

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-2021-057

APPLEGATE ASSOCIATION NO. 1,)
)
 Plaintiff/Counterclaim)
 Defendant,)
)
 v.)
)
 MARJORIE COLLINS,)
)
 Defendant/Counterclaim)
 Plaintiff.)

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

REC'D CUMB CLERKS OFC
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This matter is before the Court on Plaintiff/Counterclaim Defendant Applegate Association No. 1's ("the Association") Motion for Partial Summary Judgment and Defendant/Counterclaim Plaintiff Marjorie Collins's ("Mrs. Collins") Motion for Summary Judgment. For the following reasons, the Court grants the Association's Motion and denies Mrs. Collins's Motion.

I. Background

The following is drawn from the parties' statements of material facts. The Association owns certain real property in Falmouth, Maine. (Pl.'s Supp'g S.M.F. ¶ 3; Pl.'s Add'l S.M.F. ¶ 3.) Mrs. Collins owns Unit 31 in Building Cluster No. 11 within the Association by way of deed recorded in the Cumberland County Registry of Deeds at Book 36210, Page 92. (Pl.'s Supp'g S.M.F. ¶ 5; Def.'s Supp'g S.M.F. ¶ 1; Pl.'s Add'l S.M.F. ¶ 5.)

All units within the condominium, including Mrs. Collins's, are subject to the Declaration, as amended and restated, recorded in the Cumberland County Registry of Deeds at Book 36945, Page 40, as well as the Plats, Bylaws, and all properly promulgated

Rules and Regulations (the Declaration, Plats, Bylaws, and Rules and Regulations collectively, the "Governing Documents"). (Pl.'s Supp'g S.M.F. ¶ 4; Def.'s Supp'g S.M.F. ¶ 2; Pl.'s Add'l S.M.F. ¶ 4.) Declaration § 5.2 provides that the Board of Directors ("the Board") shall govern the affairs of the Association. (Pl.'s Supp'g S.M.F. ¶ 20; Pl.'s Add'l S.M.F. ¶ 14.)

In September 2020, Mrs. Collins notified the Board that she was planning to install gas heat to her unit.¹ (Pl.'s Supp'g S.M.F. ¶ 26; Pl.'s Add'l S.M.F. ¶ 20.) The Board provided Mrs. Collins with forms for an application for approval of the project. (Pl.'s Supp'g S.M.F. ¶ 30; Pl.'s Add'l S.M.F. ¶ 24.) Mrs. Collins submitted a partial application. (Pl.'s Supp'g S.M.F. ¶ 31; Pl.'s Add'l S.M.F. ¶ 25.)

In early January 2021, Mrs. Collins retained the services of Beau J. Atwater-Wood of Redwood Plumbing and Heating to install a gas line to her unit. (Pl.'s Supp'g S.M.F. ¶ 35; Def.'s Supp'g S.M.F. ¶ 4; Def.'s Add'l S.M.F. ¶ 1; Pl.'s Add'l S.M.F. ¶ 29.) Although Mr. Atwater-Wood had initially proposed running the gas line through the garage, Mrs. Collins and Mr. Atwater-Wood arrived at a different configuration for the gas line after discussing Mrs. Collins's plans for modifications to the interior of her unit, practical considerations, and safety considerations. (Pl.'s Supp'g S.M.F. ¶¶ 40-41; Def.'s Resp. Pl.'s Supp'g S.M.F. ¶¶ 40-41; Def.'s Supp'g S.M.F. ¶¶ 9-12; Def.'s Add'l S.M.F. ¶¶ 6-9; Pl.'s Add'l S.M.F. ¶¶ 34-36.) The configuration involved running a gas line six feet up the exterior face of the building, approximately ten feet across the face of the building and over the door, then approximately eight feet down the building's face parallel to the door before entering the unit. (Pl.'s Supp'g S.M.F. ¶ 42; Def.'s Resp. Pl.'s Supp'g S.M.F. ¶ 42.)

¹ Mrs. Collins denies several admissible statements of material fact without providing a record citation. Each of those statements is deemed admitted by Mrs. Collins. *See* M.R. Civ. P. 56(h)(2), (4).

