

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. YOR-24-205

FAIR FRIEND ENTERPRISE CO, LTD,

Plaintiff/Appellee

v.

CNC SYSTEMS, INC.

Defendant/Appellant

**ON APPEAL FROM YORK COUNTY
SUPERIOR COURT**

BRIEF OF APPELLANT CNC SYSTEMS, INC.

September 6, 2024

Russell B. Pierce, Jr., Esq.
Joseph M. Mavodones, Esq.
Norman, Hanson & DeTroy, LLC
Two Canal Plaza, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000

TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES	ii
FACTS AND PROCEDURAL HISTORY	1
STATEMENT OF ISSUES PRESENTED FOR REVIEW	9
SUMMARY OF ARGUMENT	9
ARGUMENT	11
I. Standard of Review	11
II. The trial court abused its discretion in declining to stay the Maine Action in response to CNC’s repeated requests to stay because CNC and FFE were already parties to preexisting, ongoing litigation in the California Action	12
III. The trial court abused its discretion in awarding attorney’s fees to FFE in accordance with 13-C M.R.S. § 1604	17
IV. The trial court erred in awarding attorney’s fees to FFE based on reasons outside of 13-C M.R.S. § 1604 and on findings unsupported by the record	21
CONCLUSION	22
CERTIFICATE OF SERVICE	24

TABLE OF AUTHORITIES

Case(s)	Pg(s)
<i>Berkowitz v. Legal Sea Foods, Inc.</i> , WL 153815 (Del. Ch. March 24, 1997)	15, 17
<i>Cutler Assocs., Inc. v. Merrill Tr. Co.</i> , 395 A.2d 453 (Me. 1978)	11, 12, 13
<i>Darling v. Am. Graphics Inst., Inc.</i> , 2003 WL 22019549	14, 17
<i>Darling’s v. Chrysler Grp., LLC</i> , 57 F.Supp. 3d 68 (D.Me. 2014).....	13
<i>E. Fine Paper, Inc. v. Garriga Trading Co.</i> , 457 A.2d 1111 (Me. 1983)	13
<i>Fitch v. Whaples</i> , 220 A.2d 170 (Me. 1966)	11, 13, 14
<i>Galasso v. Cobleskill Stone Prod., Inc.</i> 156 N.Y.S.3d 715 (N.Y. Sup. Ct. 2021).....	15
<i>Haskell v. Haskell</i> , 2017 ME 91, 160 A.3d 1176	11, 17
<i>Holdsworth v. Goodall-Sanford, Inc.</i> 143 Me. 56, A.2d 130 (Me. 1947).....	10, 16, 19
<i>Howell v. Howell</i> , 418 A.2d 181 (Me. 1980)	13
<i>Human Rights Defense Center v. Maine Cnty.</i> <i>Commissioners Ass’n Self-funded Risk Mgmt. Pool</i> , 2023 ME 56, 301 A.3d 782	12
<i>Kezer v. Cent. Maine Med. Ctr.</i> , 2012 ME 54, A.3d 955	12

<i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936)	13
<i>Lipman v. Nat’l Med. Waste, Inc.</i> 1992 WL 97218 (Del. Ch. May 4, 1992)	15
<i>Macomber v. MacQuinn-Tweedie</i> , 2003 ME 121, 834 A.2d 131	12
<i>Marquis v. F.D.I.C.</i> , 965 F.2d 1148 (1 st . Cir. 1992)	13
<i>Poussard v. Com. Credit Plan, Inc. of Lewiston</i> , 479 A.2d 881 (Me. 1984)	12
<i>Robinson v. Am. Legion Dep’t of Washington, Inc.</i> , 452 P.3d 1254 (Wash. App. 2019)	19
<i>Smith v. Rideout</i> , 2010 ME 69, A.3d 441	11, 22
<i>United Techs Corp. v. Treppel</i> , 109 A.3d 553 (Del. 2014).....	15

STATUTES

13 C.M.R.S. § 1601	2, 4, 16, 17
13-C.M.R.S. §1602.....	2, 18
13 C.M.R.S. § 1604.....	4, 8, 9, 17, 18, 20, 21

FACTS AND PROCEDURAL HISTORY

This appeal arises out of ongoing litigation in California and a later statutory request for records in Maine involving Appellant CNC Systems, Inc. (“CNC”) and Appellee Fair Friend Enterprise, Co., Ltd. (“FFE”). CNC is a Maine corporation with a principal office located in California (A. 26, 48-49).

