State of New Hampshire Supreme Court

NO. 2017-0195

2018 TERM

FEBRUARY SESSION

Natalie Anderson

v.

Adam Robitaille et al.

RULE 7 MANDATORY APPEAL OF FINAL DECISION OF THE
9th CIRCUIT COURT – DISTRICT DIVISION – NASHUA

BRIEF OF PLAINTIFF/APPELLANT/PETITIONER NATALIE ANDERSON

By: Natalie Anderson, pro se
1648 Taylor Rd, #1108
Port Orange, FL 32127
617-710-7093

February 20, 2018

ADDENDUM

2017-0195

[NB: The lower court clerk's office did not produce separate clerk's notices of orders for the post-judgment decisions in this case, but instead only provided copies of the entire motion submitted, upon which the judge scribbled his written orders at the end of the motion. As a result, the petitioner has to rely on the district court case summary produced by the clerk's office as a proxy for the clerk's notices of orders from the judge. Otherwise, it would be too voluminous to reproduce all of the entire motions with the judge's orders on the back of the motion here for purposes of attaching the decisions being appealed along with the brief as an addendum. For the actual full motions and/or pleadings with the orders written on them by the lower court judge, see the attached **appendix (volume 1, 2 and 3)**. See also the attachments for the previously submitted notice of appeal, which are also incorporated here by reference]

TABLE OF ADDENDA/SUPPLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

New Hampshire Cases

Other States' Cases

Secondary Authority/Sources

Rule

NEW HAMPSHIRE STATUTES

OTHER STATE STATUTES

DECISIONS/ISSUES PRESENTED

The key issue presented in this case has to do with whether the petitioner is a tenant or a hotel guest and thus whether RSA 540A applies to this case. This was implicated in the final orders of the lower court issued on 2-21-17. It was also implicated in a motion for reconsideration that was timely filed on 3-6-17 and denied on 3-10-17 ("first motion to reconsider") as well as a re-formatted motion for reconsideration filed on 3-21-17 and denied on 3-31-17 ("second motion to reconsider").

With the first motion to reconsider, the lower court simply denied it without further explanation except that the lower court adopted the rationale offered by the defendants. In the first motion to reconsider, the petitioner requested leniency with respect to the length of her pleadings[1], though this request was worded with less technical precision/language than a trained lawyer would use. Then the petitioner submitted a separate and more formally-worded motion to exceed page limits on 3-21-17, but it was denied as untimely as it was filed subsequent to the first motion to reconsider. Therefore, did the lower court err in denying the first motion to reconsider because of page limits, and also in denying as untimely the motion to exceed page limits? Was the lower court required to treat petitioner's pro se request for leniency regarding page length as an informal request to exceed page limits? Did the lower court err in not allowing pro se leniency where the pro se petitioner was unaware of the rule (i.e. the ten-page limit rule for motions to reconsider)?

After the second motion to reconsider and related follow-up pleadings were submitted by the petitioner, the lower court noted that it reviewed all of the arguments and documents submitted by the petitioner but still, in the end, denied changing its final judgment of the merits[2].

The next issue pertains to a **Motion to Void Judgment Based on Defective Affidavit** (Filed 3-24-17) and has to do with whether the lower court erred in not acting upon a motion for void judgment based on defective affidavit. Because the lower court failed or refused to act upon this motion, the petitioner was forced

---

[1] Although at that time, she was not aware of the ten-page limit rule (as this was her first-time filing a motion to reconsider as she was now proceeding pro se due to her Counsel's withdrawal after final judgment and was unaware of this intricacy of NH civil procedure), the petitioner still was self-conscious about the length of her pleadings and thus asked for leniency in considering her lengthy presentation. Hence, she was unaware that she had to make a formal motion to exceed page limits at the first instance.

[2] Preserved: 540A Petition (filed 1-9-17); Plaintiff's Objection to Defendants' Motion to Dismiss (filed 2-3-17); Plaintiff's Sur-reply to Defendants' Motion to Dismiss (filed 2-14-17); Plaintiff's Motion for Reconsideration (filed 3-6-17); Plaintiff's Reformatted Motion for Reconsideration (filed 3-21-17). See App. 1, p. 112, Plaintiff's Objection to Motion to Dismiss in district court, and App. 1, p. 196, Plaintiff's Sur-reply in district court. See also App. 2, p. 280 for Exhibit 16, p. 355 for Exhibit 18, p. 368 for Exhibit 19, and p. 573 for Exhibit 21. - [**NB: "App." refers to appendix of this brief. e.g. App. 1 refers to Appendix Vol. 1.**].

to treat the inaction as a de facto denial and this was referenced as such in the petitioner's notice of appeal. However, it came to the attention of the petitioner that, within recent months, Judge Paul Moore issued a ruling, after the fact, with no date attached to it. Also, the key question here is: did the lower court err in considering facts presented by the defendants without support by a valid affidavit as required by statute? Should the judgment be void and a new trial result because the affidavit is defective (and thus null and void of effect) since it lacks reference to a sworn oath under the pains and penalties of perjury?[3]

Another issue pertains to an order on a **Motion for New Trial & Attorney Disqualification** (filed 3-6-17 and denied 3-10-17) and has to do with whether the lower court erred in failing to allow a hearing to consider evidence that Attorney Karl Terrell should be disqualified because of a conflict that resulted from his co-counsel's conflict (a conflict that resulted in co-counsel's disqualification) as well as whether the lower court should have allowed a hearing to determine if false evidence was submitted by defendants.[4]

Another issue has to do with whether the lower court erred in denying a **motion for recusal** (filed 3-6-17 and denied 3-10-17) and a motion to reconsider recusal (filed 3-21-17 and denied 3-31-17). Did the lower court err in not granting recusal when the judge made statements that indicated that he had prejudged the case and the facts of the case from the very beginning?[5]

STATEMENT OF THE CASE

This Appeal arises from a final decision rendered by the 9th Circuit-District Division Nashua Court ("district court" or "lower court"). The Petitioner, Natalie Anderson, filed an RSA 540-A Petition ("540A petition" or "petition") with the district court alleging that she was being forced to vacate her residence by the defendants without proper observation and adherence of lawful procedures under 540A. The Petition[6] named Adam Robitialle and Homewood Suites as Defendants. On 1-9-17, the petitioner filed her 540A action for injunctive relief in the district court. The district court immediately entered a restraining order pending a

---

[3] Preserved: Motion to Void Judgment Based on Defective Affidavit (Filed 3-24-17). See App. 3, p. 611, Exhibit 25. Also, January 18, 2017 hearing. See court transcript.

[4] Preserved: Plaintiff's Motion for New Trial and Disqualification (filed 3-6-17), App. 3, p. 634 for Exhibit 28; also January 18, 2017 hearing. See court transcript; Plaintiff's Sur-reply to Defendants' Motion to Dismiss (filed 2-8-17); Plaintiff's Request for Time to Reply to Defendants' Objections and Notice of Intent to File Motions to Exceed Page Limits or in the Alternative to Amend (filed 3-13-17).

[5] Preserved: Motion for Recusal (filed 3-6-17); Motion to Reconsider Recusal (3-21-17). See App 1, p. 246, Exhibit 11; and see also p. 256, Exhibit 13.

[6] See Addendum A – Final Orders of the District Court. See Addendum B for Final Case Summary.

hearing on the matter.[7] The petitioner initially filed the action pro se, but subsequently the New Hampshire Legal Assistance became interested in vindicating the rights of the petitioner in this case, as representative of the rights of many New Hampshire citizens in a similar situation as the petitioner. Attorney Elliott Berry ("Mr. Berry" or "Attorney Berry"), Managing Attorney for the New Hampshire Legal Assistance (who oversees the housing division), decided to take the case on or about 1-11-17. Also, subsequent to the filing of the petitioner's 540A petition, the defendants sought to remove the petitioner from the premises via self-help. The defendants did not file any eviction action against the petitioner.

On 1-13-17, the defendants filed a Motion to Dismiss in response to the petitioner's 540A filing. The main focus of their argument was that the property was a hotel and as a result, the defendants cannot be a landlord and the property in question was not a residential rental within the meaning of RSA 540-A. A hearing was scheduled for 1-18-17. However, on 1-18-17, instead of conducting a hearing, District Court Judge Paul Moore ("Judge" or "Judge Moore") facilitated a bench conference on sidebar with petitioner's counsel Mr. Berry, and defendants' counsel Karl Terrell ("Attorney Terrell") who was Pro Hac Vice, and Craig Donais ("Attorney Donais"), who was local counsel at the time. At the hearing, Mr. Donais was disqualified by the judge as a result of conflict of interests/ethics issue that was brought to the attention of the judge by Attorney Berry. Mr. Terrell continued on as Pro Hac Vice and Attorney Donais departed from the case[8]. The parties agreed that the matter would proceed on the papers with no formal hearing, especially since Mr. Terrell was domiciled in Atlanta. The parties also agreed that the only issue before the lower court to decide, at that juncture, was whether the petitioner was a hotel guest or a tenant, as a threshold question in terms of whether RSA 540A would apply or not.[9]

After the petitioner objected[10] to the motion to dismiss, and the parties submitted their pleadings amidst other related motion practice, the following events took place: Judge Moore issued a ruling on 2-21-17, where he found that the petitioner was a hotel guest and not a tenant. The clerk's entry on the district court docket/case summary of this decision took place on 2-23-17. The petitioner then filed a timely motion for

---

[7] See App. 1, p. 12; Exhibit 2 – TRO issued by district court on January 9, 2017.

[8] He was replaced by new local counsel, about a week later, who was identified as Brian Snow ("Attorney Snow").

[9] See January 18th court transcript, p. 5-6.

[10] NB: Prior to this, Judge Moore issued a ruling, in error, on 2-1-17 prior to the petitioner submitting her objection, which had to be vacated.

reconsideration on 3-6-17, which was denied. The petitioner then submitted a second motion for reconsideration (which was reformatted) along with a motion to exceed page limits and this too was denied as untimely. There were other post-decision motions that were filed with the district court that were also denied. This appeal with the NH Supreme Court ("supreme court" or "this court") followed.

It should be noted that, on or about 2-14-17, the petitioner filed a request for temporary injunctive relief in NH Hillsborough Superior Court ("superior court") based on a breach of contract claim as well as a discrimination/retaliation claim, which was initially granted. The superior court later issued a preliminary injunctive ruling on 5-8-17 that found that there was a rental contract. Similarly, during the superior court proceedings, the defendants admitted that there was a rental contract (which they denied in district court) which was used as a basis to assert a counterclaim for debt based on breach of contract in superior court.[11]

This case largely centers on a critical jurisdictional question. If petitioner is a tenant, then RSA 540A applies and then this becomes a landlord-tenant case. If petitioner is a hotel guest, then RSA 540A does not apply and then this becomes a public accommodations case.

Therefore, this is a novel case that has the potential to be a landmark case that will once and for all clarify the rights of similarly-situated petitioners and the law relating to this issue in New Hampshire. This case has the potential to supersede (or at least to definitively clarify) cases such as Evans v. Four Realty, LLC, 164 N.H. 570, (2013) and Comeau v. Vergato, 149 NH. 508, 511 (2003) and others (which only tangentially deals with this issue) in terms of importance and the standard for this issue for the foreseeable future.

Because this appeal presents both a question of law and a mixed question of law and fact, this court should review this matter under a de novo standard of review. See State v. Sprague, 146 N.H. 334, 336 (2001).

STATEMENT OF THE FACTS

On 11-22-15, Natalie Anderson ("petitioner", "plaintiff" or "Ms. Anderson") and her husband (who are both African-American) moved into a one-bedroom apartment unit at the Homewood Suites of Nashua[12]

---

[11] See App. 3, Exhibit 35, p. 725 – Defendants' Counterclaim for debt based on contract filed in Superior Court. - **NB: "NH" means New Hampshire.**

[12] Homewood Suites of Nashua ("Homewood") is owned by John Flatley Company and managed by Great American Hotel Group ("GAHG"). Adam Robitaille is the general manager of Homewood. Homewood is also a franchisee of Hilton Hotels Worldwide Inc. ("Hilton") and uses the name Hilton under a license from the same for branding purposes. Hilton, pursuant to its franchising agreement (see App 2, p. 468-470), provides oversight over Homewood but does not manage it or own it. Homewood can make or enter any contract as it wishes.

property located at 15 Tara Blvd, Nashua NH ("Homewood"). The general manager of the property was Adam Robitaille ("Mr. Robitaille"), who is Caucasian.

[First] Tenancy Contract November 22, 2015 to November 20, 2016

In November 2015, the petitioner contracted for an apartment at Homewood in a telephone conversation with Sales Manager Jayme Putnam (who is also Caucasian) and in a follow-up email.[13] The apartment has full kitchen, full/separate bedroom, bathroom, kitchen and living/dining area and was furnished with full long-term living amenities and features[14]. When the petitioner made the arrangements with Ms. Putnam, she told Ms. Putnam that she and her husband would live at Homewood for at least one year. This is reflected in her statement of account or "Folio", which shows a "Move-in date" of 11-22-15 and a "Departure date" of 11-20-16[15]. This one-year contract was renewable per the agreement with the sales office. The rate was $84 per day. The petitioner paid rent on a bi-weekly or monthly basis. Ms. Putnam gave petitioner a reduced rate due to petitioner's long-term arrangement but told the petitioner that the rate would be retroactively adjusted up to the regular higher short-term rate if she left before the expiration of one year.

In their phone conversation, Ms. Putnam relayed features and benefits of staying at the property as well as living in the local area. She also reviewed some key items related to long-term residential life including that the petitioner would have complimentary meals, could choose the frequency of rental payments so that it would be on a fixed schedule[16], could opt for housekeeping services and to extend her stay/renew her residency as needed, etc.

Ms. Putnam sold the petitioner on the idea of using the property for her long-term residency/housing needs (including that there were certain tax advantages in getting a tax refund after a certain number of days

---

[13] See App. 2, p. 428; specifically Exhibit 1 – Tenancy Contract for 11-22-15 to 11-20-16. Exhibits for Reformatted Motion for Consideration.

[14] A full-sized spacious two-room apartment with fully-equipped kitchen (including full-size refrigerator, built-in dishwasher, built-in stove, built-in microwave, and full kitchen cabinetry, with farm style sink and built-in garbage disposal compactor, etc.), a large spacious separate bedroom, a separate bathroom (with bath tub, shower, toilet all in a separate room and, in another separate area, a bathroom vanity with a closet), a separate spacious living room, and a dining area off of the kitchen area that can double as a home office area. It also has a sizable storage area and closet. It has all of the comforts, conveniences and amenities of a full home, equipped for full independent living, cooking, entertaining and study or work. [See App. 1, p. 129 and 135, for Petitioner's affidavits in Petitioner's Motion to Dismiss in District Court AND App. 1, p. 206 and 209 for Petitioner's affidavits in Petitioner's Sur-reply in district court.].

[15] See App. 1, starting on page 112, Exhibit 7; Petitioner's Objection to Defendant's Motion to Dismiss; specifically see under the exhibits section of that pleading, p.140 for "Folio" dated 1-6-16. See also App. 1, p. 213 for Folio printed on 2-9-16 showing contract dates from 11-22-15 to 11-20-16. This is undeniable proof that there was a one-year rental agreement at the $84 rate. This is also confirmed by the fact Ms. Putnam never raised the $84 per day rental rate until 11-20-16, which was when the first contract expired.

[16] And thus the petitioner was not charged daily as would be done for transient guests.

have passed under New Hampshire Law i.e. after 185 days) and thus induced the petitioner to enter into the long-term residential agreement based on a number of such inducements, representations and promises, in order to secure the petitioner's entrance into the agreement. (See App. 2, p. 454). These discussions and promises took place by phone and were formalized in a written agreement by email. Ms. Putnam indicated also that she was eager to offer a special affordable rate in November 2015 because Homewood had just opened on 8-20-15 and they were aggressively looking to fill vacancies long-term.

