

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3702354

Book Page CIVIL

No. Pages: 39

Instrument: COMPLAINT

Control #: 202401111117

Index #: E2024000703

Date: 01/11/2024

Time: 3:04:45 PM

Return To:
James R. Caputo
4278 Lafayette Rd
Jamesville, NY 13078

Caputo, James R

Holt, Nathan
Billet, Owen
Premium Mortgage Corporation
Houle, Robert T
Houle Sales Consulting Inc

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

Index No.: _____

James R Caputo

Plaintiff

– vs –

COMPLAINT FOR
FORECLOSURE OF
MECHANICS LIEN
BREACH OF CONTRACT
BREACH OF FIDUCIARY DUTY
CONTEMPT OF COURT
FRAUD

- 1. Nathan Holt – Current Homeowner
- 2. Owen Billet – Current Homeowner
- 3. Premium Mortgage Corporation – Mortgage Holder
- 4. Robert T Houle – President of Houle Sales Consulting Inc
- 5. Houle Sales Consulting Inc - Home Seller
- 6. Donald Cheney Esq – Attorney Presiding Over Sale
- 7. Cheney Law Firm PLLC – Real Estate Attorney Firm
- 8. ABAR Abstract Corporation – Title Insurance Company for Sale
- 9. Monroe County Clerk’s Office – Office Where Lien Filed

Subject Premises:
4 Chambord Drive
Mendon, NY 14506

Defendants

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Plaintiff, acting pro se, complaining of the Defendants above-named, respectfully submits to this Court and alleges as follows:

THE PARTIES

1. Plaintiff James R. Caputo, the sole proprietor of a home improvement business under the name House Surgeon Renovations, (previously House Surgeon Home Service), a domestic company duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of business at 6499 East Seneca Turnpike Box 433 Jamesville, NY 13078, is the home improvement contractor who provided labor and materials for the improvement of the subject premises, and who filed the mechanic's lien upon which this foreclosure complaint is based. (*See Exhibit 1*)

2. Upon information and belief, Defendant(s) No. 1, Nathan Hold and Owen Billet, are the current homeowners of the subject premises located at 4 Chambord Drive Mendon, NY 14506, [designated on the tax map as Municipality (SWIS Code): Mendon: (263689) Parcel ID: 216.04-1-43]. They are named as necessary defendants in this matter pursuant to NY LIE CHAPTER 33, ARTICLE 3 §44(3) and NY Real Property Actions & Proceedings (RPA) CHAPTER 81, ARTICLE 13, §1311(1), and presently stand directly liable to Plaintiff James Caputo for payment of the debt secured by the property, the mortgage and lien thereupon.

3. Upon information and belief, Defendant No. 2, Premium Mortgage Corporation, (a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having their principal place of business at 2541 Monroe Ave Rochester, NY 14618), is the current mortgage holder/lender for the subject premises. They are named as necessary defendants in this matter pursuant to NY LIE CHAPTER 33, ARTICLE 3 §44(2) and NY Real Property Actions & Proceedings (RPA) CHAPTER 81, ARTICLE 13, §1311(3).

4. Upon information and belief, Defendant No. 3, Robert T. Houle, the president and sole operating officer of Defendant No. 4, Houle Sales Consulting, Inc, (a domestic corporation duly

organized and existing under and by virtue of the laws of the State of New York, having his and its principal place of residence (and operation) at 1108 Cheese Factory Road, Honeoye Falls, New York 14472), are the previous owner of the subject premises and against whom Plaintiff James Caputo filed the original mechanic’s lien involved with this complaint. Pursuant to NY LIE CHAPTER 33, ARTICLE 3 §41 and NY Real Property Actions & Proceedings (RPA) CHAPTER 81, ARTICLE 13, §1313, these parties are being named as permissible defendants in this matter for being liable to the plaintiff James Caputo for payment of the debt secured by the property, the mortgage and lien thereupon.

5. Upon information and belief, Defendant No. 5, Donald Cheney, Esq., the owner and operator of Defendant No. 6, Cheney Law Firm, PLLC, (a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of operation at 336 North Main Street, Canandaigua, NY 14424), are the attorney (and firm) who presided over the sale of the subject premises over and against an existing and in-force mechanic’s lien on said property. Pursuant to NY LIE CHAPTER 33, ARTICLE 3 §41 and NY Real Property Actions & Proceedings (RPA) CHAPTER 81, ARTICLE 13, §1313, these parties are being named as permissible defendants in this matter for being liable to the plaintiff James Caputo for payment of the debt secured by the property, the mortgage and lien thereupon.

6. Upon information and belief, Defendant No. 7, ABAR Abstract Company, (a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of operation at 65 West Broad Street, Suite 101, Rochester, NY 14614), is the Title Insurance providing company of record for the sale of the subject premises over and against an existing and in-force mechanic’s lien. Pursuant to NY LIE CHAPTER 33, ARTICLE 3 §41 and NY Real Property Actions & Proceedings (RPA) CHAPTER 81,

ARTICLE 13, §1313, this party is being named as a permissible defendant in this matter for being liable to the plaintiff James Caputo for payment of the debt secured by the property, the mortgage and lien thereupon.

7. Upon information and belief, Defendant No. 8, The Monroe County Clerk’s Office, (a County Government Administrative Bureau/Agency, duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of operation at 39 West Main Street, Room 101 Rochester, NY 14614), is the County Real Property Records Administrator and overseer of the filed and verified mechanic’s lien (against the subject premises) involved in this Complaint that wound up missing from the (online) property records, missing from an official and verified printout of all records for the property and/or somehow ended up hidden from the records as part of the (enigmatic) sale of the property over and against this (selfsame) in-force mechanic’s lien. Pursuant to NY LIE CHAPTER 33, ARTICLE 3 §41 and NY Real Property Actions & Proceedings (RPA) CHAPTER 81, ARTICLE 13, §1313, this party is being named as a permissible defendant in this matter for being potentially liable to the plaintiff James Caputo for payment of the debt secured by the property, the mortgage and lien thereupon.

JURISDICTION AND VENUE

8. Jurisdiction is proper under NY CPLR §301 and §302.

9. Venue is proper in New York pursuant to NY CPLR §503 because it is the county in which Defendants (save one) have their principal places of residence and business and where the subject residence is located.

FACTS

10. In this action, Plaintiff James Caputo seeks to file a Complaint for Foreclosure of Mechanic's Lien against Nathan Holt and Owen Billet, Premium Mortgage Corporation, Robert T. Houle and Houle Sales Consulting, Inc., Donald Cheney, Esq, Cheney Law Firm, PLLC, ABAR Abstract Corporation, and the Monroe County Clerk's Office – on the basis of the underlying grounds.

11. That, on or before May 1, 2021, Plaintiff, James Caputo, as general contractor, initially entered into a work agreement whereby he was to furnish professional home improvement services upon the subject premises, [which was then secured by a formal written agreement on August 3, 2021], all with the knowledge and consent of then owner, Robert T. Houle and Houle Sales Consulting, Inc. (*See Exhibit 2*)

12. That, Plaintiff begs leave to refer to the original of said agreement as the same may be produced upon the trial of this action for all of its terms and conditions.

13. That, according to the terms and conditions of the agreement, Plaintiff James Caputo did agree to provide said services of extensive carpentry repair and partial restructuring/redesign, (involving compromised studs, support joists, exterior sheathing, and more), along with the installation of a completely new plumbing system, within and upon the (heavily water damaged) subject property for the agreed upon (and greatly discounted) sum of \$19,500. (*See again Exhibit 2*)

14. That, the terms of the August 3, 2021 contract stated that an initial payment of \$3,000 would be made, followed by weekly \$400 payments until the project was completed. The remainder of the balance would be paid upon the sale (or occupation) of the house or 90 days from completion of plaintiff's work, whichever came first.

