

State of New Hampshire
Supreme Court

NO. 2011-0903

2012 TERM
JULY SESSION

Lancelot Court Condominium Association

v.

Judith Tompson

RULE 7 APPEAL OF FINAL DECISION OF
SALEM DISTRICT COURT

BRIEF OF PLAINTIFF/APPELLEE,
LANCELOT COURT CONDOMINIUM ASSOCIATION

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STATEMENT OF FACTS AND STATEMENT OF THE CASE

This is a small claims action brought by the Lancelot Court Condominium Association (hereinafter Lancelot) for non-payment of condominium fees and assessments against Judith Tompson, an owner of one of the units in the condo complex. Ms. Tompson's response throughout the litigation has been mostly to attack the messengers of debt. The 5-year record, including her several dozen filings, is mostly comprised of Ms. Tompson's attacks on Lancelot, its fiscal agent, and its attorney.

2007

In 2007 Ms. Tompson had a dispute with one of her neighbors, and requested that Lancelot solve it. Lancelot's attorney, William Burdin, wrote a letter to Ms. Tompson saying that the board of directors does not get involved in such relationships, and recommended contacting the police or suing the neighbor. LETTER FROM BURDIN TO TOMPSON (May 29, 2007), *TmpsnAppx*¹ at 26, 39.

2008

In 2008 Lancelot made a supplemental assessment on owners, the nature of which is not in the record. In June Ms. Tompson wrote a letter to Attorney Burdin saying she could not pay due to "financial hardship." LETTER FROM TOMPSON TO BURDIN (June 28, 2008), *TmpsnAppx* at 3, 4. Apparently she did not pay either the supplemental assessment or her regular assessment, and in July Attorney Burdin wrote her a letter saying that she was in arrears \$626.

¹Ms. Tompson filed an appendix with her brief, which is cited herein as: "*TmpsnAppx*." It is not paginated. For reference herein, pagination of Ms. Tompson's appendix has been assumed to begin with the cover as page 1, the table of contents as page 2, the first item as page 3, etc.

Record documents not contained in Ms. Tompson's appendix are included in an appendix to Lancelot's brief, filed herewith, which is cited herein as: "*LncltAppx*."

The letter also notified Ms. Tompson that if she did not pay everything within 30 days, she would lose parking privileges. The letter further warned the law allowed Lancelot to suspend other condominium privileges, including electric, hot water, heat, snow removal, and access to the dumpster. LETTER FROM BURDIN TO TOMPSON (July 31, 2008), *TmpsnAppx* at 5.

In August 2008 Ms. Tompson wrote a letter to the Massachusetts Attorney General complaining that Lancelot's fiscal agent, Fischer Financial of Brookline Massachusetts, was negligent in how it handled her checks, and that despite its record-keeping, she was not in arrears. LETTER FROM TOMPSON TO ATTORNEY GENERAL (Aug. 1, 2008), *TmpsnAppx* at 6-7. The Attorney General referred her to the appropriate agency. LETTER FROM ATTORNEY GENERAL TO TOMPSON (Aug. 15, 2008), *TmpsnAppx* at 8.

In October 2008 Attorney Burdin wrote a letter to Ms. Tompson notifying her of Lancelot's intent to file a lien on her condo unit if her arrears (by then totaling \$778) were not paid by November 15. LETTER FROM BURDIN TO TOMPSON (Oct. 29, 2008), *TmpsnAppx* at 9. Ms. Tompson responded by letter saying she was not in arrears. She also complained about the qualifications of Lancelot's fiscal agent and the amount of money he is annually paid by Lancelot, about the service provided by Lancelot's property manager employee, and about Lancelot's service generally. She requested an accounting, a copy of the contract between Lancelot and the fiscal agent, a job description of Lancelot's employees, and the names and addresses of its board of trustees. She also threatened suit if a lien is filed. LETTER FROM TOMPSON TO BURDIN (Nov. 10, 2008), *TmpsnAppx* at 10-11.

2009

In January 2009 Ms. Tompson applied for fuel assistance, and it appears that at Ms. Tompson's request, the aid was applied to her Lancelot account by the property manager. RENT VOUCHER AND LANDLORD/TENANT AGREEMENT (Jan. 30, 2009), *TmpsnAppx* at 16; LETTER FROM ROCKINGHAM COMMUNITY ACTION TO TOMPSON (Feb. 12, 2009), *Lnclt.Appx* at 1; LETTER FROM TOMPSON TO FISHER FINANCIAL (Feb. 5, 2009), *TmpsnAppx* at 17.

In February, Lancelot provided the accounting Ms. Tompson had requested. It also notified her that a lien had been recorded in the amount of \$1,300, comprising condominium fees, assessments, a special assessment, late fees, plus a charge for attorney and recording fees. NOTICE OF LIEN FOR CONDOMINIUM ASSESSMENTS PURSUANT TO RSA 356-B:46 (Feb. 4, 2009), *TmpsnAppx* at 12.

In May, Lancelot filed a small claims complaint in the amount of \$1,747 for "unpaid condominium fees and late charges," which commenced this case. SMALL CLAIMS COMPLAINT (May 7, 2009), *TmpsnAppx* at 19. Ms. Tompson refused service.

In July, Ms. Tompson again complained to the Massachusetts Attorney General regarding Lancelot's fiscal agent, alleging he did not properly account for the fuel assistance. LETTER FROM TOMPSON TO ATTORNEY GENERAL (July 20, 2009), *TmpsnAppx* at 20; POSTCARD RESPONSE (July 24, 2009), *TmpsnAppx* at 21.