The reason why the petitioner went through the sales office was because she understood that long-term contracts can only be entered into via the sales office, not through guest reservations. Homewood had a specific policy in place to refer long term stays to the sales manager. Long-term arrangements for residential purposes are setup only through contact with the property sales office and are handled separately from arrangements with short-term guests (who may call by phone or use an online platform to make arrangements for their short-term or transient stay). In fact, the front desk staff are instructed to refer prospective long-term residents to the sales manager for long-term living arrangements and thus, the petitioner was directed by the property staff to speak with the sales manager to arrange the petitioner's long-term arrangements.

Ms. Putnam was very clear that if the petitioner moved-out prior to their contracted dates, that the rental rates would revert back to a higher rate as a penalty, which goes to the petitioner's understanding that she entered into a fixed-term lease arrangement with Homewood. Ms. Putnam did state that as a condition of getting the low rental rate, the petitioner had to agree to stay for the full contracted length of time, or otherwise, the rental rates will revert back to the standard rates (i.e. $129 per day, etc.). Because this could turn a $2600 per month rent into a $4000 per month rent, this was a significant deterrent to the petitioner leaving earlier than the prescribed departure date. The petitioner thus understood this to be tantamount to a contract cancellation penalty. i.e. around $1400 per month penalty.

The petitioner lived at her previous address in Dedham for over 7 years from July 2008 to November 2015. Her last rent amount was about $2400 per month (this included certain utilities). When the petitioner moved to Homewood, she agreed to $84 per day (or around $2600 per month including utilities and taxes) although she was told that taxes would eventually fall off. This made her monthly rent comparable to (or even slightly lower than) what she had been paying at her previous residence. By offering and agreeing to a very low rental rate, the

defendants made it financially possible for the petitioner to reside there on a long-term, permanent basis[17]. Also, the defendants did take from the petitioner the equivalent of a security deposit by charging her extra amounts way beyond the agreed upon biweekly or monthly rate, as a future security. (App. 2, p. 436).

Under the long-term arrangements that Homewood made with the petitioner, she had complete control over the rental unit, and the defendants had relinquished control over the unit during the period of her tenure. The petitioner had no other residence permanent or otherwise. The petitioner was not a transient occupant for purposes of RSA 353. The defendants knew and accepted that the petitioner would be a long-term resident and not a transient occupant (i.e. the apartment unit that she rented was to live-in for non-transient residential purposes). The email exchange between the petitioner and the sales manager in November 2015 confirms the discussion about the petitioner's long-term "housing" needs. In that exchange, Ms. Putnam expressed a clear understanding that the petitioner needed housing on a long-term basis.[18] The particular apartment chosen by the petitioner was designed and equipped for permanent independent living. The petitioner made a selection of the one-bedroom apartment because it supplied the living needs provided by a home. It is a one-bedroom apartment with separate rooms and the petitioner selected it because it was more suited for long-term residency as it provided all of the features of a one-bedroom apartment home. (See App.2, p. 378 for diagram comparing hotel rooms to one-bedroom extended-stay units).

[Second] Tenancy Contract November 20, 2016 to May 31, 2017

On 11-11-16, Ms. Anderson contacted Jayme Putnam ("Ms. Putnam"), in the sales office, to extend her tenancy for an additional 6 months. By email dated 11-14-16, Ms. Putnam agreed to her request for an extension and stated the terms.[19] Ms. Putnam did however increase the petitioner's rental rate from $84 to $89 per night. The terms of the agreement were memorialized in an exchange of emails, dated 11-11-16 and 11-14-16. Ms. Putnam informed the petitioner that Homewood had "stopped offering discounts to other long-term guests" but that due to the petitioner's long-term "tenure", Homewood would continue to offer the petitioner

[17] The low rental rate allowed the petitioner to rent the unit for a rate similar to that of a regular apartment i.e. $2600 per month.

[18] See also Ms. Putnam's reference to petitioner's long term "tenure" as her reason for granting a discount exclusively for the petitioner in her [Ms. Putnam's] e-mail of November 14, 2016 (See App. 2, Exhibits for Reformatted Motion for Consideration App. 2, p. 428; specifically Exhibit 3 – Tenancy Contract for 11-20-16 to 5-31-17, App. 2, p.437).

[19] See App. 2, Exhibits for Reformatted Motion for Consideration App 428; specifically Exhibit 3 – Tenancy Contract for 11-20-16 to 5-31-17, App. p 437.

a discounted rate. The rate charged to the petitioner was "well below [that of] any other guest". [20] On or about 11-20-16, the petitioner started paying the new rate.[21] This shows that the renewed contract for an additional 6 months was accepted and ratified by the parties and evidenced by the conduct of the parties[22]. The foregoing is evidence of a contract between the parties.

Homewood is an Apartment Hotel or a Hybrid Property

Homewood is not a traditional hotel or inn or tavern[23]. The key features of a traditional hotel are: 1) It primarily caters to overnight guests or travelers. 2) Occupants stay less than 30 days. 3) Occupants are transient. 4) Occupants do not have rental contracts. 5) Occupants do not have control over the rental units. 6) Rooms are generally not designed for self-sufficiency or independent living i.e. no kitchen, etc. 7) Rooms are not generally designed for long term occupancy i.e. no multiple rooms similar to a home environment. 8) Room are not rented for a long period of time, such as a year or more, to guests.

Homewood calls itself an extended stay hotel, which is designed for the purpose of catering to or accommodating non-transient long-term residents/occupants. There are a variety of reasons[24] why hotel patrons pursue extended stays properties for long-term living accommodations. These units have all the comforts, conveniences and amenities of a full home equipped for full independent living, cooking, entertaining and study or work. There is nothing that an occupant would need from the operator in order to be self-sufficient, once he/she takes up occupancy. By any stretch of the imagination, this is not a simple hotel

---

[20] See App. 2, Exhibits for Reformatted Motion for Consideration App 428; specifically Exhibit 3 – Tenancy Contract for 11-20-16 to 5-31-17, App. p 437.

[21] See App. 2, Exhibits for Reformatted Motion for Consideration App. 2, p. 428; specifically Exhibit 4 - "Folio", showing $89 per night charge, App. 2, p. 439. See also App. 3, p. 725, Exhibit 35. NB: The second contract for 6 added months is irrefutable.

[22] On or about 12-1-16 as well as on 1-4-17, Mr. Robitaille requested that the petitioner vacate the hotel and thus attempted to break the rental contract with the petitioner. This was in retaliation for the petitioner and her husband raising concerns about race discrimination at Homewood (which comports with a textbook-definition of "retaliation" situation). Also, after litigation began, the defendants engaged in further harassment/retaliation of the petitioner including: locking her out of her unit (and the building) on several occasions during the bitter cold winter; banging on her door in a threatening manner; calling the police and attempting to evict her even though there was a court order prohibiting eviction and issuing an attendant no trespass order; changing her checkout date on her statements to be earlier than what was ordered by the court in an attempt to cause emotional distress over the possibility of future attempt at eviction; placing hotel staff and agents in rooms adjacent to the petitioner's in order to eavesdrop and intimidate the petitioner, etc.. These and other acts constituted "an attempted self-help constructive eviction", which was conduct intended to force the petitioner to leave. See Evans v. J. Four Realty, LLC, 164 N.H. 570, (2013).

[23] NB: Old definition/derivation and usage of the term "Hotel" refers to old nineteenth century inn or tavern that entertained the weary traveler. See also See p. 40 of **The Laws of Innkeepers** by John E.H. Sherry, 1993.

[24] Some people prefer the ease and convenience of living in a hotel (i.e. with added perks of maid service, room service, proximity to work, etc.); in other cases, they are international visitors looking for extended-stay residential living accommodations but who prefer, one reason or another, not to enter into a more formal 1-year lease for an apartment; and many others are in the midst of a life transition (employment, relationship, relocation, etc.) and need a place to call home for some extended period of time.

"room" and it would be a misstatement to simply categorize it as such. Therefore, Homewood is a hybrid property. It is like a hotel in some ways; it is like an apartment in other ways. It is a special extended stay hotel that competes with rental apartments for longer term housing needs. It was inevitable that this clash would occur given that the operators intended to design their property to be dual-use or dual purpose. These hotels are no longer the types of traditional hotel of the nineteenth century[25] or even like the hotels built in 1950s when the Hilton first opened.

Homewood therefore meets the definition of an apartment hotel. Unlike the transient nature of the commercial hotel guest, residential guests of apartment hotels can take on permanent residency. This creates a landlord-tenant relationship that differs in legal rights and responsibilities from the traditional guest-innkeeper relationship[26].

SUMMARY OF ARGUMENT

The petitioner's claim for relief is based on rights and obligations conferred by RSA Chapter 540-A i.e. specifically, that the defendants unlawfully attempted to circumvent the lawful procedure for eviction and violated petitioner's right to quiet enjoyment of her tenancy in violation of RSA 540-A:2. She also claims that defendants threatened to deny her access to her rental premises without proper judicial process, in violation of RSA 540-A:3, II. A critical issue to be determined by this court is whether defendant is a "landlord" and petitioner is a "tenant" as those terms are defined in RSA 540-A:1.

Another key issue comes down to whether the dwelling unit which the petitioner rented at Homewood constitutes "residential premises." Three key facts indicate that they do: 1) The petitioner has continuously occupied the premises for 14 months. 2) unlike most hotel guests, she has had no other residence -- factual or legal -- for this entire period of time. 3) She has had complete control over the rented unit for the entire, if not majority of, the time she occupied the unit. (App. 1, p. 130-136). At issue is whether the prohibitions of 540-A apply to an occupancy of 14 months at a property that calls itself an extended stay hotel. 540-A applies when there is (l) an occupancy based upon (2) a rental agreement involving (3) rented residential premises. For the

---

[25] According to Black's law dictionary (which references the older nineteenth century definition), a hotel is an inn, a public house or tavern or a house for entertaining strangers or travelers. In law, there is no difference between the terms "hotel," "inn," and "tavern". However, none of these terms mentioned will include a boarding house, because that is a place kept for the entertainment of permanent boarders, while a hotel or inn is for travelers and transient guests. See p. 40, The Laws of Innkeepers by John E.H. Sherry.

[26] NB: In some locales, the room occupancy tax is not payable for residential (sometimes called permanent residents) guests in a transient hotel. Also, Homewood's franchising contract states that it business model is also based on revenue from permanent residents. See App. 2, p. 468-470.

reasons that follow, petitioner's tenancy meets the three elements set forth above. The parties had a rental contract for residency from 11-22-15 until 5-31-17. This is easily proven by the fact that the Sales Manager Jayme Putnam provided email confirmation of a rental contract renewal of petitioner's residency from 11-20-16 to 5-31-17 with a special reduced $89 nightly rate (slightly increased from the previous $84 rate which had been in effect for the previous year starting from 11-22-15, when petitioner arrived at Homewood). This new rental contract rate was accepted and began to be charged[27] to petitioner's account beginning on 11-20-16. The petitioner had two email exchanges with the Sales Manager and two Folios statement printout that proves the existence of such a rental contract.[28]

Also, the requisite landlord-tenant relationship existed under RSA chapter 540-A because (1) Homewood rented residential premises to Ms. Anderson for one year and then renewed the rental agreement for an additional 6 months, thus creating a tenancy (App. 2, p. 442-443); (2) Ms. Anderson had exclusive possession of the rented unit for 14 months before any attempt was made to evict her; 3) Ms. Anderson had no other physical residence for those months that she lived at Homewood (App. 1, p. 131); or (4) the conduct of the parties demonstrate that a landlord-tenant relationship had been created by implication[29].

Ultimately, a key issue in this case is whether there was rental contract for residential purposes[30]. The facts are undeniable and compelling in showing that there was such a rental contract.[31] The following equation demonstrates that a tenancy was created by a contract to rent living/housing accommodations for 18 months:

> **14-month[32] actual uninterrupted occupancy in a self-sufficient apartment-unit (with full kitchen, dining area, separate bedroom and separate bathroom) in a building designed for extended stay hotel accommodations**
>
> **+**
>
> **A contract to rent this unit for housing or residential living purposes first for one year and then renewed for 6 months i.e.18 months (both in written form, via emails, that memorializes the basic terms of agreement for rental of this unit plus orally)**

---

[27] NB: November 20, 2016 was the date the previous residency contract period was set to expire i.e. after one year.

[28] See App. 2, p. 442-443.

[29] See Evans v. J. Four Realty, LLC, 164 N.H. 570, (2013), which discussed that a tenancy can be created by implication due to conduct of the parties: *First, relying upon Texas law, the petitioner argues that she and the respondent created a new landlord/ tenant relationship by implication. See Twelve Oaks Tower I v. Premier Allergy, 938 S.W.2d 102, 110 (Tex. App. 1996) ("parties' postforeclosure conduct, including continued possession of the premises and payment and acceptance of rent payments with full knowledge of foreclosure, created a new lease").*

[30] There is insufficient evidence to support the conclusion that there was no rental contract.

[31] See App. 2, p. 428, Exhibits for Reformatted Motion for Consideration; specifically Exhibit 1 – Tenancy Contract for 11-22-15 to 11-20-16, App. 2, p. 431 and Exhibit 3 – Tenancy Contract for 11-20-16 to 5-31-17, App. 2, p. 437.

[32] NB: Petitioner counts 14 months here because this is the time at which the defendants first tried to evict the petitioner and the time at which the petitioner filed a 540A action in district court. However, it should that the petitioner had an explicit contract to rent the unit at least for 18 months. And at the time the lower court rendered its final orders, the time amounted to 16 months.

+

Exclusive possession of the rented unit by the occupant for at least 11 months straight with no interruption of or interference with that possession in any way by defendants

=

Creation of a tenancy for residential purposes.

These elements of the above equation can establish no other result. It cannot establish a traditional overnight transient stay at a traditional hotel with only a room. It cannot establish something else other than a rental agreement for residency or the creation of a tenancy. If the above cannot establish this, then what set of facts or elements could ever establish a tenancy? To find otherwise would be to suggest that an occupant could never become a tenant in an extended stay hotel, no matter how long the occupant actually lives there and no matter if the parties entered a written agreement for renting the unit on a long-term basis for living or residential purposes. There is no dispute of the first element of the above equation i.e. the 14 months of actual occupancy of the rented unit or that the rented unit was a fully-self-sufficient one-bedroom unit with full kitchen with dining area, separate bedroom and separate bathroom (App. 1, p. 131). Similarly, there is no dispute of the core point of the second element i.e. that there was a contract to rent the unit[33]. And lastly, as to the third element, there is no dispute[34] that the petitioner had uninterrupted possession of the rented unit for at least 11-months straight (from March 2016 through January 2017) with no attempt by the defendants to enter, gain access or otherwise interfere with the possession of the unit by the occupants including no attempt to clean or otherwise assert control over the rented unit (App. 1, p. 30 and 187). These facts are easily proven from the record and there is a lack of sufficient evidence from the record to conclude otherwise.

The majority of jurisdictions hold that under the above circumstances a lease and thus a tenancy would have been created. Therefore, Ms. Anderson's rights as a tenant were not extinguished because Homewood

---

[33] Though the defendants initially asserted in the district court that there was no contract to rent the premises, the defendants later changed their position during an evidentiary hearing in superior court on May 8, 2017, wherein the existence of this contract was admitted to by the defendants. Thus, they are legally/judicially estopped from asserting or continuing to assert a position that they subsequently abandoned and that they know they have abandoned. The doctrine of estoppel prohibits the defendants from taking a different position in the supreme court after they took the opposite position in superior court. According to the rules of professional conduct, the defendants are required to be honest with the tribunal and are required to disclose to this court that they have in fact subsequently agreed to the existence of a contract. See App. 3, p. 725-730);

[34] It should be noted that the defendants will make much ado about a one-time housekeeping service that was utilized by the petitioner in February 2016. This was 3 months after she took possession of the rented unit since 11-22-15. The defendants try to argue that the use of this service established that the defendants had control over the unit. But this cannot be used to established a such a thing. Even assuming arguendo that the one-time usage in February 2016 shows some measure of control by the defendants at that moment, it still does not show any measure of control or attempt to control the unit subsequent to that one occasion in February 2016. The petitioner did not ever again opt to use the housekeeping service after that one-time and this did not result in the defendants imposing or attempting to impose the service on the petitioners in March, April, May, June, July, August, September, October, November, December of 2016. Even when the contract was set to expire in November 2016 and there was a renewal agreement ratified by Homewood, at no point did the defendants raise the issue of housekeeping or indicated that there was a problem or require that as a condition of renewal.

calls itself an extended stay hotel. Further, the majority of jurisdictions hold that a tenancy is created after 30 days of continued occupancy in a hotel. Additionally, a landlord's actions may "ratify" the existence of a lease without the existence of a formally written lease.

