

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

Law Court Docket No. PEN-24-551

AMARYLLIS FISHER

v.

CITY OF BANGOR, et al.

ON APPEAL
FROM THE PENOBSCOT COUNTY SUPERIOR COURT (Mallonee, J.)

BRIEF OF APPELLEE AMARYLLIS FISHER

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INTRODUCTION

Plaintiff/Appellee, Amarylis Fisher, was catastrophically injured in Bangor, Maine on August 15, 2020, when she was run over by a bus while crossing the street in a marked crosswalk in the middle of downtown Bangor. Among her many injuries, Ms. Fisher's leg had to be amputated at the hip. Her medical bills are close to \$1 million. Previously a world traveler, she is now wheelchair bound. The bus which struck Plaintiff was a "Community Connector" bus, part of a regional transportation system servicing Bangor and a number of surrounding towns and cities. These municipalities (excluding the City of Bangor) are the Appellants in this case. Legal responsibility and insurance coverage for the bus are at the crux of this case.

STATEMENT OF THE CASE

A. Procedural History

Ms. Fisher filed her Complaint at the Penobscot County Superior Court on July 19, 2022. (A. 3).

Count I of the Complaint alleged that the bus driver negligently ran over Ms. Fisher and that the Defendants (including the Appellants) were vicariously liable for Ms. Fisher's injuries because the bus driver was acting as the Defendants' agent at the time of the accident. (A. 21-23).

Count II of the Complaint alleged that the Defendants were engaged in a joint venture or joint enterprise in the operation of the Community Connector bus system and that as joint venturers, they were jointly and severally liable for Ms. Fisher's injuries. (A. 24).

Count III of the Complaint alleged that the Defendants were potentially subject to the Maine Tort Claims Act ("MTCA") and that they waived any immunity that they might enjoy to the extent that they had insurance beyond the minimum. (A. 24-27). Count III also alleged that the Defendants applied for and accepted federal funds in the operation of the Community Connector bus system and that as a result of receiving those federal funds, the Defendants agreed to waive any immunities that they might otherwise be entitled to, up to a financial responsibility of not less than \$5,000,000. (A. 25-27).

The Defendants filed answers asserting various defenses, including immunity under the MTCA. By Motion dated December 28, 2023¹, the Appellants moved for Summary Judgment on all counts of the Complaint. (A. 29-46). The essence of the Motion was that the Appellants were immune from suit pursuant to the MTCA because: (1) the only possible exception to immunity is for "ownership, maintenance or use" of motor vehicles as set forth in Section 8104-A(1)(A) of the

¹ Defendant City of Bangor (not an Appellant here) filed its own Motion for Summary Judgment, asking the Court to rule that its liability was limited to \$400,000. The Trial Court denied that Motion by Order dated November 11, 2024.

MTCA; and (2) none of the Appellants “owned, maintained or used” the bus that ran over Ms. Fisher. (A. 29-46).

By Order dated July 16, 2024, the Trial Court (Mallonee, J.) denied the Motion for Summary Judgment finding that the Appellants did not meet their burden of establishing that they were entitled to immunity. (A. 10-18). On July 30, 2024, the Appellants filed a Motion for Reconsideration. (A. 47-55). That Motion was denied on November 11, 2024. (A. 19). The Appellants then filed a timely interlocutory appeal. (A. 7).

On March 7, 2025, Ms. Fisher filed a Motion to Dismiss the interlocutory appeal on the grounds that there were unresolved factual issues as to: (1) whether there was a joint venture in the operation of the Community Connector; (2) the extent of insurance available to the Appellants; and (3) whether the Appellants waived immunity up to \$5,000,000 because of Federal Regulations and Federal grant money conditions that imposed a \$5,000,000 financial responsibility requirement.

The Appellants filed a timely objection to the Motion to Dismiss, and by Order dated March 20, 2025, this Court (Connors, J.) denied the Motion stating that the arguments for dismissal are “inextricably intertwined with the merits of the appeal” but that the issue of whether the interlocutory appeal should be considered by the Law Court may be argued as part of the appeal.