15. That, the last day of work by plaintiff on subject premises was November 15, 2021 and that according to the terms and conditions of his agreement, Plaintiff did complete his performance and furnish said Carpentry and Plumbing services to the satisfaction of Robert T. Houle and Houle Sales Consulting, Inc, (who retained the benefits of Plaintiff James Caputo's professional services), thereby earning the sum of \$19,500.

16. That, Plaintiff James Caputo struggled to get his weekly \$400 installment payments from Defendant(s) Robert T. Houle and Houle Sales Consulting, Inc., with multiple delays and three separate instances of returned checks for insufficient funds. (*See Exhibits 3 and 4*)

17. That, Plaintiff James Caputo was paid a paltry sum of \$8,200 from the contracted amount of \$19,500 by the time his work on the subject premises was completed. This paid total was comprised of a \$3,000 down payment and thirteen (13) \$400 payments. This left the remaining balance from the contracted work at \$11,300, which would be subject to interest accrument of 9% annually (compounded daily) if unpaid.

18. That, as of January 8, 2024, a total of 692 days have elapsed since the final balance of \$11,300, (from the originating contract), was due on February 16, 2022, with an accrued interest now due of \$2,099. (*See Exhibit 5*)

19. That, on January 15, 2022, Defendant Robert T. Houle and Houle Sales Consulting, Inc were sent a Final Invoice for the work at the subject premises. This bill included the balance due (at the time) from the (August 3, 2021) contract, plus an additional \$8,700 in itemized charges, [which was commensurate with previous service rates] for work completed by plaintiff (over and above the contract) that was mutually agreed upon by both parties during the course of the work, along with a supplementary charge of \$5,000. This invoice was spurned by Defendant Robert T. Houle who refused to pay for the services described and rendered. (*See Exhibit 6*)

20. That, according to the terms and stipulations of his working agreement, Plaintiff did complete his performance, furnish said services to Robert T. Houle and Houle Sales Consulting, Inc. upon the subject premises, and did endure the specified conditions, (all detailed in the Final Invoice), thereby earning the additional sum of \$13,700.

21. That, as of January 2022, the total outstanding balance due Plaintiff James Caputo for the completed work on the subject premises is \$25,000.

22. That, no part of the aforesaid sum of \$25,000 has been paid to Plaintiff although duly demanded.

23. That, all of the aforesaid labor and materials furnished by Plaintiff to the said Defendants, Robert T. Houle and Houle Sales Consulting, Inc., was for construction of improvements on and within the subject premises and were furnished with the knowledge and consent of the aforesaid owner.

24. That, by reason of the foregoing, Plaintiff James Caputo became and is entitled to receive the payment for the agreed price for professional services which included labor supplied and work materials furnished in connection with the improvement of the Subject Premises to the sum of \$25,000.

25. That, in breach of their obligations, Robert T. Houle and Houle Sales Consulting, Inc, refused and neglected to pay to James Caputo/House Surgeon Renovations (both) the contracted and supplemental balances due and outstanding for the supply of extensive and advanced carpentry and plumbing work in connection with the improvement of the Property.

26. That, Plaintiff James Caputo/House Surgeon Renovations (House Surgeon Home Service) demanded the balance due payment from Robert T. Houle and Houle Sales Consulting,

Inc., who have since failed, refused and neglected to pay/remit the same to Plaintiff James Caputo.

27. That, Defendant Robert T. Houle has a history of breaching financial obligations on real property. **(See Exhibit 7)**

28. That, pursuant to the Lien Law of the State of New York, Plaintiff James Caputo, on January 21, 2022, within the eight (8) months (four months on a single-family dwelling) after the time when the last items of the contract and invoice were supplied, duly filed with the Monroe County Clerk, a Notice of Mechanic's Lien in writing and in proper and due form, duly verified by the oath of Plaintiff which claims a lien on the premises located at 4 Chambord Drive, Mendon, NY 14506, [designated on the tax map as Municipality (SWIS Code): Mendon: (263689) Parcel ID: 216.04-1-43] for the sum of \$25,000. **(See Exhibits 8 and 9)**

29. That, said Notice of Mechanic's Lien set forth Plaintiff's state of business operation, principal office in New York , the owner of the real property against whose interest therein a lien was claimed and the interest of the owner as far as known to Plaintiff; the name of the person by whom the lienor was employed and to whom Plaintiff as lienor furnished materials; the materials furnished and the agreed price and value thereof; the unpaid balance; the time when the first and last materials were furnished; the property subject to the lien with a description thereof to permit identification; and said Notice of Mechanic's Lien contained all the statements required by and in all respects duly complied with the statutes of New York.

30. That, pursuant to Lien Law §10(1) and §10(2) following the filing of said lien, Plaintiff served a copy of said lien upon the owners and the corporation with whom the construction contract was made. Pursuant to Lien Law §11, an affidavit with proof of service as to the

certified mailing of copies of the aforesaid lien was filed with the County Clerk within thirty (30) days after the notice of lien was filed. (**See Exhibit 10**)

31. That, by reason of the foregoing and by the filing and docketing of said Notice of Mechanic's Lien and said affidavits of service regarding the Notice of Mechanic's Lien, Plaintiff acquired a good, valid and subsisting lien on the within described premises.

32. That, on March 22, 2022, Robert T. Houle and Houle Sales Consulting, Inc. filed an Order to Show Cause in the Monroe County (NY) Supreme Court seeking dismissal of the Mechanics Lien, after which a decision was rendered on May 2, 2022 by Supreme Court Justice, Hon. Sam L. Valleriani upholding all aspects of plaintiff's mechanic's lien as being proper. (**See Exhibit 11**)

33. That, per Judge Valleriani's Decision, the only way in which the subject premises could be sold was either settle the mechanics lien or file a sufficient bond pursuant to New York Lien Law (LIE) §19.

34. That, on Tuesday, May 24, 2022 at 4:26pm; Defendant Donald Cheney, Esq emailed Plaintiff James Caputo the following:

“Mr. Caputo,
Houle Sales Consulting, Inc. has a contract in place for the sale
of 4 Chambord Drive. Closing will be in about 30 days.”

35. That, on Wednesday, June 1, 2022 at 12:26pm; Robert T. Houle emailed James Caputo the following (excerpts):

“Jim,
I am writing to you and my attorney Don Cheney.... That you
withdraw your mechanicsHaving the lien on my personal
name clouds the title... It is becoming a distraction and slowing
down closing.”

36. That, on Thursday, June 2, 2022 at 10:14am; Robert T. Houle emailed James Caputo the following (copied and pasted):

“Jim,

Asa noted yesterday and in a[pparently my attorneys emails.. my name on the lien is screwing up the abstract...I need to be removed from any liens for this to close.....”

37. That, on Thursday, June 2, 2022 at 2:51pm; Don Cheney, Esq emailed James Caputo the following (excerpts):

“Mr. Caputo,

....What I really need is to have this lien put in the name of the property owner who is Houle Sales Consulting, Inc. This corporation owns the property and not Robert Houle individually. If you are willing to amend the lien I am happy to draft the paperwork.....

...If this lien gets bonded over you will have to bring an action to foreclose the lien and collect your money. This has to be done within 2 years from the date the lien was originally filed. At this point you will be able to submit your proof and Mr. Houle can submit his proof and a judge will decide whether the lien is proper and the amount of the lien.”

38. That, on June 3, 2022 – Defendant Robert T. Houle filed papers with Monroe County Supreme Court against Plaintiff James Caputo seeking to have his (Robert T. Houle’s) name removed from the Mechanic’s Lien on 4 Chambord Drive and replaced with his corporation’s name. His eventual service violation of these papers upon Plaintiff causes a cancelation and ultimate rescheduling of this matter before the Judge for August 25, 2022.

39. That, on Wednesday Jun 8, 2022 at 1:16 PM, Defendant Robert T. Houle wrote Plaintiff James Caputo an email containing the following (excerpts):

Jim,

I asked that you withdraw the lien against me..... If you continue to insist on the lien in my personal name this is only delaying and complicating the matter as well. The buyer is ready to close and the

bank is ready to fund this. The abstract because of your lien in my name is holding up the closing.