On February 25, 2022, FFE commenced a civil action against CNC by filing a complaint (“California Complaint”) in the Superior Court of the State of California, County of Orange, styled *Fair Friend Enterprise Co. Ltd., et al v. CNC Systems, Inc., et al.* Case No. 30-2022-01247363-CU-BC-WJC (the “California Action”). (A. 126-27; *Trial Court Record* (“*Record*”), November 14, 2022, Motion to Stay, Exhibit A) As shown in the California Complaint, FFE, a company domiciled in Taiwan, is joined as plaintiffs in the California Action with the other “members of the Fair Friend Group,” including FFG DMC Co., Ltd., a company domiciled in South Korea, and MAG Automotive LLC, a limited liability company incorporated in Delaware. (A. 127-28; *Record*, November 14, 2022, Motion to Stay, Exhibit A, ¶¶ 2-3, 11.) The California Complaint alleged that after FFE became a majority shareholder in CNC in early 2019, an executive of CNC “unilaterally took on a more active role” in the company and “effectively has usurped control over CNC Systems.” (A. 127-28; *Record*, Exhibit A, at ¶¶ 24-26) The claims asserted by FFE in the California Action arose out of CNC’s alleged failure to pay FFE and its

sister companies amounts owed for equipment FFE had sold CNC from “early 2019 to the present,” a so-called “April Agreement” allegedly agreed upon by the parties in 2021, and CNC’s alleged breach of the April Agreement. (*Record*, Exhibit A, at ¶¶ 27-58.) CNC filed its Answer to the California Complaint on April 11, 2022, and later filed a counterclaim against FFE in the California Action. (A. 127-128; *Record*, November 14, Motion to Stay, Exhibits B, D.) The California Action remains ongoing today and, as discussed below, has since evolved to include other parties who have asserted claims against FFE. (A. 254-274)

In the midst of the California Action, FFE later sent a letter on July 18, 2022 (“July 18 Letter”), to CNC’s registered office in Kennebunk, which sought the production of a variety of corporate records and documents.¹ (A. 34) In relevant part, the July 18 Letter requested to inspect certain records identified in 13-C M.R.S. §§ 1601 and 1602, as well as additional records not listed under the statute. (A. 34) In its July 18 Letter, Fair Friend stated that its purpose in seeking certain documents was to obtain “an accurate understanding of CNC’s business condition, financial and legal obligations, and corporate governing structure.” (A. 35) As reflected in the July

¹ FFE previously mailed to CNC a request to inspect records years earlier, on August 12, 2019, which was received in Maine and then forwarded to CNC’s office in California. (A. 193-196) At that time, FFE sought to inspect records listed under 13-C M.R.S. § 1601(5), as well as “a copy of current financial statements.” (A. 193-94) By letter from separate counsel responding on behalf of CNC to FFE’s request, FFE and its counsel were informed as of August 30, 2019, that FFE was permitted “to inspect and copy the records identified in § 1601 and § 1602 during regular business hours at CNC’s California office upon at least five business days’ notice.” (A. 195-96.) FFE was also instructed to “advise when” it wished to inspect and copy the records at CNC’s California office, but did not otherwise pursue inspection of records at that time. (A. 195-96)

18 Letter, no reference was made to the ongoing, and then-pending, California Action. (A. 34-35.) Moreover, the person who signed the July 18 Letter was Paul Chen, an employee of MAG Automotive, LLC who was “tasked by [FFE], DMC, and MAG to address” alleged disputes with CNC. (A. 36; A. 66) FFE and the other members of the “Fair Friend Group” involved in the California Action are “sister companies under common ownership.” (A. 67; *Record*, November 14, 2022, Motion to Stay, Exhibit A)

Approximately two weeks after delivery of the July 18 Letter, FFE commenced this action—the “Maine Action”—by filing its Complaint (“Maine Complaint”). (A. 25) FFE’s Maine Complaint—like its California Complaint—alleged that, since 2018, CNC had failed to pay FFE and its sister companies certain amounts owed for equipment sold by FFE to CNC. (A. 25-27) FFE further alleged that a CNC executive “usurp[ed] control over CNC” in April 2019 and that CNC “failed” to provide documents to FFE in response to an August 2019 request for records. (A. 25-28.)