In August Ms. Tompson filed in the small claims court a pleading appearing to request a trial before a federal jury. Ms. Tompson sought removal from small claims for several reasons: an alleged high-dollar counterclaim against Lancelot and its Massachusetts fiscal agent for negligence, the fact that New Hampshire has no government regulation of operating condominium associations, that the small claims case was allegedly in retaliation for Ms.

Tompson's complaints about Lancelot's employees and their salaries, and because Attorney Burdin had an alleged conflict of interest stemming from his ownership of units in the Lancelot condominium complex and the 2007 letter he wrote to Ms. Tompson about Lancelot declining involvement in inter-owner issues. MOTION TO TRANSFER CASE TO A FEDERAL JURY TRIAL (Aug. 14, 2009), *TmpsnAppx* at 22.

As noted, Ms. Tompson refused service. After she was finally served in-hand by sheriff, CERTIFICATE OF SERVICE (July 8, 2009), *LncltAppx* at 2, she filed no answer. Lancelot thus filed a motion to default her. PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT (Aug. 26, 2009), *LncltAppx* at 3. Ms. Tompson objected on the grounds that her request for a federal jury trial was an adequate answer. MOTION OBJECTING TO PLAINTIFF'S ENTRY OF DEFAULT (Aug. 28, 2009), *LncltAppx* at 4.

Given Ms. Tompson's allegation of a conflict, in September Attorney Burdin requested the input of the Bar Association Ethics Committee, and requested a stay of the litigation to provide time for that. MOTION TO EXTEND TIME FOR FILING A MOTION TO DISMISS (Sept. 3, 2009), *TmpsnAppx* at 28. Ms. Tompson objected. MOTION OBJECTING TO PLAINTIFF'S TIME EXTENSION REQUEST (Sept. 11, 2009), *TmpsnAppx* at 31. Ms. Tompson then filed a motion seeking access to the whatever documents the Ethics Committee generated. MOTION FOR PRODUCTION OF DOCUMENTS (Sept. 12, 2009), *TmpsnAppx* at 33.

Ms. Tompson also filed a grievance against Attorney Burdin with the Attorney Discipline Office. GRIEVANCE (Sept. 12, 2009), *TmpsnAppx* at 34; LETTER FROM ADO TO TOMPSON (Sept. 17, 2009), *TmpsnAppx* at 43. Attorney Burdin filed a response to the grievance, explaining the situation and requesting it not be docketed. LETTER FROM BURDIN TO ADO (Sept 23, 2009), *TmpsnAppx* at 45; LETTER FROM ADO TO BURDIN (Oct 15, 2009), *TmpsnAppx*

at 47. The ADO determined there was no ethical violation because Attorney Burdin had not previously represented Ms. Tompson, and if he had, the situations were not substantially related. LETTER FROM ADO TO TOMPSON (Oct 15, 2009), *TmpsnAppx* at 48. Ms. Tompson filed a reconsideration with the Professional Conduct Committee, LETTER FROM TOMPSON TO ADO (Oct. 22, 2009), *TmpsnAppx* at 51; LETTER FROM ADO TO TOMPSON (Oct 27, 2009), *TmpsnAppx* at 57, to which Attorney Burdin objected. OBJECTION TO REQUEST FOR RECONSIDERATION (Oct 29, 2009), *TmpsnAppx* at 58. The PCC affirmed that there was no ethical violation. LETTER FROM ADO TO TOMPSON (Nov 12, 2009), *TmpsnAppx* at 61.

In November, the Salem District Court (*Michael E. Jones, J.*) held a hearing, NOTICE OF HEARING (Oct 8, 2009), *TmpsnAppx* at 63, of which no transcript has been requested. The court issued a decision in December, which reads in full:

Both parties present. Defendant is responsible for eleven months of the special assessment fee in the amount of \$51.00/month through the date of filing. Further, defendant is responsible for nine months of late charges associated with the special assessment fees outstanding in the amount of \$25.00/month through the date of filing. What is still in dispute is whether defendant paid the April 2009 condo fee in the amount of \$249.00 for which defendant claims she has a cancelled check. Defendant paid \$49.00 toward the \$249.00 owed for August 2008 condo fee; therefore, owes \$200.00 balance for this month. Also, defendant claims the June 2008 condo fee in the amount of \$249.00 was paid. Defendant has sixty days or until the next hearing to search her records demonstrating payment for the effected condo fee months was paid.

ORDER (Dec. 4, 2009), *TmpsnAppx* at 64. The order was not appealed. Thus, as of December 2009, it was established that Ms. Tompson owed Lancelot \$786. The amount remaining in dispute was \$449, stemming from June 2008, August 2008, and April 2009 condo fees.

2010

In April 2010, noting that “Ms. Tompson has not complied with this [c]ourt’s order of December 4, 2009 directing her to produce proof of payment of the June and August, 2008 and April, 2009 condominium fees,” Lancelot requested a review hearing. LETTER FROM BURDIN TO SALEM DISTRICT COURT (Apr. 21, 2010), *LncltAppx* at 5.

This prompted the court to schedule a hearing, NOTICE OF HEARING (Apr. 26, 2010), *TmpsnAppx* at 65, and also prompted Ms. Tompson to file a new round of pleadings.