Sometime around the first week of January 2021, Mrs. Collins installed her gas line. (Pl.'s Supp'g S.M.F. ¶ 36; Pl.'s Add'l S.M.F. ¶ 30.) Mr. Atwater-Wood affixed the gas line to the exterior face of the building with clamps screwed into the exterior with twelve drywall screws and secured by split rings and F&M plates.² (Pl.'s Supp'g S.M.F. ¶¶ 43, 44; Pl.'s Add'l S.M.F. ¶ 38.) Mr. Atwater-Wood testified that to affix the gas piping, he screwed through the siding into the plywood beneath and into the drywall beyond the plywood. (Pl.'s Supp'g S.M.F. ¶ 45; Pl.'s Add'l S.M.F. ¶ 39.) Mr. Atwater-Wood also drilled a hole at the end of the exterior gas piping through the exterior siding, plywood, and drywall. (Pl.'s Supp'g S.M.F. ¶ 48; Pl.'s Add'l S.M.F. ¶ 42.)

The gas line, which services only Mrs. Collins's unit, was installed to service a gas range and gas fireplace within Mrs. Collins's unit. (Pl.'s Supp'g S.M.F. ¶ 37; Pl.'s Add'l S.M.F. ¶ 31; Def.'s Supp'g S.M.F. ¶ 6; Def.'s Add'l S.M.F. ¶ 3.) The gas line was safely installed. (Def.'s Supp'g S.M.F. ¶ 8; Def.'s Add'l S.M.F. ¶ 5.)

Mrs. Collins did not submit a complete application to the Board before commencing the work, nor did she provide notice to the Board as to the timing of the work to be performed. (Pl.'s Supp'g S.M.F. ¶¶ 51, 52; Def.'s Resp. Pl.'s Supp'g S.M.F. ¶ 52; Pl.'s Add'l S.M.F. ¶¶ 45, 46.) Mrs. Collins stated that she "assumed that [the] maintenance request was approved by the Board." (Pl.'s Supp'g S.M.F. ¶ 55; Pl.'s Add'l S.M.F. ¶ 49.)

Section 3.4 of the Declaration provides:

Subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association, a Unit Owner may make nonstructural improvements and alterations within the interior of the Unit without approval of the Association.

² Paragraphs 11-14, 46, 47, 49, and 50 of the Association's Supporting Statement of Material Facts and paragraphs 9, 11, 12, and 22 of the Association's Additional Statement of Material Facts constitute legal conclusions and will not be considered. The portion of paragraph 53 of the Association's Supporting Statement of Material Facts that contains a legal conclusion will not be considered. Similarly, paragraphs 7 and 14 of Mrs. Collins's Supporting Statement of Material Facts and paragraphs 4 and 11 of Mrs. Collins's Additional Statement of Material Facts will not be considered because they contain legal conclusions.

....

Any alteration or improvement which is structural or which does not conform with the provisions in the previous sentence may be made only with the written approval of the Board of Directors. Applications for such alterations or improvements shall be made in accordance with the procedures set forth in § 4.3 herein. Alterations or improvements outside the boundaries of the Unit, as defined in § 3.2, also shall require written approval of the Board of Directors after application made in accordance with § 4.3.

(Pl.'s Supp'g S.M.F. ¶ 6; Def.'s Supp'g S.M.F. ¶ 18; Def.'s Add'l S.M.F. ¶ 16; Pl.'s Add'l S.M.F. ¶ 8.) Similarly, Declaration § 4.3 provides in part:

No Unit Owner shall alter any portion of the Common Elements, including the Limited Common Elements, without the express written permission of the Board of Directors. Prohibited alterations without Board consent include exterior paint, exterior doors, replacement windows, addition of a second story, alteration of a garage or basement, and all other alterations or additions to the portions of the Property considered Common or Limited Common Elements.

(Pl.'s Supp'g S.M.F. ¶ 15; Def.'s Supp'g S.M.F. ¶ 19; Def.'s Add'l S.M.F. ¶ 17.)