Over a month *before* CNC filed its Answer to the Maine Complaint (filed on September 23, 2022 (A. 1), FFE had, as part of the California Action, propounded discovery requests upon CNC on August 16, 2022, including document requests to CNC that sought, among other things, the production of shareholder records, documents reflecting amounts allegedly owed to FFE, and CNC’s 2019-2021 tax

returns. (See A. 127-28; *Record*, November 14, 2022, Motion for Stay, Exhibit C, ¶¶ 1-3, 6-8, 9-12, 20-25). Indeed, CNC produced to FFE in the California Action many of the same documents FFE sought and ultimately received here in Maine, including CNC’s Articles of Incorporation, Bylaws, shareholder stock certificates, a stock transfer ledger, and meeting minutes—in effect, many of the same documents identified in 13-C M.R.S. § 1601(5) that FFE was purportedly pursuing through its July 18 Letter and its commencement of the Maine Action. (A. 279) CNC later filed its Amended Answer on October 12, 2022. (A. 2) In both its Answer and Amended Answer, CNC asserted the pending California Action as affirmative defenses in Maine. (See *Record*, Amended Answer, Affirmative Defenses ¶¶ 1-2, 4, 7-10.)

Despite the ongoing California Action and the related discovery in that forum, FFE continued to prosecute this Maine Action, filing its Application and Motion to Compel (“Application”) on October 24, 2022, and requesting—eight months after commencement of the California Action and over two months after FFE served document requests in California—that the Court compel the production of records in Maine in response to FFE’s July 18 Letter. (A. 52-125) See 13-C M.R.S. § 1604. In support of its Application, FFE also included an affidavit from Paul Chen, of MAG Automotive, LLC who stated that FFE filed its Application “to enlist the Court’s assistance to obtain prompt and meaningful access” to CNC’s corporate records, without mentioning that FFE had already requested many of the same

records as part of discovery in California. (A. 66-72, ¶¶ 3, 31; *Record*, November 14, 2022, Motion for Stay, Exhibit C.) In response, CNC filed its Opposition to the Application and Cross-Motion to Stay on November 14, 2022 (“Motion to Stay”), which opposed the Application on the basis that, among other things, the July 18 Letter was not made in good faith or for a proper purpose, and that the California Action presented a good faith basis for not immediately responding to the July 18 Letter. (A. 126-141) For the reasons stated in its opposition to the Application, CNC also sought to temporarily stay the Maine Action pending the resolution of the primary legal proceedings in California. (A. 138-141; *Record*, November 14, 2022, Motion for Stay, Exhibits A-D)

On March 8, 2023, the trial court (York County, *Mulhern, J.*) entered an Order on the pending motions, granting FFE’s Application and denying CNC’s Motion to Stay. (A. 10) As relevant here, the Court recognized that “[a] court should deny a shareholder's request where it determines that a shareholder's true motivation for seeking corporate records is to gain access to documents for use in separate litigation pending against the corporation,” but concluded that “that is not the case here.” (A. 16-17) As to the Motion to Stay, the court denied CNC’s request to stay the Maine Action, concluding that “the parties are not identical to the those in the California action,” that “the issues in this matter are not an exact match to those in the California

Action,” and that the Maine Action “is not ‘designed solely to harass the adverse party,’ nor to gain an edge in the California Action.” (A.18)

After entry of the Court’s March 8 Order, CNC provided hundreds of pages of corporate records to FFE in April 2023, including, for the second time, its Articles of Incorporation, Bylaws; meeting minutes, and shareholder stock certificates. (A. 279) CNC also produced to FFE numerous financial statements (including CNC’s balance sheet, income statement, and other information) and Federal tax returns, among other documents. (A. 279)

CNC later renewed its Motion to Stay on May 9, 2023, (*Record*, May 9, 2023, Motion to Dismiss, at 4) and later submitted a supplemental request for stay on September 7, 2022 (“Supplemental Motion to Stay”). (A. 254) CNC’s Supplemental Motion to Stay included as exhibits additional pleadings from the California Action, including CNC’s “Cross-Complaint” against FFE, a separate intervening complaint filed against FFE by other CNC shareholders, and the California court’s August 24, 2023, order, granting the other CNC shareholders’ intervention in the California Action. (A. 254-274, *Record*, September 7, 2023, Supplemental Motion to Stay, Exhibit 3.) The California court’s order provided additional context regarding the status of the California Action and the issues in dispute, including the basis for granting the other CNC shareholders’ motion to intervene:

The claims Intervenors wish to assert against FFE are similar to those CNC alleges in its Cross-Complaint against FFE.