40. That, per Judge Valleriani's Decision on May 2, 2022, he expressly ruled against the "Proper Party" motion and contention made by Defendant Robert T. Houle and Houle Sales Consulting, Inc. for the lien to be dismissed by citing, (with emphasis) NY LIE §9(7) which states:

"The property subject to the lien, with a description thereof sufficient for identification; and if in a city or village, its location by street and number, if known; whether the property subject to the lien is real property improved or to be improved with a single-family dwelling or not. A failure to state the name of the true owner or contractor, or a misdescription of the true owner, shall not affect the validity of the lien."

41. That, on June 9, 2022, Defendant Robert T. Houle wrote an email to the Court Clerk for Judge Sam L. Valleriani seeking to have his July 21, 2022 court date moved up to a date in June, due to the pending sale of the subject premises pressing the matter.

42. That, on June 10, 2022, Defendant Houle was given a modified date of June 23, 2022. Plaintiff James Caputo was eventually copied in by the Court on these communications but did not see them for ten days.

43. That, on June 20, 2022 Plaintiff Caputo notified the Court that he had not yet received service of any papers for the changed June 23, 2022 date. Defendant Houle responded by stating that the June 23, 2022 date was actually not agreed to or accepted and that the original July 21, 2022 date was being kept. He assured the Court the Petitioner James Caputo would "be served prior and given ample time to respond." (**See Exhibit 12**)

44. That, on June 29, 2022, despite an active and in-force real-property mechanics lien, the subject premises was secretively sold by Robert T. Houle and Houle Sales Consulting, Inc to Defendants Nathan Holt and Owen Billet for \$410,000, without any disclosure whatsoever to Plaintiff James Caputo. Donald Cheney, Esq. and Cheney Law Firm, PLLC provided the legal services for and presided over the sale of the subject premises as representing the seller, with full knowledge of the duly filed and (earlier) Court-upheld mechanic's lien actively on the property.

45. That, on July 20, 2022, more email communications occurred from the Court regarding Defendant Houle's pending "Order To Show Cause, seeking to remove his name from the mechanic's lien as not being the owner of the subject property." The Judge's clerk states that they had not received any opposition from Plaintiff James Caputo. After not having heard any response by the end of the day, the Court adjourned the motion for one week pending any opposition from Petitioner James Caputo. (**See Exhibit 13**) Note: This just-mentioned court matter, (which was ongoing back in July 2022), was, in fact, Defendant Robert T. Houle contesting a previously upheld mechanic's lien on his property that had (by the time of these dates of communication) already been (somehow) sold by Mr. Houle out from under the very lien itself that is in question regarding his name. (With emphasis)

46. That, on July 21, 2022, Petitioner James Caputo sees these emails for the first time and immediately responded to the Court by stating that no papers for this July 21, 2022 matter had been served upon him. That he appreciated the time extension and asked for further instructions. (**See again Exhibit 13**) Note: At this moment in time, Plaintiff James Caputo still does not realize throughout these email communications actively involving Defendant Robert T. Houle that the subject premises had already been stealthily sold by Mr. Houle. (Emphasis added)

47. That, on July 21, 2022, the Court recognized that the papers in the matter had not been served in accordance with NY CPLR 308, [despite Defendant Robert T. Houle previously writing the Court and assuring them that Petitioner James Caputo would “be served prior and given ample time to respond.”], and therefore rescheduled the entire matter before the Court for August 25, 2022. (*See Exhibit 13*)

48. That, on August 9, 2022, after still not having received proper (re)service of the papers pertaining to the August 25, 2022 scheduled court appearance, it was discovered by Plaintiff James Caputo through an online search that the subject property upon which the mechanic’s lien rested, known as 4 Chambord Drive, Mendon, NY 14506, had been sold, closed and the deed transferred on the abovementioned date of June 29, 2022.

49. That, on August 11, 2022, Plaintiff James Caputo drove to Rochester, NY (from Syracuse) to the Monroe County Clerk’s Office to obtain certified copies of all active filings with the Clerk pertaining to the subject premises from January 2020 to present. (*See Exhibit 14*) Take note that the Mechanic’s Lien filed by Plaintiff James Caputo (**Exhibits 8 and 9**) is nowhere to be found. (Emphasis added)

50. That, also on August 11, 2022, Plaintiff James Caputo personally met with a senior representative of Premium Mortgage Corporation, where this matter was brought to their attention, and where, (after she stepped away for approximately ten minutes and then returned), Plaintiff was personally told that the lien was indeed seen [on whatever records for this sale that this company rep was looking at] but was apparently deemed invalid by Don Cheney because of the name issue, thus evidently obviating (in their minds) any obstruction therefrom, (regardless of any Abstract of Title holdup, as previously mentioned), and thereby enabling the sale. An mp3 audio recording corroborating this very cordial and cooperative encounter with the Premium

Mortgage Corp. senior representative has been retained should an official transcription be necessary to introduce at any future point.

51. That, also on August 11, 2022, after it was recommended that this matter be brought to the Sheriff's Office, a visit was indeed made by Plaintiff James Caputo, and a conversation was had with little to no interest and zero report since.

52. That, on August 15, 2022, after having called and spoken to a representative at Stewart Title Insurance Company, (the perceived Title Company of record for this sale), located on 47 West Main St, Rochester, NY 14614, and apprising them of this matter and where there was supposedly going to be an internal inquiry into the matter upon hearing of it, James Caputo wrote a follow-up email to both Don Cheney, Esq and Robert T. Houle where he lays out his preliminary findings, what he was prepared to (lawfully) do in order to be paid, as well as mentioning the Sheriff's visit. (**See Exhibit 15**)

53. That, on Tuesday, August 16, 2022 at 5:14pm; Don Cheney, Esq, (who was well aware of the May 2, 2022 Supreme Court ruling on the mechanics' lien for the subject premises from Judge Valleriani), sent a response email to James Caputo with the following excerpts: (**See Exhibit 15**)

“Thank you for your email. Your lien failed to name the correct property owner so we were able to avoid the lien for that reason. In the future you should hire an attorney to assist you with these matters to avoid simple mistakes.

The Monroe County Sheriff will not care about this. The lien is clearly defective and my client was able to avoid the lien and close on this property without the need to bond over the lien. You can call everybody and anybody you want and it won't make a difference.

On top of the lien being defective, the lien itself contains clear fraud....”

54. That, on Wednesday, August 17, 2022 at 12:37pm; James Caputo wrote a response email to both Cheney and Houle making it clear that no lien is able to be discharged in such a manner and that a Court Order is the only instrument available, other than bonding or satisfying the lien itself. That in order to do so, fraud had (apparently) been committed as well as the Statute violated. (*See Exhibit 16*)

55. That, on Wednesday, August 17, 2022 at 2:01pm, Donald J. Cheney, Esq. wrote an email back stating: (*See Exhibit 16*)

“The lien you filed is effective only to property owned by Robert Houle. Robert Houle does not own the property described in the notice of lien. Per New York Law “a misidentification of the true owner is a jurisdictional defect.” Furthermore, when abstractors search for liens, judgments etc., they search the name index for the actual property owner. Liens that incorrectly name the property may never get picked up in a title search for this very reason.”