Moreover, as will be fully explained later, Homewood's failure to attempt to clean or assert any control over the unit occupied by Ms. Anderson for 11 months after a one-time usage of the cleaning services by the petitioner in February 2016, and Homewood's tacit acceptance of petitioner's non-use of the cleaning service for 11 months, show that a landlord-tenant relationship had been created.

Therefore, the defendants meet the definition of "landlord" contained in RSA 540-A:1(I) because defendants rented residential premises to another person. The petitioner meets the definition of "tenant" pursuant to RSA 540-A:1(H) because defendants rented residential premises to her. The property is a "residential premises" and does meet the definition of "premises" contained in RSA 540-A:1(IH) because the petitioner had exclusive control over the rented unit as a result of a rental agreement with the defendants. Since Ms. Anderson's' primary purpose for renting the unit was residential, it is evident that petitioner's dwelling unit at Homewood is a "residential premises" within the meaning of RSA 540-A:1, and that there is a landlord-tenant relationship between the parties. The district court ignored these considerations and instead focused on whether Homewood is simply to be called a hotel.

ARGUMENT

The Lower Court Oversimplified Analysis Focusing On Whether Defendant is a Hotel

In its 2-23-17 decision ("ruling" or "judgment"), the district court placed heavy emphasis on the idea that Homewood is a hotel, based on the defendants' district court pleadings.[35] However, the mere fact of having characteristics of a hotel is not enough alone to preclude the existence of a tenancy. Homewood must also act and behave like a traditional hotel in every way and they must not have behaved in any way that suggests that they have entered into a rental agreement for tenancy with anyone, particularly the petitioner, or that they are like a boarding house or a landlord in any way; by doing so, they change their status from merely being a traditional hotel. If the operator of a hotel, acts in ways that suggest that they are more than a hotel or not simply a hotel, then the law requires (or should require) that they be treated as more. So, although the

[35] See App. 1, Exhibit 4, p. 16. Defendants' Motion to Dismiss and to Vacate Ex-Parte Temporary Order and Memorandum of Law, and the Defendants' Reply to Plaintiff's Objection to defendant's Motion to Dismiss.

defendants rely heavily on the assertion that they are a "hotel" and have the attributes of a hotel, the analysis is required to go a step beyond that. It must be determined whether Homewood is a traditional Hotel/Inn, or an apartment or apartment hotel (also called a "residential hotel"), or a boarding house. If it is deemed to be a boarding house, then the petitioner is a tenant because of the 90-day rule exception under 540A. If it is deemed to be an apartment or apartment hotel/residential hotel, then petitioner is a tenant because such properties do rent to tenants.

If Homewood is deemed to be a traditional hotel or inn, then the issue is not settled there. The nature of the petitioner's specific occupancy must also be determined i.e. indicators of a tenancy that may be unique to the petitioner's unit and/or arrangement, even if every other resident is deemed to be a purely transient short-term guest in the hotel. This is necessary because there are many traditional hotels which rent or lease units to certain residents as tenants. It is axiomatic that even a traditional hotel can enter into leases or rental agreements and can create tenancies.

The defendants would like to benefit from a "dual use" or "dual purpose" situation, where they can rent to long-term or permanent residents while also renting to short-term transient guests (i.e. a "best of both worlds" scenario). But if they want to benefit from both scenarios, then they must be prepared to be treated as a "hotel" when renting to short-term transient guests but also treated as a "landlord" when renting to long-term permanent residents for non-transient purposes.

Similarly, in its 2-23-17 ruling[36], the district court also placed heavy emphasis on a list of features that are purportedly distinguishing features of a hotel. Yet, the district court ignored the fact that many modern apartment complexes (as well as boarding houses) have a central area for front desk operations, retain a master key that can be used to enter a tenant's apartment by maintenance or security, provide furnished apartments (especially in the corporate housing and short-term apartment rental market), provide utilities inclusive in the rent, provide a business center, meeting room, swimming pool, and fitness center, and have to comply with similar ADA requirements. These are not distinguishing features necessarily or exclusively for a hotel. Many modern apartment complexes provide these features (App. 1, p. 449-452); and many corporate apartment operations owned by large corporate parents operate similar to Homewood. The lower court thus

[36] See Addendum A; See Addendum B for Final Case Summary; See App. 1, Exhibit 1, p. 2 for final orders of the district 2-23-17.

misunderstood the complexities pertaining to the intricacies and nuances of the global hotel industry and its modern evolution i.e. many hotels are blurring the lines[37] with apartments, thus becoming apartment hotels[38]. There are larger global economic forces and drivers operating behind the scenes to cause many hotel operators and apartment developers to merge features, in order to compete with each other.[39]

This means that a customer could decide to live in a hotel that feels more like an apartment or live in an apartment that feels more like a hotel. Property operators are designing their properties with this merged quality in response to the market forces of competitive advantage. The district court has missed the import of this fact, apparently not realizing that the trends are such that the features of an apartment have become conflated with the features of a hotel and vice versa in this modern global competitive era.

RSA 540-A Applies to Anyone Who Rents Residential Premises to Another Person

This Court previously has not directly addressed the issue of whether an extended stay hotel occupant becomes a tenant after a certain time period of occupancy through an informal rental agreement. The 540A statute "defines a landlord as one who "rents or leases,' and a tenant as one 'to whom a landlord rents or leases" such property." Hill v. Dobrowolski, 125 NH. 572, 574 (1984). In the present appeal, the petitioner argues that the trial court erred in finding that (1) Homewood was not a landlord within the meaning of the RSA chapter 540-A; (2) Ms. Anderson was not a tenant within the meaning of the statute; (3) Ms. Anderson's rented unit was not a "residential premises" within the meaning of the statute. For the reasons that follow, this court should reverse the lower court's rulings and find that RSA chapter 540-A applies.

RSA 540:1-a, IV(b) And Its Application To This Case

The defendants base their argument that they can summarily eject petitioner from the premises on RSA 540:1-a, IV (b), which excludes certain categories of occupancy from the terms "tenant" and "tenancy." Among the excluded categories are: "Rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use." RSA 540-A:1-a. IV(b). Notwithstanding this statute, this court has rejected

---

[37] In fact, almost everything that Defendants cite as a distinguishing feature for a hotel was provided by the apartment complex that Petitioner previously resided at, for the previous 7 years since 2008. See Exhibit 7: Dedham Apartment Features and Tara Heights Apartment Features.

[38] See p. 33 -34 of **The Laws of Innkeepers:** For Hotels, Motels, Restaurants, and Clubs, Edition 3, by John E.H. Sherry, 1993.

[39] See App. 2, Reformatted Motion for Consideration starting on p. 428 for the exhibits section; specifically see, under the exhibit within Exhibits section, Exhibit 8: Hotel Industry Information on p. 455 – 467.

the argument that RSA Chapter 540 categorically excludes all dwelling units located in such facilities no matter the circumstances. See Evans v. Four Realty, LLC, 164 N.H. 570, (2013).[40] In *Evans*, the owner of a vacation resort claimed that the occupant who he had locked out of the premises without judicial process was "merely a hotel guest" so that he could not have used the statutory eviction process to remove the occupant. Describing the unit in question as a "full apartment" the *Evans* court ruled that the eviction procedures in Chapter RSA 540 apply, even though the dwelling unit at issue was indisputably located in a vacation resort -- a category of facility that is clearly not regarded as tenancy under RSA 540:1-A, IV(b). See Evans, 164 N.H. at 577.

The lower court in *Evans* specifically found that Petitioner Evans "*was a residential tenant at will...by informal agreement with Naturally New Hampshire Healthfully Yours Resort, Inc., beginning in 2003 and until August 3, 2007.*" Similarly, Petitioner Anderson had an informal rental agreement or contract for 18 months and that agreement created a residential tenancy. The conduct of the parties in this case also created a tenancy by implication such that RSA 540 applies. The evidence shows that the defendants were aware of the petitioner's continued use and possession of the property for many months without use of the cleaning services but took no action to enforce usage of the cleaning services.

The lower court in *Evans* made findings of fact that the property in question was a motel. However, the *Evans* Court still found that the petitioner was a tenant. This means that there are circumstances where a finding that a property is a motel is still consistent with a finding that residential premises (subject to the prohibited practices statute contained in RSA 540-A) were still rented to a tenant, because of the circumstances that made the relationship not a traditional one involving a transient hotel guests and an innkeeper. The only conclusion that can be drawn from this case is that the determination of whether any given occupancy is a tenancy – even in a facility listed in RSA 540:1-A, IV(b) – is a case by case determination based on the totality of the circumstances. This is consistent with the way courts in other states have approached the issue[41].

The specific facts in this case -- the long period of time which the petitioner has lived at Homewood, the petitioner's lack of another residence, the degree of control that petitioner exercised over the premises, the design and facilities contained in the unit and the other facts set forth in petitioner's affidavit in district court

---

[40] See App. 1, p. 112, Exhibit 7; Plaintiff's Objection to Defendant's Motion to Dismiss; specifically, under the Exhibits section, App. 1, p.157 for Exhibit 11. See App 1, p. 112, Plaintiff's Objection to Motion to Dismiss in district court and App. 1, p. 196, Plaintiff's Sur-reply in district court.

[41] For more on this point, see later section titled: "Relevant Case Law from Other Jurisdictions".

and other district court pleadings--combine to establish a relationship that goes beyond hotel and guest. Under the unusual circumstances of this case, petitioner and defendants have a landlord-tenant relationship subject to the requirements and prohibitions set forth in RSA 540-A.

Even if this court were to hold that RSA 540:1-a, IV(b) does establish a categorical exemption for all dwelling units described therein, the exemption does not apply to the petitioner. As noted above, subparagraph IV(b) covers "rooms in hotels, motels, inns, tourist homes, and other dwellings rented for recreational or vacation use." There is no question that the petitioner did not rent her unit at Homewood for recreational or vacation use. She is therefore outside of the statutory exemption. Hence, although RSA 540 specifically excludes rooms in hotels, motels, inns, tourist homes, and other dwellings rented for recreational or vacation use from the provisions of the landlord and tenant eviction statute, it is an open question as to whether properties like Homewood, which are a more modern hybrid version of a hotel/apartment, should be treated as merely a hotel as defined and envisioned by the legislature under RSA 540A. The lower court avoided this issue by bluntly relying on the argument by Homewood in holding itself out to be a "hotel" and thus, ergo, 540A does not apply. This resulted in an end-run around this thorny question as to how the law and court should treat this new evolving hybrid hotel-apartment situation.

In arguing that the Supreme Court's decision in Evans v J. Four Realty, 164 N.H. 570 (2013) is not applicable to this case, the defendants also rely on the fact that the dwelling unit at issue in *Evans* was located "adjacent to the resort's office and not part of the hotel portion of the resort." 164 N.H. at 570. This reading of the case puts far too much emphasis on the portion of the resort in which the apartment was located. It suggests that if the very same occupants had occupied an identical dwelling unit over the same time period but said dwelling unit was located in the hotel portion of the resort, the court would have ruled that these long-time residents of the resort could have been evicted without any process whatsoever. This reading of *Evans* is far too narrow.

Notwithstanding the fact that the apartment was located in the hotel portion of the resort, the resort itself was exempt from the eviction process under RSA 540:1-a, IV(b) ("...other dwellings rented for recreational of vacation use"). In ruling that the dwelling unit located within the resort was subject to the statutory eviction process, *Evans* stands for the proposition that the court must make its determination as to

whether the occupant of a dwelling unit is a guest or a tenant based on the totality of circumstances of the particular case[42].

If the defendants were correct in their contention that dwelling units located in hotels are always exempt from the eviction process, a person could live in a unit located in a hotel as her sole residence for 10 years, and still be subject to immediate eviction at the whim of the property owner. Given the myriad types of arrangements that people make with hotel operators, the case by case/totality of the circumstances approach employed by the court in *Evans* makes far more sense. As set forth in detail in petitioner's Objection to Defendants' Motion to Dismiss in the district court[43], in this case the totality of the circumstances tilt in favor of a finding that the petitioner is a tenant.

The petitioner's reading of *Evans* is buttressed by a close reading of the Supreme Courts' decision in Comeau v. Vergato, 149, N.H. 508 (2003). Here the court expressly ruled that a campground owner could be found to have forfeited his right to summarily evict an occupant of the campground under RSA 216-I, noting that "*whatever his 'stated intention,' the campground owner 'knowingly allowed people, the petitioner included' to live year-round on his property for non-temporary and non-recreational purposes. On these facts, we find no legal error in the trial court's refusal to apply RSA Chapter 216–I to this case.*" 149 N.H. at 513. Likewise, in the case before this court the defendants forfeited their right to summarily eject the petitioner when it agreed to rent to her on a long term residential basis.

This Court's ruling in *Comeau* showed that length of stay is a critical aspect of determining whether a tenancy exists and whether summary ejection is allowed or prohibited. The NH supreme court found that residency of one year or more is a critical threshold in that decision.

---

[42] The district court also has misinterpreted *Evans* by drawing an artificial distinction between the apartment in *Evans* and the petitioner's apartment. By saying that the *Evans* apartment was an actual apartment, the district court implied that the petitioner's unit was not (an actual apartment). Yet the only logical basis for drawing that distinction is related to the actual physical characteristics of the unit in *Evans* compared to Homewood. But both units have similar physical characteristics. They both have more than one room in the unit, separate bedroom, separate bathroom, separate living room, full kitchen, etc. Petitioner's unit has the look and feel of an actual apartment and it was designed intentionally as such by the defendants in order to attract long-term residents. There is not some esoteric formula by which one can confer the label of "actual apartment" on one unit, but withhold that same designation to a similar unit, based on where it is located on a property. If the physical characteristics are the same, then they both must meet the criteria for being an actual apartment. Certainly, neither the unit in *Evans*, or the unit in this case, could be described as merely a "room". (See App.2, p. 378 for diagram comparing hotel rooms to one-bedroom extended-stay units). It was the physical characteristics of the unit (along with the terms of occupancy such as length of stay, informal rental agreement, etc.) that drove the underlying *Evans* court's designation of the unit to be an actual apartment, not the label of it being in a hotel and not the fact that it was located on hotel property. See Evans v. J. Four Realty, LLC, Lancaster District Division, No. 451-2011~LT-0032 (December 5, 2011).

[43] See App. 1, p. 112, Exhibit 7; Plaintiff's Objection to Defendant's Motion to Dismiss.

Other Relevant NH Statutes and NH Case Law

In determining the status of petitioner's occupancy, this court should consider RSA 353:3-c, which governs ejection of guests at hotels and other facilities which often house short term occupants. The statute reads as follows:

> All hotel keepers and all persons keeping public lodging houses or cabins may remove or cause to be removed from such establishment in a rental unit in violation of RSA 353:3-b, or RSA 353:3-bb by notifying such guest that the establishment no longer desires to entertain him or her and requesting that the guest immediately leave. Any guest who remains or attempts to remain in a rental unit after being so requested to leave shall be guilty of a violation. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less. RSA 353:3-c (emphasis added).