B. Factual Background

Plaintiff brought suit against not only the City of Bangor (which oversaw most but not all of the day-to-day operations of the Community Connector), but also against the Appellant towns and cities. The Complaint alleges that the City of Bangor and the Appellants were engaged in a joint venture or joint enterprise in the operation of the Community Connector bus system and thus they are jointly and severally liable for Ms. Fisher's injuries.

All Defendants denied liability and asserted the defense of sovereign immunity under the Maine Tort Claims Act. 14 M.R.S. §§ 8101-8118. For its part, the City of Bangor (not an Appellant here) asserted sovereign immunity but agreed that it had waived immunity to the extent of \$400,000.00, *see supra* note 1, being the statutory limit of the exception to immunity found in 14 M.R.S. §8105. The City of Bangor has insurance coverage through participation in the Maine Municipal Association Property and Casualty Pool ("MMAPCP") and its certificate of coverage (which the Trial Court found was ambiguous) is identical to the ones issued to the Appellants.

The Appellants moved for Summary Judgment arguing that there was no joint venture or joint enterprise in the operation of the Community Connector bus system and that even if there was, the MTCA does not recognize governmental entity liability based upon a joint venture or joint enterprise. The Trial Court denied

Summary Judgment recognizing that a joint venture or joint enterprise, if proven, would be sufficient to impose joint and several liability under the MTCA. The Trial Court also determined that the Appellants had failed in their burden as moving party to submit admissible evidence that would negate the allegation of a joint venture or joint enterprise that was made in the Complaint. The Court also noted that the Plaintiff had generated a triable issue of fact on the existence of a joint venture. Finally, the Trial Court determined that there was a question as to how much insurance the Appellants had through the MMAPCP and thus denied Summary Judgment on that issue as well.

The Trial Court's decision was well-reasoned and correct and should be sustained on Appeal.

C. The Community Connector Bus System.

The Community Connector bus that ran over Ms. Fisher is part of a fixed-route regional bus system that services Bangor and surrounding communities. (A. 72 at ¶ 11). The surrounding communities are the Appellants in this case. (A. 72 at ¶ 12).

The Federal Government provides the large majority of the funds that are used to operate the Community Connector bus system. For example, in 2021, Federal Funds comprised 55.9% of the operating budget and 85.2% of the capital budget for the Community Connector. (A. 106 at ¶ 106). The Community Connector applies

for the federal funding with the approval and at the request of the City of Bangor and the Appellant towns and cities. (A. 109 at ¶ 117).

The City of Bangor pays 61% of the administrative expenses for the Community Connector and the non-Bangor towns and cities pay 39%. (A. 104 at ¶ 98). Since 2019, costs have been assigned to the various communities pursuant to a formula that is based upon the average number of hours driven. (A. 105 at ¶ 102).

The Community Connector bus system is guided by a Transit Committee, which includes representatives from the various communities served by the bus system. (A. 99 at ¶¶ 79, 82). The purpose of the Transit Committee is to foster a partnership between the Community Connector and the various municipalities that contribute to the operation of the bus system. (A. 99 at ¶ 80). The City of Bangor and the Appellants refer to themselves as “Partners” in the operation of the Community Connector bus system. (A. 100 at ¶ 86).

D. Insurance and Financial Responsibility for the Appellants.

Each of the Appellant towns and cities have their own certificate of insurance through the MMAPCP. (A. 85-92 at ¶ ¶ 53, 56, 59, 62, 65). The certificates of coverage for each Appellant contains a \$400,000 limit on some claims and a \$2,000,000 limit on others. (A. 85-92 at ¶ ¶ 53, 56, 59, 62, 65).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether this interlocutory appeal must be dismissed because it involves disputed questions of insurance coverage, not immunity.
2. Whether the Trial Court erred in denying the Appellants' Motion for Summary Judgment, and/or abused its discretion in denying the Motion for Reconsideration.

SUMMARY OF ARGUMENT

This appeal should be dismissed as interlocutory, since the case does not fall within the “immunity” exception to the final judgment rule. Rather, it involves disputed and unresolved questions of insurance coverage which do not fall within the immunity exception.

