STATE OF MAINE
SUPEREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-25-193

JOHN VENEZIANO,

Appellee,

v.

BERNARD SAULNIER,

Appellant.

ON APPEAL FROM THE BUSINESS AND CONSUMER COURT
(CUMBERLAND)

REPLY BRIEF OF APPELLANT BERNARD SAULNIER

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Summary of Case

This is a matter in which the Business and Consumer Docket ("Business Court"), under the Enforcement of Money Judgments Act, *imputed* $350,000.00 in annual income to the Appellant (A. 12) and then ordered Appellant to make installment payments towards a judgment based upon that imputed amount of income.

Statement Of Issue On Appeal

This appeal concerns a single legal question: whether the Business Court had the statutory power under the Enforcement of Money Judgments Act, 14 M.R.S. §§ 3120-3138 (2025), to *impute* annual income of $350,000.00 to the Appellant based on what the Business Court said he "could or should be earning". (A. 12)

The Business Court, at page 3 of its Order (A. 12), expressly states "Saulnier could and should be earning a minimum of $350,000.00 per year for his work as a developer." (A. 12) The Business Court then entered an installment Order compelling payments based on that amount. (A. 12-13) Appellee's argument, at page 18 of his brief, that the Business Court did not *impute* income is fallacy. Nowhere in the Business Court's Order are there findings of fact as to *what amounts* of income were actually earned and/or owed to Appellant, or allegedly concealed and/or transferred by him, or to whom or when allegedly transferred. The Business Court skipped all of that analysis and simply *imputed*, "Saulnier could and

should be earning a minimum of $350,000.00 per year…" and based its installment Order thereon.

Appellee spends the majority of his brief avoiding the legal issue on appeal, whether or not the Business Court had the statutory power to impute income, and focuses instead on alleged conduct of Appellant. This appeal is not about what Appellant did or failed to do. The sole issue on this appeal is whether the Business Court, regardless of Appellant's conduct, had the statutory power to impute income under 14 M.R.S. §§ 3120-3138 (2025). As is answered in Appellant's opening brief, and again below, the Business Court did not have that power.

Standard Of Review

Appellant and Appellee agree that this Court's review is *de novo*. (Citations omitted).

Argument

A. The Business Court Did Not Have the Power Under 14 M.R.S. § 3120 – 3128 (2025) to Impute Income to the Appellant.

14 M.R.S. § 3126-A(3) provides:

> **Maximum amount of earnings subject to installment payment order.** In the case of a judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:
>
> A. Twenty-five percent of the sum of the judgment debtor's disposable earnings and exempt income for that week;
>
> B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly

wage prescribed by 29 United States Code, Section 206(a)(1) or the state minimum hourly wage prescribed by Title 26, section 664, whichever is higher at the time the earnings are payable; or

C. The total amount of disposable earnings.

In addition, 14 M.R.S. § 3126-A(6) provides:

Certain orders not subject to limitations. The limitations set forth in. subsection 3 do not apply to:

A. An order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure if the administrative procedure is established by state law, affords substantial due process and is subject to judicial review;

B. An order of any court of the United States having jurisdiction over cases under 11 United States Code, chapter 13; or

C. A debt due for state of federal tax.

Further, 14 M.R.S. § 3126-A(7) provides:

Maximum earnings subject to garnishment. The maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment to enforce an order for the support of any person may not exceed:

A. When the individual is supporting a spouse or dependent child, other than a spouse or child with respect to whose support such order is used, 50% of that individual's disposable earnings for that week;

B. When the individual is not supporting such a spouse or dependent child described in paragraph A, 60% of that individual's disposable earnings for that week; and

C. If the support order being enforced is made with respect to a period that is prior to the 12-week period that ends with the beginning of that

> workweek, the percentage of disposable earnings subject to the garnishment is 55% under paragraph A and 65% under paragraph B.

Nowhere in 14 M.R.S. § 3126-A does the statute authorize an installment payment order compelling payments above the maximum established limits, unless the order is one for the support of another person (*i.e.*: child support or spousal support) or one issued by a Bankruptcy Court or for taxes[1]. Sections 3126-A (3), (6) and (7) are clear and express as to: *(1) the maximum amount of earnings subject to an installment payment order; and (2) what orders are not subject to the limitations. (emphasis supplied)*

Pursuant to 14 M.R.S. § 3126-A(4)(F), in determining the amount of an installment order a court may take into consideration "any other factors the court considers material and relevant." While broad for what a court may consider, nothing in Section 3126-A(4)(F) empowers a court to exceed the maximum limits set by 14 M.R.S. § 3126-A (3) or (7), unless the order is one for the support of another person, or one arising in Bankruptcy or for taxes. *See* § 3126-A (6).

In construing statutes, courts give words their plain ordinary meaning. *Adoption by Joseph R.*, 2024 ME 47, ¶ 7, 319 A. 3rd 1042; *Merrill v. Sugarloaf Mountain Corp.,* 2000 ME 16, ¶ 11, 745 A. 2d 378 ("The most fundamental rule of statutory construction in the plain meaning rule"). Additionally in construing statutes, courts give effect to all provisions and do not render meaningless or

[1] 14 M.R.S. § 3128-A (Order to seek employment) provides additional remedies for the enforcement of child support orders.

superfluous any provision. *American Protection Ins. Co. v. Acadia Ins. Co.* 2003 ME 6, ¶ 12, 814 A. 2d 989; see also *Lopez-Soto v. Hawayek,* 175 F.3d 170, 173 (1st Cir. 1999).