RSA 353:3-c is the statute that addresses removal of guests from hotels, and it explicitly limits the hotel owner's right to eject occupants without process to guests who reside therein for no more than one month. This is the most specific statement of the legislature about the circumstances under which a hotel owner can summarily eject an occupant. Whatever one believes about the wisdom of this limitation, the legislature chose it, and since all parties agree that the petitioner has resided in the premises for over 14 months, self-help eviction by the defendants is clearly not authorized.

In arguing that the one-month durational limit on a hotel's right to eject occupants without process does not apply to this case, the defendants ignore the clear wording of RSA 353:3-c, which provides that a hotel can summarily eject a person who rents a residential rental unit for "one month or less." RSA 353:3-c puts the focus of the inquiry on whether or not the dwelling unit is being used for residential purposes.

The statute creates a one-month exception to, but is otherwise totally consistent with, RSA 540-A:1, which ties the status of "landlord" and "tenant" to the rental of residential premises. The defendants argued in the district court that forcing hotel operators to use the eviction process to eject any guest who stays at a hotel for more than one month would be "an odd result" that the legislature could not have intended.[44] This argument ignores the fact that the one-month limitation on self-help only applies to tenants who rent residential units in the hotel. If the occupancy is not intended to be the occupant's residence, the one-month limitation does not apply and the hotel can eject the guest without judicial process anytime. Since the petitioner is renting the premises for residential purposes, and she resided on the premises for over 14 months, RSA 353:3-c cannot be a lawful basis for summarily ejecting the petitioner.

[44] See App. 1, p. 183, Exhibit 9; Defendants' Response to Plaintiff's Objection to Defendant's Motion to Dismiss (paragraph. 25.).

The key question here is why would the legislature insert this time duration of "one month or less" if it did not intend to signal that there was something special that occurs at the one-month mark? And it cannot be argued that what the legislature meant was to clarify that anything "under one month or less" as well as anything "over one month or more" are included. This would be an absurd meaning. It is certainly presumed that the vast majority of true transient hotel guests would stay at a traditional hotel for only a few nights and the legislature, by general knowledge and common sense, must have known this. The only logical reason for drawing a distinction at "one month or less" is to demonstrate that it is expected or presumed that true hotel operators would not be in the business of regularly renting accommodations for more than one month and that if any hotel operator did so, it would relinquish or forfeit the protections afforded by RSA 353 to a genuine traditional innkeeper (i.e. to be able to summarily eject a guest without lawful eviction procedures). After one month or more, an innkeeper becomes something more than just a mere innkeeper. Such an operator would then have traversed into the territory of becoming a landlord, at least as it pertained to the resident who rents the premises for more than one month.

This is also supported by the supreme court case, State of New Hampshire v. Priscilla Protasowicki, N.H. Sup.Ct. No. 2011-0859, which highlighted that the term "rental unit" is defined in the statue as "residential property rented for one month or less," so as to "distinguish guests-and-innkeepers from tenants-and-landlords".

Similarly, RSA 540-A:5, IV defines "rental unit" in the context of the landlord tenant relationship as: "*'rental unit" means each separate part of any residential premises which has full facilities for habitation, including contiguous living, sleeping, kitchen and bathroom facilities, which is held out for rental by the landlord.*". This perfectly fits the situation pertaining to the petitioner's rented unit and living situation, especially as it relates to the fact that the petitioner's unit had full facilities for habitation including full kitchen, full separate bathroom and a sperate bedroom for sleeping, etc., thereby imputing a status of a tenancy[45]. This is further consistent with the defendants' treatment of the petitioner as a tenant[46].

[45] Also, this statute defines security deposit in a way that comports with the fact that, as it pertains to the contract renewal for 6 months that occurred at the end of November 2016, the defendants took an advanced security deposit from the petitioner as a future security for payment, in addition to the monthly rent that was paid for the beginning of December 2016. (App. 2, p. 436).

[46] See App. 1, under the Exhibits section of the plaintiff's objection to defendant's motion to dismiss for the Email Exchange with Adam Robitaille, more specifically on p. 151; AND App. 2, Exhibits for Reformatted Motion for Consideration, for the Email Exchange with Adam Robitaille on p. 517.

Since NH law only provides two avenues for removing an occupant from rented residential premises i.e. one process is under RSA 540A and the other is under RSA 353, then it stands to reason that if RSA 353 does not apply, then RSA 540A must apply. This was the conclusion drawn by this court in Comeau v Vergato, where because RSA 216-I did not apply (a statute analogous to RSA 353), due to the fact the campground owner rented premises for a year and thus forfeited the protections afforded to traditional campground owners, then RSA 540A then must apply.

Along the same lines, both RSA Chapter 540-B regarding "shared facilities" and RSA Chapter 540-C regarding vacation or recreational units explicitly authorize self-help eviction of occupants. See RSA 540-B:6 and RSA 540-C:3. It could not be more obvious that the legislature has chosen which occupants can be removed from their dwelling units without judicial process. People such as the petitioner, who have occupied a dwelling unit in a hotel for more than 30 days, are not among them.

Moreover, the definition of "rental unit" set forth in RSA 540:1-a, is: "*a suite of one or more rooms located within a single building rented by the owner to one or more individuals living in common for non-transient residential purposes.*" The petitioner's tenure at Homewood fits perfectly within this definition. It follows that a person who resides in a rental unit for non-transient purposes, does so pursuant to a rental agreement, which renders the occupant a "tenant" within the meaning of RSA 540-A. The existence of petitioner's a rental agreement from 11-20-15 until 11-20-16 is clear from her statement of account or "Folio".[47] As was the extension of that agreement from 11-22-16 to 5-31-17[48]. Having occupied a rental unit pursuant to a rental agreement, the petitioner must be considered a tenant.

It is also worthy of note that RSA 78-A:3, VII defines a "permanent resident" of a hotel as "any occupant who has occupied any room in a hotel for at least 185 consecutive days." Although RSA Chapter 78-A relates to New Hampshire's tax on rooms and meals, the definition of permanent resident is yet another indication of the legislature's recognition that at some point in time an occupant of a room in a hotel sheds his

[47] See App. 1, starting on p. 112, Exhibit 7; Plaintiff's Objection to Defendant's Motion to Dismiss; specifically, under the Exhibits section, App. 1, p. 157 for Exhibit 11; AND See App. 2, Exhibits for Reformatted Motion for Consideration App. 2, p. 428; specifically Exhibit 4 - "Folio", showing $89 per night charge, App. 2, p. 439.

[48] See App. 2, Exhibits for Reformatted Motion for Consideration App. 2, p. 428; specifically Exhibit 3 – Tenancy Contract for 11-20-16 to 5-31-17, App. 2, p. 437.

or her status as a guest and becomes a permanent resident, a status that is entirely consistent with "tenant." That point in time arrived long before the petitioner was asked to vacate. See also Rev 703.04.

If the legislature did not intend to indicate a special status at 6 months, then it would be inconsistent for the legislature to choose to no longer tax them as a hotel guest at the point. In fact, the legislature could have chosen not to relieve a hotel guest of tourist taxes until it showed some other indicia of tenancy (which would mean more revenue for the state). But instead, it used the 6-month mark as determinative of when to relieve a hotel guest of room/meal taxes and of when a hotel guest becomes transformed into a permanent resident. There is a consistency issue here that cannot be ignored or reduced to the oversimplified retorts. It is a fundamental tenet of statutory construction that the acts of the legislature are to be construed as consistent and not as self-contradictory[49].

Labeling or Self-Description As A Hotel Is Not Determinative of The Nature of The Occupancy under NH Supreme Court Precedent

In State of New Hampshire v. Robert Grimpson Smith, N.H. Sup. Ct, No. 2015-0636 (Jan. 31, 2017) (hereinafter "*Smith*"), the supreme court stated that: "[T]he determination of whether a person has a legitimate expectation of privacy with respect to a certain area must be made on a case-by-case basis, considering the unique facts of each particular situation." See State v. Boyer, 168 N.H. 553, 556 (2016) at 558. Similarly, this court has stated: "*we have stated that the privacy interest in a hotel room is comparable to that of the home.*" See State v. Tarasuik, 160 N.H. 323, 328 (2010) at 328. This court also stated in *Smith*:

> We have not previously addressed whether a tenant has a reasonable expectation of privacy in the common areas of a rooming house, and other jurisdictions that have addressed the issue have reached varying conclusions. In arriving at such varying results, courts have focused on the particular facts of the living situation in question. See, e.g., United States v. Werra, 638 F.3d 326 (1st Cir. 2011). The common areas in rooming houses that are more like shared single-family dwellings are usually protected. Id. at 332. Conversely, the common areas in rooming houses that are more like unsecured apartment buildings are not usually protected. Id. For example, in Werra, the First Circuit noted that, when dealing with a residence that "does not fit squarely into the paradigm for either a traditional family home or a multi-unit apartment building," the court should look to the nature of the tenants' living arrangements. Id. at 332.

In its ruling on *Smith*, this court also stated that:

> The fact that the individual units are not fully self-contained living spaces (i.e., they do not have separate bathrooms and kitchens), weighs in favor of finding that the defendant had an objectively reasonable expectation of privacy in the common hallway of the building. Bathrooms and kitchens are integral parts

[49] As this Court has on several occasions noted: "It is a well-recognized rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the latter will be regarded as an exception to the general enactment where the two conflict. Appeal of Johnson, 161 N.H. 419, 424 (2011) (quotation omitted); see Energy North Natural Gas, 164 N.H. 15, 16 (2012)."

> of a home..." However, several other factors weigh against finding an objectively reasonable expectation of privacy. The rooms are individually numbered, and each is secured by a lock, which is similar to how apartment buildings are organized. Additionally, 14 Bank Street has between eight and ten rooms, and the front door is customarily left unsecured and wide open. This custom makes 14 Bank Street more like an unsecured apartment building, where visitors approach through the common hallways and knock directly on individual apartments. In sum, the large number of tenants, the fact that each room had an individual number and a private lock, and the custom of leaving the exterior door unsecured and open suggest that the tenants at 14 Bank Street lived more like apartment dwellers, despite the shared kitchen and bathroom. Based upon these facts, we conclude that the defendant did not have a reasonable expectation of privacy....

The *Smith* case shows that the supreme court has already recognized the need to view with some nuance, the legal issues that stem from or are related to the evolving nature of the various living arrangements that are used for people's homes. This supports the petitioner's argument that this court should rule that the issue of whether petitioner was a tenant or guest must be determined on a case by case basis and not simply based on a categorical definition supplied by how a property characterizes itself i.e. as a hotel. Here, in *Smith*, the property in question was held out to be a rooming house by its operator and residents. However, the supreme court ignored that definition and, based on a close scrutiny of the actual living arrangements and situation, determined that it was more like an "apartment" and its residents more like "apartment-dwellers". The first circuit (United States v. Werra, 638 F.3d 326 (1st Circuit 2011) also provided guidance by saying:

> When dealing with a residence that "does not fit squarely into the paradigm for either a traditional family home or a multi-unit apartment building," the court should look to the nature of the tenants' living arrangements. Id. at 332.

In petitioner's case, Homewood does not fit squarely into the paradigm of a hotel or apartment. Hence, similarly, this court should look to the nature of the occupant's living situation more specifically.

Similarly, New Hampshire's hotel statute defines "*inn or hotel*" as:

> All types of establishments offering accommodations for rent either by the day, week or month, or any portion thereof, including but not limited to hotels, motels, apartment houses, rooming house, inns, boarding houses, trailer parks, restaurants or camping areas.

Also, RSA 78-A:3, III defines a "hotel" as:

> An establishment which holds itself out to the public by offering sleeping accommodations for rent, whether or not the major portion of its operating receipts is derived from sleeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished room houses, boarding houses, private clubs, hostels, cottages, camps, chalets, barracks, dormitories, and apartments.

Furthermore, RSA 353:7, III defines a "hotel" as an "*establishment offering accommodations for rent.*" These statutes place "apartments" or "apartment houses" under the definition of "hotels". It is therefore evident that the nomenclature under New Hampshire law is not well-defined as it perhaps might be in other states. This means that any attempt to simply use the label of a "hotel" as the basis to determine whether a landlord-tenant

relationship exists, as if to say that is the end of the story, is misguided because as shown by the definitions provided by these NH statutes, even apartments and apartment houses can be considered under the general bucket definition of a "hotel", even though it is a known fact that when dealing with apartments and apartment houses, tenancies are regularly created. So, in the same way, when examining this issue in this state, one must look beyond the mere labeling[50] or classification or self-description of a hotel, to determine whether an occupant is a tenant or guest.

Relevant Case Law from Other Jurisdictions

Recent court decisions across the country have recognized that despite the fact that a facility holds itself out as a hotel, the question as to whether any given occupant is a tenant or a guest must be decided on a case-by-case basis based on the totality of the circumstances. In one case, a family that lived in a hotel for over two years because they had no other place to live was considered a tenant and could only be evicted through court order under the Anti-Eviction Act. See Williams v. Alexander Hamilton Hotel, 249 N.J. Super. 481 (App. Div. 1991)[51]. In another case, the court held that a person who lived in a hotel for three years and had no intention of moving to other accommodations was a tenant, and that the hotel was the tenant's permanent home. The tenant was entitled to the protection of the Anti-Eviction Act and had the right to sue for damages for an illegal lockout. See McNeil v. Estate of Lachman, 285 N.J. Super. 212 (App. Div. 1995).

See also *Baker v. Rushing*, 409 S.E. 2d 108 (N.C. 1991) ("whether the petitioners here were residential tenants must be determined by all of the circumstances and the fact that a building is identified as a hotel, and those who reside in it is "guests" is not determinative" 409 S.E. 2d at 112). See also, *Willlims v. Alexander Hamilton Hotel*, 592 A2d 644, (N.J. Super. 1996); *Hundley v. Milner Hotel Management Co.*, 114; and *Lambert v. Sine*, 256 P2d 241 (Utah 1953) (Supreme Court).

See also Chawla v. Horch, 70 Misc. 2d 290, 292, 333 N.Y.S. 2d 531, 533-34 (Civ. Ct. 1972). The management of a hotel may have different responsibilities to different occupants, depending on their status,

---

[50] NB: The City of Nashua regulations do not distinguish "boarding houses" from "hotels". [See generally App. 2, Exhibit 19, Reformatted Motion for Reconsideration, the exhibits section starting on p. 428; more specifically, please see p. 476 for, exhibit within Exhibits, Exhibit 12– International Code or Building regulations used by City of Nashua.]. It should also be noted that both the City of Nashua building regulations and the Code of Federal Regulations define "transiency", consistent with this brief. See App 2, p. 476-479.

[51] In Williams v. Alexander Hamilton Hotel, 249 N.J. Super. 481 (App. Div. 1991), the court held that the long-term occupant of a hotel room was a residential tenant and entitled to the protection of the Anti-Eviction Act. The court emphasized that the hotel accommodations included full kitchen facilities, the family resided in the unit over two and one-half years, planned to remain in the unit indefinitely, and used none of the housekeeping services available to guests of the hotel.

even if the persons occupy identical accommodations. See also Brin v. Sidenstucker, 232 Iowa 1258, 1260, 8 N.W. 2d 423, 424 (1943); Marden v. Radford, 229 Mo. App. 789, 84 S.W. 2d 947, 959 (1935). Cedar Rapids Inv. Co. v. Commodore Hotel Co., 205 Iowa 736, 218 N.W. 510, 511 (1928).

In 43A C.J.S. Inns, Hotels, and Eating Places § 8, it states:

> The same building may undoubtedly be operated as an inn and rooming house, eating house, and apartment house as a single institution and under the same management. Such operation, however, would not make the relationship between the proprietor and all of the occupants of the house of the one class either guests, roomers, or tenants. The defendant's relationship with some of them might be that of innkeeper and guests and with others landlord and tenants.

Hence, where the same building is operated as an inn or hotel, rooming house, and apartment house, as a single institution and under the same management, some of the occupants may be guests, others roomers, and still others tenants.