56. That, on Wednesday, August 17, 2022 at 2:46pm; James Caputo wrote a response email to Defendants Cheney and Houle making it clear that Mr. Cheney had yet to identify the actual Statute he refers to that enables a duly executed and entered Mechanic’s Lien to be “avoided” (as he termed it) outside of a Court Order, all because “*a misidentification of the true owner is a jurisdictional defect.*” James Caputo also pointed out that (both) the owner of record and the mechanic’s lien contain the name “Houle” and thus his argument that the lien would have been missed on a “name index” search is preposterous and dishonest. James Caputo also made it clear to Mr. Cheney that by his foreknowledge of the lien and his being the presiding legal officer over the unlawful “avoidance” of the lien (as he put it) and thus the unlawful sale of the house, that this constituted both legal malpractice as well as professional malfeasance. (*See Exhibit 17*)

57. That, on August 27, 2022, a lengthy email with the subject heading of “Notice of Intent to File Court Papers” was sent to all parties involved with the sale of the subject premises. The

communication laid out the matter in chronological order with argument and documented evidence, much like this Complaint. (*See Exhibit 18*)

58. That, on August 29, 2022, Defendant Donald Cheney, Esq. responded to Plaintiff James Caputo's August 27, 2022 email by stating that he would not be "reading this voluminous email and the various attachments." He does go on to admit, yet again, that he decided that the lien was invalid outside of any court action, (as previously corroborated by the Premium Mortgage Corporation Senior Representative) and that all parties to the sale, (the buyers (through their attorney), the title company, the lender and, of course, both himself and Robert T. Houle), were well aware of the lien and were willing to look past it. Mr. Cheney then goes on to make a threat to Plaintiff of legal retaliation if he is named in any lawsuit for "simply representing" his client. (*See Exhibit 19*)

59. That, pursuant to the March 17, 2021 Second Mortgage taken out on the subject premises by Defendant, Houle Sales Consulting, Inc, (*See Exhibit 14, pages 10-14*), and contrary to the confused contention made by Defendant Donald Cheney in Exhibit S as to Defendant Houle's "*shareholder*" or "*officer*" status "*of the actual property owner*", (Houle Sales Consulting, Inc), on *page 12*, (the signature page), Robert T. Houle is listed as "President/sole shareholder", next to which is found his signature.

60. That, by Robert T. Houle being the sole shareholder of Houle Sales Consulting, Inc., (the listed owner of the subject premises), Robert T. Houle is arguably the owner of the subject premises as well, by the law of transitive equality.

61. That, pursuant to the April 15, 2022 third mortgage *on* the subject premises *by* Defendant Robert T. Houle *personally* (*See Exhibit N, pages 15-18*), Robert T. Houle is legally established as an owner of the subject premises.

62. That, on August 29, 2022, after having received Plaintiff James Caputo's August 27, 2022 email with the "*Notice of Intent to File Court Papers*" subject heading, an underwriter from Stewart Title Company named Joseph Interlichia wrote an email response clarifying that the Title Insurance for the sale was provided for by ABAR Abstract Corporation and not them. He did state that on May 3, 2022, an abstract redatate was ordered from Stewart by Defendant Donald Cheney and that it correctly set out the mechanic's lien on the property. (See **Exhibit 20**)

63. That, on January 18, 2023, a mechanic's lien extension was duly filed with the Monroe County Clerk's Office. The attendant clerk confirmed that the previously filed lien was still showing in the system but she had no answer as to how the property could have been sold with it still in place. She was apprised that the lien does not show up when doing an online County Clerk property search for which she also had no answer. (See **Exhibits 21 and 22**)

64. That, in a certified, return-receipt letter dated June 12, 2023, and mailed on June 14, 2023, the current owners of the subject premises, Defendants Nathan Holt and Owen Billet, were sent a *Notice of Intent to Foreclose*, with the specifics of the matter clearly detailed. (See **Exhibit 23**)

65. That, the above certified letter was returned undeliverable for failure of the addressees to provide a signed receipt. (See **Exhibit 24**)

66. That, on August 31, 2023, in a letter dated August 30, 2023, the current owners of the subject premises, (Defendants Nathan Holt and Owen Billet), were once again given a *Notice of Intent to Foreclose*, along with a cover letter, mailed by a third party via both certified and first-class mail. Former owner, Robert T. Houle, President of Houle Sales Consulting, Inc, was also copied in on the letter and the *Notice* by these same two service modalities. (See **Exhibit 25**)

67. That, an Affidavit of Service for the above mailings was then filled out and notarized.

(See Exhibit 26)

68. That, on October 27, 2023, the above certified mailing to the current owners, Nathan Holt and Owen Billet, was returned unsigned and thus undeliverable, while the return receipt card was received from Robert T. Houle. (See Exhibit 27)

69. That, Plaintiff James Caputo/House Surgeon Renovations is filing the present Complaint against Defendants Nathan Holt and Owen Billet, Premium Mortgage Corporation, Robert T. Houle and Houle Sales Consulting, Inc., Donald Cheney, Esq, Cheney Law Firm, PLLC, ABAR Abstract Corporation, and the Monroe County Clerk's Office for foreclosure of mechanic's lien, demanding the balance sum/unpaid amount due with costs, interests and administration fees.

70. That, pursuant to NY CPLR §6501 and NY CPLR §6511 Plaintiff duly filed a lis pendens or notice of pendency regarding the subject premises involved with this action.

71. That, upon information and belief, no person has any subsequent liens or claims against said premises by way of judgment, mortgage or otherwise.

72. That, Plaintiff James Caputo's Mechanic's Lien was not paid and remains unpaid, and no other action or proceeding at law or in equity has been brought by Plaintiff for the foreclosure thereof.

73. That, Plaintiff James Caputo (and House Surgeon Renovations) are entitled to equitably foreclose its Mechanic's Lien.

CAUSES OF ACTION

FORECLOSURE OF MECHANIC'S LIEN:

AGAINST DEFENDANT(S) #1: Nathan Holt and Owen Billet (the current homeowners)

74. That, pursuant to the Mortgage obtained by Defendant(s) #1 for the purchase of the subject premises, (*pages 24-35 of Exhibit 14*), under the "Covenants" section, item #4, the signer(s) of that mortgage agree that they "**will promptly pay or satisfy all Liens against the Property that may be superior to this Security Instrument.**" And with the Mechanic's Lien involved with this Foreclosure Complaint having been filed with the Monroe County Clerk's Office on January 21, 2022, it stands superior to the Mortgage that was signed by the Defendant(s) on June 29, 2022. Therefore, Defendant(s) Nathan Holt and Owen Billet are contractually obligated for the Mechanic's Lien Debt of \$25,000.

75. That, pursuant to the email communications testified to above in **paragraphs 34-37, 58, 62** and in **Exhibits 19 and 20**, Defendant(s) #1, (Nathan Holt and Owen Billet), were well aware of the active Mechanic's Lien on the property when they entered into the Mortgage agreement noted (and certified) in **Exhibit 14**.

76. That, Plaintiff James Caputo's Mechanic's Lien being active and (rightfully) effective on the property to the extent of it holding up closing efforts, *and* it (the lien) showing up on the Abstract of Title (per Mr. Interlichia), *and* Defendant Donald Cheney, Esq's written admission that the buyer's attorney was "**willing to accept title to the property for his client**", proves that the current homeowners, (Defendants Nathan Holt and Owen Billet), knew of and accepted their responsibility for this debt as they willingly decided to defraud Plaintiff James Caputo of his Court upheld mechanic's lien and the monies duly owed thereupon.

**BREACH OF FIDUCIARY DUTY
AGAINST DEFENDANT #2: Premium Mortgage Corporation (the mortgage holder)**

77. That, Premium Mortgage Corporation, by virtue of being the Mortgage Lender and (the customary) primary lien holder on any property so financed by them, had a fiduciary duty to all parties involved with the sale and funding of this real property in question, including themselves. This would include identifying and addressing any encumbrances on the property that they were prepared to fund for sale. As such, a duly executed, in-force and Court-upheld mechanic's lien was in place on the subject premises at the time of their Mortgage contract with the prospective buyers. Premium Mortgage Corporation's fiduciary duty therefore extended also to Plaintiff James Caputo, whose mechanic's lien was superior to the mortgage they funded on the subject premises. The record shows from **paragraphs 58 and 62** above and **Exhibits 19 and 20** that Premium Mortgage Corporation had foreknowledge of the mechanic's lien and was "*willing*" (according to Defendant Donald Cheney, Esq.) "*to put a mortgage on the property*", thereby failing to (both) regard and perform their fiduciary duty in the matter, causing Plaintiff James Caputo damages equal to the value of the mechanic's lien.

