

*Chad Short and Kelly Short v. John LaPlante and Lori LaPlante, As Trustees of The LaPlante Family Revocable Trust, No. 2020-0113*

August 27, 2021  
Affirmed

**Contract Dispute**

- Whether the trial court erred in denying prospective homebuyers’ claims for breach of contract, breach of implied covenant of good faith and fair dealing, specific performance, and attorney’s fees following a bench trial.

John and Lori LaPlante, as trustees of the LaPlante Family Revocable Trust (“Sellers”), listed their Concord, New Hampshire home for sale because Mrs. LaPlante suffered from debilitating allergies caused by birch and oak trees on the property. At the same time, Sellers searched for a new home with limited exposure to birch and oak trees and with a large garage. By the end of May 2018, Sellers looked at more than 100 homes online and visited 15–17 homes in person. Chad and Kelly Short (“Buyers”) submitted an offer to purchase Sellers’ home on May 24, 2018. On June 3, 2018, Sellers submitted an offer to purchase a new home located in Stratham, New Hampshire. Sellers’ purchase of the Stratham home was contingent upon Sellers’ review of any restrictive covenants. That same day, Sellers and Buyers executed a purchase and sale agreement (“P&S”) for Sellers’ home that included the following disputed provision: “This agreement is subject to Sellers finding

**At-a-Glance Contributor**



**Jonathan P. Killeen**

Shareholder at Boyle | Shaughnessy Law PC in Manchester, NH

suitable housing no later than July 14, 2018” (“Disputed Provision”). On June 4, 2018, Sellers obtained the restrictive covenants for the Stratham property, which possibly precluded Sellers from building a large garage at the property. Sellers withdrew their offer on the Stratham property and felt that they had exhausted their search for suitable housing. On June 5, 2018, Sellers instructed their realtor to exercise the Disputed Provision because they no longer needed to move, as Mrs. LaPlante no longer had allergy symptoms, and Sellers were not confident they would find suitable housing by the July 14, 2018 deadline contained in the Disputed Provision because nearly every house they looked at had covenants of some sort that would prevent building a large garage. Buyers then filed suit.

Following a bench trial, the trial court found that the P&S was not binding and enforceable because there was no meeting of the minds regarding the Disputed Provision. Accordingly, the trial court denied Buyers’

AT-A-GLANCE continued on page 34

**LD-2021-0004, In the Matter of Joseph B. Piper, Esquire**

On June 15, 2021, the Professional Conduct Committee (PCC) filed a petition recommending the disbarment of Attorney Joseph B. Piper. The PCC also filed a record of its proceedings with this court. In accordance with Rule 37(16), the court provided notice to Attorney Piper of the PCC’s disbarment recommendation and ordered him to file a response on or before July 19, 2021, identifying any legal or factual issues relating to the PCC’s recommendation that he wished the court to review. Attorney Piper did not file a response.

The court has reviewed the PCC’s recommendation for disbarment and the PCC record. The PCC adopted a hearing panel report, which concerned three docketed matters and which found, among other misconduct, that Attorney Piper failed to protect clients’ interests in matters before the U.S. Patent and Trademark Office (PTO), failed to keep the clients apprised of developments in the PTO matters, failed to communicate with the clients, failed to take reasonable steps to protect the clients’ interests after effectively having terminated representation of them, failed to provide the Attorney Discipline Office (ADO) with information that it had requested during its investigation, and otherwise failed to cooperate with the ADO during its investigation. Those facts were undisputed because Attorney Piper did not respond to the ADO’s notices of charges, see Rule 37 A(III) (b)(3)(A), and did not participate in the hearing before the panel. The PCC determined that Attorney Piper had violated the following Rules of Professional Conduct:

Rule 1.1 (requiring competence); Rule 1.2(a) (requiring a lawyer to abide by the client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued); Rule 1.3 (requiring diligence); Rule 1.4 (requiring adequate communications with clients); Rule 1.16(d) (requiring a lawyer to protect the client’s interests when withdrawing or terminating representation); Rule 8.1 (prohibiting non-compliance with ADO demands for information and with ADO hearing notices); and Rule 8.4(a) (making it misconduct to violate any of the rules). The PCC further adopted the hearing panel’s conclusion that a lesser sanction was unwarranted, given the seriousness of Attorney Piper’s misconduct, the injury that it caused to his clients, and the harm that it caused to the legal system and to the reputation and standing of the legal profession.