The Trial Court's decision denying Defendants' Motion for Summary Judgment on the joint venture issue was thoughtful and correct in all respects. First, the Trial Court correctly determined that Appellants as moving party had failed in their burden of establishing the absence of an issue of fact on the existence of a joint venture.

Second, the Court correctly determined that joint and several liability which arises from a joint venture would impute the conduct and negligence of its bus driver to all joint venturers.

Finally, the record establishes that each Appellant has waived immunity for an amount of at least \$400,000 and perhaps as much as \$2,000,000 by procuring coverage under the MMA Property and Casualty Pool.

ARGUMENT

I. THE CASE OF *ESTATE OF BEAN V. CITY OF BANGOR*, 2022 ME 30 REQUIRES DISMISSAL OF THIS INTERLOCUTORY APPEAL BECAUSE IT INVOLVES DISPUTED AND UNRESOLVED QUESTIONS OF INSURANCE COVERAGE AND NOT IMMUNITY.

The first issue to be addressed by this Court is whether to consider the appeal. This appeal is interlocutory because there has been no final judgment. *See Fleming v. Gardner*, 658 A.2d 1074, 1076 (Me. 1995). This Court has crafted an exception to the final judgment rule for cases where immunity, if upheld, would be dispositive. *Webb v. Haas*, 1999 ME 74, ¶ 6, 728 A.2d 1261. The Appellants have presented their appeal as one involving immunity, but it is not. Rather, it falls within the exception to the exception as set forth in *Estate of Bean v. City of Bangor*, 2022 ME 30, ¶ 4, 275 A.3d 324, 326. *See also Wilcox v. City of Portland*, 2009 ME 53, ¶ 14, 970 A.2d 295, 298.

Under the Maine Tort Claims Act, a governmental entity is deemed to have waived immunity to the extent it has acquired insurance, even in substantive areas where it would have been immune. 14 M.R.S. § 8116. In this case, each of the Appellants has a member certificate of coverage from the Maine Municipal Association Property and Casualty Pool. (A. 64-68). That certificate is deemed the

equivalent of insurance for immunity waiver purposes. *King v. Town of Monmouth*, 1997 ME 151, ¶ 7, 697 A.2d 837, 840.

The Appellants try to circumvent that situation by arguing that they do not really have insurance for this claim and thus it defaults back to immunity. However, because immunity is an affirmative defense, the burden was on the Appellants to prove the affirmative defense. *See, e.g., Estate of Kay v. Estate of Wiggins*, 2016 ME 108, ¶11, 143 A.3d 1290, 1293. The Trial Court rejected Appellants' Motion for Summary Judgment on grounds that they failed to establish their affirmative defense of immunity due to the absence of insurance. (A. 10-18). Pursuant to this Court's decision in *Bean*, the Appellants are not entitled to take an interlocutory appeal because the disputed issues of insurance coverage preclude it. *Bean*, 2022 ME 30, ¶ 4, 275 A.3d 324, 326. *See also Wilcox v. City of Portland*, 2009 ME 53, ¶ 14, 970 A.2d 295, 298.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANTS' MOTION FOR SUMMARY JUDGMENT MUST BE DENIED.

To the extent that this Court decides to consider this interlocutory appeal, it should be noted that Appellants are appealing from the denial of a Motion for Reconsideration. The standard of review in such cases is for abuse of discretion. *Moosehead Mountain Resort, Inc. v. Carmen Rebozo Foundation, Inc.*, 2025 ME 39 ¶ 10. The standard of review for a denial of a motion for summary judgment on

a defense of immunity is for errors of law, viewing the evidence in the light more favorable to the non-moving party. *McDonald v. City of Portland*, 2020 ME 119, ¶ 11, 239 A.3d 662, 668. Absent a dispute of material fact, immunity is a question of law that the Court reviews de novo. *Id.* Under either the de novo or abuse of discretion standard, the Trial Court’s decision denying summary judgment should not be disturbed because there are genuine issues of material fact surrounding whether the Appellants were involved in a joint venture in the operation of the Community Connector bus service.²