Specifically, CNC's Cross-Complaint is focused on multiple misrepresentations FFE allegedly made to CNC and the [Intervenors] during negotiations of the acquisition. Intervenors allege that in exchange for FFE's purchase of CNC stock from them, they were to receive an annual salary of \$450,000 guaranteed by Fair Friend, were entitled to a portion of the cost of CNC Systems' building (which was to be sold per Fair Friend's instructions), and would be entitled to a share of CNC Systems' "accounts receivable" balance. The [Intervenors] further allege that they believed FFE would honor its promises and misrepresentations related to the management of CNC Systems. On or about January 9, 2019, the stock purchase agreements were finalized, and FFE acquired a controlling interest in CNC Systems.

Intervenors allege that shortly after the acquisition, the relationship between FFE and CNC broke down. Furthermore, as also alleged in the Cross-Complaint, FFE began to demand that CNC pay for all equipment upfront (instead of after it was sold) and FFE shipped higher volumes of equipment to CNC, which exceeded the demand and resulted in losses to CNC. Intervenors allege this caused them direct harm. In addition, resolution of this action will impact CNC Systems' ability to pay its debts, including its debts to the [Intervenors].

(A. 270-72) (internal record citations omitted) In light of the additional pleadings and court order from the California Action, CNC asked the trial court in its Supplemental Motion to Stay to review the new materials provided, "revisit its findings in its [March] 8, 2023 order" on the issue of whether FFE sought records in the Maine Action for a "proper purpose," and grant the renewed motion to stay. (A. 254-57)

Following these filings, the court's subsequent September 27, 2023, Order required CNC to produce additional documents by October 17, 2023 (A. 19-21),

which it did, including additional income tax returns and 1099 forms. (A. 279) The court's order also scheduled a status conference with the parties, at which time the court would discuss the matter and again assess whether "the matter should be stayed pending adjudication of a separate action between the parties in California." (A. 19-21) Following a November 8, 2023, status conference, the trial court ordered that CNC produce one remaining outstanding financial statement "within three weeks of its receipt" and that FFE file a motion for attorney's fees within four weeks of the date of the court's order. (A. 22)

On February 12, 2024, FFE filed its Motion for Attorney Fees and for Ancillary Relief,² which sought, in part, over \$23,000 in attorney's fees for seeking records from CNC as part of the Maine Action. (A. 159) On March 4, 2024, CNC opposed FFE's motion, arguing, in part, that FFE was without a proper purpose to request records in Maine, and that CNC acted in "good faith" with a "reasonable" basis to seek a stay and not immediately produce records to FFE—again, because of the ongoing California Action. *See* 13-C M.R.S. § 1604. (A. 175) On April 30, 2024, the court granted FFE's motion and awarded FFE \$23,906. (A. 23) The trial court based this award on "the manner in which CNC Systems, Inc. resisted production of

² The "ancillary relief" sought by FFE related to FFE's request for leave to file its motion beyond the time stated in the trial court's November 8, 2023, order. (A.22, A. 159) CNC did not object to this requested relief. (A.175)

documents, filed serial motions to delay or avoid production of documents to Fair Friend (CNC's majority shareholder) and based on applicable law." (A. 23)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the trial court abused its discretion in declining to stay the Maine Action in response to CNC's repeated requests to stay, when CNC and FFE were already parties to overlapping, preexisting litigation in California.
- II. Whether the trial court abused its discretion in awarding attorney's fees to FFE in accordance with 13-C M.R.S. § 1604.
- III. Whether the trial court erred in awarding attorney's fees to FFE for reasons beyond the scope of 13-C M.R.S. § 1604 and based upon findings unsupported by the record.

SUMMARY OF ARGUMENT

This appeal requires the court to consider the scope of a shareholder's right to request inspection of certain corporate records under Maine law. *See* 13-C M.R.S. §§ 1601-04. More specifically, this appeal asks the Court to determine whether a corporation must produce certain business records to a shareholder under Title 13-C when that same corporation and shareholder are involved in preexisting, overlapping litigation in another jurisdiction and, in turn, to determine whether a corporation is

required to pay the shareholder's attorney's fees when the corporation seeks a stay pending resolution of the preexisting litigation.

In this case, CNC and FFE have been embroiled in civil litigation in California since February 2022, which litigation predates the trial court action and involves the same parties and nearly identical issues. Although FFE asserted claims and sought corporate documents from CNC as part of the California Action, FFE commenced this Maine Action seeking nearly identical corporate documents and, later, was awarded its attorney's fees for doing so.