She objected to the hearing on the grounds that Salem District Court was not the “proper venue for this case,” that Attorney Burdin had a “gross conflict of interest,” that because there were ethics issues the proper venue was the New Hampshire Supreme Court, and that some other venue was proper because Ms. Tompson wanted a jury trial. MOTION OBJECTING TO REHEARING DUE TO IMPROPER VENUE (May 14, 2010), *LncltAppx* at 6.

Ms. Tompson also filed a comprehensive request for documents, seeking the rules and regulations of the Lancelot condominium; the names, addresses, and phone numbers of its board members; the resumes of its board members and employees; the contracts with its agents and employees; the job descriptions of its property manager, other employees, and agents; 10 years of documents pertaining to her unit; 5 years of documents showing “monetary reserves” of the condo association; 5 years of documents regarding money spent on repairs to the condominium; documents regarding federal flood insurance policies and money; the names, addresses, and phone numbers of all unit owners whose cars have been towed for lack of paying fees; the names, addresses, and phone numbers of all current and former unit owners sued by Lancelot for not paying fees; and the names, addresses, and phone numbers of all current and former unit owners sued where Attorney Burdin was Lancelot’s lawyer. MOTION FOR PRODUCTION OF

DOCUMENTS BY PLAINTIFF (May 14, 2010), *LncltAppx* at 7.

Ms. Tompson also sought to remove the lien, claiming she was all paid up, and alleged that Attorney Burdin and Lancelot's fiscal agent were negligent in ascertaining facts. MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (May 19, 2010), *LncltAppx* at 9.

The court held a hearing in May, NOTICE OF HEARING (Apr. 26, 2010), *TmpsnAppx* at 65, of which no transcript has been requested, and issued an order. It provided in full:

Plaintiff will review his files and let the court know if check number 1113 dated 6/28/08 in the amount of \$249.00 is for June 2008 or another month.

ORDER (May 19, 2010), *LncltAppx* at 10. The order was not appealed. Thus, as of May 2010, it appears the only claim Ms. Tompson had remaining was a single month's \$249 regular condominium assessment.

A few days later Attorney Burdin reported by letter:

On May 19, 2010, a hearing was conducted in the above matter. There was a question regarding check no. 1113 dated June 28, 2008 in the amount of \$249 having been credited to Ms. Tompson. Please be advised that the check was cashed on July 7, 2008 in the amount of \$249.00. Therefore, Ms. Tompson has already been fully credited for that check and she should not receive duplicate credit when Judge Jones makes his final decision.

LETTER FROM BURDIN TO SALEM DISTRICT COURT (May 20, 2010), *TmpsnAppx* at 66. Ms.

Tompson objected to the letter, on grounds that it conflicted with testimony she claims occurred at one of the non-transcribed hearings, and that it was non-responsive. MOTION OBJECTING TO PLAINTIFF'S LETTER AS EVIDENCE (June 1, 2010), *LncltAppx* at 12, Lancelot responded, with the added date detail defendant demanded. OBJECTION TO PLAINTIFF'S [sic] MOTION OBJECTING TO PLAINTIFF'S LETTER AS EVIDENCE (June 16, 2010), *LncltAppx* at 14.

The motion was denied by order. MOTION OBJECTING TO PLAINTIFF'S LETTER AS EVIDENCE (June 1, 2010) (handwritten: "Denied 6/16/10"), *LncltAppx* at 12; ORDER (June 16,

2010) (“Motion Objecting to Plaintiff’s Letter as Evidence is Denied.”), *LncltAppx* at 17.

Ms. Tompson tried one more time on this matter, subsequently filing a motion objecting to the use of the underlying check to which Attorney Burdin’s letter referred, on the grounds that the fiscal agent was negligent in processing the check, that Citizens Bank made an “encoding error,” that use of the check allegedly contradicted testimony at one of the untranscribed hearings, and that the check violated the Uniform Commercial Code. MOTION OBJECTING TO PLAINTIFF USING CHECK #1075 AS EVIDENCE (July 12, 2010), *LncltAppx* at 25. Lancelot objected, noting that any problems were caused by Ms. Tompson in that there was a “discrepancy between the written amount and the numeric amount” on her check. OBJECTION TO DEFENDANT’S MOTION OBJECTING TO USING CHECK #1075 AS EVIDENCE (July 14, 2010), *LncltAppx* at 27. The court denied the motion. MOTION OBJECTING TO PLAINTIFF USING CHECK #1075 AS EVIDENCE (July 12, 2010) (handwritten: Denied Order Stands 7/21/10”), *LncltAppx* at 25; ORDER (July 21, 2010) (“Defendant’s Objection to Plaintiff using check #1075 as Evidence is DENIED, order stands.”), *LncltAppx* at 28.

The orders were not appealed. Thus, as of June 16, 2010, or at the latest July 21, it appears the last \$249 was resolved.

Following the May 19 hearing Ms. Tompson filed five additional pleadings.

One was a redux of her earlier motion for production of documents re-requesting the same material, MOTION TO COMPEL PLAINTIFF PRODUCTION OF DOCUMENTS (June 1, 2010), *LncltAppx* at 11, to which Lancelot objected. OBJECTION TO PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS (June 16, 2010), *LncltAppx* at 16. The court ordered Ms. Tompson to clarify what she wanted. MOTION TO COMPEL PLAINTIFF PRODUCTION OF DOCUMENTS (June 1, 2010) (handwritten: “[D]efendant to clarify documents sought”),

LncltAppx at 11; ORDER (June 16, 2010) (“Defendant to clarify documents sought.”), *LncltAppx* at 17. Ms. Tompson then filed a pleading, which was essentially a re-listing of what she had before requested, MOTION TO CLARIFY PRODUCTION OF DOCUMENTS BY PLAINTIFF (July 30, 2010), *LncltAppx* at 32, and which the court denied. *Id* (handwritten: “Denied 8/11/10”).