Contrary to what Appellants have suggested, the Community Connector bus system is not a division of the City of Bangor in which they play no part. Although Appellants tried to take that position in their Motion for Summary Judgment filings, the Trial Court rejected it and instead held that there are genuine issues of material fact relating to whether the Community Connector bus system was a joint venture in which all of the Defendants were joint venturers. (A. 13-15). If this Court decides to reach the merits of this interlocutory appeal, the Trial Court’s carefully considered decisions denying Summary Judgment should be upheld.

² Count II of the Complaint asserts that all of the Defendants were engaged in a joint enterprise or joint venture. (A. 24). The basic difference between a joint venture and a joint enterprise is that a business relationship is necessary for a joint venture but not for a joint enterprise. 46 Am. Jur. 2d Joint Ventures § 5 (1994). The law considers each member of a joint enterprise to be the agent of the other and acts within the scope of the enterprise are to be charged vicariously against the rest. *Id.* Similarly, joint venturers are also vicariously liable for negligent acts of their fellow joint venturers or employees of the joint venture. *Id.* §42. For the sake of simplicity, the Appellee will refer to the claim as a “joint venture” as that is what the Trial Court termed it. (A. 13).

A. The Trial Court Correctly Concluded that the Appellants Failed to Meet Their Burden of Showing that Material Facts are Not in Dispute as to Whether the Appellants were Engaged in a Joint Venture Regarding the Community Connector Bus System.

Plaintiff/Appellee filed a Complaint in accordance with notice pleading asserting that the City of Bangor and five neighboring municipalities engaged in a joint venture involving the Community Connector bus system, and that a Community Connector bus—part of the system—had negligently caused grievous injuries to the Plaintiff. The five municipalities filed a motion for summary judgment and supported it with sworn assertions as to some of the contents of the documents governing the Community Connector bus system. They did not, however, submit the Community Connector bus documents themselves. Plaintiff filed a response to Defendants’ Statement of Material Facts (A. 69-94), as well as detailed Statement of Additional Material Facts (A. 95-110). The Trial Court ruled correctly that the municipalities failed to support their claim of the absence of a material issue of fact regarding the existence of a joint venture with admissible evidence and thus denied the motion.

In their appeal to this Court, the Appellants argue that there is insufficient evidence on which to base a finding of a joint venture and that as such, the Trial Court erred in denying Summary Judgment. (Appellants’ Brief at 25-27). The Appellants’ argument is misplaced, however, because Ms. Fisher did not have the burden to establish the joint enterprise at the Summary Judgment stage. Rather,

given that it was the Defendants'/Appellants' motion for summary judgment and immunity was their defense, it was their burden to establish the absence of a joint venture. *See Bean*, 2022 ME 30, ¶ 6, 275 A.3d 324, 326.

As determined by the Trial Court, the Appellants failed to contest properly the joint venture issue because: (1) the Affidavit of Laurie Lindscott (on which much of their argument is based), failed to attach copies of the various documents referred to in her affidavit; and (2) much of Ms. Lindscott's affidavit was based upon "conclusory assertions of fact or law, apparently drawn from Lindscott's own interpretation of the unsubmitted contracts." (A. 13-15).

The Trial Court correctly determined that because of these deficiencies, it could not consider "critical assertions in Defendants' S.M.F. by which they seek to negate the existence of a joint venture." (A. 14). The Trial Court went on to conclude that "[a]bsent those assertions, Defendants' S.M.F. does not meet their burden of showing that material facts are not in dispute." (A. 14)³. It is noteworthy that the Trial Court then went on to rule that the Plaintiff had indeed generated a triable issue of fact on the existence of a joint venture. (A. 18) The Trial Court issued

³Even if Ms. Lindscott's affidavit was not defective, however, there is ample evidence in the record to create a genuine issue of fact as to whether there was a joint venture in the operation of the Community Connector bus system. As such, the Superior Court's denial of the Appellants' Motion for Summary Judgment should be upheld.

a sound ruling denying the Appellants' Motion for Summary Judgment and it should not be disturbed.