In Adler v. Northern Hotel Co. (N.D.ILL. 1948), the court stated:

> "...the mere fact that a building is operated, advertised and known as a hotel is not conclusive of the character of any particular occupancy therein, and a person who occupies rooms in a hotel may, under the circumstances of the case, be a tenant and not a guest. Where the same building is operated as an inn or hotel, rooming house and apartment house, as a single institution and under the same management, some of the occupants may be guests, others roomers, and still others tenants." "To be a guest of an inn or hotel it is necessary that the person should be a transient; that is, that he should come to the inn for a more or less definite stay, for if he comes on a permanent basis, he will be deemed a boarder, lodger or tenant. Corpus Juris Secundum defines the word "guest" in the following manner: "A `guest,' within the meaning of the rules of law pertaining to the relation of innkeeper and guest, is a transient person who resorts to, and is received at, an inn for the purpose of obtaining the accommodations which it purports to afford." 43 C.J.S., Innkeepers,§ 3, page 1136."

In *Waitt Construction Co. v. Chase*, 197 A.D. 327 (AD. NY 1927), it states:

> "The hotel, as it was first called, was the old inn, which is well defined as "A house of entertainment for travelers," or "A house where a traveler is furnished, as a regular matter of business, with food and lodging while on his journey." In 22 Cyc. 1070, note 2, it is said: "The words `hotel' and `tavern' are usually used as synonymous with `inn;' and a hotel or tavern which is maintained for the accommodation of travelers is an inn." Further, "an inn or hotel is a house where all who conduct themselves properly and who are able and ready to pay for their entertainment are received, if there is accommodation for them, or who, without any stipulated engagement as to the duration of their stay or as to the rate of compensation, are, while there, supplied at a reasonable charge with their meals, their lodging and such services and attention as are necessarily incident to the use of the house as a temporary abode." (Citing Matter of Brewster, 39 Misc. Rep. 689.) In 14 Ruling Case Law (p. 492) it is said: "He [the innkeeper] is distinguished from the proprietors of other public houses of entertainment in that he publicly holds out his place as one where all transient persons who choose to come would be received as guests." At page 494 the text reads: "It has frequently been held that the term `hotel' is synonymous with `inn,' and that the definition of an inn comprises a hotel, and in some jurisdictions, the word `tavern' is also considered synonymous with `hotel' and `inn.'"
>
> That this defendant would not be entitled to the rights of a guest at an inn has been settled in this department in the case of Hackett v. Bell Operating Co., Inc. (181 App. Div. 535). In that case the petitioner had leased four rooms in the Netherland Hotel in New York city at the corner of Fifty-ninth street and Fifth avenue to be occupied solely as private living rooms, and it was held that the relation was that of landlord and tenant and not that of innkeeper and guest. It was further held that an innkeeper's liability exists only in the case of one who is a traveler and seeks the hospitality of the inn as a transient guest. These cases are only pertinent as bearing upon the meaning of the word "hotel," as

> used in the exception specified in the statute, and as showing the clear distinction between the rights of transients or travelers, socalled, at an inn, and permanent guests therein, and this distinction has a greater significance when we consider that the object and purpose of this law was to furnish housing facilities to dwellers within the city of New York, and not to transients, and to protect such dwellers from oppressive and unreasonable exactions for rent."

The consensus on case law around the country for the most part show that hotels were deemed to be landlords under circumstances similar to the petitioner's case. Hence, the overwhelming majority of cases dealing with this issue in numerous other states come down in favor of the petitioner's position as a tenant.

The lower court in this case failed to take this approach and instead determined the issue based largely on a category definitional approach i.e. Homewood is a hotel therefore it cannot be a landlord, etc. It is also therefore evident that the lower court misunderstood innkeeper law. Under innkeeper statutes, innkeepers are required to accept and not turn away the weary traveler or the person needing public accommodations. The hotel is based on the concept of an Inn, which is for transients. Once a hotel caters to non-transients, it can no longer claim innkeeper protection when it relates to non-transients.

The Purpose of RSA 540A Compared To Statutes from Other Jurisdictions

The purpose of the 540A statute is not to protect the indiscriminate whims of hotel operators everywhere. RSA chapter 540~A prohibits landlords of residential premises from "willfully violating] a tenant's right to [the] quiet enjoyment of his tenancy or attempt to circumvent lawful procedures for eviction pursuant to [RSA 540-A:2]. "[T]he overall intent of RSA chapter 540-A is to deter landlords from engaging in prohibited conduct." Simpson V. Young, 153 NH. 471, 479 (2006). There are many examples of operators who use the "hotel" label to operate something more than a mere transient hotel, while at the same time, maintaining the protections of an innkeeper status. In California[52], New York[53], Connecticut[54], New Jersey, North Carolina, Ohio, Florida, among others, the legislature and judiciary have sought to curb these abuses by hotel operators,

---

[52] In **California**, the statutes state: "*If you are a resident in a hotel or motel, you do not have the rights of a tenant in any of the following situations: 1. You live in a hotel, motel, residence club, or other lodging facility for 30 days or less, and your occupancy is subject to the state's hotel occupancy tax.*".

[53] Under **New York** law (Section 2204.1) a "tenant" is defined to include an occupant of one or more rooms in a hotel who has been in possession for 30 consecutive days or longer but is not a "transient occupant." In Universal Motor Lodges, Inc. v. Seignious, 146 Misc.2d 395, 550 N.Y.S.2d 800 (N.Y.Just.Ct., 1990), the court found a month-to-month tenancy where a "homeless person" had resided for over two years in a motel room that was paid for by the Department of Social Services and where accommodations were provided only to homeless public assistance recipients and not to the general public. See also Mann v. 125 E 50th St. Corp., 124 Misc.2d 115, 475 N.Y.S.2d 777 (N.Y.City Civ.Ct., 1984).

[54]In **Connecticut**, transient occupancy is defined as: *"(1) Occupancy in a hotel, motel or similar lodging for less than thirty days is transient, except that such occupancy is not transient if the dwelling unit or room in such hotel, motel or lodging is occupied as the primary residence of the occupant from the beginning of such occupancy; and (2) Occupancy in a hotel, motel or similar lodging for thirty days or more is not transient, except that such occupancy is transient if the dwelling unit or room in such hotel, motel or lodging is not occupied as the primary residence of the occupant and the occupancy is for less than ninety days (CGS § 47a-2(c)).".*

by making it clear that a hotel cannot host long-term residents and expect to be treated as merely a hotel. It is no less the case with the legislature in New Hampshire. The NH legislature never had in mind that hotels would rent to so-called "transients" for more than 30 days and thus for residential purposes. Contrary to the defendants' assertion in their district court pleadings, this is not an "odd result" since many states have explicitly defined 30 days as the point at which a hotel guest becomes a tenant.

When the legislature defined these issues in the statutes, it had no intention of removing the protections afforded to tenants from those who permanently resided in a property that called itself a hotel. The implication of this is clear: landlords cannot circumvent the purposes behind NH tenant protections by simply labeling a building a "hotel." The legislature could not have envisioned a landlord successfully eradicating basic tenant rights simply because the tenant resided in a hotel property.

The focus of 540A is to deter unacceptable landlord conduct and therefore it is within the power of this court to determine if self-help is unacceptable whether by statute, case law or common law, even if the defendants do not technically meet the definition of a landlord. The historical development in landlord-tenant law in NH is towards protecting residents from homelessness and the capricious whim of powerful landlords or property managers who wield tremendous power over the fate of its residents/occupants.

It is the petitioner's contention that the legislature intended to protect persons who find themselves similarly-situated to the petitioner. The havoc, the upheaval, the damage, the distress, the instability and threat of homelessness created by the defendant's actions should not be allowed to stand. Something must be done to correct this inequity and to protect people who are vulnerable to such conduct by extended stay hotel operators who want the best of both worlds i.e. to lure residents into their extended-stay living accommodations on a long-term basis, thus gaining stable predictable rents over a long period, and staving off cyclical fluctuations in vacancies that erode profits, while at the same time treating such long-term residents as overnight guests who can be thrown onto the streets within minutes, with no warning or no time to prepare to move or relocate. Such residents should not be left with "zero" rights. This is simply unfair and unjust. If extended-stay hotel operators want to sell rented units to only transient overnight guests, then that is one thing. But if they want to sell long-term residential occupancies (especially for a year or more), then they should no longer be able to hide behind the innkeeper' statute as if they are in fact a traditional innkeeper.

The time has come to curtail those hotel operators who try to exploit the situation and operate in any fashion they wish. The current situation can be exploited because of either ambiguity in the law or lack of clarification by the legislature and/or the courts. Either the legislature had the intent to protect those who live in hotels (as long-term or permanent residents), or not. Should the law as it stands evolve? is it already evolved or evolved enough? The ambiguity should be removed and the law should be made clear in petitioner's favor and in favor of those to come after her who may be similarly-situated. This court should define the law (or redefine the law), and set binding precedent as necessary, according to the principles of a just society given the sophisticated evolution of the modern residential market and the diversity of modern living arrangements or situations that can be adopted by those renting residential premises today.

The Lower Court Misapprehended The Ann Arbor YMCA Case

The district court misapprehended the law by wrongly relying on the Ann Arbor v. YMCA case in Michigan. See Ann Arbor Union v. YMCA, 581 N.W.2d 794 (Mich. Ct. App. 1998). First, it should be noted that the Ann Arbor YMCA case is based on Michigan law. Michigan does not have comparable statutes that define "tenant" by the length of a person's stay. Also, Michigan law is not binding on New Hampshire. Michigan has a different statutory scheme than that of New Hampshire. So, to the extent Michigan is used as an analogy, it fails[55]. Moreover, there is no reason to use this one case from Michigan, which reflects a minority view, as dispositive over against the many cases from numerous other states that have set precedents that favor the petitioner's position.

Moreover, the *Ann Arbor YMCA* case is distinguishable from Homewood's on a multitude of factual grounds and therefore it is inapposite and inapplicable to the petitioner's situation. Most of the factors in the Homewood case are not indicative of a hotel-guest relationship, but one of landlord and tenant. Out of 18 characteristics, as much as 17 of them show the opposite fact situation between *Ann Arbor v. YMCA* situation and Homewood.[56] For example, Homewood's conduct served to transfer exclusive possession to the petitioner, which is evidenced by the fact that the defendants did not enter petitioner's unit for 11 months.

---

[55] NB: The defendants rely almost exclusively on this Michigan case. Yet this Court has stated that any attempt to rely upon cases construing statutory schemes of states other than NH, without analyzing NH statutory scheme or without addressing NH case law on the subject, is considered to be an insufficiently developed argument for purposes of NH tenant law. See Evans v. J. Four Realty, LLC, 164 N.H. 570 (2013).

[56] See App. 2, p. 322-324 for the Table of Differences between Ann Arbor case and the Homewood case.

Homewood did not specifically reserve the right to terminate a guest's occupancy at any time and without any reason. Homewood is equipped with cooking or bathing facilities. The residents are not prohibited from storing food or personal belongings in their rooms and are not required to specifically acknowledge that they have no possessory interest in their rooms. Visitation on the residents' floor and in the rooms is not restricted by Homewood. The residents are not required to leave their room keys at the front desk when they leave the building. The above factors provide compelling evidence that *Ann Arbor v. YMCA* is opposite to the Homewood and that a landlord-tenant relationship existed between the parties in this case.

Moreover, a key basis for the findings in the Ann Arbor YMCA case (i.e. the *Poroznoff* case[57]) was clarified by the NJ supreme court[58], holding that lower courts were misapplying and misconstruing the holding in *Poroznoff* to mean that a resident of a hotel could never be a tenant. The NJ supreme court over turned its holding in *Poroznoff* and found that the occupant of a hotel was in fact a tenant, as follows:

> However, we did not hold that a resident of a hotel could never become a "lessee" or "tenant," or a "non-transient" guest entitled to the Act's protection. Cf. Vasquez v. Glassboro Service Ass'n, Inc., 83 N.J. 86, 97, 415 A.2d 1156 (1980). While under Poroznoff the mere assertion that a room in a hotel or Y.M.C.A. or similar premises is the "only residence" does not suffice to make one a "lessee or tenant" under N.J.S.A. 2A:18-61.1, the case before us involves a petitioner who lived in the Alexander Hamilton Hotel for over two years with his family members who attended school and registered to vote as a result of their residence at the premises. Further, while the petitioner had an intention to ultimately leave the premises and find a "more suitable" residence for his family, he had no present intention or ability to do so within any particular time or fixed duration, or to leave the premises until after he could return to work and obtain the funds for doing that.

It should also be noted that the *Ann Arbor v. YMCA* court was concerned about the impact on a low budget non-profit like the YMCA. The court stated:

> To hold otherwise would create an intolerable burden on the YMCA in its efforts to provide inexpensive temporary lodging for the very people it undertakes to serve, with a likely result being that those people would, in the end, be without accommodations. There being no landlord-tenant relationship, we also hold that the YMCA is not subject to those statutes that apply to landlords.

There is no such mitigating or extenuating concern for Homewood. Homewood is backed by John Flatley Co. and Hilton which are multi-billion dollar "for-profit" enterprises.

The Lower Court Ignored Evidence That Petitioner Had Exclusive Possession

The lower court ignored evidence of the petitioner's exclusive use and possession of the premises[59]. In its 2-23-17 ruling, the lower court found that cleaning was a contested issue. But the defendants did not contest

---

[57] Poroznoff v Alberti (168 N.J. Super. 140, 401 A.2d 1124 (1979).

[58] Williams v Alexander Hotel Hamilton Hotel, 249 N.J. Super. 481 (App. Div. 1991)).

[59] The lower court cannot find as fact something that is opposite of the actual facts pled by either petitioner or defendants (unless the lower court used evidence taken from other sources, but no such other source exists as it relates to this particular point other than the pleadings of the petitioner and the defendant).

the fact that there was no cleaning of the petitioner's room from February 2016 through January 2017 (NB: They admitted that they did not clean petitioner' room during that time). The only contest is whether petitioner's room was cleaned prior to February 2016. Both parties agree that there was one cleaning in February 2016. However, it is not contested that the unit was not cleaned for 11 months straight, after February 2016. The record is clear that during the time of the second or renewed contract, the period of 11-20-16 through 5-31-17, no cleaning of petitioner's room occurred from 11-20-16 through the time of the filing of the 540A petition in district court. Therefore, the lower court should have found that the petitioner had exclusive possession from February 2016 through 11-20-16 and then from 11-20-16 through the time that the lawsuit was filed on 1-9-17. Either way, the lower court should still have found that the petitioner definitively had exclusive possession from 11-20-16 through 1-9-17 (i.e. the term of the second contract period).

The key question here is why did the defendants not enter the unit for 11 months? The answer is because they relinquished control over the unit. What other reason could there be? Also, if the petitioner was in violation of the hotel's cleaning policy, as defendants purport, and if petitioner thus did not have exclusive possession of the unit, then why did not the defendants attempt to terminate petitioner's stay in February 2016, and then why did not the defendants terminate petitioner's stay subsequently in March, April, June, July, August, September, October, November 2016 (when the rental agreement was renewed for 6 months) and December 2016 and then the beginning of January 2017, for refusing cleaning service and violating hotel policy on cleaning? It defies logic that defendants would allow petitioner to refuse housekeeping for all of that time (i.e. 11 months), if in fact the petitioner did not have exclusive possession.

