss pursuant to M.R.Civ.P. 12(b)(6) as follows:

I. STATEMENT OF THE CASE

This appeal arises out of the Estate of Phyllis Clarke Bradbury's sale of real property located at 1 Lower High Street, Eastport, Maine (hereinafter the "Property" or "1 Lower High Street") to Craig J. Holmes and Melissa M. Holmes in violation of Charles S. Keegan's contractual right of first refusal on the sale of the Property, and, in turn, the Holmes' purchase of the Property despite having actual and constructive knowledge of Mr. Keegan's contractual right of first refusal by virtue of the recorded Affidavit of Charles Samuel Keegan stating that he held a right of first refusal on the sale of 1 Lower High Street pursuant to that Purchase and Sale Agreement dated October 8, 2012.

II. STATEMENT OF FACTS

Appellant Charles S. Keegan purchased real property located at 7 Lower High Street, Eastport, Maine ("Appellant's Property" or "7 Lower High Street") from the Estate of Phyllis Clarke Bradbury (the "Estate") pursuant to a Purchase and Sale Agreement executed by Mr. Keegan and William Bradbury, acting in his capacity as a Co-Personal Representative of the Estate, dated October 8, 2021 (the "Agreement"). (A. 38, 109). The subsequent Deed of Sale by Personal Representative was executed by William Bradbury and Barbara Anne Shuffler, Co-Personal Representatives of the Estate, on November 22, 2021, and recorded in Book 4859, Page 162 of the Washington County Registry of Deeds (the "Deed to

Keegan”).¹ (A. 114). As part of the Agreement for the purchase and sale of 7 Lower High Street, Mr. Keegan specifically negotiated to obtain a right of first refusal with respect to the abutting Property located at 1 Lower High Street, then-owned by the Estate, which is memorialized in paragraph 26 of the Agreement as follows:

26. OTHER CONDITIONS: Buyer would like the Right of First Refusal on the sale of abutting lot if ever sold
Map K-7 Lot 1

(A. 41, 112).

In September 2022, Mr. Bradbury and Ms. Shuffler undertook efforts on behalf of the Estate to sell the Property at 1 Lower high Street. (A. 29, Compl. ¶ 15). During that time, the Estate’s real estate broker contacted Mr. Keegan, at Mr. Bradbury’s request, to notify him that the Estate was negotiating with a potential buyer of 1 Lower High Street and to ask him if he was interested in exercising his right of first refusal. *Id.* Mr. Keegan responded to the Estate’s broker in writing stating that he was interested in exercising his right of first refusal but would need to see an executed agreement between the Estate and the potential buyer with a sale price in order to determine whether to exercise his right of first refusal (otherwise, Mr. Keegan would have had no idea as to what offer he was or was not refusing). (A. 30, Compl. ¶¶ 16–17). Mr. Keegan also told Mr. Bradbury

¹ It is a typographical error that the Deed to Keegan refers to “Ann Shuffler,” rather than “Barbara Anne Shuffler,” as a Co-Personal Representative of the Estate.

and Ms. Shuffler that “I am happy to match the terms of the offer once I have confirmation of a bona-fide third party offer.” (A. 30, Compl. ¶ 18). To ensure that his right of first refusal would be protected and known to all, Mr. Keegan recorded the Affidavit of Charles Samuel Keegan on September 28, 2022, in Book 4954, Page 123 of the Washington County Registry of Deeds, stating that he held a right of first refusal on the sale of 1 Lower High Street (the “Affidavit”). (A. 30, Compl. ¶ 19). The Affidavit references the Agreement and the Property that is the subject of the right of first refusal, and thus provides record notice of the right of first refusal. *Id.*

Mr. Keegan did not release his right of first refusal, nor was he afforded the opportunity to exercise his right of first refusal, before Mr. Bradbury and Ms. Shuffler, acting as Co-Personal Representatives of the Estate, sold the Property to Craig and Melissa Holmes. (A. 30, 31, Compl. ¶¶ 21, 25, 28). No purchase and sale agreement was ever provided to Mr. Keegan. (A. 31, Compl. ¶¶ 26). The subsequent Deed of Sale by Personal Representative dated October 12, 2022, was recorded in Book 4961, Page 293 of the Washington County Registry of Deeds (the “Deed to Holmes”). (A. 117).