78. That, by Premium Mortgage Corporation "putting" a mortgage on the property, over and against an in-force mechanic's lien, and thus willingly deciding to defraud Plaintiff James Caputo of his mechanic's lien and the monies owed thereupon, it demonstrates an outright contempt for the lien itself as well as the Lien Law that was installed by The Legislature for the express purpose of protecting those businesses whose only recourse for being able to get compensation for work completed (and not paid for) is this very strong and powerful law that provides the necessary leverage for the one who so properly files papers under it.

79. That, as a result of putting a mortgage on the subject premises, over and against an in-force mechanic's lien, Premium Mortgage Corporation knew that the lienor's only recourse for

ever being paid was a Mechanic's Lien Foreclosure Lawsuit – an expensive undertaking for any company, let alone a small independent contractor. This was a gamble, (as the Lender), that they were apparently willing to take in order to close on a sizable mortgage.

**BREACH OF CONTRACT; CONTEMPT OF COURT:
AGAINST DEFENDANTS #3 and #4: Robert T. Houle (President of Houle Sales Consulting, Inc) and Houle Sales Consulting, Inc. (Home Seller)**

80. That, pursuant to the August 3, 2021 signed contract between Plaintiff James Caputo and Defendant Robert T. Houle, President of Defendant Houle Sales Consulting, Inc, (*See again Exhibit 2*), Robert T. Houle agreed to and is responsible for payment of the services rendered, plus interest, as described. As such, these services (along with the supplemental work also performed, which was detailed in a separate invoice) were completed on November 15, 2021 with a remaining balance of \$11,300 from the contract (and \$13,700 of supplemental labor charges) still not paid, (in addition to \$2,099 of accrued contract interest as of January 8, 2024). Defendants Robert T. Houle and Houle Sales Consulting, Inc have unmistakably breached their obligation to the contract and therefore Plaintiff James Caputo is entitled to full pay of the remaining balance, plus interest.

81. That, pursuant to the Final Invoice sent to Defendant Robert T. Houle and Defendant Houle Sales Consulting, (*See again Exhibit 6*), all the work listed was agreed upon by both parties and performed by Plaintiff James Caputo to the satisfaction of Robert T. Houle, as well as the conditions stated, endured. Defendants Robert T. Houle and Houle Sales Consulting, Inc have breached their obligation to pay for the work, (and subjected conditions), which were detailed in the invoice and completed to satisfaction, and therefore Plaintiff James Caputo is entitled to full payment of the balances of \$11,300 (plus contracted interest) and \$13,700, plus an additional statutory interest of 9% on the total amount owed from the time of completion of the

work to the present. *See* HSH Nordbank AG New York Branch v. Swerdlow, No. 08 CIV. 6131(DLC), 2010 BL 63465, at *5 (S.D.N.Y. Mar. 24, 2010), *aff'd* sub nom. HSH Nordbank AG New York Branch v. St., 421 F. App'x 70 (2d Cir. 2011); *see also* Spodek v. Park Prop. Dev. Assocs., 96 N.Y.2d 577, 580, 759 N.E.2d 760, 762 (2001).

82. That, Defendant Houle already attempted to exercise his rights under NY Lien (LIE) CHAPTER 33, ARTICLE 2, Section §19(6) by filing an Order To Show Cause to have the mechanic's lien (for the invoiced amount of \$25,000) dismissed, only to fail.

83. That, pursuant to the May 2, 2022 Monroe County Supreme Court Decision by Hon. Sam L. Valleriani, the mechanic's lien amount of \$25,000 was found to be valid and the lien itself, proper, and therefore Defendants Robert T. Houle and Houle Sales Consulting, Inc are therefore responsible for paying for the full amount of the lien. (***See again Exhibit 11***)

84. That, pursuant to the May 2, 2022 Monroe County Supreme Court Decision by Judge Valleriani, if Robert T. Houle and Houle Sales Consulting, Inc. wished to sell the property, they could either resolve the matter themselves (with the lienor) or they can file a sufficient bond or undertaking pursuant to NY Lien Law §19. Despite full knowledge beforehand, Robert T. Houle and Houle Sales Consulting, Inc., (along with their attorney Donald Cheney, Esq. and his law practice, Cheney Law Firm, PLLC), demonstrated outright contempt for Judge Valleriani's unequivocal and lawful mandate by disobeying and ignoring it completely as they illicitly sidestepped the lien in order to close on the sale of the subject premises. (Emphasis added)

85. That, pursuant to the May 2, 2022 Monroe County Supreme Court Decision by Judge Valleriani, and pursuant to NY Lien Law §9, the lien remained *valid* despite the challenge by Defendant Houle on the contention that the Lien did not have the proper owner named. Yet, both Defendant Houle and his attorney, Defendant Donald Cheney, Esq., insisted on pursuing

this already defeated argument to the extent of (unilaterally) deeming the mechanic's lien invalid, [without any of the required action (for such a declaration) having been undertaken in a Court of law], so that the sale of the house could (deceitfully) close without having to satisfy the lien.

86. That, pursuant to the email communications testified to above in **paragraphs 34-37** and **Exhibits 12 and 13**, Defendant Robert T. Houle knew full well that the mechanic's lien was performing as it was designed to do, by being an encumbrance to the sale of the house until it was paid. Rather than satisfying the lien as instructed by Judge Valleriani, Defendants Robert T. Houle and Houle Sales Consulting (under the fraudulent representation of his attorney, Donald Cheney, Esq.) took the dishonest pathway.

87. That, even *after* the secretive sale of the house, Defendant Robert T. Houle continued to pursue action in Court to have the names altered on the Mechanic's Lien because it was allegedly impairing his ability to close on the house (that had already been sold). (**See again Exhibits 12 and 13**) This duplicitous pursuit resulted in a service violation and subsequent rescheduling of the matter as an (ostensible) means of continually tying up Plaintiff James Caputo with Court matters, perhaps hoping to see him essentially abandon the issue, once it got far enough out from the illicit sale.

88. That, pursuant to Defendant Donald Cheney, Esq.'s admission that all parties were "*willing*" to move past the active and in-force mechanic's lien, so did Defendants Robert T. Houle and Houle Sales Consulting, Inc. also demonstrated outright contempt for the lien as well as the Lien Law itself by willingly deciding to defraud Plaintiff James Caputo of his mechanic's lien and the monies duly owed thereupon.

89. That, Defendant Robert T. Houle has an established and documented history of financial indiscretion concerning real property only compounds his already established motive to deceive and cheat Plaintiff James Caputo in this matter by breaching the contract and thumbing his nose to a Court Decision. **(See again Exhibit 7)**

90. That, Defendants Robert T. Houle and Houle Sales Consulting, Inc. never told Plaintiff James Caputo of the sale and that said sale had to be independently discovered by plaintiff, is illustrative of the planned deception perpetrated by Defendants Robert T. Houle and Houle Sales Consulting, Inc., while under the direct legal counsel of Defendants Donald Cheney, Esq. and Cheney Law Firm, PLLC.

91. That, even after the sale of the subject premises and Plaintiff James Caputo finding out, Defendants Robert T. Houle and Houle Sales Consulting, Inc. have not made any attempts whatsoever to satisfy the outstanding debt to Plaintiff.

92. That, as a result of selling the subject premises, over and against an in-force mechanic's lien, Defendants Robert T. Houle and Houle Sales Consulting, Inc knew that the Plaintiff James Caputo's only recourse for ever being paid was a Mechanic's Lien Foreclosure Lawsuit – an expensive undertaking for any company, let alone a small independent contractor, like Plaintiff. Defendant Houle knew that Plaintiff was not in the financial position to afford an attorney. This course of action was a gamble, (as the seller), that these parties were (also) apparently willing to take in order to close on a substantial sale without having to pay for the work that went into its transformation in order that it might be sold.