Ms. Tompson’s second post-hearing motion sought to remove the lien. MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (May 19, 2010), *LncltAppx* at 9. Lancelot objected on the grounds that Ms. Tompson still owed the assessment arrearages, which had grown larger during litigation. OBJECTION TO PLAINTIFF’S MOTION TO REMOVE LIEN PURSUANT TO RSA 356-B:46 (June 16, 2010), *LncltAppx* at 15. The court denied lien removal. MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (May 19, 2010) (handwritten: “Denied 6/16/10”), *LncltAppx* at 9; ORDER (June 16, 2010) (“Motion to Remove Property lien Denied”), *LncltAppx* at 17.

The third motion sought dismissal of the case, on the grounds that Attorney Burdin “negligently filed an erroneous property lien,” that Ms. Tompson had already paid, that Lancelot “has failed to state the facts sufficient to constitute a cause of action,” that the complaint was “grossly in error, inaccurate and false,” that both Lancelot’s fiscal agent and its attorney “are negligent in this matter,” that “the case record filed by plaintiff fails to be properly presented,” and that “Attorney Burdin’s conduct has been improper, erroneous and negligent.” MOTION TO DISMISS WITH PREJUDICE DUE TO PLAINTIFF’S INSUFFICIENCY OF PLEADINGS (June 25, 2010), *LncltAppx* at 22.

Ms. Tompson’s fourth and fifth post-hearing motions sought sanctions against both Lancelot and Attorney Burdin on largely the same grounds as her motion to dismiss. MOTION FOR SANCTIONS AGAINST PLAINTIFF (June 25, 2010), *LncltAppx* at 18; MOTION FOR

SANCTIONS AGAINST PLAINTIFF'S ATTORNEY WILLIAM T. BURDIN, ESQUIRE (June 25, 2010), *LncltAppx* at 20.

In July Lancelot responded to the third, fourth, and fifth motions by filing a global objection, on the grounds that Ms. Tompson's "flurry" of filings were long after trial and long after it was clear the money was due. GLOBAL OBJECTION TO DEFENDANT'S MOTIONS (July 2, 2010), *LncltAppx* at 24.

At the end of July Ms. Tompson filed reconsiderations alleging no new grounds, all of which were denied. MOTION FOR RECONSIDERATION ON MOTION OBJECTING TO PLAINTIFF'S LETTER AS EVIDENCE (July 30, 2010) (handwritten: "Denied 8/11/10"), *LncltAppx* at 35; MOTION FOR RECONSIDERATION ON MOTION OBJECTING TO PLAINTIFF USING CHECK #1075 AS EVIDENCE (July 30, 2010) (handwritten: "Denied 8/11/10"), *LncltAppx* at 37; MOTION FOR RECONSIDERATION ON MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (July 30, 2010) (handwritten: "Denied 8/11/10"), *LncltAppx* at 40.

Also at the end of July Ms. Tompson filed two motions attempting to dispose of the case entirely. The first sought mistrial on the grounds that the hearing was noticed as a "hearing on the merits," but that "[i]nstead, a trial ensued," and that therefore she had no opportunity to offer her evidence. She also again complained about production of documents and venue. MOTION FOR MISTRIAL (July 30, 2010) (handwritten: Denied 8/11/10"), *LncltAppx* at 34. The second motion sought summary judgment on the grounds that Lancelot's fiscal agent was negligent and mismanaged accounting, that Attorney Burdin "enlarged monetary amounts due," that Attorney Burdin was negligent in ignoring her request for documents, and that while the court noticed a "hearing on the merits" nonetheless "a trial ensued." MOTION FOR SUMMARY JUDGMENT (July 23, 2010), *LncltAppx* at 29. Lancelot objected, and also requested fees on the

grounds Ms. Tompson's motion was frivolous. OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (July 28, 2010), *LncltAppx* at 31.

In August Lancelot filed a global objection to Ms. Tompson's various pleadings, and addressed each one. PLAINTIFF'S OBJECTION TO MOTION FOR MISTRIAL, PLAINTIFF'S OBJECTION TO MOTION FOR RECONSIDERATION ON MOTION OBJECTING TO PLAINTIFF [sic] LETTER AS EVIDENCE, PLAINTIFF'S OBJECTION TO MOTION FOR RECONSIDERATION ON MOTION OBJECTION [sic] TO PLAINTIFF USING CHECK #1075 AS EVIDENCE, PLAINTIFF'S OBJECTION TO MOTION FOR RECONSIDERATION ON MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 AND PLAINTIFF'S OBJECTION TO MOTION TO CLARIFY PRODUCTION OF DOCUMENTS BY PLAINTIFF (Aug. 4, 2010), *LncltAppx* at 42. The court denied everything. ORDER (Aug. 11, 2010), *LncltAppx* at 44.

The order was not appealed. Thus, by August 11, 2010, at the latest, all of Ms. Tompson's attacks against all parties were disposed, including money issues, process issues, evidentiary issues, and ethical issues.