III. PROCEDURAL HISTORY

On May 25, 2023, Mr. Keegan submitted the complaint initiating this suit (the “Complaint”) in the Washington County Superior Court (hereinafter the

“Superior Court”) seeking (1) a declaratory judgment pursuant to 14 M.R.S.A. § 5951, *et seq.* that declares, in relevant part, that he has a legally enforceable right of first refusal with respect to 1 Lower High Street under paragraph 26 of the Agreement (Count I); (2) damages for breach of contract resulting from the violation of his right of refusal (Count II); and (3) rescission and claim in equity pursuant to 14 M.R.S.A. § 6051, *et seq.* (Count III). (A. 29–36, Compl. ¶¶ 10–55). The Complaint was filed with the Superior Court and docketed on May 26, 2023. (A. 3).

On July 20, 2023, the Estate, Mr. Bradbury, and Ms. Shuffler (collectively referred to in this Section III as the “Estate Defendants”) submitted a Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted (M. R. Civ. P. 12(b)(6)). (A. 59). The Estate Defendants’ Motion to Dismiss was initially submitted to the Superior Court without payment and therefore considered an incomplete filing. (A. 5). The motion was formally filed with the Superior Court with payment on August 3, 2023, and docketed on August 14, 2023 (A. 5).

On August 22, 2023, Mr. Keegan submitted a response to the Estate Defendants’ Motion to Dismiss. (A. 67). Mr. Keegan’s response was filed with the Superior Court on August 28, 2023, and docketed on even date. (A. 5).

On September 1, 2023, the Estate Defendants filed a reply brief dated August 28, 2023, in response to Mr. Keegan’s opposition to the Estate Defendants’ Motion to Dismiss. (A. 5, 81).

On January 14, 2024, the Superior Court issued an Order granting the Estate Defendants’ Motion to Dismiss. (A. 9). This Order was entered on the Docket on January 18, 2024. (A. 5–6).

On February 25, 2024, Craig and Melissa Holmes (collectively referred to in this Part III as the “Holmes Defendants”) submitted a Motion to Dismiss Counts I and III of the Complaint for failure to state a claim upon which relief could be granted pursuant to M. R. Civ. P. 12(b)(6). (A. 88). The Holmes Defendants’ Motion to Dismiss was filed with the Superior Court on March 3, 2024, and docketed on March 7, 2024. (A. 6).

Mr. Keegan submitted a response to the Holmes Defendants’ Motion to Dismiss with incorporated memorandum of law on March 14, 2024. (A. 93). The response was filed on March 18, 2024, and docketed on March 26, 2024. (A. 7).

On March 27, 2024, the Holmes Defendants submitted a Reply Memorandum in response to Mr. Keegan’s opposition to the Holmes Defendants’ Motion to Dismiss. (A. 103). The reply memorandum was filed with the Superior Court on March 29, 2024, and docketed on April 5, 2024. (A. 7).

On April 18, 2024, the Superior Court issued an Order granting the Holmes Defendants' Motion to Dismiss Counts I and III of the Complaint. (A. 21). This appeal followed. (A. 7).

IV. STATEMENT OF ISSUES PRESENTED FOR REVIEW

DID THE SUPERIOR COURT ERRONEOUSLY GRANT THE DEFENDANTS' M. R. CIV. P. 12(b)(6) MOTIONS TO DISMISS IN ITS ORDERS ENTERED ON THE DOCKET ON JANUARY 18, 2024, AND APRIL 18, 2024, HAVING ERRONEOUSLY DETERMINED:

- A. THAT THE UNDERLYING CONTRACT BY AND BETWEEN MR. KEEGAN AND THE ESTATE DID NOT PROVIDE TO MR. KEEGAN AN ENFORCEABLE RIGHT OF FIRST REFUSAL;**
- B. THAT COUNT I OF THE UNDERLYING ACTION DOES NOT SET FORTH A COGNIZABLE CLAIM TO RELIEF UNDER MAINE'S DECLARATORY JUDGMENTS ACT;**
- C. THAT COUNT II WAS DISMISSED; AND**
- D. THAT THE ESTATE DID NOT BREACH THE UNDERLYING CONTRACT BECAUSE THERE WAS NOT AN ENFORCEABLE RIGHT OF FIRST REFUSAL?**

V. SUMMARY OF APPELLANT'S ARGUMENT

This is an appeal of (1) the Superior Court's Order granting the Estate, Mr. Bradbury, and Ms. Shuffler's Motion to Dismiss the Complaint (hereinafter the "Estate Order"), and (2) the Superior Court's Order granting Craig and Melissa Holmes' Motion to Dismiss Counts I and III of the Complaint (hereinafter the "Holmes Order"). Both the Estate Order and the Holmes Order conclude that

paragraph 26 of the Agreement does not provide Mr. Keegan with an enforceable right of first refusal on the sale of 1 Lower High Street. Appellant asserts that paragraph 26 of the Agreement *does* provide an enforceable right of first refusal and, as such, Counts I, II, and III of the Complaint were improperly dismissed.

VI. STANDARD OF REVIEW

On appeal from an order granting a Motion to Dismiss pursuant to M. R. Civ. P. 12(b)(6), the Law Court reviews *de novo* the legal sufficiency of the Complaint and “view[s] the complaint in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Calnan v. Hurley*, 2024 ME 30, ¶ 7, 314 A.3d 267, 272 (quoting *Doe v. Bd. of Osteopathic Licensure*, 2020 ME 134, ¶ 6, 242 A.3d 182, 186). In determining whether a Motion to Dismiss should be granted, the Court must consider “the allegations in the complaint in relation to any cause of action that may reasonably be inferred from the complaint,” and a claim will be dismissed only “when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim.” *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830, 832.

VII. APPELLANT’S LEGAL ARGUMENT

A. THE UNDERLYING AGREEMENT BETWEEN THE ESTATE AND MR. KEEGAN PROVIDED MR. KEEGAN WITH AN ENFORCEABLE RIGHT OF FIRST REFUSAL ON THE SALE OF 1 LOWER HIGH STREET

1. The Superior Court erred in determining that paragraph 26 of the Agreement is unambiguous and therefore must be interpreted based on its plain meaning.

Whether contract language is ambiguous is a question of law reviewed *de novo*. *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 12, 814 A.2d 989 (citing *Apgar v. Commercial Union Ins. Co.*, 683 A.2d 497, 498 (Me. 1996)). “[W]hen interpreting a contract, a court needs to look at the whole instrument.” *Id.* (citing *Peerless Ins. Co. v. Brennon*, 564 A.2d 383, 384-385 (Me. 1989)). If a court determines that contract language is unambiguous, then its interpretation “must be determined from the plain meaning of the language used and from the four corners of the instrument without resort to extrinsic evidence.” *Id.* at ¶ 11 (quoting *Portland Valve, Inc. v. Rockwood Sys. Corp.*, 460 A.2d 1383, 1387 (Me. 1983)). “Contract language is ambiguous when it is reasonably susceptible of different interpretations” *Id.*; see also *Villas by the Sea Owners Ass'n v. Garrity*, 2000 ME 48, ¶ 9, 748 A.2d 457 (“a contractual provision is considered ambiguous if it is reasonably possible to give that provision at least two different meanings.”). If a contract is ambiguous, construction of the contract “is a question of fact determined by the fact-finder and reviewed for clear error.” *Id.* (citing *Town of*

Lisbon v. Thayer Corp., 675 A.2d 514, 516 (Me. 1996). When interpreting an ambiguous contract, “a court may look to extrinsic evidence of the intent of the parties.” *Id.* at ¶ 10 (citing *Bangor Publ'g Co. v. Union St. Mkt.*, 1998 ME 37, ¶ 5, 706 A.2d 595). A court may also look to extrinsic evidence to reveal a latent ambiguity. *Id.* (citing *Interstate Indus. Unif. Rental Serv., Inc. v. F.R. Lepage Bakery, Inc.*, 413 A.2d 516, 519 (Me. 1980)).