As expressed below, in light of the still-ongoing California Action and the evolving evidence presented to the trial court related to that Action, the trial court abused its discretion in declining, repeatedly, to temporarily stay the Maine Action. Put simply, FFE has used this Maine Action and assertion of rights as "majority shareholder" to assist and further its aims in the California Action, placing CNC in a position to defend two separate lawsuits in two states, both of which involve the same parties and arise out of nearly identical disputed issues. The trial court likewise abused its discretion in awarding attorney's fees to FFE under Section 1604 for prosecution of this Maine Action. FFE's request for attorney's fees is inherently unreasonable. *See Holdsworth v. Goodall-Sanford, Inc.*, 143 Me. 56, 55 A.2d 130, 134 (Me. 1947) (inspection of corporate records "should not be granted as an aid to the prosecution or defense of other litigation"). In effect, FFE was awarded its

attorney's fees in Maine for engaging in discovery in aid of its California Complaint. This error was compounded by the fact that the trial court's factual findings in support of its award to FFE are unsupported by the record and beyond the scope of 13-C M.R.S. § 1604.

ARUGMENT

I. Standard of Review

This Court reviews a trial court's decision whether to stay a proceeding for an abuse of discretion. *See Cutler Assocs., Inc. v. Merrill Tr. Co.*, 395 A.2d 453, 456-57 (Me. 1978); *Fitch v. Whaples*, 220 A.2d 170, 172 (Me. 1966) ("It is true that a court has the right, and under certain circumstances the duty, to stay a proceeding until an action between the same parties for the same cause pending in another state is completed and that the grant or denial of such postponement lies within the sound judicial discretion of the trial court.") This Court's review for abuse of discretion "involves resolution of three questions: (1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court's weighing of the applicable facts and choices within the bounds of reasonableness." *Haskell v. Haskell*, 2017 ME 91, ¶ 12, 160 A.3d 1176 (quotation marks omitted); *see Smith v. Rideout*, 2010 ME 69, ¶ 13, 1 A.3d 441.

Additionally, this Court reviews an award of attorney’s fees for an abuse of discretion. *See Kezer v. Cent. Maine Med. Ctr.*, 2012 ME 54, ¶ 28, 40 A.3d 955; *Poussard v. Com. Credit Plan, Inc. of Lewiston*, 479 A.2d 881, 884 (Me. 1984). When such fees are awarded pursuant to statute, this Court reviews “de novo the [trial] court’s interpretation of the statute,” and reviews the trial court’s “factual findings for clear error.” *Human Rights Defense Center v. Maine Cnty. Commissioners Ass’n Self-funded Risk Mgmt. Pool*, 2023 ME 56, ¶ 21, 301 A.3d 782 (quotation marks omitted).

II. The trial court abused its discretion in declining to stay the Maine Action in response to CNC’s repeated requests to stay because CNC and FFE were already parties to preexisting, ongoing litigation in the California Action.

In the trial court, CNC requested a stay of this Maine Action on multiple occasions, first, on November 14, 2022, and, most recently, on September 7, 2023. Given the evidence before the trial court related to the California Action, the trial court abused its discretion in declining to stay this matter prior to ordering an award of attorney’s fees to FFE.

Courts “are reposed with inherent authority to control their dockets and promote judicial economy.” *Macomber v. MacQuinn-Tweedie*, 2003 ME 121, ¶ 17, 834 A.2d 131. It is “within the inherent power of the Superior Court, under its general supervisory power over its own process, to stay temporarily a proceeding before it.” *Cutler Assocs., Inc.*, 395 A.2d at 456. “The power to stay proceedings is

incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Id.*; see *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1154 (1st Cir. 1992). Whether a stay is granted “is not a matter of right but a matter of grace,” and a stay “will only be granted when the court is satisfied that justice will be thereby promoted.” *Cutler Assocs., Inc.*, 395 A.2d at 456.