The first time that termination of stay for refusing cleaning service is raised was is in the motion to dismiss filed in the lower court by defense counsel on 1-17-17 (i.e. 11 months had passed and there was no mention of cleaning service, no request to clean room, no threat or warning regarding cleaning). This shows that the defendant's representations are a false pretext brought up after the fact.[60] And even when the defendants had a chance to make this a condition of renewal in November 2016, they did not raise it as an issue. Therefore, the defendants renewed petitioner's contract for another 6months with the only change being a small increase in

[60] It makes no sense to say that evidence of exclusive possession was the fact that the hotel staff had a pass key that they COULD have used to enter unit, when in fact in this case they DID NOT use their pass key to enter to the unit. If any thing it begs the question of why no cleaning was done for 11 months.

the rental rate from $84 to $89. It defies logic that the defendants would renew petitioner's contract for an additional 6 months if she had violated the cleaning policy for 11 months straight prior to that. It is thus plain error for the lower court to find that the petitioner did not have exclusive possession.

The Lower Court Ignored Evidence That The Defendants Submitted False Evidence

Defendants submitted false evidence[61] regarding the purported fact that a bathroom sticker was placed on petitioner's bathroom mirror prior to her taking up residence at Homewood because such bathroom stickers were placed in all bathrooms rented at Homewood. Petitioner's bathroom did not have a sticker-notice placed on the bottom corner of the mirror in the guest bathroom[62]. Evidence from the TripAdvisor website shows photos posted by other guests of that time, proving that other bathrooms in other residents' units did not have such a sticker-notice placed in them.[63] Similarly, there are photos of guest bathrooms (posted by Homewood management on the TripAdvisor site) that prove that other guest bathrooms in other units did not have such a sticker-notice placed on the mirror in them.[64] There is also further evidence from the defendants' own website that shows that there were no stickers placed on the bottom corner of the mirror of every guest bathroom. (See App. 1, p. 169-172 and p. 216-219; App 2, p. 471-473). This evidence is incontrovertible. Mr. Robitaille and his counsel therefore submitted false evidence to the lower court, to mislead the court that such a sticker was placed in petitioner's bathroom prior to her residency that began on 11-22-15. The question is why would they go through such lengths to submit false evidence? This was done to try to establish that petitioner did not have exclusive control over our unit and to either use this false evidence to establish that they had exclusive possession, or to obfuscate the fact that petitioner had exclusive possession.

The Lower Court Misapprehended The Basis for Petitioner's Domicile at Homewood

Although the NH Constitution does not define domicile, the legislature has defined it as "that one place where a person, more than any other place, has established a physical presence…". See Guare v. State, 117 A. 3d 731, NH Supreme Court (2015). Also, a person's domicile can be defined as the place where he has his true, fixed home and principal establishment, and to which, whenever he is absent, he has the intention of returning.

---

[61] In Exhibit L submitted to the lower court on 1-27-17, Mr. Robitaille claims that a photo of a sticker-notice is placed on the bottom corner of the mirror in every guest bathroom, explaining the scheduling of this service. See App. 1, p. 87 and p. 99.

[62] See App. 1, p. 169-172 and p. 216-219; App 2, p. 471-473.

[63] These photos are time-stamped to show when they were uploaded and by whom.

[64] These photos posted by Homewood management are also time-stamped and show who posted them. See App. 1, p. 169-172 and p. 216-219; App 2, p. 471-473.

In order to show domicile, a party must establish that he (1) was present in the new domicile and (2) intended to remain there. See Melendez-Garcia v. Sanchez, 629 F. 3d 25 (1st Circuit 2010).

It is without a doubt that the petitioner's physical presence had been established to be only at Homewood over 14 months or more. The district court erroneously placed great weight on a Chelmsford MA address (where a commercial UPS mailbox is maintained by petitioner's husband) and a previous Dedham MA address (where petitioner used to live at prior to moving to Homewood) to establish petitioner's domicile to be elsewhere. Yet it has been clearly established that petitioner moved out of the Dedham MA address as of November 2015 prior to her move to Homewood on 11-22-15. It has also been clearly established that the Chelmsford MA address is only a commercial UPS mailbox address and that petitioner cannot reasonably be expected to live in a UPS mailbox. Hence, the petitioner's physical presence was not at the Chelmsford MA address that was used by her husband for largely business purposes and for legal service of mail[65]. Therefore, the clear facts[66] do not establish that petitioner had a different residence than at Homewood from 11-22-15 until 1-9-17. Moreover, even assuming *arguendo*, that the domicile requirements had not been met, it still does not mean that the parties had not entered a rental contract that created a tenancy. Many people who are domiciled outside of NH routinely enter tenancies in NH for one reason or another, such as for college, military, project work, elderly family caretaker purposes, etc.[67] The key point in all of this is that the petitioner had no other place to live other than at Homewood, and this is undisputed.

The Lower Court Ignored Evidence of a Tenancy Contract

There are two phases of analysis on the existence of a tenancy based on a contract. 1) Phase 1: Was there a rental agreement between the parties from 11-22-15 to 11-20-16? If so, did this rental agreement result in a tenancy? 2) Phase 2: Was there a rental agreement between the parties from the period of 11-20-16 to 5-

---

[65] In addition to petitioner directly receiving some mail at Homewood, it is important to note that any/all mail received at this UPS mailbox address was forwarded to Homewood. This establishes that the final delivery and destination of all mail was to Homewood, which shows that they had no other final permanent residence at which to receive mail. See App. 1, p. 143-148.

[66] Petitioner's husband had a legitimate privacy interest in using the UPS mailbox address. Moreover, petitioner's husband did not put the Chelmsford address on his original Bankruptcy petition filed in August 2015 in MA, as at that time he was actually living at the Dedham apartment. Hence, it was an erroneous conclusion by the lower court to find that the petitioner's husband placed the UPS Chelmsford address on his original bankruptcy petition when he initiated his MA bankruptcy. This is factually incorrect and it constitutes plain error for the lower court to use this to conclude that petitioner's domicile was the Chelmsford address. See App. 2, p.545. Also, the notice of change of address form in MA Bankruptcy court only requires an address for noticing/mailing purposes, not necessarily a place where one lives. See App. 2, p. 542. Again, this is another plain error made by the lower court.

[67] Many people who are domiciled outside of NH routinely enter tenancies in NH for one reason or another, such as for college, military, project work, etc. Some are looking to invest or own homes in two states such as in NH and FL or NH and MA, etc.

31-17? If so, did this rental agreement result in a new tenancy or a continuation/renewal of a prior tenancy? If this court finds that there was a tenancy in phase 1, then no further analysis is necessary to determine if there was a tenancy created in phase 2, since this would still require defendants to follow lawful eviction procedures under 540A because a tenant at sufferance is still subject to 540A[68]. If this court does not find that there was a tenancy in phase 1, then this court must still determine if there was a tenancy created in phase 2. If this court finds that there was a tenancy in phase 2, then no further analysis is necessary and 540A would apply.[69]

Other Errors of The Lower Court

In its 2-23-17 ruling, the lower court stated that it did not find that the essential characteristics for a landlord-tenant relationship exist[70]. But the lower court ignored the following: 1) Petitioner occupied the premises with defendants' consent. This is undisputed. 2) The fact that the defendants surrendered control of petitioner's unit means that it granted exclusive possession to the petitioner and the fact that the defendant did not clean petitioner's unit for 11 months shows that it subordinated its title and rights to the tenant. 3) It is undisputed that the defendants have a reversionary right in the premises—meaning they have the right to recover possession and all rights of ownership when petitioner's tenancy is terminated. 4) The creation of an estate in tenancy is a conclusion of law that cannot be assumed before it is proven (a circular argument), which the lower court did. 5) The existence of a contract establishes that an estate in tenancy was created and the defendants' rights were subordinated[71].

REMAINING ISSUES

The **motion for void judgment based on defective affidavit** should have been granted because the defendants' pleadings were fatally defective because the affidavit that accompanied them failed to follow the

---

[68] Even if the rental arrangement was not renewed on 11-20-16 (which it was), then petitioner would still be a tenant at sufferance and defendants must still follow lawful eviction procedures i.e. because a tenancy at sufferance arises by operation of law after a tenancy at will is terminated. See Hill v. Dobrowolski, 125 NH. 572, 574 (1984).

[69] However, if this court does not find that there was a tenancy in phase 2, then this court must still determine if there is a prohibition against self-help under these circumstances, even if there was no tenancy created in phase 1 or 2.

[70] This court should consider that it has increasingly rejected self-help eviction by property owners-- even when it has found that the provisions of RSA 540-A:1-4 do not apply. See, Greelish v. Wood, 154 NH 521, 526 (2007) ("The modern trend has been to recognize that the existence of a speedy judicial remedy makes a right of self-help unnecessary"). See Evans v. J. Four Realty, LLC, 164 N.H. 570, (2013). Also, this court has found that even if 540A does not apply to a case, a common law theory of recovery could apply. See Hill, 125 N.H. at 573 (in addition to claiming statutory violation, tenant sued landlord for trespass); Greelish, 154 N.H. at 521-22 (purchaser at foreclosure sale sued for harassment).

[71] In Evans v. J. Four Realty, this Court recognized that a tenancy can be created even in the absence of a written lease (where there is only an informal agreement) and despite the rented unit being located in a hotel resort, especially when the plaintiff resided in the unit for a long time and where rented unit was a fully-equipped apartment with two bedrooms, a kitchen, a living room & one bathroom.

statutes, in that it was not sworn according to the rules, thus making it null and void. Consequently, the lower court had no properly sworn facts that it could rely on from the defendants' pleadings. Thus, the lower court erred in considering facts presented by the defendants, not supported by a valid affidavit as required by statute. Thus, there should be a void judgment and a new trial as a result with the facts appropriately sworn to. An affidavit is defective if it lacks reference to a sworn oath under the pains and penalties of perjury. See: NH Superior Court Rule 11 (b). The lower court did not waive this rule. In fact, the court stated on 1-18-17 that it was enforcing that rule and ordered the defendants to comply with the rule. Yet, the defendants failed to do so.

During the 1-18-17 bench conference, the need for properly sworn statements from the defendants was raised by petitioner's counsel. However, even after this objection was raised by Attorney Berry and the judge confirmed the requirement by statute[72], the defendants still did not file an affidavit that was duly sworn under oath under the pains and penalties of perjury. The factual basis of the defendants' case rests on this one affidavit by Mr. Robitaille. Thus, the district court had no basis to construe the facts in favor of the defendants[73].

Moreover, it is not accurate for Judge Moore to state that petitioner's counsel did not raise the issue at any time during the proceeding. In light of the judge's instructions, Mr. Robitaille's affidavit was supposed to be the "fix" that corrected the lack of sworn statements in the defendants' pleadings. It was the job of the lower court to enforce the requirement that the judge reiterated to defendants' counsel on 1-18-17, in response to petitioner's counsel raising the issue. As a result, the issue was timely and properly raised but the lower court neglected to enforce its own stated requirement and the requirement by statute.

The **motion for new trial and for attorney disqualification** should have been granted because justice required it. With no explanation, the lower court flatly denied petitioner's motion for a new trial without allowing evidence to be presented, without allowing a hearing, and without timely objection from the

---

[72] See excerpt taken from the court transcript of the hearing (Tr., p. 31-33):

> MR. BERRY: Two last little things, is that number one: If we understand it, and I could be wrong about this, but there are documents you have that are not…that if you still want it on the record, we don't have them signed or…they're not affidavits. What I want is to do is whatever you're going to rely on, I'm just going to ask you to have them re-executed in affidavit form, and we'll do the same…(inaudible)…
> MR. TERRELL: Like an under-oath verification of the facts in our pleading. True and correct under penalty of perjury.
> THE COURT: Yes, our statute requires it anyways.
> MR. TERRELL: Right.
> MR. TERRELL: Okay

[73] See App. 1, p. 86, Exhibit 4 of Defendants' Supplement to Defendants' Motion to Dismiss and to Vacate Ex-parte Temporary Order; and App. 1, p. 87 of Affidavit Verifying Facts Stated in Motion and Striking Certain Evidence in the Motion.

defendants, indicating that it simply declined to address the issues. The lower court should have allowed such a hearing to determine if false evidence[74] was submitted by the defendants and their counsel Karl Terrell and Brian Snow[75]. The lower court also erred in not allowing a hearing to review newly discovered evidence related to whether Attorney Terrell should be disqualified because of a conflict that resulted from his co-counsel's conflict (which resulted in co-counsel's disqualification) and whether Attorney Terrell made misrepresentations to the lower court related to the conflict issue, which would result in tainted proceedings rendering it unfair and compromised.

The **motion for recusal** should have been granted because Judge Moore had already made up his mind that the defendants' property was a hotel and thus, ergo, they cannot be a landlord. This was made manifest by the judge's statement at the bench conference on 1-18-17, and this was reinforced by the judge's error on 2-1-17 (when he ruled on the case without first receiving the petitioner's objection to the defendants' motion to dismiss, which had to be vacated). This was further reinforced by the judge's refusal to enforce the rules regarding sworn affidavits against the defendants and to consider his plain errors when these were brought to his attention. The need for recusal is reinforced by the judge's subsequent conduct, in refusing to act upon the motion for void judgment and then, after notice of appeal, defying this court's order of denying partial remand.

The **motions for reconsideration** should have been granted because it showcased the errors of the lower court. The lower court ignored the errors it made (both factual and legal) and simply doubled-down on its decision without further thoughtful review of the evidence and the law.

The defendants' **motion to dismiss based on mootness** was denied by this Court without prejudice on 10-17-17. The petitioner refuted the issue of mootness in her objection[76] to that motion, citing that the mootness argument is improper because it suggests that there is no longer any controversy to be resolved between the parties[77]. However, the parties' dispute is not moot because, if this court rules in her favor, the petitioner would be entitled to damages.

---

[74] See page 30 of this brief for example of falsified evidence. See also App. 1, p. 169-172 and p. 216-219.

[75] Mr. Snow has been previously disciplined by this court and removed from judgeship due to serious ethical misconduct. See.

[76] See App. 3, p. 691-713.

[77] Due to page limits, the petitioner preserves her right to further address this issue in a reply brief, if it is raised in defendants' brief.

CONCLUSION

In conclusion, the petitioner would like to bring to the court's attention a few key questions, the answers to which will demonstrate that the petitioner should prevail in this case, as follows: 1) Was there a rental contract agreed to by Ms. Anderson and Ms. Putnam in November 2015? 2) Was there a rental contract that was agreed upon by the parties for an additional 6 months from 11-20-16 through 5-31-17? 3) Did the management of Homewood upload (to the trip-advisor website and/or to the Homewood website) pictures that showed no bathroom stickers in the bathroom of rented units at Homewood? 4) Did the defendants submit evidence to the district court, especially regarding the bathroom stickers, that was false or misleading? 5) Why did the defendants not swear under oath to the affidavit they provided to the district court? 6) Why did the defendants not raise the cleaning issue when the petitioner requested her contract to be renewed for additional 6 months?[1]

For the foregoing reasons, this Court should reverse the lower court's ruling and find that 540A applies. From a public policy perspective, this finding is compelling under the circumstances of this case.

PRAYER

WHEREFORE, the petitioner requests that this Court: A) reverse the lower court's decision and enter a finding for petitioner that she was a tenant, not a transient hotel guest. B) vacate (in the alternative) the 2-23-17 decision and remand/order a new trial based on newly discovered evidence, taint of the proceeding by attorney misconduct, false evidence submitted by defendants, and the need for an evidentiary hearing to sort out the full truth in the interests of justice. C) remand the case for petitioner to amend her pleadings to correct any defect under a common law theory of recovery. D) order such other and further relief that it finds just and equitable.

Respectfully submitted

Natalie Anderson
1648 Taylor Rd, #1108
Port Orange, FL 32127
617-710-7093

Dated: February 20, 2018

[1] The defendants will likely not directly address these questions in their brief, which should signal to this court that there is something amiss and that the petitioner should in fact prevail.

CERTIFICATE OF SERVICE

The petitioner hereby certifies that two copies of the foregoing was/will be served on opposing counsel (Karl Terrell and/or Brian Snow) by email as agreed by the parties. NB: It is intended that two copies will be served on opposing counsel by the below date (February 20, 2018).