In this case, as described in the Estate Order, the Superior Court reviewed paragraph 26 in the context of the entire Agreement and found that the language is unambiguous. (A. 16). As such, the Superior Court treated the interpretation of paragraph 26 as a question of law and looked to the plain meaning of the language exclusively to conclude that it is precatory and therefore does not provide Mr. Keegan with a legally enforceable right of first refusal. *Id.* The Superior Court’s analysis overlooks the fact that paragraph 26 is expressly identified as “OTHER CONDITIONS” to which the Agreement is subject (i.e., conditions other than the standard conditions included in a typical agreement for the purchase and sale of real property). (A. 112). Paragraph 26 expressly provides that “OTHER CONDITIONS” of the Agreement include that “**Buyer would like the Right of First Refusal on the sale of the abutting lot if ever sold....**” *Id.* The parties specifically added this provision to an otherwise standard real estate contract that is fully executed by—and legally binding on—Mr. Keegan and the Estate. (A. 110,

Purchase and Sale Agreement ¶ 23). As such, it is reasonable to interpret paragraph 26 as a legally binding condition under the Agreement. *Villas by the Sea Owners Ass'n*, 2000 ME 48, ¶ 9, 748 A.2d 457. Because it is reasonably possible to give paragraph 26 at least two different meanings—(1) precatory language that creates no duty or obligation, or (2) a legally binding condition of the Agreement—the provision is ambiguous. *Id.*

When interpreting an ambiguous contract, “a court may look to extrinsic evidence of the intent of the parties.” *Id.* at ¶ 10 (citing *Bangor Publ'g Co. v. Union St. Mkt.*, 1998 ME 37, ¶ 5, 706 A.2d 595). As stated in the Complaint, the Estate’s real estate agent emailed Mr. Keegan on September 6, 2022, to notify him that the Estate was in negotiations with a potential buyer of the Property and to ask him, at Mr. Bradbury’s request, whether he would like to exercise his right of first refusal. (A. 29, Compl. ¶ 15). This email and subsequent correspondence between Mr. Keegan and the Estate’s agent reveals the true intent and understanding of the parties at the time the Agreement was executed, which was to provide Mr. Keegan with an enforceable right of first refusal on the sale of 1 Lower High Street. (A. 29–30, Compl. ¶¶ 15–18). Paragraph 26 of the Agreement would otherwise have no meaning.

To the extent that the Court is not persuaded as to the ambiguity of paragraph 26 as written, a court may also look to extrinsic evidence to reveal a

latent ambiguity. *Villas by the Sea Owners Ass'n*, 2000 ME 48, ¶ 10, 748 A.2d 457 (citing *Interstate Indus. Unif. Rental Serv., Inc. v. F.R. Lepage Bakery, Inc.*, 413 A.2d 516, 519 (Me. 1980), where the Court allowed evidence of negotiations and prior agreements to determine whether a contract was completely or partially integrated).²

2. The Superior Court’s conclusion that paragraph 26 of the Agreement does not provide Mr. Keegan with a right of first refusal renders the provision meaningless and therefore goes against well-established Maine precedent.

Maine has long recognized that “canons of construction require that a contract be construed to give force and effect to all of its provisions, and we will avoid an interpretation that renders meaningless any particular provision in the contract.” *Farrington Owners' Ass'n v. Conway Lake Resorts, Inc.*, 2005 ME 93, ¶ 10, 878 A.2d 504 (quotation marks omitted). *See also Foster v. Foster*, 609 A.2d 1171, 1172 (Me. 1992) (“It is a well-established principle that a contract is to be interpreted to give effect to the intention of the parties as reflected in the written instrument, construed in respect to the subject matter, motive and purpose of making the agreement, and the object to be accomplished.”); *Acadia Ins. Co. v. Buck Constr. Co.*, 2000 ME 154, ¶ 9, 756 A.2d 515 (“Generally...canons of construction require that a contract be construed to give force and effect to all of its