**BREACH OF FIDUCIARY DUTY; CONTEMPT OF COURT; FRAUD
AGAINST DEFENDANTS #5 and #6: Donald Cheney, Esq. (Attorney Presiding Over Sale)
and Cheney Law Firm, PLLC (Real Estate Attorney's Firm)**

93. That, pursuant to the NEW YORK RULES OF PROFESSIONAL CONDUCT, Defendants Donald Cheney, Esq. and Cheney Law Firm, PLLC have (both) professional and ethical responsibilities (and duties) within the practice of law. By falsely representing and misapplying the applicable law; by failing to establish a legal ground for his actions; by committing fraud; by disregarding and willingly violating a Court Decision; and by engineering the illicit sale of a real property over and against a duly filed and Court affirmed mechanic's lien, Defendants Donald Cheney, Esq. and Cheney Law Firm, PLLC have committed legal professional misconduct towards Plaintiff James Caputo with subsequent damages.

94. That, pursuant to **paragraphs 34-37** above, Defendant Donald Cheney, Esq. knew full well that the mechanic's lien was performing as it was designed to do, by being an encumbrance to the sale of the house until it was paid. Rather than advising his client to satisfy the lien, he repeatedly made false and misleading statements to Plaintiff James Caputo about the lien and his client's ability to overcome it, in an effort to legally intimidate Plaintiff into giving up his only leverage, the lien itself.

95. That, by being the attorney (and representative firm) for Defendants Robert T. Houle and Houle Sales Consulting, Inc., it would have been the duty of Defendants Donald Cheney, Esq. (and his Law Firm) to know full well of the May 2, 2022 Monroe County Supreme Court Decision by Hon. Sam L. Valleriani, which not only upheld Plaintiff's Mechanic's Lien as far as the work detail and amounts demanded, but the Judge also made clear that the issue concerning the name on the Mechanic's Lien was moot, while also citing the Statute (NY Lien Law §9) from which he ruled. The Judge even underlined the very sentences in the Law that negated Defendant Houle's contention, while also adding emphasis to his ruling. How Mr. Cheney would go on to treat both Plaintiff's Mechanic's Lien and the Decision from Judge Valleriani,

(after he openly acknowledged that he and the sale were constrained, as evidenced in his June 2, 2022 email), demonstrates his utter contempt for both, including the Lien Law itself, notwithstanding all of its intrinsic protections as well.

96. That, by Judge Valleriani making clear in his Decision that to sell the property, it would require the parties to either settle the matter, or for Defendant Robert T. Houle to file a sufficient bond or undertaking pursuant to Lien Law §19 (as the only remedies), it demonstrates once again the contempt that Defendant Donald Cheney, Esq. had for the Court's Decision when he orchestrated the sale of the subject premises past the standing mechanic's lien and outside of the Court directed and Statute driven avenues made clear in the May 2, 2022 Decision.

97. That, by Defendant Donald Cheney, Esq. making the following statements across several emails regarding Plaintiff's Mechanic's Lien, [which had already held up on formal challenge in Court on all issues cited by Mr. Cheney, (including that of *proper name*)], it not only puts words to the contempt he holds for the Lien Law and the Court's Ruling therefrom,

“Your lien failed to name the correct property owner so we were able to avoid the lien for that reason.”

“The lien is clearly defective and my client was able to avoid the lien and close on this property without the need to bond over the lien.”
On top of the lien being defective, the lien itself contains clear fraud....”

“The lien you filed is effective only to property owned by Robert Houle. Robert Houle does not own the property described in the notice of lien. Per New York Law “a misidentification of the true owner is a jurisdictional defect.””

“My client brought a pro se action regarding this mechanic's lien. At this time you were made aware of your mistake but you did nothing to amend the lien.”

“You failed to name the property owner in your lien paperwork which is fatal to the lien.”

“There is statutory law and there is case law. Case law is clear that if you misidentify the owner of the property, the lien is invalid.”

“As such, the buyer’s attorney was willing to accept title to the property for his client and the Title company was willing to write Title insurance and lender willing to put a mortgage on the property.”

it also demonstrates that Mr. Cheney chose to unilaterally act as the Court and Judge on this matter rather than following the Law and seeking argument on these issues in actual Court papers and before an actual Judge. He is not allowed to do such a thing and to do so is an abuse of his license and a violation of the ethics code and therefore professional misconduct.

98. That, by Defendant Donald Cheney, Esq. repeatedly making reference to Plaintiff’s failure to name the correct property owner and that the ***“case law is clear that if you misidentify the owner of the property, the lien is invalid.”***, he not only (once again) demonstrates an utter disregard to the already rendered Court Decision on the matter, he fails to cite any actual case, how it applies to this matter and how he was able to sidestep the lien as a result. By not providing a proper legal explanation to who he perceived (in Plaintiff James Caputo) as a naive lay person and therefore not worthy of justifying his legal maneuvering, he once again abuses his position as a servant of the law and this constitutes professional misconduct.

99. That, by Defendant Donald Cheney, Esq. having represented the lien as “jurisdictionally defective” to the other official parties involved with the sale (Premium Mortgage Corp. and ABAR Abstract Corp.) who would have had a reasonable reliance upon him for such “legal contentions”, to the extent of them proceeding with the sale over and against the lien itself and the Decision by Judge Valleriani describing the only true avenues for sale of the property, he is guilty of fraud.

100. That, upon a review of the case law on the matter, one can only conclude that Defendant Cheney was referring to Rigano v. Vibar Construction, Inc., 2014 NY Slip Op. 08762, or one of the related cases where the issue of *listed* owner vs *true* owner is argued and decided.

(See Exhibit 28) What is seen upon close examination of this paper is a case that has covered the full gambit of this matter by way of a re-argument at the Supreme Court Level (with an overturn), followed by the Appellate Division holding, only to see the Court of Appeals (rightfully) overturn all improper rulings and make the final statement on the matter. In this document, the Court and the Law are clear, and what they reveal (relevant to this matter) are several unambiguous conclusions. What is initially evident here is this. Defendant Cheney either intentionally misled Plaintiff James Caputo on his claim that “a misidentification of the true owner is a jurisdictional defect” or he is unlearned to the point of negligence about this issue of law within his own discipline of practice. There cannot be any other conclusion made.

101. That, what the case law does show and what Defendant Donald Cheney, Esq. failed to disclose when claiming a “jurisdictional defect” is that there is a difference between a “*mis-identification*” and a “*mis-description*” of the true owner on a mechanic’s lien. “Mis-identification” is when the listed party or owner on the lien has no relationship to the true owner and no interest in the property. In such a case, of course this would be legitimately considered a jurisdictional defect, which the courts have indeed held on. But that is not at all the circumstance in this matter and Defendant Cheney knew this full well. A “Mis-description”, however, is defined by the Courts as when the “*listed owner is closely related to the true owner, there was consent to the construction work, and a third party would not be prejudiced.*” That is precisely what describes the matter at hand, which ought to have been known by Defendant Cheney, a seasoned real-estate attorney, who chose to falsely represent the facts to an individual he figured would never know better to call his bluff. Notwithstanding the fact that Plaintiff’s Mechanic’s Lien names *both* Robert T. Houle and Houle Sales Consulting, Inc, [the listed owner (so alleged)], Robert T. Houle, is closely related to the true owner Houle Sales Consulting, Inc,

(by being President, sole shareholder and namesake); there was a signed contract and verbal consent by Defendant Robert T. Houle (as the party representing Houle Sales Consulting, Inc) for the construction work to be performed by Plaintiff (which was also upheld by the Court); and no third party was prejudiced, thus satisfying the legal requirements. The Court has held that a *misdescription* of the true owner shall not invalidate a lien but instead is the kind of failure which subdivision 7 of section 9 of the Lien Law is intended to protect by allowing amendment where a third party would not be prejudiced.