In light of the seriousness of Attorney Piper’s misconduct, which includes violations of Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4, 1.16(d), 8.1, and 8.4(a), the court concludes that disbarment is the appropriate sanction.

THEREFORE, the court orders that Joseph B. Piper be disbarred from the practice of law in New Hampshire. He is hereby assessed all costs and expenses incurred by the attorney discipline system in the investigation and prosecution of the matters.

MacDonald, C.J., and Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: August 17, 2021  
Timotfiy A. Gudas, Clerk

**CaseLines is Here**

**Digital Evidence Management Debuts**

*Rockingham Superior Court pilots CaseLines starting in September*

**Train Now**

- ▶ **Watch Part 1 CaseLines Digital Evidence Management** thru the [NHBA CLE Catalog](#) (FREE CLE credit)
- ▶ **Attend Part 2 – Courtroom Presentation Skills Workshop** [Workshop Schedule](#)

**Practice Here**

- ▶ The CLE catalog, workshop schedule, additional videos, guides, tips, and FAQs are located at <https://www.courts.state.nh.us/superior/caselines/training.htm>

Learn more at [www.courts.state.nh.us/superior/caselines](http://www.courts.state.nh.us/superior/caselines)

*The New Hampshire*



*Supreme Court Society*



**King Lecture Series  
Fall 2021**

**Tracey Maclin**  
Professor of Law  
Boston University School of Law

**Long Overdue:  
Fifth Amendment Protection for  
Corporate Officers**

*(when responding to discovery requested of the corporation they serve)*

September 30, 2021  
4:00 PM  
New Hampshire Supreme Court

Seating is limited for this in-person event.

Please RSVP to Emilee Thompson at [ethompson@sheehan.com](mailto:ethompson@sheehan.com) by Tuesday, September 28

August 2021

\* Published

## EVIDENCE; EXPERT WITNESSES; MOTIONS IN LIMINE

8/12/21 *Kevin Rogers v. Town of New Hampton, et al.*  
Case No. 19-cv-118-JL, Opinion No. 2021 DNH 127\*

In advance of trial on the plaintiff's § 1983 claim for deliberately indifferent medical care, the court granted the defendant's three motions in limine in part and denied them in part. It first ruled that certain alleged hearsay statements were not hearsay if admitted for purposes other than to prove the truth of the matter asserted therein. It next ruled that the plaintiff's medical records and bills could not be introduced into evidence to prove a causal

connection between the defendant's actions and the plaintiff's allegedly resulting injuries, absent expert opinion testimony drawing the causal link. Finally, it ruled that the plaintiff would be permitted to testify about his attempts to obtain a video of the incident in question and the absence of that video, but the court declined to provide an adverse inference instruction against the defendant relating to the deletion of the video recording. 11 pages. Judge Joseph N. Laplante.

## FOURTH AMENDMENT; SUPPRESSION

8/31/21 *USA v. Francis Harrington*  
Case No. 19-cr-241-01-JL, Opinion No. 2021 DNH 138\*

Defendant moved to suppress suspected drugs seized from his person as well as an inculpatory statement allegedly obtained in violation of the Fourth and Fifth Amendments. After two evidentiary hearings and further oral argument, the court denied the motion. The police officer had ample reasonable suspicion that the defendant was engaged in criminal activity to justify his initial investigatory detention of the defendant. As the situation unfolded, the officer had continued suspicion of criminal activity to extend the detention and reasonable suspicion that the defendant may have been armed and dangerous to justify ordering him out of the vehicle and patting him down. Finally, the inculpatory statement would not be suppressed because it was not obtained as a result of a custodial interrogation. 20 pages. Judge Joseph N. Laplante.