Declaration § 4.1 defines the "Common Elements" as "all of the Property, excluding the Units." (Pl.'s Supp'g S.M.F. ¶ 9; Def.'s Supp'g S.M.F. ¶ 20; Def.'s Add'l S.M.F. ¶ 18; Pl.'s Add'l S.M.F. ¶ 6.) Declaration § 1.1 defines "the Property" as the "metes and bounds description of the real property and buildings and improvements provided as Exhibit A to the Declaration." (Pl.'s Supp'g S.M.F. ¶ 10; Pl.'s Add'l S.M.F. ¶ 7.) Section 3.2 of the Declaration defines the boundaries of a Unit:

(a) The upper horizontal boundary is the unfinished/undecorated lower interior side of the wallboard, gypsum, or other surface attached to the lower edge of the second floor or attic joists.

(b) The lower horizontal boundary is the unfinished/undecorated interior side of the subflooring or material attached to the top edge of the floor joists or any concrete floor slab.

(c) The vertical boundaries are the unfinished/undecorated interior side of the wallboard, gypsum, or other surface attached to the inner edge of the exterior wall studs, interior surfaces of exterior doors, windows, skylights, and glass walls, and the unfinished/undecorated surface of party walls between abutting Units.

....

By way of example and not of limitation, specific components of Units include interior partitions, finished flooring or floor covering . . . and gas lines servicing Unit equipment and systems, even if any portions of such lines or systems are located outside of the Unit boundaries, provided that they do not service another Unit.

Any portion of the utility system or other apparatus serving more than one Unit (e.g., pipes, conduits, ducts) which is partially within and partially without the Unit, is part of the Common Elements.

(Pl.'s Supp'g S.M.F. ¶¶ 7, 8; Def.'s Supp'g S.M.F. ¶ 17; Def.'s Add'l S.M.F. ¶ 15.)

Declaration § 5.3 authorizes the adoption of Rules and Regulations pertaining "to the operation, use, appearance, and occupancy of the Units and Common Elements."

(Pl.'s Supp'g S.M.F. ¶ 21; Pl.'s Add'l S.M.F. ¶ 15.) The most current version of the Rules and Regulations was adopted in June 2020. (Pl.'s Supp'g S.M.F. ¶ 22.; Pl.'s Add'l S.M.F. ¶ 16.) Rule and Regulation III provides:

Owners are permitted to make alterations to the interior of their personal unit without having to seek the permission of the Board of Directors provided those alterations have no effect on the structure and are confined to the interior space. If the alterations affect the structure or the exterior appearance in any way, then a Request for Alteration/Maintenance must be submitted to the Alterations and Maintenance Committee with plans and contractor information for evaluation and recommendation for approval/denial by the Board of Directors.

(Pl.'s Supp'g S.M.F. ¶ 23; Pl.'s Add'l S.M.F. ¶ 17.)

Section 5.3(d) of the Bylaws provides:

The violation of any rule or regulation adopted by the Association, or the breach of any Bylaw, or the breach of any provision of the Declaration shall give the Directors the right, in addition to any other rights set forth in these Bylaws:

(1) After reasonable written notice and opportunity for the Owner to remedy the violation, to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting member, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any

manner of trespass provided, however, the Board of Directors shall not alter or demolish any items of construction before instituting appropriate judicial proceedings;

(2) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the cost, including reasonable attorneys' fees, of such member;

(3) If the personal conduct of any person violates the Association Rules and Regulations governing the use of the Common Elements, to suspend such use by any such person for violation of such rule or regulation for a period not to exceed thirty (30) days, in addition to the period of violation, for any single violation.

(4) If, after thirty (30) days written notice, a person continues to continuously or repeatedly, and flagrantly, violate a rule or regulation, summary charges may be levied against a member for such violation, in addition to any damages, provided that no summary charges may be levied for more than \$50.00 for any one violation; but each day a violation continues after such notice shall be considered a separate violation. Collection of charges for damages or summary charges may be enforced against the member as if the charge were a common charge owed by a particular member or members.

(Pl.'s Add'l S.M.F. ¶ 70.)