² A latent ambiguity is “an uncertainty which does not appear on the face of a legal instrument (as a contract or will) but which arises from a consideration of extrinsic facts or evidence[.]” Latent ambiguity, <https://www.merriam-webster.com/legal/latent%20ambiguity> (last visited July 12, 2024).

provisions...and we will ‘avoid an interpretation that renders meaningless any particular provision in the contract....’” (quoting *SC Testing Tech., Inc. v. Department of Env'tl. Protection*, 688 A.2d 421, 424 (Me. 1996)); *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 12, 814 A.2d 989 (“Furthermore, a contract should ‘be construed to give force and effect to all of its provisions’ and not in a way that renders any of its provisions meaningless.” (quoting *Acadia Ins. Co. v. Buck Constr. Co.*, 2000 ME 154, ¶ 9, 756 A.2d 515)).

In light of the foregoing, the Agreement should be interpreted in a manner that gives force and effect to *all* of its provisions, including paragraph 26, which reflects the clear intent of the parties to include a contractual right of first refusal on the sale of the 1 Lower High Street in Mr. Keegan’s favor. Had that not been the intent, it would not have been included, however inartful the drafting was by the seller agent. If it was merely precatory, as ruled by the Superior Court (A. 14), there was, again, no reason for it to have been included by the parties in the first instance.

B. COUNT I OF THE UNDERLYING ACTION SETS FORTH A COGNIZABLE CLAIM TO RELIEF UNDER MAINE’S DECLARATORY JUDGMENTS ACT

Count I of Mr. Keegan’s Complaint requests the following relief under Maine’s Declaratory Judgments Act, 14 M.R.S. §§ 5951, *et seq.*: (1) a declaration that Mr. Keegan has a legally enforceable right of first refusal on the sale of 1

Lower High Street under the Agreement; (2) an order of specific performance compelling all Appellees to convey the Property to Mr. Keegan and release any and all claims they may have to the Property; (3) a declaration that the Estate, Mr. Bradbury, and Ms. Shuffler acted with fraud, deceit, and/or malice in causing the Deed to Holmes to be executed; (4) a declaration that the Holmeses were not bona fide purchasers of the Property; and (5) a declaration that Mr. Bradbury and Ms. Shuffler violated their fiduciary duties as Co-Personal Representatives of the Estate. (A. 32–34, Compl. ¶¶ 32–45).

As provided in the Estate Order, the Superior Court found that “[a]ll of the claims in Plaintiff’s complaint are dependent upon him having that alleged right of first refusal. Consequently, as Plaintiff does not actually have the right to first refusal under the purchase and sale agreement that he claims, all of his claims in count I collapse.” (A. 17). In addition, the Superior Court found that Mr. Keegan’s request for specific performance seeks relief that is beyond the scope of the Declaratory Judgments Act, and that Mr. Keegan lacks standing to sue Mr. Bradbury and Ms. Shuffler for violation of their duties as Personal Representatives of the Estate. *Id.*

Appellant concedes to the Superior Court’s conclusion with respect to specific performance under the Declaratory Judgments Act (but not under Maine contract law) and standing to sue Mr. Bradbury and Ms. Shuffler for breach of

duty. *Id.* Consistent with the legal arguments set forth in subpart VI.A. above, however, Appellant maintains that he has a valid right of first refusal under the Agreement, and that such right was clearly violated. To that end, it is Appellant's position that the Superior Court erred in concluding that all of his remaining claims in Count I of the Complaint collapse due to the absence of a valid right of first refusal. *Id.*

**C. THE SUPERIOR COURT ERRONEOUSLY DISMISSED
COUNT II OF MR. KEEGAN'S COMPLAINT**

Count II of Mr. Keegan's Complaint brings a breach of contract claim against the Estate and its Personal Representatives for conveying the Property to the Holmeses in violation of his right of first refusal under the Agreement. (A. 35, Compl. ¶¶ 46–51). The Superior Court found that “count II does not state a claim for breach of contract upon which relief can be granted as his complaint does not allege facts which, if taken as true, would form a prima facie case that the right of first refusal was a legally enforceable and material term of the contract and that its breach caused Plaintiff damages.” (A. 18, Estate Order at 10).