2011

Lancelot waited 7 months for Ms. Tompson's payment on the judgment against her. Having received none, in March 2011 Lancelot requested the court order periodic payments for the total amount of \$1,235 then owing. MOTION FOR PERIODIC PAYMENTS (March 17, 2011), *TmpsnAppx* at 67.

Ms. Tompson objected, reiterating a long list of grounds from her previous pleadings. She alleged that Lancelot's initial collection action was retaliation for her statements at an owners' annual meeting, and also that it was a conspiracy for Attorney Burdin to acquire her unit. MOTION OBJECTING TO MOTION FILED FOR PERIODIC PAYMENTS (Mar. 25, 2011), *LncltAppx* at 45.

Lancelot replied, noting that final judgment had been entered in 2009, and that there was no retaliation or conspiracy. REBUTTAL TO DEFENDANT'S MOTION OBJECTING TO MOTION FOR PERIODIC PAYMENTS (Apr. 4, 2011), *LncltAppx* at 50.

Ms. Tompson complained to the New Hampshire Attorney General, who responded that the Attorney General does not regulate homeowners' associations nor condominiums after they are registered, and suggested hiring a lawyer. LETTER FROM ATTORNEY GENERAL TO TOMPSON (Apr. 11, 2011), *TmpsnAppx* at 68.

Ms. Tompson then filed a motion to dismiss the entire case. It reiterated many of her points from previous pleadings, and added the novel notion that there had been no final judgment. MOTION TO DISMISS WITH PREJUDICE (Apr. 12, 2011), *LncltAppx* at 51.

Ms. Tompson also renewed her previous requests to remove the lien, and to impose sanctions on Lancelot and Attorney Burdin. She again asserted assorted allegations, and reiterated that Attorney Burdin was unethical and was conspiring to acquire her unit. MOTION

TO REMOVE PROPERTY LIEN AND INTEREST PURSUANT TO RSA 356-B:46(C) (Apr. 12, 2011), *LncltAppx* at 53; MOTION FOR SANCTIONS AGAINST PLAINTIFF AND ATTORNEY BURDIN (Apr. 12, 2011), *LncltAppx* at 55.

To these Lancelot filed a standing objection, noting that Ms. Tompson's pleadings are "frivolous, unintelligible, redundant and vexatious," and that Lancelot should not incur further attorneys fees responding to them. STANDING OBJECTION (Apr. 21, 2011), *TmpsnAppx* at 72. Ms. Tompson responded, alleging that Lancelot's standing objection was a "temper-tantrum" which "seethes with apparent verbal accosting and improper legal foot stamping." MOTION IN RESPONSE TO PLAINTIFF'S STANDING OBJECTION (Apr. 27, 2011), *LncltAppx* at 58. Ms. Tompson also requested payment for money she spent on a plumber. MOTION SEEKING REIMBURSEMENT DUE TO PLAINTIFF NEGLIGENCE (Apr. 27, 2011), *LncltAppx* at 60.

The court (*Michael F. Sullivan, J.*) held a hearing on November 30, 2011, which was transcribed. ORDER OF NOTICE (Sept. 6, 2011), *TmpsnAppx* at 74. Ms. Tompson admitted she did not pay the assessments that underlie the judgment. *Trn.* at 4. She argued there had not been a final judgment, but "only an order." *Trn.* at 5. The court disagreed, finding that there had been a final judgment previously rendered, for a total indebtedness of \$1,484 plus costs. *Trn.* at 6. After the hearing the court issued a written order providing for "monthly installments of \$25 beginning Jan[uary] 15, 2012 until the judgment and all costs are paid in full." ORDER FOR PAYMENTS (Nov. 30, 2012), *TmpsnAppx* at 75.

In December 2011, Ms. Tompson appealed.

SUMMARY OF ARGUMENT

Lancelot Condominium Association first notes that Ms. Tompson's entire appeal is untimely and should thus be summarily affirmed. It then addresses each of Ms. Tompson's nine numbered arguments, and concludes that each either fails to state an appellate issue, or should be affirmed.

ARGUMENT

O. Ms. Tompson's Appeal is Untimely

The Salem District Court held in December 2009 that Ms. Tompson owed Lancelot \$786. At that time the amount remaining in dispute was \$449, stemming from three discrete disputed months' assessments. ORDER (Dec. 4, 2009), *TmpsnAppx* at 64.

Those remaining amounts were resolved in May 2010. ORDER (May 19, 2010), *LncltAppx* at 10. Ms. Tompson continued to insist that there was insufficient evidence regarding one of those amounts, which the court disposed by two orders, in July and August 2010. ORDER (July 21, 2010), *LncltAppx* at 28; MOTION FOR RECONSIDERATION ON MOTION OBJECTING TO PLAINTIFF USING CHECK #1075 AS EVIDENCE (July 30, 2011) (handwritten: "Denied 8/11/10"), *LncltAppx* at 37.

The various procedural issues Ms. Tompson raised were disposed also in August 2010. ORDER (Aug. 11, 2010), *LncltAppx* at 44.

The only issue remaining which was decided within 30 days before this appeal was filed was the \$25 monthly installment. Ms. Tompson conceded she could pay \$5 per month, *Trn.* at 7, and does not appear to have appealed anything related to the installment plan.

Accordingly, this appeal states no timely-raised issues, and should be summarily dismissed.