Literally, nothing in 14 M.R.S. §§ 3120-3138 empowers a court to impute income unless the Order is one for support or arising in Bankruptcy or for taxes. Had the Legislature granted authority for courts to generally impute income, the Legislature would have expressly provided for it. To interpret section 3126-A(4)(F) as authorizing the general imputing of income and exceeding of the limits set by sections 3126-A(3) and (7), renders meaningless the express limits set by sections 3126-A(3) and (7) and renders superfluous the express exceptions set forth in section 3126-A(6).[2]

B. The Business Court Did Not Make Findings of Fraud

The Business Court did not make findings of fraud. The Business Court's only finding was that the Appellant's actual total earnings were $40,000.00.[3] (A. 11) Beyond that, the totality of the Business Court's analysis was, "Saulnier could and should be earning a minimum of $350,000.00 per year…" (A. 12). There was no finding of fact in the Order, or even evidence in the hearing record, that Appellant had actually earned and/or was actually owed or due $350,000.00 from any source.

[2] It also renders meaningless and superfluous section 3128-A. *See* page 11-12, *infra*.

[3] In contrast to Appellee's brief, Appellant did not testify that he was earning $350,000.00 a year. (A. 11; Tr. 58: 13-16). Appellant testified that he was working approximately 10 hours per week and for some weeks not at all. (A. 11; D.H. Tr. 57:6-15; Court Order, Page 2). Appellee's assertion that Appellant testified that he was earning $350,000.00 per year is not anywhere in the hearing record.

Moreover, there was no finding of fact nor evidence in the record that Appellant had transferred, or concealed, through "subterfuge" or otherwise, any specified amounts, let alone amounts totaling $350,000.000.

Appellee argues that in circumstances of "fraud," a court has equitable powers, citing the District Court's general jurisdictional statute -- 4 M.R.S. §152(5)(J). This matter arose under 14 M.R.S. §§ 3120-3138. The Enforcement of Money Judgments Act is a legal procedure created by the Legislature. Under the Act, the Business Court sat and acted as a court of law, not a court of equity. Equitable remedies are of last resort and are available only if no adequate legal remedy exists. *Core Finance Team Affiliates, LLC v. Maine Med. Ctr.*, 2024 ME 78, ¶ 28, 327 A.3d 79. Courts are not empowered to nullify statutes enacted by the Legislature using equitable powers unless the statute is expressly deemed unconstitutional. *See Opinion of the Justices,* 623 A.2d 1258, 1262 (Me. 1992) (stating that legislative power is "absolute and all-embracing except as expressly or by necessary implication restricted by the Constitution").

Further, the Business Court did not make a finding of fraud. Although the Business Court said that there was "subterfuge," the Business Court did not make factual findings of "fraud." The elements of fraud are (1) a false representation; (2) of a material fact; (3) knowingly or recklessly made; (4) for the purpose of inducing another to act upon it; and (5) the other party justifiably relies and acts upon it to his

or her damage. *Diversified Foods, Inc. v. First Nat'l Bank of Boston*, 605 A.2d 609, 615 (Me. 1992); *Me. Eye Care Assocs., P.A. v. Gorman*, 2008 ME 36, ¶ 12, 942 A.2d 707 (internal citations omitted). Nowhere does the Business Court's Order make these findings.

C. The Business Court Made a Mathematical Error

The Business Court also erred mathematically. On page 3 of the Order (A. 12), the Business Court states:

> "Saulnier could and should be earning a minimum of $350,000 per year for his work as a developer. Assuming that 60% of that amount would be withheld for state and federal taxes, FICA, Social Security, and any other amounts required by law to be withheld, Saulnier should expect to have $210,000 per year in disposable earnings."

Assuming the Business Court's 60% withholding amount is correct, Appellant would have 40% of $350,000 in disposable earning, or $140,000, not $210,000, to which the amount of 25% or $35,000.00 annually or $673.07 per week would be subject to an installment order, not the $210,000.00 that the Business Court decreed. Should this Court not entirely vacate the Business Court's Order, then this mathematical correction is necessary.

D. The Business Court Did Not Have the Power to Impute Income.

The Enforcement of Money Judgments Act is clear and unambiguous as to what can be ordered. Generally imputing income is not authorized in the Act. Although the Business Court weighs any relevant "factors" to arrive at an order, the order cannot exceed the limits set by the Act except in cases of support, Bankruptcy

and taxes. To the extent "subterfuge," or fraudulent transfers exist, the Act provides specific procedures and remedies. *See*, 14 M.R.S § 3127-A (Order to 3rd Party to hold and answer); *See*, 14 M.R.S § 3127-B (Order to employer or payor of earnings). In the situation where a judgment debtor is under employed, or unemployed, the Act only authorizes a court to order employment when child support is owed.[4] 14 M.R.S § 3128-A. To infer or imply that section 3126-A(4)(F), or powers of "equity," permit courts to generally impute income under the Act, renders meaningless and superfluous sections 3126-A (3), (6) and (7), and section 3128-A, of the Act.

CONCLUSION

The Enforcement of Money Judgments Act does not authorize general imputation of income. The Business Court committed error by imputing $350,000.00 in annual income to the Appellant. Alternatively, the Business Court miscalculated the amount of disposable earnings which must be corrected.

[4]Realistically, imputing income is tantamount to ordering employment. The Legislature could have, but chose not to, include such a remedy except in cases where child support is owed. 14 M.R.S. § 3128-A.

DATED in Portland, Maine on the ____th day of November 2025,

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on November ___ 2025 I served true copies of the above Appellant's Reply Brief by providing electronic copies and paper copies to Appellee's Counsel:

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