The Board obtained an estimate of \$803.31 to rework the gas line. (Pl.'s Supp'g S.M.F. ¶ 67; Pl.'s Add'l S.M.F. ¶ 61.) Mrs. Collins refused to work with the Board to alter the gas line. (Pl.'s Supp'g S.M.F. ¶¶ 69, 70; Pl.'s Add'l S.M.F. ¶¶ 63, 64.)

Pursuant to § 5.3(d)(4) of the Bylaws, the Board sent a written Notice of Violation to Mrs. Collins on April 10, 2021. (Pl.'s Add'l S.M.F. ¶ 71.) Mrs. Collins did not remedy the purported violation within thirty days of receipt of the Notice of Violation. (Pl.'s Add'l S.M.F. ¶ 73.) The Board voted to set a daily fine of \$50.00. (Pl.'s Add'l S.M.F. ¶ 72.) The Association has assessed and continues to assess Mrs. Collins a fine of \$50.00 per day for each day that her gas line remains in place. (Def.'s Supp'g S.M.F. ¶ 16; Def.'s Add'l S.M.F. ¶ 13.)

Mrs. Collins moves for summary judgment on Counts I through IV of the Association's Complaint and Count I of her Counterclaim. The Association moves for

summary judgment on Counts I and II of its Complaint and Counts I and II of Mrs. Collins's Counterclaim.

II. Legal Standard

A party is entitled to summary judgment when review of the parties' statements of material facts and the record to which the statements refer demonstrates that there is no genuine issue as to any material fact in dispute, and that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 14, 951 A.2d 821.

A contested fact is "material" if it could affect the outcome of the case. *Dyer*, 2008 ME 106, ¶ 14, 951 A.2d 821. A "genuine issue" of material fact exists if a factfinder must "choose between competing versions of the truth." *Id.* (quoting *Farrington's Owners' Ass'n v. Conway Lake Resorts, Inc.*, 2005 ME 93, ¶ 9, 878 A.2d 504).

The court considers the record in the light most favorable to the party objecting to the grant of summary judgment. *F.R. Carroll, Inc. v. TD Bank, N.A.*, 2010 ME 115, ¶ 8, 8 A.3d 646; *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 23, 980 A.2d 1270. "Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted." M.R. Civ. P. 56(h)(4). To controvert an opposing party's statement of fact, a party must "support each denial or qualification by a record citation." M.R. Civ. P. 56(h)(2). The evidence offered in support of a genuine issue of material fact "need not be persuasive at that stage, but the evidence must be sufficient to allow a fact-finder to make a factual determination without speculating." *Est. of Smith v. Cumberland County*, 2013 ME 13, ¶ 19, 60 A.3d 759.

When appropriate, summary judgment may be rendered against the moving party. M.R. Civ. P. 56(c). Summary judgment may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages. *Id.*

III. Discussion

The undisputed facts for each of the pending motions are substantially similar, but not identical. The Court will first consider Mrs. Collins's motion, viewing the record developed in connection with that motion in the light most favorable to the Association. Then, the Court will consider the Association's motion, viewing the record developed in connection with that motion in the light most favorable to Mrs. Collins.

A. Mrs. Collins's Motion for Summary Judgment

i. Counterclaim Count I

Count I of Mrs. Collins's Counterclaim requests a declaratory judgment that Mrs. Collins has the right to install gas lines without Board approval. Mrs. Collins contends that the Governing Documents allow Unit owners to modify the interior of Units without Board approval, and that gas lines are included in the definition of "Unit." To resolve this issue, the Court must interpret the Governing Documents.

"A condominium association's bylaws and declaration are contracts, and '[t]he interpretation of a contract, including whether or not its terms are ambiguous, is a question of law.'" *Scott v. Fall Line Condo. Ass'n*, 2019 ME 50, ¶ 6, 206 A.3d 307 (quoting *Farrington's Owners' Ass'n*, 2005 ME 93, ¶ 9, 878 A.2d 504). Language is ambiguous "if it is reasonably susceptible to different interpretations." *Farrington's Owners' Ass'n*, 2005 ME 93, ¶ 9, 878 A.2d 504.