Respectfully submitted

Natalie Anderson

Natalie Anderson
1648 Taylor Rd, #1108
Port Orange, FL 32127
617-710-7093

Dated: February 20, 2018

REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Although petitioner is theoretically in favor of oral argument because the issues involved in this matter are novel in New Hampshire and are of tremendous public importance, the petitioner would like to forego oral argument unless she is allowed to have a non-lawyer family member assist her in presenting the oral argument. Because the petitioner is pro se and not accustomed to making legal arguments in court (and especially at the supreme court level), she believes she will be disadvantaged in the process, especially with seasoned opposing counsel on the other side. However, if this court believes that it would be useful, important or necessary to have oral argument (or otherwise would like to do so in order to write a full and considered opinion, etc.), the petitioner would be happy to facilitate this, but (again) only if she will be allowed to have the assistance of a non-lawyer family member (who would be prepared to submit any necessary filings in compliance with rule 33). If the court does prefer to have oral argument, then petitioner prefers 15 minutes before the full court.

The petitioner hereby certifies that the decision (s) being appealed is/are addended to this brief.

The petitioner also certifies that this brief has 35-pages (from the "issues presented" page to the last page with signature of the petitioner, excluding table of contents, table of authorities, and all addendum materials) and is in size 12 font (Garamond), double-spaced, printed on one-side only, bound at 1-inch at the left margin with appropriate binding attached, with blue cover on front page, and thus is in compliance with all formatting requirements of Rule 16, as ordered by the court.

Dated: February 20, 2018

Natalie Anderson

ADDENDUM i

PERTINENT STATUTES

PERTINENT STATUTES

RSA CHAPTER 353

Section 353:3-bb

353:3-bb Refusal or Denial of Accommodations. –

I. A hotel keeper, including any person keeping public lodging houses, tourist camps, or cabins, may refuse or deny any accommodations, facilities, or privileges of a hotel, lodging house, or campground to:

(a) Any person who is unwilling or unable to pay for accommodations and services of the hotel, lodging house, or campground. The hotel keeper may require the prospective guest to demonstrate the ability to pay by cash, valid credit card, or a validated check.

(b) Any person under the age of 18 who does not present a signed notification from a parent or legal guardian that the parent or legal guardian accepts liability of the guest room or campground site costs, taxes, all charges by the guest, and any damages to the hotel, lodging house, campground, guest room, or its furnishings or to the campground site caused by the minor guest while at the hotel, lodging house, or campground to the extent that such costs, taxes, damages, or charges exceed the amount of cash or credit card deposit already provided by the guest.

(c) Any person or persons, if admitting that person or those persons would cause the limit on the number of persons who may occupy any particular guest room in the hotel or lodging house or a site in the campground to be exceeded. For purposes of this subparagraph, the limit represents the number permitted by local ordinances or reasonable standards of the hotel, lodging house, or campground relating to health, safety, or sanitation.

II. Nothing in this section authorizes any hotel keeper to violate state law against discrimination, RSA 354-A.

Section 353:3-c

353:3-c Ejection of Guests. –

I. All hotel keepers and all persons keeping public lodging houses or cabins may remove or cause to be removed from such establishment any guest remaining in a rental unit in violation of RSA 353:3-b or RSA 353:3-bb by notifying such guest that the establishment no longer desires to entertain him or her and requesting that the guest immediately leave. Any guest who remains or attempts to remain in a rental unit after being so requested to leave shall be guilty of a violation. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

II. All hotel keepers and persons keeping public lodging houses, cabins, or any rental unit may immediately remove or cause to be immediately removed by any law enforcement officer of this state, any guest who willfully denies other guests their right to quiet enjoyment of their tenancies, including but not limited to any guest who:

(a) Disturbs, threatens, or endangers other guests;

(b) Is less than 21 years of age and possesses alcohol;

(c) Possesses illegal drugs;

(d) Violates any rule of the hotel, lodging house, or campground that is posted in a conspicuous place and manner at the guest registration desk and in each guest room; or

(e) Violates any local or state law.

II-a. The right to remove, or cause to be removed, shall arise after the hotel keeper or person keeping a public lodging house, or cabin, or their agents makes a reasonable attempt to verbally warn said guest to cease and desist said breach of quiet enjoyment or violation of local or state law. Upon such immediate eviction, the guest shall be refunded the unused portion of his or her pre-paid rental fee less damage charges for his or her actions. For the purpose of this section, the term "rental unit" shall include residential property rented for one month or less.

III. Any law enforcement officer of this state, upon request of a hotel keeper, or person keeping a public lodging house, or cabin, shall place under arrest and take into custody any guest who violates this section in the presence of the officer. Upon arrest, the guest shall be deemed to have abandoned his right of occupancy of the rental unit and the operator of the establishment may then make such unit available to other guests. The

operator of said establishment shall employ all reasonable means to protect any personal property left on the premises by such guest.

RSA CHAPTER 540-A

Section 540-A:1

540-A:1 Definitions. – As used in this subdivision:

I. "Landlord" means an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.

II. "Tenant" means a person to whom a landlord rents or leases residential premises, including manufactured housing or a space in a manufactured housing park.

III. "Premises" means the part of the landlord's property to which the tenant is entitled exclusive access for living or storage as a result of the rental or lease agreement.

Section 540-A:2

540-A:2 General Prohibition. – No landlord shall willfully violate a tenant's right to quiet enjoyment of his tenancy or attempt to circumvent lawful procedures for eviction pursuant to RSA 540. No tenant shall willfully damage the property of the landlord or prevent completion of necessary repairs or willfully deny tenants their right to quiet enjoyment of their tenancies.

Section 540-A:3

540-A:3 Certain Specific Acts Prohibited. –

I. No landlord shall willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

II. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's rented or leased premises, other than through proper judicial process.

III. No landlord shall willfully seize, hold, or otherwise directly or indirectly deny a tenant access to and possession of such tenant's property, other than by proper judicial process.

IV. No landlord shall willfully enter into the premises of the tenant without prior consent, other than to make emergency repairs.

IV-a. Entry to make emergency repairs as authorized by RSA 540-A:3, IV includes, but is not limited to, entry by the landlord to evaluate, formulate a plan for remediation of, or engage in emergency remediation of an infestation of rodents or insects, including bed bugs, provided such infestation-related emergency entry took place within 72 hours of the time that the landlord first received notice of the infestation.

V. No tenant shall willfully refuse the landlord access to the premises to make necessary repairs, or to perform other reasonable and lawful functions commonly associated with the ownership of rental property, at a reasonable time after notice which is adequate under the circumstances.

V-a. No landlord shall willfully fail to investigate a tenant's report of an infestation of insects, including bed bugs, or rodents in the tenant's rented or leased premises, within 7 days of receiving notice of such alleged infestation from the tenant or a municipal health or housing code authority, or fail to take reasonable measures to remediate an infestation.

V-b. No tenant shall willfully refuse the landlord access to the premises to:

(a) Make emergency repairs as authorized in paragraphs IV and IV-a of this section; and

(b) Evaluate whether bedbugs are present after the landlord has received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit that is directly above or below the premises, provided the landlord gives the tenant 48 hours written notice of his or her need to enter the premises to evaluate whether bed bugs are present.

V-c. No tenant shall willfully refuse to comply with reasonable written instructions from a landlord or pest control operator to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs, provided that such instructions are given to an adult member of the tenant household such that the tenant household has a reasonable opportunity to comply, and in all cases at least 72 hours prior to remediation.

V-d. Notwithstanding any other provision of this chapter, a landlord may only enter a tenant's dwelling unit without the consent of the tenant:

(a) To make emergency repairs pursuant to paragraphs IV and IV-a; or

(b) If the landlord has obtained an order authorizing the entry from a court of competent jurisdiction pursuant to RSA 540-A:4.

VI. No tenant shall willfully damage the property of the landlord.

VII. Other than residential real estate under RSA 540-B, a landlord shall maintain and exercise reasonable care in the storage of the personal property of a tenant who has vacated the premises, either voluntarily or by eviction, for a period of 7 days after the date upon which such tenant has vacated. During this period, the tenant shall be allowed to recover personal property without payment of rent or storage fees. After the 7-day limit has expired, such personal property may be disposed of by the landlord without notice to the tenant.

Section 540-A:4

540-A:4 Remedies. –

I. All district courts shall have concurrent jurisdiction with the superior court to enforce the provisions of RSA 540-A:2 and RSA 540-A:3.

II. Any tenant or landlord may seek relief from a violation of RSA 540-A:2 or RSA 540-A:3 by filing a petition in the district or county where the rental premises are located.

III. No filing fee shall be charged for a petition under paragraph II, and the plaintiff may proceed without legal counsel. Either a peace officer or the sheriff's department shall serve process under this section and the cost of such service shall be billed as directed by the court pursuant to paragraph X. Any proceeding under this subdivision shall not preclude any other available civil or criminal remedy.

IV. The clerks of the district courts shall supply forms for petitions for relief under this subdivision designed to facilitate proceedings.

V. The findings of facts shall be final but questions of law may be transferred to the supreme court in the same manner as from the superior court.

VI. The court shall hold a hearing within 30 days of the filing of a petition under paragraph II or within 10 days of service of process upon the defendant, whichever occurs later.

VII. Upon a showing of a violation of RSA 540-A:2 or RSA 540-A:3, I, II, or III, the court shall grant such relief as is necessary to protect the rights of the parties. Such relief may include:

(a) An order prohibiting the defendant from continuing the activity or activities which violate RSA 540-A:2 or RSA 540-A:3; and

(b) An award of damages to the plaintiff for the violations of RSA 540-A, breach of warranty of habitability, breach of the covenant of quiet enjoyment or any other claim arising out of the facts alleged in the plaintiff's petition.

VIII. Upon the showing of an immediate threat of irreparable harm, the court may issue such temporary orders as it deems necessary to protect the parties with or without actual notice to the defendant. If temporary orders are made ex parte, the party against whom such relief is issued may file a written request with the clerk of the court and request a hearing on such request. Such hearing shall be held no later than 5 days after the request is received by the clerk. Such hearings may constitute the final hearing described in paragraph VI.

IX. (a) Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10 for the initial violation, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues after issuance of a temporary order shall constitute a separate violation.

(b) Notwithstanding the provisions of subparagraph (a), a landlord who violates RSA 540-A:3, VII shall be subject only to an award of actual damages, plus costs and reasonable attorneys fees.

Section 540-A:5

540-A:5 Definitions. – As used in this subdivision:

I. "Landlord" means a person and his or its employees, officers or agents who rents or leases to another person a rental unit, including space in a manufactured housing park as regulated by RSA 205-A and in manufactured housing, for other than vacation or recreational purposes. A person who rents or leases a single-family residence and owns no other rental property or who rents or leases rental units in an owner-occupied building of 5 units or less shall not be considered a "landlord" for the purposes of this subdivision, except for any individual unit in such building which is occupied by a person or persons 60 years of age or older.

II. "Security deposit" means all funds in excess of the monthly rent which are transferred from the tenant to the landlord for any purpose.

III. "Tenant" means any person who rents or leases residential premises owned by another, including space in a manufactured housing park regulated by RSA 205-A and in manufactured housing, for other than vacation or recreational purposes.

IV. "Rental unit" means each separate part of any residential premises which has full facilities for habitation, including contiguous living, sleeping, kitchen and bathroom facilities, which is held out for rental by the landlord.

RSA CHAPTER 540

Section 540:1

540:1 Tenancies, Nature of. – Every tenancy or occupancy shall be deemed to be at will, and the rent payable upon demand, unless a different contract is shown.

Section 540:1-a

540:1-a Definitions. – In this chapter:

I. "Nonrestricted property" means all real property rented for nonresidential purposes and the following real property rented for residential purposes:

(a) Single-family houses, if the owner of such a house does not own more than 3 single-family houses at any one time.

(b) Rental units in an owner-occupied building containing a total of 4 dwelling units or fewer.

(c) [Repealed.]

(d) Single-family houses acquired by banks or other mortgagees through foreclosure.

II. "Restricted property" means all real property rented for residential purposes, except those properties listed in paragraph I.

III. "Rental unit" means a suite of one or more rooms located within a single building rented by the owner to one or more individuals living in common for nontransient residential purposes.

IV. The term "tenant" or "tenancy" shall not include occupants or occupancy in the following places and the provisions of this chapter shall not apply to:

(a) Rooms in rooming or boarding houses which are rented to transient guests for fewer than 90 consecutive days. For purposes of this subparagraph, if the owner of the facility directs the occupant to move from one room to another in the same rooming or boarding house, or directs the occupant to move from one of the owner's rooming or boarding houses to another, the 90-day period for computing consecutive days of occupancy shall not be broken. Consecutive days of occupancy shall not include a voluntary move from one room to another if the move was made at the request of the occupant after the occupant has been notified of the exemption from tenancy under this subparagraph. Such request shall be in writing and shall include the following statement:

"I request a move from _____ to _____. I have received a copy of RSA 540:1-a, IV(a) and understand that any time I spent in the first room shall not apply toward the 90 consecutive days of occupancy required for tenancy under RSA 540."

(b) Rooms in hotels, motels, inns, tourist homes and other dwellings rented for recreational or vacation use.

(c) Rooms in student dormitories, nursing homes, hospitals and any other facilities licensed under RSA 151 or certified under RSA 126-A, convents, monasteries, asylums, or group homes.

(d) A single-family home in which the occupant has no lease, which is the primary and usual residence of the owner.

(e) Residential real estate under RSA 540-B.

(f) Vacation or recreational rental units under RSA 540-C.

(g) Residential units leased by a member of a fraternal or social organization that provides student housing for a postsecondary institution in a structure owned and operated by the fraternal or social organization.

Section 540:9

540:9 Payment After Notice. – No tenancy shall be terminated for nonpayment of rent, utility charges, or any other lawful charge contained in a lease or an oral or written rental agreement if the tenant, before the expiration of the notice, pays or tenders all arrearages plus $15.00 as liquidated damages; provided, however, that a tenant may not defeat an eviction for nonpayment by use of this section more than 3 times within a 12-month period.

Section 540:13-a

540:13-a Defense to Retaliation. – Except in cases in which the tenant owes the landlord the equivalent of one week's rent or more, it shall be a defense to any possessory action, as to residential property, that such possessory action was in retaliation for the tenant:

I. Reporting a violation or reporting in good faith what the tenant reasonably believes to be a violation of RSA 540-A or an unreasonable and substantial violation of a regulation or housing code to the landlord or any board, agency or authority having powers of inspection, regulation or enforcement as to the reasonable fitness of said residential property for health or safety;

II. Initiating an action in good faith pursuant to RSA 540-A or availing himself of the procedures of RSA 540:13-d; or

III. Meeting or gathering with other tenants for any lawful purpose.

Section 540:13-b

540:13-b Evidence of Intent to Retaliate. – Unless the court finds that the act of the tenant in making a report or complaint or in initiating an action or in organizing relative to alleged violations by a landlord was primarily intended to prevent any eviction, a rebuttable presumption that such possessory action was in retaliation of the tenant's action shall be created when any possessory action, increase in rent or any substantial alteration in the terms of the tenancy is instituted by a landlord within 6 months after:

I. The landlord received notice of any such alleged violation provided that:

(a) The tenant mailed, gave in hand to, or left at the abode of the landlord notice of the report or complaint of the alleged violation; or

(b) The landlord received notice of the complaint or report from the board, agency or authority; or

II. The landlord completed repairs or otherwise successfully remedied such violation; or

III. The landlord received notice that the tenant had initiated an action pursuant to RSA 540-A; or

IV. The discovery by the landlord of activity protected by RSA 540:13-a, III.

Section 540:14

540:14 Judgment. –

I. If the defendant makes default, or if on trial it is considered by the court that the plaintiff has sustained its complaint, judgment shall be rendered that the plaintiff recover possession of the demanded premises and costs, and a writ of possession shall issue. In cases based on nonpayment of rent, the court shall state the actual amount of the tenant's current weekly rent or, if rent is not paid on a weekly basis, the equivalent weekly rent amount, which must be paid into the court if an appeal is taken pursuant to RSA 540:20 and 540:25. The judgment may be enforced, at the sole discretion of the plaintiff, either by directing the sheriff to serve the writ of possession or by seeking judicial relief against the defendant for civil contempt. A writ of possession shall authorize the sheriff to remove the defendant from the premises.