In this matter, the Monroe County Supreme Court already held on the issue of listed owner stating that ***“the lien lists both Houle Sales Consulting, Inc. (President, Robert T. Houle) and Robert T. Houle.”*** The Judge then cited Lien Law §9 with specific underlining and an ***“emphasis added”*** statement. (***See again Exhibit 11***) In other words, Defendant Donald Cheney, Esq.’s continued claim of owner “mis-identification” on Plaintiff’s Mechanic’s Lien was not only rendered moot by Judge Valleriani and incorrect by the case law, but indeed improper in and of itself, and would have continued to fail along these lines upon any required “undertaking pursuant to Lien Law §19”, which was discriminatorily flouted by these defendants.

102. That, by Defendant Donald Cheney, Esq. choosing to knowingly misrepresent the law in this matter pertaining to “mis-identification” vs “mis-description” of the true owner on a lien, (with the intent to deceive and defraud), combined with his disregard of (both) Judge Valleriani’s directive as to how Plaintiff’s Mechanic’s Lien could be discharged, and the lien itself, by unilaterally playing the fact-finder and the adjudicator outside of the Courts when he is expected to be reasonably relied upon to act in accordance with the New York State Rules of Professional Conduct for attorneys, he is thereby guilty of fraud and professional misconduct.

103. That, by Defendant Donald Cheney, Esq. ignoring an in-force mechanic's lien (and the Court Decision thereupon), and afterward sanctioning the sale of the subject property by somehow avoiding the lien (as he put it), he breached his fiduciary duty to the parties involved as an officer of the law who is supposed to ensure that the transaction does not involve any hidden or vulnerable instruments that could potentially bring future legal and/or monetary entanglements to any of the parties, as well as to the property itself. As such, he is liable for damages.

104. That by Defendant Donald Cheney, Esq. writing to Plaintiff James Caputo the following:

“I represent clients and use my understanding and knowledge of the law to help clients achieve certain goals and objectives. Any attempt to name me as a party in any lawsuit for simply representing my client will certainly be frivolous and I will seek punitive damages as well as costs and attorneys fees if you take such action. You have been so advised and should act accordingly.”

he is employing a bully-tactic towards Plaintiff James Caputo, after failing to provide a single ounce of legal justification for any of what he had illicitly done in this matter by his engineering of the sale of this property over and against the existing mechanic's lien, which he characterizes as helping “clients achieve certain goals and objectives.” This once again constitutes professional misconduct.

**BREACH OF FIDUCIARY DUTY:
AGAINST DEFENDANTS #7: ABAR Abstract Corporation (Title Company for Sale)**

105. That, pursuant to **Exhibit 20**, the email from Stewart Title Insurance Company, Defendant ABAR Abstract Corporation provided the Title Insurance Coverage for the sale of the

subject premises (which occurred on June 29, 2022) and that it would have been based upon ABAR's review of Stewart's redated abstract of title containing plaintiff's mechanic's lien.

106. That, pursuant to **Exhibit 20**, Defendant Donald Cheney, Esq. ordered a redated abstract of title for the subject premises on May 3, 2022, (the day following Judge Valleriani's Decision), where the abstract was said to have *"correctly set out Plaintiff's mechanic's lien"*.

107. That, pursuant to Defendant Donald Cheney, Esq's August 29, 2022 email stating that after he (himself) declared the lien invalid, *"the Title company was willing to write Title insurance"*, ABAR Abstract Corporation willingly chose to deny Plaintiff James Caputo of his mechanic's lien and the monies duly owed thereupon.

108. That, ABAR Abstract Corporation had a fiduciary duty to not only the parties involved with the sale, (including Plaintiff James Caputo), but to itself as the Title Insurance Carrier and underwriter for the sale of the property, not to place anyone at undue risk of future legal and/or monetary entanglements (including the subject premises itself) based upon the Abstract of Title for the property. By ignoring the mechanic's lien that was correctly set out in the abstract and willingly writing Title Insurance in complete disregard of it, such a breach of their fiduciary duty brings liability upon themselves for the value of Plaintiff's mechanic's lien.

**BREACH OF FIDUCIARY DUTY:
AGAINST DEFENDANT #8: Monroe County Clerk's Office (Office Where Lien Filed)**

109. That, by Defendant Monroe County Clerk's Office having an official State and County duty (as one of its functions) to maintain the records on public and private real property located within the county, and that a failure of the public records to show on August 11, 2022 an in-force mechanic's lien on (both) an online search of the subject premises, as well as certified copies of same being printed out in-person by a member of the Clerk's Office, constitutes an

apparent failure of the Monroe County Clerk’s office to properly maintain the record. (*See again Exhibits 9, 14 and 22*)

110. That, by this record of the mechanic’s lien going missing from the Monroe County Clerk’s online and printed records in and around the time of the illicit sale of the very property it was duly filed against, suggests that there may exist foul play going on within this official State and County office.

111. That, by the Filing Clerk’s confirmation that the original (January 21, 2022) mechanic’s lien was still showing in the system on January 18, 2023, when the lien was being extended, and that she could not understand how the property could have been sold in the face of this fully alive and evidently effective mechanic’s lien, stands as further testimony and evidence that something improper may have occurred within the offices of the Monroe County Clerk pertaining to the subject premises and specific to the prohibited sale of this property against the mechanic’s lien itself.

112. That, because these inconsistencies concerning the official County records and filings for the subject premises in regards to Plaintiff’s mechanic’s lien, (in an around the time of the sale of the property), may have been a factor in that (otherwise) prohibited sale, and absent a suitable explanation by the Monroe County Clerk’s Office as to why, the Monroe County Clerk’s Office stands liable, in part, for monies owed in Plaintiff’s mechanic’s lien for failing to maintain the property records accordingly.

WHEREFORE, Plaintiff James R. Caputo respectfully demands judgment as follows:

113. That, by filing and causing the docketing of its Notice under Mechanic’s Lien, Plaintiff be determined and adjudged to have a valid and subsisting lien upon the interest of the

current owner in the real property above-described, (and against the other defendants who were party to the cause of action), to ensure recovery of professional services comprised of extensive carpentry repair and partial restructuring, (involving compromised studs, support joists, exterior sheathing, and more), along with the installation of a completely new plumbing system, in connection with improvement of the (heavily water damaged) subject property hereinabove described.

114. That the amount due upon Plaintiff's lien and claim be ascertained and adjudged.

115. That Plaintiff be given judgment in the sum of \$25,000 with 9% interest thereon (compounded daily) from the 16th day of February, 2022, together with the additional costs and disbursements related to this action. (*See again Exhibit 2*)

116. That the lien amount and additional cost breakdown is as follows:

1. Lien Amount - **\$25,000**
2. Interest on contracted monies owed - **\$2,099** (*See Exhibit 5*)
3. Fees, parking, fuel - **\$384** (*See Exhibit 29*)
4. Lost Days of Work – 24 days at \$400/day - **\$9,600**
 - a. To research write the lien – 2 days (being conservative)
 - b. To file the lien – 1 day
 - c. To certify mail, write and file the affidavit of service – 1.5 days
 - d. To write the Response to Houle OTSC – 2 days
 - e. To file Response – 1 day
 - f. To prepare and appear in Court – 1.5 days
 - g. To write and file Sur-Reply – 1 day
 - h. To obtain certified documents for 4 Chambord – 1 day
 - i. To research associated statutes for the lien law violation and assemble present Summons and Complaint – 13 days
5. Bank fees for the financial struggle this has caused - **\$500** (*See Exhibit 30*)

Total: **\$37,583**

117. That, adjusting and determining the equities of all the parties to this action and determining the validity, extent and priority of the claims and liens to be asserted herein.

118. That, pursuant to the current mortgage contract for the subject premises, under Covenants, Section 4, paragraph 2, Defendants, (and homeowners) Nathan Holt and Owen Billet, be directed to pay over to plaintiff the amount adjudicated as the amount of its lien and claim herein, with interest and granting to the plaintiff judgment for any deficiency therein together with the costs and disbursements of this action.