To the extent that this Court desires to examine more closely the joint venture/joint enterprise issue, it should note that governmental entities have been engaging in joint enterprises for a long time. The Annotation at 123 A.L.R. 997 collects cases, some of them going back to the 19th century. The basic rationale is that municipalities have the right to unite to promote a particular enterprise of common interest. *Wiley N. Jackson Co. v. City of Norfolk*, 197 Va. 62, 67, 87 S.E. 2d 781, 784 (1955). Put another way, when a problem is common among several municipalities, a common approach to a solution is fully justified. *City of Oakland v. Williams*, 15 Cal. 2d, 542, 550, 103 P. 2d 168, 173 (1940).

The situation in the present case parallels *Texas Department of Transportation v. Able*, 35 S.W. 3d. 608 (TX 2000) which involved a joint enterprise between the Texas Department of Transportation and the METRO in the operation of a high occupancy vehicle (HOV) lane on the Texas highway. In *Able*, the Plaintiff was severely injured and his wife killed when their vehicle, traveling in an HOV lane, was struck head on by a wrong way driver in that lane. Plaintiffs sued the Department of Transportation, the City of Houston, the "Metro," and the County (which was later dismissed).

After a jury trial, the jury found:

- (a) The wrong way driver and the Metro each 50% negligent;
- (b) Texas DOT not negligent; and
- (c) That the Metro and Texas DOT had been engaged in a joint enterprise.

On the basis of these findings, the trial court entered judgment against Texas DOT and it appealed. It advanced two arguments pertinent to this case:

- (1) That the Texas tort claim act did not waive immunity for joint enterprise liability; and
- (2) There was insufficient evidence of a joint enterprise.

The Texas Supreme Court rejected both those arguments, and its reasoning provides persuasive authority to sustain the denial of summary judgment in this case. First, the *Able* Court considered and rejected the DOT's claim that it was immune under the Texas Tort Claims Act (an act which is similar to Maine's). Its role in the joint enterprise (which made it responsible under settled and traditional tort law, for the negligence of the other member of the enterprise), made it liable because the Texas DOT would have been liable if it were not a governmental entity, exactly within the waiver of immunity under the Texas Act.

In this case, if the City of Bangor and the Appellants were engaged in a joint enterprise or joint venture regarding the Community Connector, then they are deemed negligent to the same extent as the City of Bangor, and that negligence, which arose out of the ownership, maintenance or use of a motor vehicle, is squarely

within the exception to immunity under the Maine Tort Claims Act. *See* 14 M.R.S. § 8104-A(1)(A).

The *Able* case also addresses the other issue the Appellants here raise, namely whether there was evidence of a joint enterprise sufficient to hold the DOT liable based on the jury's finding. The *Able* Court set forth a four-part test to prove a joint enterprise: (1) an express or implied agreement among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest; and (4) an equal right to a voice in the direction of the enterprise. This test is adopted from the *Restatement (Second) of Torts* § 491 (Am. L. Inst. 1965) and is very similar to the joint enterprise test adopted by this Court in *Trumpfeller v. Crandall*, 130 Me. 279, 155 A. 646 (1931). The *Trumpfeller* Court stated that:

In order to have a joint enterprise there must be a community of interest in the object and purposes of the undertaking and an equal right to direct and govern the movements and conduct of each other in respect thereto. Each must have some voice and right to be heard in its control or management.

Id., at 287, 155 A. at 650 (emphasis added).

The *Able* and *Trumpfeller* Courts set forth similar elements for joint enterprise liability. The only apparent difference is that *Able* requires a “community of pecuniary interest” where *Trumpfeller* has no such requirement. Analyzing this case

using the *Able* or *Trumpfeller* descriptions of joint enterprise liability demonstrates that there is ample record evidence to support a finding of a joint enterprise.