A court “clearly possesses inherent power to order a stay for prudential reasons,” and the “pendency of parallel proceedings provide such a reason.” *Darling's v. Chrysler Grp., LLC*, 57 F. Supp. 3d 68, 81 (D. Me. 2014) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). Indeed, “a court has the right, and under certain circumstances the duty, to stay a proceeding until an action between the same parties for the same cause pending in another state is completed” and “the grant or denial of such postponement lies within the sound judicial discretion of the trial court.” *Fitch*, 220 A.2d at 172. A request to temporarily stay proceedings when an action between the same parties is already pending in another jurisdiction “calls upon the court to exercise a sound discretion in all the circumstances.” *Howell v. Howell*, 418 A.2d 181, 184 (Me. 1980); cf. *E. Fine Paper, Inc. v. Garriga Trading Co.*, 457 A.2d 1111, 1113 (Me. 1983) (“Pendency of another action involving the same litigants and issues does not automatically require dismissal of a subsequently commenced action.”). Thus, “[t]he pendency in competing courts of two separate

actions involving the same subject matter, parties and issues does not pose a question of jurisdiction but one of comity.” *Darling v. Am. Graphics Inst., Inc.*, No. CIV.A. CV-02-602, 2003 WL 22019549, at *2 (Me. Super. Ct. Aug. 6, 2003). In turn, “[t]he bar which comity between courts of sister states will erect against the prosecution of an action in one state in deference to the completion of a pending action in another state is not absolute.” *Fitch*, 220 A.2d at 173. As this Court explained in *Fitch*:

Multiple considerations may serve the trial court in a judicial exercise of its discretion in granting or denying a stay, such as whether the subsequent action was designed solely to harass the adverse party; the nature of the respective actions, especially with a view as to which appears to provide complete justice; also, where did the cause of action arise and which law will be applicable; will there be great and unnecessary expense and inconvenience; the availability of witnesses; the stage at which the proceedings in the other court have already progressed; the delay in obtaining trial. Each case must perforce present its own variety of circumstances which may necessitate different results.

Id. at 172–73.

Here, given the increasing evidence before the trial court regarding the ongoing and evolving nature of the California Action, the court abused its discretion in declining to stay this Maine Action. At the time of the court’s March 8, 2023, Order, the Court had determined, in part, that “the parties are not identical to the those in the California action,” “the issues in this matter are not an exact match to those in the California Action,” and that the Maine Action “is not ‘designed solely to harass the adverse party,’ nor to gain an edge in the California Action.” (A.10)

However, by the time of CNC's Supplemental Motion to Stay, and prior to the trial court's award of attorney's fees to FFE, the court was presented with additional evidence relevant to the California Action, including new pleadings and the California court's August 2023 order. (A. 254-274) As noted, the California court's order recognized that the allegations involving CNC and FFE in California arise out of events dating back to 2019.

This Court and other jurisdictions have determined that a shareholder's request to inspect corporate records amid pending litigation initiated by a shareholder against a corporation is not a proper purpose or good faith basis to permit inspection. *See, e.g., Galasso v. Cobleskill Stone Prod., Inc.*, 156 N.Y.S.3d 715 (N.Y. Sup. Ct. 2021) (concluding that "common-law right of inspection cannot be used to circumvent limitations on the scope or timing of disclosure in pending litigation" and denying request to inspect corporation's tax returns); *United Techs. Corp. v. Treppel*, 109 A.3d 553, 559 (Del. 2014) (recognizing that the denial of a request to inspect records is warranted "when there is other pending litigation against the corporation and discovery is thus the more appropriate mechanism for obtaining relevant documents"); *Berkowitz v. Legal Sea Foods, Inc.*, No. CIV. A. 15111, 1997 WL 153815, at *3 (Del. Ch. Mar. 24, 1997) (denying request to inspect corporate records in Delaware where shareholder's real "purpose in bringing [Delaware] action was to facilitate his Massachusetts litigation"); *Lipman v. Nat'l Med. Waste*,

Inc., No. CIV. A.12260, 1992 WL 97218, at *1 (Del. Ch. May 4, 1992) (recognizing that a request to inspect corporate records “is not a substitute for discovery in civil actions”). In Maine, this Court has concluded that a shareholder’s purpose in seeking to inspect corporate records must not be “vexatious or unlawful,” and that a shareholder “should not be granted a roving commission to pore at will through the books and records of the corporation without regard to the purpose for which he seeks the extraordinary remedy which the law gives to him.” *Holdsworth*, 55 A.2d at 132. Importantly, an order permitting inspection of corporate records “should not be granted as an aid to the prosecution or defense of other litigation.” *Id.*