119. That subject premises be sold, as provided by law, and that out of the proceeds of such sale, Plaintiff James Caputo (and House Surgeon Renovations) be paid the amount of the mechanic's lien and interest, with the expenses of the sale and the costs and disbursements of this action; and that the plaintiff have judgment against the said defendants, Premium Mortgage Corporation, Robert T. Houle and Houle Sales Consulting, Inc., Donald Cheney, Esq, Cheney Law Firm, PLLC, ABAR Abstract Corporation, and possibly even the Monroe County Clerk's Office, (based upon determined equities) for any deficiency which may then remain.

120. In case it be determined and adjudged that plaintiff did not have a valid and subsisting lien, that plaintiff then be granted a personal judgment for breach of contract, contempt of court and breach of an in-force and duly filed mechanic's lien against defendant(s), Robert T. Houle and Houle Sales Consulting, Inc, as well as the abettors and contributors to the breach and contempt, Nathan Holt and Owen Billet, Premium Mortgage Corp., Donald Cheney, Esq, Cheney Law Firm, PLLC, ABAR Abstract Corp., and (quite possibly) the Monroe County Clerk's Office (pending their Answer) in the sum of \$25,000 with interest thereon, together with the costs and disbursements of this action.

121. That Plaintiff have such other and further relief on the premises as shall be equitable and proper.

PUNITIVE DAMAGES

122. That the Court consider Punitive Damages against all parties involved with the unlawful sale of this property, should they be determined by the Court to have behaved unlawfully themselves and in a particularly reprehensible manner. The basis of this request is the following.

123. Plaintiff James Caputo had fallen on unusually hard times in the preceding seven-plus years such that his financial health had been quite tenuous but was now poised for sustainable stability once the work on the subject premises was complete in late 2022.

124. Plaintiff James Caputo and House Surgeon Renovations (formerly House Surgeon Home Service), spent six and a half months working exclusively on this extensive project, being at the job site consistently and without fail, working tirelessly on weekdays and many weekends, often enduring rain and 95+ degree weather, while producing a superior final product. Upon any inquiry into the extent and performance of the aforementioned services being provided by any other (so-qualified) local contactor or home improvement specialist, it would be readily determined that the price given to Defendants Houle and Houle Sales Consulting, Inc. for the work completed was well under the industry standard, which would have been upwards of two to two and a half times more cost. Plaintiff James Caputo knowingly and willingly provided a bargain price for Defendant Houle as a gesture of generosity towards an acquaintance he had worked with and for on several other past occasions, who called upon Plaintiff for his help and expertise in flipping a several-hundred-thousand-dollar house without ever having done anything of the sort. In other words, not only did this Defendant get an unusually sweet deal, it was crucial for Plaintiff James Caputo to attain his full remuneration for having spent so much time and effort for so little by industry standards.

125. Plaintiff James Caputo had been planning for over a year to move back to Syracuse, NY from Victor, NY to be closer to his children and to officially launch his home improvement business full-time under his updated company name. The original move date was to be July 2022, but was delayed due to the scope of work to be done by Plaintiff James Caputo upon the subject premises, such that the move date was pushed back to December 2022. Defendant Robert T. Houle was cognizant of these plans and that Plaintiff was relying wholly on his earnings from the work on the subject premises in order to be able to make the move to Syracuse and have the necessary funds for such a multi-step transition.

126. By Plaintiff James Caputo having been deprived of his rightful earnings, and then having to spend countless hours and days in an effort to actually get paid, the negative impact on his ability to transition to another city, to launch his business and to recover from the lost income has caused great and repeated distress and undue burden. The lost days of work, the constant cloud of betrayal and pending litigation, the inability to focus on business growth, and the constant reshuffling of limited finances has been detrimental and injurious beyond anything imaginable or planned for. And as of the filing of this paper, not one effort has been put forth by Defendant Houle since selling the subject premises to make good on his signed contract.

127. The fact that Defendant Houle has a history of financial misgivings involving real estate, this case is yet another cheating chapter upon all that he does business with.

128. The sale of the house is especially egregious given the fact that all parties knew full well that Plaintiff's Mechanic's Lien was rightfully holding up the sale, and yet, they were all willing to essentially say, "to hell with the lien and to the gentleman who worked six and a half months on the house and is still owed a lot of money for which the lien was filed and then subsequently upheld by the County Supreme Court." Not only did they all contemptuously

thumb their collective noses to the Court, neither of them would ever wish six months of their own work/income/livelihood to ever be snubbed as such, but *still* they did so themselves, and to the direct and ongoing detriment of Plaintiff James Caputo.

129. The fact that both Defendant Houle and Defendant Donald Cheney, Esq. were specifically making efforts during the early weeks of June 2022 (see above paragraphs 34-37) to get Plaintiff James Caputo to amend the lien so that they could proceed with the sale proves that they were sensitive to the Lien Law by being restricted from selling that home, just as Judge Valleriani had also ruled. Nevertheless, for them to then decide that the Law was no longer worthy of them following it, but instead to be trampled on and ignored, (in a most flagrant fashion), it demonstrates a level of repugnancy for the Rule of Law and for the protections provided therein, not to mention dishonoring the practice of law itself, that it more than rises to the level of punitive damages.

130. Defendant Donald Cheney, Esq. knowingly and willingly tried to mislead Plaintiff James Caputo with his erroneous claims of how he was able to sidestep the lien and proceed with the sale. By making false legal statements and then by unilaterally bypassing the legal process of a court intermediated determination on the matter pursuant to NY Lien Law §19, Defendant Cheney has committed fraud and such professional misconduct is particularly reprehensible for which punitive damages are justified.

131. Premium Mortgage Corporation, Inc., Houle Sale Consulting, Inc, Cheney Law Firm, PLLC, and ABAR Abstract Corporation all had a legal duty, a fiduciary duty and a company duty to abide by the law and not allow the mortgage funding of a house sale when there is a duly filed and in-force mechanic's lien on the property. In addition to the utter disregard for Plaintiff and his unpaid work, they saw fit to disregard the Lien Law (and the

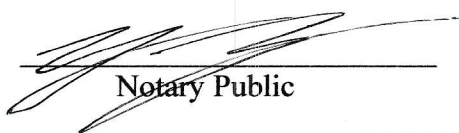
active lien itself) and took a chance on the Liener not being able to overcome his legal burden of filing a mechanic’s lien foreclosure as his only means of ever getting paid. The ease and carefree nature by which these parties violated (both) the Lien Law and the rights of Plaintiff James Caputo are very troubling to say the least, leaving one to wonder just how often and how unhesitatingly this practice goes on for other contractors so (unlawfully) treated as well. Defendant Cheney had seemingly no trouble playing the “mis-identification” card to a non-attorney when in fact, he ought to have known it was an act of dishonesty and an otherwise illegitimate reason. Given all of these examples of disdain by the above parties towards Plaintiff’s mechanic’s lien and the Law by which the lien is protected and empowered, perhaps the Court will find it prudent to levy punitive damages as a future deterrent against these parties and any other party (or parties) to unlawfully carry out a home sale where there exists a duly filed and in-force mechanic’s lien, save for any remedy available pursuant to NY Lien Law §19, just as the Decision by Judge Valleriani on May 2, 2022 established in the first place.

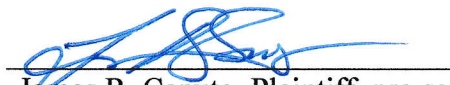
132. VERIFICATION

I, James R. Caputo, being duly sworn, say: I am the Plaintiff in the above-named proceeding and that the foregoing Complaint and submitted evidence were prepared by me, and are true to my own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters, I believe it to be true.

WHEREFORE, I respectfully request that this motion be granted, and that I have such other and further relief as may be deemed just and proper.

Sworn to before me this
16th day of January, 2024


 Notary Public


 James R. Caputo, Plaintiff, pro se
 6499 East Seneca Turnpike
 Box 433
 Jamesville, NY 13078
 (315) 382-8778

MICHAEL T. DeBOTTIS
 Notary Public, State of New York
 Qualified in Onondaga County
 Reg. No. 01DE0003711
 My Commission Expires March 25, 2027