I. Ms. Tompson Did Not Remove the Small Claims Action from the Salem District Court

In her argument I, Ms. Tompson alleges that the court failed to remove the small claims action to either the New Hampshire superior court or to the federal district court.

To remove a case from the small claims court to a New Hampshire superior court for a jury trial, the defendant must comply with New Hampshire's removal statute, which provides:

If the defendant upon entry of any action under this section within 5 days of the entry thereof or such additional time as the district court may for good cause allow file in the district court a brief statement setting forth that ... the defendant has a claim arising out of the same transaction or situation in which his claim for damages exceeds \$1,500, and ... [a]ccompanies his brief statement with an affidavit under oath supporting the same, then no further proceeding shall be had in the district court, but the cause shall be at once transferred to the superior court for the county in which the district is located to be heard and tried as if originally entered in the superior court.

RSA 502-A:14, III(a) & (c).

To remove a case from any state court to a federal court for a jury trial, the defendant must comply with the federal removal statute, which provides:

A defendant ... desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal ... and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.... The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

28 U.S.C. § 1446(a) & (b)(1). In addition, for federal diversity jurisdiction, which Ms. Tompson appears to invoke, the amount in controversy must be at least \$75,000. 28 U.S.C. § 1332.

Lancelot filed its small claims suit on May 7, 2009, and Ms. Tompson was served by

sheriff on July 8, 2009. Ms. Tompson filed her Motion to Transfer Case to a Federal Jury Trial, which she purports to be an answer, on August 14, 2009. Thus she missed both the 5-day deadline for removal to New Hampshire superior court, and also the 30-day deadline for removal to federal court.

Even if she complied with the state deadline, she did not comport with the state statutory procedure. She did not file a “brief statement” setting forth the basis for her claim that the case exceeded \$1,500, nor any affidavit.

Even if she complied with the federal deadline, and even if this case could state an amount in controversy over \$75,000, she did not comport with the federal statutory procedure. There is no known record of her filing anything in any federal district court removing the case from the New Hampshire court.

Accordingly, Ms. Tompson did not make any effort at removal, and the case was properly heard in the Salem District Court under its small claims jurisdiction without a jury.

II. Lancelot's Attorney Acted Ethically and was not Disqualified

In her argument II, Ms. Tompson alleges that Attorney Burdin, acting for Lancelot, committed ethical infractions, and should have been disqualified. Ms. Tompson appears to base her allegations of conflicts of interest on two discernible grounds.

First, she claims that due to his "numerous roles" in the Lancelot complex, including as a resident, owner, and board-member, he has a "pecuniary interest in this case" and thus cannot represent Lancelot. The "pecuniary interest" stated by Ms. Tompson relies on a theory that Attorney Burdin conspired to acquire Ms. Tompson's unit by forcing her into foreclosure, but she offers no facts to support the theory. Moreover, any pecuniary interest Attorney Burdin might have as an owner in reducing assessments on his own units by ensuring collection on others does not create a conflict of interest because his interest as owner is not adverse to the association he represents. *See, Kaufman v. Tudor Realty Services Corp.*, 772 N.Y.S.2d 265, 266 (App.Div. 2004) ("Petitioner's motion to disqualify counsel was properly denied. Contrary to petitioner's contention, the circumstance that respondent's counsel had also represented respondent's principal, the condominium, did not give rise to any conflict of interest, the interests of the principal and agent not having been adverse."). Ms. Tompson raised the conflict issue with the New Hampshire Attorney Discipline Office, which found that "[t]here does not appear to be any conflict in his role as a Board member, Trustee, or unit owner, with regard to his role representing [Lancelot] in its action against [Ms. Tompson]." LETTER FROM ADO TO TOMPSON (Oct 15, 2009), *TmpsnAppx* at 48, 49.

Second, Ms. Tompson claims that because Attorney Burdin once in a letter represented the position of the board that it declines to become involved in disputes among units, and therefore recommended Ms. Tompson call the police or hire a lawyer, he has a conflict of interest. Ms. Tompson also raised this issue with the New Hampshire Attorney Discipline Office, which found

that “[e]ven if this could be deemed to be legal advice, and even if it could be found that Mr. Burdin was representing you, in order for there to be a conflict stemming from that matter, it would need to be found that the prior matters were substantially related to the current matter. It does not appear that this would be a possibility.” LETTER FROM ADO TO TOMPSON (Oct 15, 2009), *TmpsnAppx* at 48, 49.

Thus it has been established the Attorney Burdin did not act unethically. Even if he did, however, it does not help Ms. Tompson here.

The Rules [of Professional Conduct] are not designed to be a basis for civil liability. The purpose of the Rules can be subverted when the Rules are invoked by opposing parties as procedural weapons. Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. Violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer from a position or from pending litigation.

N.H. R. PROF. COND., *Statement of Purpose*; see also *Morgan’s Case*, 143 N.H. 475, 477 (1999) (“[T]he purpose of the court’s disciplinary power is to protect the public, maintain public confidence in the bar, preserve the integrity of the legal profession, and prevent similar conduct in the future.”).

Accordingly, to the extent this Court can take cognizance of this issue, Attorney Burdin’s participation should be affirmed.

III. Ms. Tompson was Properly Held to Owe Lancelot Money

In her argument III, Ms. Tompson claims that the documents evidencing her indebtedness are inaccurate. The Salem District Court's findings of fact, however, must be upheld here.