To successfully bring a breach of contract claim, a plaintiff must establish that there is a legally enforceable contract, that the defendant breached a material term of that contract, and that the breach caused the plaintiff to suffer damages. *Tobin v. Barter*, 2014 ME 51, ¶¶ 9–10, 89 A.3d 1088. (A. 18, Estate Order at 10).

Mr. Keegan established that a legally enforceable contract exists between himself and the Estate, as evidenced by the written and fully executed Agreement attached to the Complaint as Exhibit A. (A. 38, 109). Mr. Keegan established that he successfully negotiated a right of first refusal on the sale of 1 Lower High Street, which is memorialized in paragraph 26 of the Agreement. (A. 41, 112). Mr. Keegan established that the Estate breached his right of first refusal upon selling the Property to Craig and Melissa Holmes, at which time Mr. Keegan had not—and still has not—released his right of first refusal. (A. 30–31, Compl. ¶¶ 17, 28). In fact, Mr. Keegan was never disclosed any written offer, purchase and sale agreement, for the Holmes’ to purchase the Property prior to the time that the Holmeses closed on the Property (A. 31, Compl. ¶ 26). As a result, Mr. Keegan paid due consideration to the Estate in exchange for, in relevant part, a right of first refusal on the sale of 1 Lower High Street, which was not afforded to him by the Estate. (A. 38, 109). Regarding the materiality of paragraph 26 of the Agreement:

In the context of contract law, material refers to an event that significantly impacts the parties’ expectations under the contract. For example, the term “material adverse effect” is used to describe events which alter the parties’ expectations so significantly that the event extinguishes the parties’ obligations under the contract. As another example, a material breach of contract refers to a court finding that a party failed to satisfy their obligations significantly enough to where the aggrieved party is entitled to a remedy.³

³ Material, Cornell Law School Legal Information Institute, <https://www.law.cornell.edu/wex/material> (last visited July 11, 2024).

Paragraph 26 refers to an event that significantly impacts the parties' expectations under the Agreement insofar as the parties knew and expected that, in the event that the Estate decided to sell the Property, the Estate had an obligation to offer the Property to Mr. Keegan first and to provide him with a right of first refusal for any offer received by the Estate to purchase the Property. (A. 41, 112). Such expectations are indicated in the email correspondence described in the Complaint and attached to Mr. Keegan's response to the Estate's motion to dismiss. (A. 29–30, Compl. ¶¶ 15–18; A. 76–80). For these reasons, the Superior Court erred in concluding that Mr. Keegan failed to make a prima facie case for breach of contract. (A. 18, Estate Order at 10).

D. THE SUPERIOR COURT ERRED IN CONCLUDING THAT THE ESTATE DID NOT BREACH THE UNDERLYING CONTRACT BECAUSE THERE WAS NO ENFORCEABLE RIGHT OF FIRST REFUSAL

Mr. Keegan maintains that a valid right of first refusal exists under paragraph 26 of the Agreement, and restates and reasserts his argument related to the same as set forth more fully hereinabove; however, even if this Court is not persuaded that such right exists, the Superior Court erred in concluding that the Estate did not breach the Agreement on that basis alone. As stated in the Complaint, Appellees refused to mediate the issues concerning Mr. Keegan's right of first refusal via failure to respond to his letter requesting mediation dated December 13, 2022. (A. 32, 50, Compl. ¶ 30, Exh. D). Such refusal violated

paragraph 17 of the Agreement, which states the following:

17. MEDIATION: Earnest money or other disputes within the jurisdictional limit of small claims court will be handled in that forum. All other disputes or claims arising out of or relating to this Agreement or the property addressed in this Agreement (other than requests for injunctive relief) shall be submitted to mediation in accordance with generally accepted mediation practices. Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees. If a party fails to submit a dispute or claim to mediation prior to initiating litigation (other than requests for injunctive relief), then that party will be liable for the other party's legal fees in any subsequent litigation regarding that same matter in which the party who failed to first submit the dispute or claim to mediation loses in that subsequent litigation. This clause shall survive the closing of the transaction.