The first element set forth in *Able* (and one that is reasonably inferred in *Trumpfeller*) is for there to be an express or implied agreement among the members of the group. That element is obviously satisfied in this case because Bangor and the Appellants have agreed to have a bus system serving Bangor and the various municipalities.

The second element set forth in *Able* is a requirement of a “common purpose to be carried out by the group.” *Able*, 35 S.W.3d at 614-615. The *Trumpfeller* Court phrases it as requiring a “community of interest in the object and purposes of the undertaking.” *Trumpfeller*, 137 Me. at 287, 155 A. at 650. The essence of this second element under either articulation is whether the members are working together for a common interest or purpose. There is ample evidence in the record to support such a finding as it is clear that Bangor and the Appellants have been working together to operate the regional bus service AND leverage as much federal money as possible. A community of interest exists when the parties have contributed property, finances, effort, skill or knowledge to the enterprise. *Hiatt v. Western Plastics Inc.*, 2104 Ill. App. 2d 140178, 36 N.E.3d 852, 868 (2014). There is clearly enough evidence to support a finding of Bangor and the Appellants working together

in furtherance of a common interest or purpose in running the Community Connector.

The third element set forth in *Able* is a “community of pecuniary interest.” While some of the older cases interpreted this to mean that the joint enterprise members had a “profit” motive, courts have moved away from that approach and have held that a profit motive is not necessary. Maine is one of those jurisdictions as this Court has expressly stated that it has never required a profit motive for a joint enterprise. *See Morey v. Stratton*, 2000 ME 147, ¶ 7, 756 A. 2d 496, 498.

The fourth and final (and most contested) element is the right of control. *Able* and the *Restatement* describe this element as “an equal right to a voice in the direction of the enterprise.” *Able*, 35 S.W.3d at 613. The *Trumpfeller* Court describes the control element as: “an equal right to direct and govern the movements and conduct of each other in respect thereto. Each must have some voice and a right to be heard in [the enterprise’s] control or management.” *Trumpfeller*, 130 Me. at 287, 155 A. at 650 (emphasis added). While the words may be a little different, the *Able* and *Trumpfeller* Courts interpreted the control requirement similarly.

In *Able*, the Texas DOT claimed that it was not involved in a joint enterprise with the METRO because they (the DOT) did not have control over the HOV lane. They argued that the METRO had control over the HOV lane. The Texas Supreme Court disagreed and held that there was sufficient evidence for the jury to conclude

that while the Texas DOT may not have had full control, (or even majority control) they had a “voice and a right to be heard” in the operation of the HOV lane and that as such, there was adequate evidence to support a jury finding that they were involved in a joint enterprise. *Able*, 35 S.W.3d at 616.

The *Able* Court’s analysis of the “control” element is consistent with this Court’s statement in *Trumpfeller*, that each of the joint enterprise members “must have some voice and right to be heard.” *Trumpfeller*, 130 Me. at 287, 155 A. 650.

Plaintiff/Appellee has discovered and presented with her opposition to the Motion for Summary Judgment, a plethora of public documents showing the significant and ongoing role the Appellants play in the Community Connector bus system. (See A. 69-110) (Plaintiffs’ Response to Defendants’ Statement of Material Facts and Plaintiff’s Statement of Additional Material Facts). Viewed in the light most favorable to the Plaintiff/Appellee, there are genuine issues of material fact that would permit a jury to find that the Appellants had and exercised the requisite amount of control to establish the control element of a joint enterprise. They include:

1. Appellant Hampden’s authority to control whether or not to have Saturday service; (A. 103, at ¶ 96);
2. The Bangor Area Comprehensive Transportation System (“BACTS”) Transit Committee, comprising of representatives from all of the Appellant towns and cities, and the role it plays to “foster the