## INSURANCE COVERAGE; SUMMARY JUDGMENT

8/19/21 *Nautilus Insurance Company v. Ferreira, et al.*  
Case No. 20-cv-1053-JL, Opinion No. 2021 DNH 130

In an insurance coverage declaratory judgment action, the court granted summary judgment to the insurer and declared that the insurer was no longer obligated to defend or insure its insured in an underlying tort suit pending in New Hampshire Superior Court. The court held that at least one, and possibly both, endorsements to the policy excluded coverage for the underlying plaintiff's claims based on the factual allegations in the underlying lawsuit, as opposed to the labels placed on the claims. 17 pages. Judge Joseph N. Laplante.

## PATENT INFRINGEMENT; PATENT INVALIDITY; INFRINGEMENT

8/12/21 *Ocado Innovation Ltd. v. AutoStore AS, et al.*  
Case No. 21-cv-41-JL, Opinion No. 2021 DNH 129\*

In a patent infringement suit between global competitors, the defendants moved to dismiss parts of the plaintiffs' complaint for failure to state a claim upon which relief could be granted. Specifically, the defendants moved to dismiss the plaintiffs' infringement claim under one patent on the grounds that the patent was directed to ineligible subject matter. They also moved to dismiss the plaintiffs' claims for induced infringement and will-

## At-a-Glance from page 33

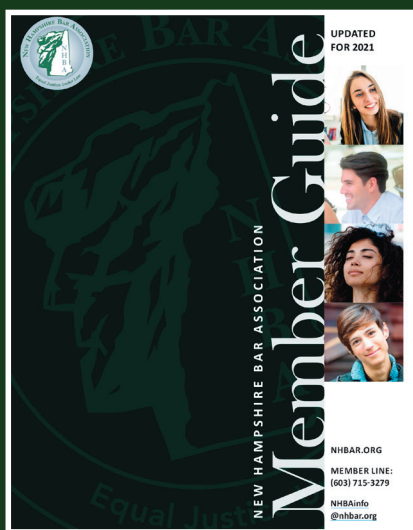
claims for breach of contract, breach of good faith and fair dealing, and request for attorney's fees.

On appeal, the Supreme Court affirmed the trial court's ruling. In doing so, it assumed without deciding that Sellers and Buyers did have a meeting of the minds regarding the Disputed Provision. Nevertheless, the Supreme Court concluded that the Disputed Provision was not ambiguous and that "finding suitable housing" was a condition precedent to Sellers' obligation to sell their home to Buyers. As a result, the P&S agreement became unenforceable as a matter of law upon the non-occurrence of the contingency and Sellers had no duty to sell their home. The Supreme Court also concluded that Sellers did not breach the P&S by "prematurely ending their search for suitable housing" because the record supported that Sellers were justified in

concluding that there was no reasonable likelihood that they would find suitable housing by the July 14, 2018 deadline in light of Sellers' particular needs. The Supreme Court next concluded that Sellers did not breach the implied covenant of good faith and fair dealing by terminating their search for suitable housing on June 5, before the deadline, because their exercise of discretion was not unreasonable and they were justified in concluding that they were unlikely to find suitable housing. Finally, the Supreme Court affirmed the trial court's order denying Buyers' request for attorney's fees because Sellers' conduct did not warrant such an award.

*Dickinson & Silverman, PLLC, of Concord (Gregory L. Silverman on the brief and orally), for the plaintiffs. Cook, Little, Rosenblatt & Manson, p.l.l.c., of Manchester (Kathleen M. Mahan on the brief and orally), for the defendants.*

# You're Not the Only One Who's Reinventing Yourself in 2021



We wrote our Member Guide for new admittees, but it contains information that's useful to attorneys at every step of their legal careers.

Download a copy today at [nhbar.org/member-guide/](http://nhbar.org/member-guide/)



# SOLACE IS WHERE YOU FIND IT... WITH OUR MEMBERS



Through the SOLACE program, NHBA members can help others in the NH legal community (including employees and families) who have suffered a significant loss, illness or injury and who need immediate assistance.

Details and submission form at [nhbar.org/solace/](http://nhbar.org/solace/)