If the court determines that language in the contract is ambiguous, then the interpretation of that language becomes a question of fact for the factfinder. *Scott*, 2019 ME 50, ¶ 6, 206 A.3d 307. Declarations and bylaws must be "construed in accordance with

the intention of the parties, which is to be ascertained from an examination of the whole instrument. All parts and clauses must be considered together that it may be seen if and how one clause is explained, modified, limited or controlled by the others.” *Scott*, 2019 ME 50, ¶ 7, 206 A.3d 307 (quoting *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 11, 814 A.2d 989).

The Declaration is unambiguous. The Common Elements may not be modified without prior written approval of the Board. The Common Elements include the exterior siding and exterior walls because they fall outside of the definition of a “Unit.” Moreover, Rule and Regulation III makes abundantly clear that any alteration that “affects the structure or the exterior appearance in any way” requires approval.

Mrs. Collins’s interpretation—that gas lines are a component of a Unit and may be installed outside of a Unit and attached to Common Elements without prior approval of the Board as long as the gas line services only one Unit—is not a reasonable reading. Mrs. Collins’s interpretation depends on reading § 3.2 in isolation. But the Court must consider the meaning of § 3.2 within the context of the Declaration as a whole, which includes §§ 3.4, 4.1, and 4.3, and the incorporated Rules and Regulations. Reading the Governing Documents as a whole, it is apparent that Mrs. Collins’s interpretation is unreasonable. Summary judgment will be entered against Mrs. Collins and in favor of the Association on Count I of the Counterclaim.

ii. Complaint Count I

The Association seeks a judgment declaring that Mrs. Collins violated the Governing Documents by installing her gas line and that the gas line is an unauthorized alteration to the Association’s Common Elements. As discussed above, the Governing Documents unambiguously prohibit alteration of the Common Elements without prior

Board approval, which Mrs. Collins did not obtain. Because installation of the gas line altered the exterior siding and walls, Mrs. Collins violated the Governing Documents.

There are genuine disputes of fact regarding the aesthetic compatibility of Mrs. Collins's gas lines with gas lines servicing other units. These disputes, however, are not material because they do not affect the undisputed fact that Mrs. Collins did not receive approval for the gas line installation. Accordingly, the Association is entitled to summary judgment in its favor and against Mrs. Collins on Count I of its Complaint.

iii. Complaint Count II

The Association seeks an order enjoining Mrs. Collins from interfering with work by the Association to remove and reinstall the gas line. A court may award injunctive relief when a plaintiff has shown:

(1) that plaintiff will suffer irreparable injury if the injunction is not granted, (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), (4) that the public interest will not be adversely affected by granting the injunction.

Ingraham v. Univ. of Me., 441 A.2d 691, 693 (Me. 1982). When a plaintiff requests a permanent injunction, the third element requires that the plaintiff has succeeded on the merits. *Fitzpatrick v. Town of Falmouth*, 2005 ME 97, ¶ 18, 879 A.2d 21.

There are no genuine disputes of material fact as to any of the elements. As discussed in detail in the following section, the Association has succeeded in demonstrating the existence of the violation and its right to remedy the violation pursuant to the Governing Documents. *See* Bylaws § 5.3(d)(1). The Association has demonstrated the harm to its property rights from the continuing violation of the Governing Documents. That harm outweighs any harm that would come to Mrs. Collins from the reconfiguration and reinstallation of the gas line, which is minimal. Finally, it is

apparent that the public interest will not be adversely affected by the reinstallation project or by preventing Mrs. Collins from interfering with the work.

The Association, therefore, is entitled to injunctive relief. Summary judgment will be entered against Mrs. Collins and in favor of the Association on Count II of the Complaint. An order will enter to enjoin Mrs. Collins from interfering with the Association's removal and reinstallation of the gas line servicing her Unit directly or through her agent(s).

iv. Complaint Counts III and IV

Count III of the Complaint is a claim for reimbursement of the cost of removing and reinstalling the gas lines. Count IV is a claim for the fines assessed by the Association against Mrs. Collins. Section 5.3(d)(1) of the Bylaws provides that the Association may abate and remove any "structure, thing or condition" that exists in violation of the Governing Documents at the expense of the unit owner after reasonable written notice and opportunity for the unit owner to remedy the violation. Section 5.3(d)(4) of the Bylaws provides that the Board may fine a person fifty dollars per day after notice of a violation "[i]f, after thirty (30) days written notice, a person continues to continuously or repeatedly, and flagrantly, violate a rule or regulation."