- partnership” between Bangor and the Appellant communities (A. 99 at ¶ 80);
3. The numerous references in many documents describing the Appellants as “partners;” (A. 100-01 at ¶ 86);
 4. The fact that, prior to his retirement, the BACTS representative did play a large role in the day to day operations of the Community Connector, and while, after his departure, City of Bangor employees were forced to assume a larger administrative role, there was no agreement or documentation to justify that changed role, and indeed, both the City of Bangor and the Appellants have expressed a desire to reset more back to the way it was previously, and to increase partner town involvement (A. 101 at ¶ 89);
 5. Bus stops and in particular bus stop structures require the approval of the council of the town/city where they are to be located. (A. 108 at ¶ 114).
In fact, switching from a “flag stop” to a fixed stop service has been a major undertaking, with much discussion among the partner towns and cities, to the point where BACTS produced a whole pamphlet outlining the considerations and procedures, in particular the steps which must be taken by each partner town and city. (A. 109-110 at ¶ 120);

6. As a Metropolitan Planning Organization (“MPO”), under federal law, BACTS effectively controls and communicates with both state and federal government officials regarding the plans, programs, policies and funding for Community Connector (A. 96, 99, 100 at ¶¶ 69, 80, 81, 83);
7. BACTS includes representatives from all of the Appellant municipalities (A. 96, 99 at ¶¶ 71, 79); and
8. The fact that the Appellant towns and cities are acknowledged as having a “voice.” (A. 102 at ¶ 90).

The Trial Court, viewing these facts in the light most favorable to the Plaintiff as the non-moving party, concluded that the Plaintiff, independent of Defendants’ failure, had generated a triable issue of fact as to a joint venture. (A. 18)

Given the above, even if this Court considers the defective affidavit of Ms. Lindscott, the facts cited above are sufficient to generate a jury question as to whether the Appellants were engaged in a joint enterprise and as a result, the Trial Court’s denial of summary judgment should be affirmed.

B. Because of the Vicarious Liability Which Attaches to Joint Ventures, the “Ownership, Maintenance and Use” of the Bus, Including its Negligent Use, is Imputed to All of the Joint Venturers, Jointly and Severally.

The general rule for governmental liability in Maine is that governmental entities are immune from tort liability unless one or more exceptions to immunity

apply. *Klein v. Univ. of Me. System*, 2022 ME 17, ¶ 8, 271 A.3d 777, 780-781.

Section 8104-A of the MTCA sets forth various exceptions to immunity. Section 8104-A(1), which relates to accidents involving motor vehicles, applies to this case. Section 8104-A(1) reads, in pertinent part:

§8104-A. Exceptions to immunity

Except as specified in section 8104-B, a governmental entity is liable for property damage, bodily injury or death in the following instances.

1. Ownership, maintenance or use of vehicles, machinery and equipment.

A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any:

A. Motor vehicle, as defined in Title 29-A, section 101, subsection 42;

...

14 M.R.S. 8104-A.

The Community Connector bus that struck Ms. Fisher is a motor vehicle.

29-A §101(42). The Appellants argue that because the bus was owned and maintained by the City of Bangor and because it was being used, at the time of the accident, as an intracity⁴ bus (as opposed to running on one of the various other routes that travel to neighboring towns and cities), there can be no liability for them. (Appellants' Brief at 21). The Appellants' argument misses the mark. If there is a joint venture in the Community Connector bus system, then "use"-

⁴ The Superior Court took Judicial Notice of the fact that Community Connector buses that provide transportation along the City of Bangor's intracity bus routes are outwardly indistinguishable from the buses that provide transportation along the other Community Connector routes that service the Municipal Appellants. (A. 8, 14 n.2). Furthermore, no evidence was submitted to show that a Community Connector bus operating on a route totally within Bangor was functionally or operationally any different from a bus running through one or more of the other municipalities.

including negligent use- of a Community Connector bus is chargeable to all joint venturers. *See Able*, 35 S.W. 3d. 608 at 613 (Texas DOT held liable as a joint venturer even though the jury found it had not been negligent in causing fatal HOV lane crash). The *Able* court's decision is consistent with Maine law imposing vicarious liability in cases involving joint ventures/joint enterprises. *Trumpfeller v. Crandall*, 130 Me. at 287, 155 A at 650.