[T]he applicable standard of review ... is well settled. ... [I]n reviewing a decision by the [trial] court the standard for review for this court is not whether we would find as the trial court did, but whether the evidence reasonably supports the finding. We focus our inquiry on whether a reasonable person could find as the trial court did. Therefore, on appeal, we will uphold the trial court unless its decision is not supported by the evidence or is legally erroneous.

Condos East Corp. v. Town of Conway, 132 N.H. 431, 434-35 (1989).

The court here found over the course of several orders that Ms. Tompson owed Lancelot money. During the November 30, 2011 hearing, the court understood the case had long ago "gone to final judgment," and thus found an outstanding "indebtedness of \$1,484, plus costs." *Trn.* at 6.

Ms. Tompson has not provided any basis on which to show that the trial court's assessment of the evidence or its understanding of its prior judgment was lacking. She also has not transcribed the hearings in which the court allegedly heard the evidence on which she purports to rely, and thus this Court must defer to the trial court's ruling. N.H. SUP.CT.R. 13 & 16(3)(b); *Bean v. Red Oak Prop. Mgmt., Inc.*, 151 N.H. 248, 250-51 (2004); *In the Matter of Lynn & Lynn*, 158 N.H. 615, 618 (2009).

Accordingly, this Court must affirm the debt.

IV. The Lien is Lawful

In her argument IV, Ms. Tompson argues that the lien should be removed.

New Hampshire's condominium statute allows the lien to include charges for "regular assessments," but not charges for "any amounts attributable to special assessments, late charges, fines, penalties, or interest assessed by the unit owners' association." RSA 356-B:46, I(c).

The lien was imposed in February 2009 in the amount of \$1,300. Of that amount, \$996 was properly attributable to 4 months accrued "regular assessments" of \$249 each. NOTICE OF LIEN FOR CONDOMINIUM ASSESSMENTS PURSUANT TO RSA 356-B:46 (Feb. 4, 2009), *TmpsnAppx* at 12. Lancelot concedes, however, that the remaining \$304 of the lien was attributable to items not allowed by statute.

At the time of the initial small-claims complaint, Ms. Tompson's total indebtedness was \$1,747 for "unpaid condominium fees and late charges." SMALL CLAIMS COMPLAINT (May 7, 2009), *TmpsnAppx* at 19. The lien was imposed around the same time, but was for only \$1,300. Moreover, since 2009 Ms. Tompson's total indebtedness increased – "As of May 18, 2010, the arrearage has grown to \$2,646." OBJECTION TO PLAINTIFF'S MOTION TO REMOVE LIEN PURSUANT TO RSA 356-B:46 (June 16, 2010), *LncltAppx* at 15. Because less than two month's worth of \$249 regular assessment charges would push the statutorily allowable items above \$1,300, it is inconceivable that after May 2010 the lien included any amounts attributable to the disallowed charges.

Thus, even if the court erred at the outset of the lien, Ms. Tompson's own actions in accruing additional arrearages of regular assessments in 2009 and 2010 cured any error. Because the lien became lawful at the latest in May 2010, the court was not in error when it denied Ms. Tompson's three motions to remove the lien in May 2010, April 2011, and July 2011. MOTION

TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (May 19, 2010) (handwritten: "Denied 6/16/10"), *LncltAppx* at 9; ORDER (June 16, 2010) ("Motion to Remove Property lien Denied"), *LncltAppx* at 17; MOTION TO REMOVE PROPERTY LIEN AND INTEREST PURSUANT TO RSA 356-B:46(C) (Apr. 12, 2011), *LncltAppx* at 53; MOTION FOR RECONSIDERATION ON MOTION TO REMOVE PROPERTY LIEN PURSUANT TO RSA 356-B:46 (July 30, 2010) (handwritten: "Denied 8/11/10"), *LncltAppx* at 40.

Accordingly, the lien is lawful and should be maintained. Because Ms. Tompson is an owner, and because she has demonstrated that a court order is not sufficiently compelling to make her pay, the lien is the only leverage Lancelot has to collect its debt. *See* PLAINTIFF'S OBJECTION (etc.) ¶4 (Aug. 4, 2010), *LncltAppx* at 42.

Finally, even if the lien were imposed wholly beyond the statute, it has not apparently caused Ms. Tompson any harm. The lien has not been exercised, and there are no facts suggesting it has affected financing, sales, mortgages, taxes, or any other thing. Accordingly, whatever items are included in the lien, any issue regarding it is not ripe.

V. Motions Were Decided

In her argument V, Ms. Tompson alleges the Salem District Court “ignored all of [Ms. Tompson’s] timely [m]otions filed in this case.” Ms. Tompson filed dozens of pleadings, many repetitive, some far-fetched, but she has not identified any particular motion that was ignored. Upon review of the record Lancelot believes all but one were addressed.

The one possibly unaddressed motion was in July 2010. Ms. Tompson requested summary judgment on the grounds that “there is no genuine issue as to any material fact in this case,” to which Lancelot objected on the grounds that such a claim is frivolous. MOTION FOR SUMMARY JUDGMENT (July 23, 2010), *LncltAppx* at 29; OBJECTION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT (July 28, 2010), *LncltAppx* at 31.

As noted *supra*, as of June 16, 2010, or at the latest July 21, the last \$249 money issue was resolved. Ms. Tompson’s motion for summary judgment was filed after that date. Thus, to the extent summary judgment should have been granted, it would have been in Lancelot’s favor.

Accordingly, to the extent the court erred, it was harmless.