Installation of the gas line required affixing brackets to the exterior siding and drilling a hole through the exterior siding and wall, which are Common Elements, thereby altering the exterior appearance of the building. Mrs. Collins violated the Declaration and Rule and Regulation III by failing to obtain approval of the Board before proceeding with the project.

A written Notice of Violation was sent to Mrs. Collins on April 10, 2021. The Board also offered Mrs. Collins an opportunity to remedy the violation by reworking the gas line, which she refused. The violation continued for more than thirty days. These facts

are undisputed. The Board, therefore, has authority to fine Mrs. Collins for the violation pursuant to Bylaws § 5.3(d)(4). The Board also has authority to remove the gas line at Mrs. Collins's expense. Summary judgment will be entered in favor of the Association and against Mrs. Collins on the issue of liability for Counts III and IV; however, a hearing on damages will be necessary.

B. The Association's Motion for Partial Summary Judgment

i. Complaint Count I

As decided above, the Association is entitled to entry of summary judgment in its favor and against Mrs. Collins on Count I of its Complaint.

ii. Complaint Count II

As decided above, the Association is entitled to entry of summary judgment in its favor and against Mrs. Collins on Count II of its Complaint.

iii. Counterclaim Counts I and II

The Court has already ruled in favor of the Association and against Mrs. Collins on Count I of the Counterclaim. Thus, in the context of the Association's Motion, the Court need only discuss Counterclaim Count II. Count II of Mrs. Collins's Counterclaim requests an injunction prohibiting the Association from fining Mrs. Collins for the installation of the gas line.

As discussed above, the Association has authority pursuant to Bylaws § 5.3(d)(4) to fine Mrs. Collins for each day the gas line remains in place in violation of the Governing Documents. The Court will not issue the requested injunction. Summary judgment is entered in favor of the Association and against Mrs. Collins on Count II of her Counterclaim.

IV. Conclusion

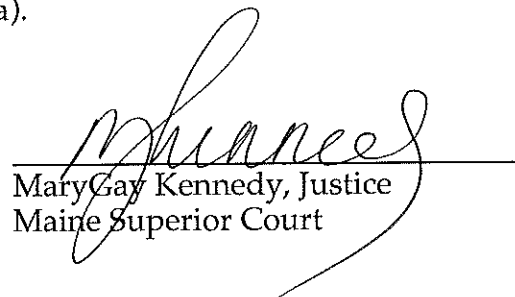
For the foregoing reasons, the Courts denies Mrs. Collins's Motion for Summary Judgment and grants the Association's Motion for Partial Summary Judgment.

The entry is:

1. Defendant/Counterclaim Plaintiff Marjorie Collins's Motion for Summary Judgment is DENIED. Summary judgment is entered against Mrs. Collins and in favor of Plaintiff/Counterclaim Defendant Applegate Association No. 1 on Count I of Mrs. Collins's Counterclaim, and summary judgment is entered against Mrs. Collins and in favor of the Association on Counts I and II of the Association's Complaint. Summary judgment as to the issue of liability is entered against Mrs. Collins and in favor of the Association on Counts III and IV of the Complaint; however, hearing on the issue of damages as to Counts III and IV is necessary before the Court may make an award of damages.
2. The Association's Motion for Partial Summary Judgment is GRANTED. Summary judgment is entered in favor of the Association and against Mrs. Collins on Counts I and II of its Complaint, and summary judgment is entered in favor of the Association and against Mrs. Collins on Counts I and II of the Counterclaim.
3. Mrs. Collins is hereby ENJOINED from interfering with the Association's removal and reinstallation of the gas line servicing her Unit directly or through her agent(s).

The Clerk is directed to incorporate this Order into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: November 18, 2022


Mary Gay Kennedy, Justice
Maine Superior Court