If, for example, two parties entered into a joint venture to construct a commercial building, and one joint venturer was the contractor and the other handled the property acquisition, permitting, financing and rentals, party number two would be jointly and severally liable for negligent injury to a third-party caused by party number one even if party number two had never picked up a hammer or been on site. The law contemplates that joint venturers may play different roles, but their relationship still gives rise to vicarious or imputed liability for the acts and omissions of the other. It is not a requirement to establish liability of a joint venturer to show that they must literally have their hands on the wheel.

The Maine Tort Claims Act did not alter the common law rules of agency, vicarious liability or joint venture. This Court has considered MTCA cases for decades in which governmental entities have been alleged to be liable for the negligent acts of their agents or employees. *See, e.g., Convery v. Wells*, 2022 ME 35, ¶ 13, 276 A.3d 504, 509 (town not entitled to summary judgment in auto accident

case involving police officers who allegedly drove negligently); *Jorgensen v. DOT*, 2009 ME 42, 969 A.2d 912 (summary judgment properly denied for DOT when alleged negligence of a foreman caused injuries to motorist); *Lynch v. Town of Kittery*, 667 A.2d 524, 525 (Me. 1996) (school not entitled to summary judgment in case involving school employee who allegedly negligently failed to lock school doors in accordance with school operating procedures); *Noel v. Ogunquit*, 555 A.2d 1054, 1055 (Me. 1989) (town not entitled to summary judgment in case involving alleged negligent acts of lifeguards/employees).

In order to form a joint venture, it is enough to show that the parties have contributed property, finances, effort, skill or knowledge to the enterprise. *Hiatt v. Western Plastics Inc.*, 2014, IL App (2d) 140178 ¶ 73, 36 N.E.3d 852, 865. The Trial Court correctly determined that there were genuine issues of material fact as to whether the Appellants were involved in a joint venture. (A. 13-15). If they were, then the basic principles of imputed liability of joint venturers would be sufficient basis to conclude that the various joint venturers “owned, maintained or used” the bus that struck Ms. Fisher. The Trial Court’s analysis of this issue is sound and should not be disturbed on appeal.

C. Given the Evidence of a Joint Venture, Each Appellant has Waived Immunity Up to Either \$400,000 or \$2,000,000 Depending Upon How the Maine Municipal Association Documents are Ultimately Interpreted.

Section 8105 of the MTCA states the general rule that where liability is allowed, the liability of a governmental entity and its employees can total no more than \$400,000. 14 M.R.S. §8105. Section 8116 of the MTCA provides that if a governmental entity has insurance, the entity is deemed to have waived immunity to the extent that it has insurance. 14 M.R.S. §8116. In this case, each Appellant has its own certificate of “insurance” through the Maine Municipal Association (“MMA”) (A. 64-68). That certificate is deemed the equivalent of insurance for immunity waiver purposes. *King v. Town of Monmouth*, 1997 ME 151, ¶ 7, 697 A.2d 837, 840.

As noted by the Trial Court, each Appellant submitted with their Summary Judgment documents a copy of the insurance certificate “summary” that was issued to it by MMA. (A. 6-7). The Appellants did not submit copies of the actual policies. (A. 8).

The Trial Court held that the certificate summaries were ambiguous as to how much coverage was afforded to each Appellant. (A. 7-8). One reading would result in only \$400,000 in coverage for each Appellant but another reading could result in \$2,000,000 in coverage for each Appellant. (A. 8). The Trial Court held that it could not resolve that ambiguity at the summary judgment stage, especially given the fact

that the Appellants did not include a copy of the insurance policy documents into the record. Moreover, even if each Appellant's coverage was capped at \$400,000, and they were jointly and severally liable as joint venturers, recovery from each Appellant could be had without running afoul of the \$400,000 immunity limit. (A. 8). The Trial Court's decision was sound and should not be disturbed on an interlocutory appeal.

CONCLUSION

For the foregoing reasons, the Appellants' appeal should be dismissed or denied on the merits.

Respectfully submitted, dated at Bangor, Maine this 19th day of May, 2025.

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CERTIFICATE OF SERVICE

I, Charles E. Gilbert III, Esq. hereby certify that on this 19th day of May, 2025,
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