Beyond the summary judgment motion, Lancelot can identify no other of Ms. Tompson’s pleadings that remain unaddressed. To the extent there are any, the court should get the benefit of the general rule that any pleading not addressed is considered denied. *See* N.H. SUP.CT.R. 21(11) (“Any order or decision by the court disposing of the case on the merits shall be deemed to be a denial of any pending non-dispositive motion.”).

VI. Attorney Burdin did not Delay

In her argument VI, Ms. Tompson makes a variety of unsupported *ad hominem* allegations against Lancelot's lawyer.

Ms. Tompson argues in her brief that Attorney Burdin "deliberately, willfully, and egregiously continued this case as a means of harassment." There is no support for any portion of that allegation. Lancelot did not once file a motion to continue. At most he asked for one stay, prompted by Ms. Tompson's unfounded ethical allegations, which ultimately does not appear to have been granted.

Ms. Tompson alleges that "Attorney Burdin called the court and verbally requested a mandate to appear for a hearing ... without filing a proper [m]otion." There is nothing in the record to support this allegation.

Ms. Tompson claims that there were unjustified fees for serving her. The record shows that Ms. Tompson refused service, and thus caused the need for sheriff's fees.

The remainder of Ms. Tompson's allegations in argument VI are unintelligible. To the extent argument VI states further issues, they are denied.

VII. The Court Made a Final Decision

In her argument VII, Ms. Tompson alleges there was no final decision in this case. The allegation is unsupported by the procedural history of the litigation. At the November 30, 2011 hearing, the court held that it had previously rendered a final judgment. *Trn.* at 6.

As of December 2009, it was established that Ms. Tompson owed Lancelot \$786. The amount remaining in dispute was \$449, stemming from three discrete months of regular assessments. ORDER (Dec. 4, 2009), *TmpsnAppx* at 64.

As of May 2010, the only claim Ms. Tompson had remaining was a single month's \$249 condominium fee. ORDER (May 19, 2010), *LncltAppx* at 10.

As of June 16, 2010, or at the latest July 21, the last \$249 was resolved. ORDER (July 21, 2010) ("Defendant's Objection to Plaintiff using check #1075 as Evidence is DENIED, order stands."), *LncltAppx* at 28.

As of August 11, 2010, all of Ms. Tompson's attacks against all parties were disposed, including money issues, process issues, evidentiary issues, and ethical issues. ORDER (Aug. 11, 2010), *LncltAppx* at 44.

Accordingly, there was a final judgment *at the latest*, as to *all issues*, on August 11, 2010. It is for this reason, as noted *supra*, that this appeal is untimely and should be summarily dismissed. Moreover, if Ms. Tompson is correct and there still is no final judgment, than this appeal is not yet ripe and should be dismissed on that basis. N.H. SUP.CT. R. 3 & 4 (defining finality, and providing that appeals be from final decision on the merits).

VIII. No Contempt was Requested or Imposed

In her argument VIII, Ms. Tompson accuses either the court or Attorney Burdin of improperly seeking a contempt charge.

After waiting 7 months for Ms. Tompson's payment on the judgment against her, in March 2011 Lancelot requested an order for periodic payments, which *did not* include a request to hold Ms. Tompson in contempt. MOTION FOR PERIODIC PAYMENTS (March 17, 2011), *TmpsnAppx* at 67. In response the court issued a hearing notice, which included what appears to be boilerplate notice that the defendant should come prepared to show cause why she was not in contempt of an existing judgment. The contempt notice was *sua sponte*, presumably pursuant to the court's inherent power to punish civil contempts. *State v. Moquin*, 105 N.H. 9, 11 (1963) ("The power to punish for contempt is inherent in the very organization of all courts and is essential to the functioning of our judicial system. The necessity for such powers ... is obvious. No reasons of precedent or policy compelling a contrary holding are suggested and none is apparent. Furthermore it is the duty and responsibility of courts to be alert to protect the judicial processes from being brought into disrepute and to act vigorously when confronted with acts or conduct which tend to obstruct or interfere with the due and orderly administration of justice.") (citations omitted).

Nothing in the notice was unlawful. Moreover, contempt was not mentioned at the hearing, and Ms. Tompson was not held in contempt. Any error is thus harmless.

IX. Legislative and Policy Issues

In her argument IX, Ms. Tompson appears to advance arguments regarding alleged laxity of New Hampshire's condominium statute. They are legislative and policy issues. Ms. Tompson neither advances nor develops an argument for legal error, and thus they should be disregarded. *Douglas v. Douglas*, 143 N.H. 419, 429 (1999) (mere laundry list of complaints regarding adverse rulings by trial court, without developed legal argument, is insufficient to warrant review.). To the extent she does, they are unintelligible, and are denied.

CONCLUSION

Based on the foregoing, this Court should affirm the judgments and rulings of the Salem District Court.

Respectfully submitted,

Lancelot Court Condominium Association
By its Attorney,

Law Office of Joshua L. Gordon

Dated: July 21, 2012

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WAIVER OF ORAL ARGUMENT AND CERTIFICATION

Lancelot Court Condominium Association waives oral argument, as it believes none is necessary. If however the court wishes oral argument, 15 minutes is requested, to be presented by Attorney Joshua L. Gordon.

I hereby certify that on July 21, 2012, copies of the foregoing will be forwarded to Judith Tompson, at 9 Lancelot Place #8, Salem, NH 03079

Dated: July 21, 2012

Joshua L. Gordon, Esq.