In this case, given the law cited above and the evidence before the trial court related to the nature and scope of the ongoing California Action, it was evident that identical parties were involved in California as to the instant case in Maine, that the claims involve disputes over FFE’s acquisition of shares and majority shareholder status and disputes by CNC corporate officers against FFE (A. 273), and that, ultimately, FFE commenced this Maine Action and asserted rights as “majority shareholder” to assist and further its aims in the California case, notwithstanding the ongoing discovery as apart of the California Action. In short, FFE’s actions are not an innocuous inquiry by a majority shareholder to determine the financial status of a Maine corporation under 13-C M.R.S. § 1601, *et seq.* It presented an aggressive end-run around serious pending allegations of fraud and breach of fiduciary by a

domestic corporation and its officers against a Taiwanese conglomerate, which allegations are being resolved through the California Action. FFE, in effect, seeks to extract the production of admissions of a party-opponent, financial admissions, and discovery out-of-sync with the California case, and ultimately sought remuneration for its own attorney's fees in doing so.³

For the foregoing reasons, given the court's weighing of the *Fitch* factors, *supra*, and "the court's weighing of the applicable facts and choices," including the progression of the California Action and the corresponding accumulation of evidence presented to the trial court related to the California Action, the trial court's decision to decline, on multiple occasions, to stay the Maine Action was not "within the bounds of reasonableness." *Haskell*, 2017 ME 91, ¶ 12, 160 A.3d 1176 (quotation marks omitted); *see Darling*, 2003 WL 22019549, at *2 (granting defendant's motion to stay second matter "in the interest of judicial economy" where "similar, if not identical, matters" were being litigated between the parties); *Berkowitz*, 1997 WL 153815, at *3 (Del. Ch. Mar. 24, 1997).

III. The trial court abused its discretion in awarding attorney's fees to FFE in accordance with 13-C M.R.S. § 1604.

³ California also has shareholder rights-to-records statutes. *See* California Corporations Code § 1601(a)(1) (permitting inspection of records "at the corporation's principal office in California").

A shareholder's right to inspect certain corporate records is governed in Maine by 13-C M.R.S. § 1601 *et seq.* Section 1601 requires that a corporation keep a copy of certain records "at its principal office or its registered office." *Id.* § 1601(5). In turn, a shareholder "is entitled to inspect and copy during regular business hours at the corporation's principal office or its registered office, if the corporation keeps such records at its registered office, any of the records of the corporation described in [13-C M.R.S. § 1601(5)] if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy." 13-C M.R.S. § 1602(2). A shareholder can also request to inspect other records beyond those specified in section 1601(5), *id.* § 1602(3), but inspection of these additional records is warranted "only if" the shareholder satisfies certain statutory requirements, including, among other things, that a "shareholder's demand is made in good faith and for a proper purpose" and that the requested "records are directly connected with the shareholder's purpose," *id.* § 1602(4).

In turn, "[i]f a court orders inspection and copying of the records demanded under [1602(2) or 1602(3)-(4)], the court shall also order the corporation to pay the shareholder's expenses incurred to obtain the order **unless** the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded." 13-C M.R.S. §

1604(3) (emphasis added); *see, e.g., Robinson v. Am. Legion Dep't of Washington, Inc.*, 452 P.3d 1254, 1262 (Wash. App. 2019) (denying shareholder request for attorney's fees where corporation refused inspection of records "in good faith" and "reasonably believed that many of the records [shareholder] was requesting were not rightfully subject to his inspection")

To begin, for many of the same reasons identified above, FFE's July 18 Letter and subsequent Maine Action were not undertaken in good faith and, as the evidence overwhelmingly shows, were pursued solely as "an aid to the prosecution or defense of [the California Action]." *Holdsworth*, 55 A.2d at 132. The California Action predated the July 18 Letter by approximately five months, and FFE had served discovery requests on CNC in California before CNC had timely filed its Answer in the Maine Action. (*Supra*, p. 3-5) Many of the documents sought through the July 18 Letter were also requested by FFE in California, and produced by CNC in California through its responses to FFE's discovery requests (including the Articles of Incorporation, Bylaws, meeting minutes, and additional documents described above). (*Id.*; A. 279; *Record*, Motion to Stay, Exhibit C) Despite its receipt of these documents and its notice that CNC had objected to FFE's other related discovery requests seeking additional documents, such as tax returns, as part of the California Action, FFE simultaneously continued to prosecute this Maine Action, as if the

California Action did not exist. It was then awarded attorney's fees by the trial court for what was, in effect, additional discovery sought as part of the California Action.