(A. 40, 111).

The Superior Court concluded that Mr. Keegan's allegations regarding the mediation provision do not give rise to a cause of action for breach of contract because Appellant initiated this litigation and was not the prevailing party. (A. 19, Estate Order at 11). Appellant respectfully disagrees. While it is true that Appellant initiated this litigation and was not the prevailing party to date at the trial court level, the Superior Court's analysis overlooks the express language in paragraph 17 stating that "Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees... This clause shall survive the closing of the transaction" (A. 40, 111). Mr. Keegan's attempt to mediate the issues set forth in his Complaint were ignored by Appellees; therefore, regardless of whether the circumstances of this case trigger additional obligations within the mediation

provision, Appellees breached a binding agreement to mediate the issues set forth in the Complaint, with the exception of requests for injunctive relief. Moreover, by holding that the Appellee's did not breach the Agreement by failing to mediate pursuant to paragraph 17, the Superior Court failed to give meaning to the plain language of paragraph 17 of the Agreement, which specifically required mediation, without applicable exception⁴ in this case.

VIII. CONCLUSION

For the reasons stated above, Mr. Keegan requests that the Law Court reverse the Estate Order and Holmes Order and direct the Superior Court to deny the Defendant-Appellees' motions to dismiss and declare that paragraph 26 of the Agreement provides Mr. Keegan with a valid and enforceable right of first refusal on the sale of 1 Lower High Street.

Dated: August 5, 2024

Respectfully submitted by:



James A. Hopkinson, Esq., Bar No. 2798
Gerald B. Schofield, Jr., Esq., Bar No. 4454
Hopkinson & Abbondanza, P.A.
6 City Center, Suite 400
Portland, Maine 04101
(207) 772-5845
Attorneys for Plaintiff-Appellant

⁴ Injunctive relief or disputes within the jurisdictional limits of small claims court, neither of which apply. (A. 40, 111).

CERTIFICATE OF SERVICE

In accordance with the provisions of Rule 7A(i) of the Maine Rules of Appellate Procedure, I, Gerald B. Schofield, Jr., a Member in good standing of the Bar of the State of Maine and counsel for Plaintiff-Appellant Charles S. Keegan, hereby certify as follows:

A. On August 5, 2024, I served ten (10) copies of the within Brief on Appeal and eight (8) copies of the Appendix on the Clerk of the Maine Supreme Judicial Court by hand delivery, addressed as follows:

Matthew E. Pollack, Clerk
Maine Supreme Judicial Court
142 Federal Street
P.O. Box 368
Portland, Maine 04101

And one (1) electronic copy of each such Brief and Appendix by e-mail, at lawcourt.clerk@courts.maine.gov.

B. On August 5, 2024, I served two (2) copies of the within Brief on Appeal and one (1) copy of the Appendix on counsel for Defendant-Appellees the Estate of Phyllis C. Bradbury, William E. Bradbury, Barbara Anne Shuffler, and Craig J. Holmes and Melissa M. Holmes, by placing them in the U.S. mail, postage prepaid, and e-mail, addressed as follows:

Barry K. Mills, Esq.
Hale & Hamlin LLC
4 State Street, P.O. Box 729
Ellsworth, Maine 04605
barry@halehamlin.com

Benjamin P. Campo, Jr., Esq.
Douglas McDaniel & Campo LLC, P.A.
490 Walnut Hill Road
North Yarmouth, Maine 04097
bcampo@douglasmcdaniel.com

DATED: August 5, 2024



James A. Hopkinson, Esq., Bar No. 2798
Gerald B. Schofield, Jr., Esq., Bar No. 4454
Hopkinson & Abbondanza, P.A.
6 City Center, Suite 400
Portland, Maine 04101
(207) 772-5845
Attorneys for Plaintiff-Appellant