Moreover, the evidence presented by CNC as part of its multiple motions to stay and its March 4, 2024, Opposition, (A. 126, 175, 254) more than supported a finding by the trial court that CNC had "refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded." 13-C M.R.S. § 1604(3). First, CNC did not "refuse[] inspection," but requested that the trial stay the action following FFE's filing of its Application. The basis for this request was, as noted above, the pendency of the California Action. Indeed, at the time July 18 Letter was sent, both CNC and FFE were represented by counsel in California, and the parties and their counsel were actively engaged in prosecuting and defending the claims asserted in that forum, as they continued to do today. From the outset of this Maine Action, CNC has asserted the ongoing California Action as a basis for why records were not initially produced in response to the July 18 Letter and for why CNC sought, and has continued to seek, a stay of this matter until resolution of the parallel California Action.

In short, the pending California Action and the discovery being conducted there provided a "reasonable" and "good faith" basis upon which CNC doubted FFE's right to inspect certain corporate records in July 2022 and for why any records were not immediately produced at that time. Thus, given the the evidentiary record,

and information about the California Action known by the trial court, the court abused its discretion in awarding fees to FFE pursuant to 13-C M.R.S. § 1604.

IV. The trial court erred in awarding attorney’s fees to FFE based on reasons outside of 13-C M.R.S. § 1604 and on findings unsupported by the record.

The court likewise abused its discretion in awarding attorney’s fees to FFE because the court’s April 30, 2024, Order made factual findings not supported by the record. As noted above, “the court shall also order the corporation to pay the shareholder's expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.” 13-C M.R.S. § 1604(3) (emphasis added). In this case, indeed, there was overwhelming evidence that CNC’s basis for not immediately providing records to FFE was due to the California Action, which CNC raised in its Answer, its Motion to Stay, and its Supplemental Motion to Stay.

However, the trial court did not make factual findings related to whether CNC, in fact, acted “in good faith” or had a “reasonable basis for doubt about the right of [FFE] to inspect the records demanded.” Rather, the court supported its award by finding that the award of attorney’s fees was “reasonable and necessary in view of the manner in which CNC Systems, Inc. resisted production of documents” and “filed serial motions to delay or avoid production of documents.” (A.23) In the

court's prior orders in this Maine Action, there had been no finding that CNC "resisted" or sought to "delay or avoid" producing documents. CNC had repeatedly sought to stay this Maine Action pending the resolution of California Action, as stated above, but complied with the production of all but one document requested by FFE. (See A. 279) As such, the trial court's findings that CNC "resisted production of documents" and "filed serial motions to delay or avoid production of documents" is not supported by the record. *See Smith*, 2010 ME 69, ¶ 13, 1 A.3d 441 (stating that a court "exceed[s] the bounds of its discretion" when it "expressly or implicitly finds facts not supported by the record"). Had such concerns or findings been noted by the trial court prior to the entry of its award of attorney's fees, CNC would have addressed such findings in its Opposition. (A. 175) Instead, the court's findings treat the award of attorney's fees, in effect, as a sanction, which is beyond the scope of the relief requested under Section 1604.

For these reasons, the trial court also abused its discretion by awarding attorney's fees to FFE.

CONCLUSION

For all the foregoing reasons, CNC respectfully requests that this Court vacate the trial court's order awarding FFE its attorney's fees and remand this Maine Action to the trial court with instructions to stay proceedings pending resolution of the ongoing California Action.

Dated at Portland, Maine this 6th day of September, 2024.

Respectfully submitted,

NORMAN, HANSON & DeTROY, LLC

Russell B. Pierce, Jr., Esq. (Bar No. 7322)
Joseph M. Mavodones, Esq. (Bar No. 6454)
Attorneys for Defendant-Appellant

Norman, Hanson & DeTroy, LLC
Two Canal Plaza, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
rpierce@nhdlaw.com
jmavodones@nhdlaw.com

CERTIFICATE OF SERVICE

I, Joseph M. Mavodones, Esq., Attorney for Defendant-Appellant CNC Systems, Inc., hereby certify that I have served an electronic copy of the Brief of Appellant with the Law Court and counsel for the Plaintiff-Appellee, and further certify that I have served two copies of the Brief of Appellant upon all counsel of record, by depositing same in the United States Mail, postage prepaid, as follows:

Daniel J. Murphy, Esq.
Bernstein Shur
100 Middle Street
Portland, ME 04104-5029
(Counsel for Plaintiff-Appellee)

Dated at Portland, Maine this 6th day of September, 2024

NORMAN, HANSON & DeTROY, LLC

Joseph M. Mavodones, Esq. (Bar No. 6454)
Attorney for Appellant CNC Systems, Inc.

Norman, Hanson & DeTroy, LLC
Two Canal Plaza, P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000