II. Whenever the tenant successfully raises the defense of retaliation pursuant to RSA 540:13-a, damages of not more than 3 months' rent may be awarded to the tenant.

III. If the plaintiff makes a successful claim for unpaid rent as well as possession, or the defendant makes a successful counterclaim, the court shall issue a money judgment at the same time that it makes its ruling regarding possession of the premises.

IV. If the court renders judgment against any one tenant or member of a multiperson household pursuant to RSA 540:2, VII(d), the court shall specify in its order that the writ of possession shall only be used to remove the tenant or household member against whom the judgment issued, and that the other tenants or household members may remain in residence.

Section 540:28

540:28 Lease Provisions. – No lease or rental agreement, oral or written, shall contain any provision by which a tenant waives any of his rights under this chapter, and any such waiver shall be null and void.

RSA CHAPTER 216-I
Section 216-I:1

216-I:1 Definition. – In this chapter:

II. "Campsite" means a parcel of land in a recreational campground or camping park rented for the placement of a tent, recreational vehicle, or a recreational camping cabin for the overnight use of its occupants.

III. "Campground owner" means the owner or operator of a recreational campground or camping park, or their agents.

IV. "Dependent vehicle" means a recreational vehicle which does not have toilet and lavatory facilities.

V. "Individual sewage disposal system" means any sewage disposal or treatment system, other than a municipally-owned and operated system, which receives either sewage or other wastes, or both.

VI. "Portable sanitary service vehicle" means a vehicle used to transport septage or waste water from a recreational vehicle to a sanitary station.

VII. "Recreational campground or camping park" means a parcel of land on which 2 or more campsites are occupied or are intended for temporary occupancy for recreational dwelling purposes only, and not for permanent year-round residency, excluding recreation camps as defined in RSA 485-A:23.

VII-a. "Recreational camping cabin" means a structure on a campsite, 400 square feet or less, calculated by taking the measurements of the exterior of the cabin, including all siding, corner trim, molding and area enclosed by windows, but not the roof or porch overhang, or log overhang at corners. It shall be designed not for use as a permanent dwelling but as a temporary dwelling for recreational camping and vacation use.

VIII. "Recreational vehicle" means any of the following vehicles:

(a) Motorhome or van, which is a portable, temporary dwelling to be used for travel, recreation and vacation, constructed as an integral part of a self-propelled vehicle.

(b) Pickup camper, which is a structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreation, and vacation.

(c) Recreational trailer, which is a vehicular, portable structure built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections, calculated by taking the measurements of the exterior of the recreational trailer including all siding, corner trim, molding, storage space and area enclosed by windows but not the roof overhang. It shall be designed primarily not for use as a permanent dwelling but as a temporary dwelling for recreational, camping, travel or seasonal use.

(d) Tent trailer, which is a canvas or synthetic fiber folding structure, mounted on wheels and designed for travel, recreation, and vacation purposes.

IX. "Sanitary station" means an approved facility used for accepting and disposing of wastes from recreational vehicle holding tanks, portable recreation toilets, or portable sanitary service vehicles.

X. "Tent" means a portable canvas or synthetic fiber structure used as a temporary dwelling for vacation or recreation purposes.

RSA CHAPTER 78-A
Section 78-A:3

78-A:3 Definitions. – As used in this chapter:

I. "Commissioner" means the commissioner of revenue administration.

II. "Person" means any individual, combination of individuals, firm, partnership, society, association, joint stock company, corporation, or any of the foregoing acting in a fiduciary or representative capacity, whether appointed by court or otherwise.

III. "Hotel" means an establishment which holds itself out to the public by offering sleeping accommodations for rent, whether or not the major portion of its operating receipts is derived from sleeping accommodations. The term includes, but is not limited to, inns, motels, tourist homes and cabins, ski dormitories, ski lodges, lodging homes, rooming houses, furnished room houses, boarding houses, private clubs, hostels, cottages, camps, chalets, barracks, dormitories, and apartments. The term does not include the following:

(a) A hospital licensed under RSA 151, or a sanitarium, convalescent home, nursing home, or home for the aged;

(b) Any establishment operated by any state or United States agency or institution, except the New Hampshire department of natural and cultural resources;

(c) An establishment owned by a nonprofit corporation or association operated exclusively for religious or charitable purposes, and which does not offer sleeping accommodations to the general public;

IV. "Operator" means any person operating a hotel, charging for a taxable meal, or receiving gross rental receipts, whether as owner or proprietor or lessee, sublessee, mortgagee, licensee, or otherwise.

V. "Occupant" means any person who, for rent paid, uses, possesses, or has a right to use or possess any room in a hotel under any lease, concession, permit, right of access, license, or agreement. The term does not include a permanent resident.

VI. (a) "Occupancy" means the use or possession, or the right to the use or possession, of any room in a hotel for any purpose, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of a room.

(b) The term "occupancy" does not include:

(1) Occupancy by a permanent resident, or by an employee of an operator when the occupancy is granted to the employee as pay for his employment, or any occupancy furnished in a seasonal camp for children under the age of 18 years; or

(2) Occupancy at a facility or establishment owned or leased pursuant to a long-term agreement by an organization operated for educational purposes, which organization is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, but only if occupancy at such facility or establishment is provided:

(A) To students regularly attending the organization;

(B) To employees, faculty members or administrative officials of the organization, but only if occupancy at such facility or establishment is provided in connection with responsibilities performed for the organization;

(C) To volunteers providing services in connection with the organization; or

(D) To any person, but only if occupancy at such facility or establishment is provided pursuant to an activity which is related to educational purposes and the sponsor of such activity is an organization exempt from federal income taxation under section 501(c) of the Internal Revenue Code or the federal or state government or an instrumentality thereof. The exemption provided by this subparagraph (b)(2)(D) shall not apply if occupancy at the facility or establishment is offered to the general public on a regular and continuous basis without regard to an activity which is related to educational purposes…

VII. "Permanent resident" means any occupant who has occupied any room in a hotel for at least 185 consecutive days.

XX. "Short-term rental" means the rental of one or more rooms in a residential unit for occupancy for tourist or transient use for less than 185 consecutive days.

Rev Rule 703.04

Rev 703.04 Computation of Permanent Residency.

(a) In determining whether or not a person is a permanent resident, as defined in RSA 78-A:3, VII, computation of the period of occupancy shall begin with the first day such person occupies or had the right to occupy any room in a hotel.

(b) If the period during which the accommodations are to be rented is not known, or anticipated to be less than 185 consecutive days, the tax shall be collected when the rent is paid.

(c) If there is a signed lease, or any other similar document, between the operator and the occupant for a period of 185 or more consecutive days, the operator shall not be required to collect tax from the occupant. If the occupancy does not continue for 185 or more consecutive days, the operator shall be responsible for the payment of the tax on the total amount of rent paid.

(d) The operator shall refund to the occupant any tax collected prior to the 185th day if the rental period continues for 185 or more consecutive days.

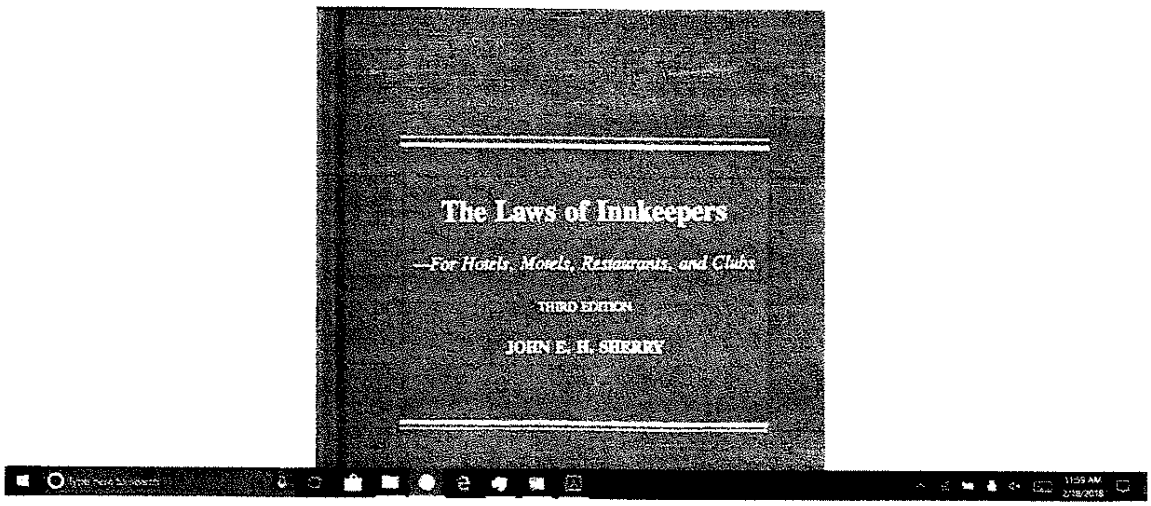
ADDENDUM ii

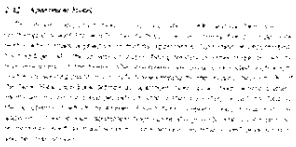
TEXT OF RELEVANT AUTHORITY

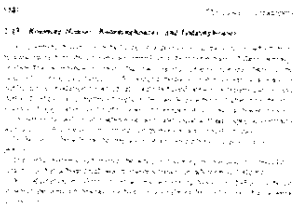
TEXT OF RELEVANT AUTHORITY

The Laws of Innkeepers: For Hotels, Motels, Restaurants, and Clubs / Edition 3

by John E.H. Sherry, 1993







ADDENDUM A

Final Orders of the District Court Issued on February 23, 2017

Exhibit 10A

Final Orders from Judge Moore on 2-23-17 Regarding the 540A Petition and Attendant Pleadings by the Parties

NB: The order entered on the case summary docket states:
"This Court finds that the plaintiffs are considered to be guests of the defendants' hotels, whose occupancy was summarily terminated pursuant to RSA 353:3c. Copies sent"

The full decision is attached

THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

COUNTY OF HILLSBOROUGH

9TH CIRCUIT – NASHUA – DISTRICT DIVISION

In the Matter of:
Natalie Anderson, Plaintiff, v. Adam Robitaille, Defendant
Docket No. 459-2017-LT-00010

ORDER ON PENDING MOTIONS

The parties to the aforementioned matter appeared before this Court on January 18, 2017, at which time they agreed that the sole issue upon which the above referenced matter turns is whether the Plaintiff, Natalie Anderson and her husband André Bisasor are tenants, entitled to the protections set forth in RSA 540-A, or a guest at the Defendant's hotel, whose occupancy can be summarily terminated pursuant to RSA 353:3-c.

This Court, after a thorough review of the pleadings/memorandum/exhibits submitted, is entering a finding that the Plaintiffs are guests at the Defendant's hotel whose occupancy can be summarily terminated pursuant to RSA 353:3-c.

The Court adopts the rational contained in the Defendant's Motion to Dismiss and to Vacate Ex-Parte Temporary Order and Memorandum of Law and the Reply to Plaintiff's Objection to defendant's Motion to Dismiss to include, but not limited to, the following facts:

1) Homewood Suites by Hilton, is a branded product of Hilton Worldwide, Inc., and is an American chain of all suite-residential-style hotels managed by Hilton Worldwide. Guests desiring to stay at the Homewood Suites by Hilton can book their rooms through the Hilton Hotel and Resorts website/reservation system.

2) Homewood Suites Hotels can accommodate not only extended-stay individuals, but all transient guests for a stay of a very short duration.

3) Homewood Suites Hotel in Nashua conducts its daily business comparable to any major hotel-branded organization to include:

    a) Guest check-in at the front desk;

    b) Guests are required to provide a credit-card and a permanent address;

    c) Guests are required to place a credit-card on file in order to secure the reservation;

    d) A hold is placed on the guest's credit-card for the full anticipated amount to be owed to the hotel, including estimated incidentals, through the date the

A TRUE COPY ATTEST

Sherry L. Bisson
Clerk

Add 241

16

guest's date of checkout with such hold not being released for 72-hours or longer;

e) The provided credit-card is charged at two-week-intervals;

f) Hotel guests that participate in the extended-stay segment can personally request and negotiate a lower rate which allows the guests to leverage their long-term stay to obtain a more favorable daily rate;

g) Guests are provided a magnetic strip room key which is *not held exclusively* by the guest as the hotel management retains a pass-key which is utilized by guest services, maintenance, security, as well as the cleaning staff.

h) The rooms are fully furnished;

i) All utilities are provided;

j) Guests can join the "Hilton Honors Rewards Points Program" which, again, allows a guest to leverage multiple visits regardless of length of stay;

k) Linen and towels are provided;

l) Daily room cleaning is provided by the hotel staff (who have pass-keys). (Court notes that the extent of the hotel's cleaning of the subject unit and daily/weekly access thereof is a contested issue between the parties);

m) Onsite maintenance personnel is provided (who have pass-keys);

n) Onsite security personnel is provided (who have pass-keys);

o) The hotel design is fully compliant with the American's With Disabilities Act, Title II under the ADA Guidelines designed specifically for hotel properties;

p) Room rate prices are set by the day and billed by the day with guests being able to make reservations for any length of stay;

q) Regardless of the length of stay guests do not enter into a lease agreement, or any other type of agreement binding their stay to a length of time as guests can check-out whenever they please and are never charged for nights they do not occupy the room. As such, if a guest has paid for room nights in advance, the guests would be reimbursed for nights the room is not occupied subject to the particular hotel's cancellation property;

r) Guests are not required to provide a security deposit; and,

s) Guests do not have exclusive use and possession of the unit.

4) When making a reservation for a stay in the hotel, the Plaintiffs were required to provide their permanent home address with Ms. Anderson providing a Dedham, Massachusetts address (300 President's Way, Apt. 3413) and Mr. Bisasor providing a Chelmsford, Massachusetts address (119 Drum Hill Road, #233) as his residential address on his Bankruptcy Petition.

5) The Plaintiffs did not receive daily mail at the hotel (the Court notes that the parties agree that the Plaintiffs had mail/packages delivered approximately half a dozen times during their extended stay).

6) At the time the Plaintiffs initially booked the reservation in November of 2015, they requested a check-out date three months' out which became the parties agreed-upon check-out date and was reflected in the hotel records. (The Court notes that the Plaintiffs, thereafter, requested and received several extensions).

In light of the aforementioned, the Court agrees with the Defendant that the key distinction between a hotel guest and a tenant is the acquisition by the tenant of exclusive possession and control of the premises and that hotel guests do not acquire possessory rights.

The Court in addressing the parties' disagreement as to how the Plaintiff's status should be defined did not find the Plaintiffs utilization of RSA 78-A (Tax on Meals and Rooms) controlling as the sub-sections cited by the Plaintiffs are utilized primarily to define a term for taxation purposes and not to delineate whether or not an individual is a guest and/or tenant. The Court, in its analysis found the Defendants reliance on Ann Arbor Tenants Union v. Ann Arbor YMCA, 581 N.W.2d 794 (1998) 229 Mich. App. 431 to be on point as to evaluating the party's actions in ascertaining their intention(s) at the onset of their contractual relationship. Specifically, the Michigan Court held:

> "The legal relationship established by the renting of a room generally depends on the intention of the parties, gathered from the terms of the parties' contract, and interpreted in light of surrounding facts and circumstances. 40 Am.Jur.2d, Hotels, Motels, and Restaurants, § 14, p. 910; 49 Am.Jur.2d, Landlord and Tenant, § 21, p. 64; Powell, § 16.02[3][ii], p. 16-29; 1 Restatement Property, 2d, Landlord and Tenant, § 1.2, p. 10. The character of the relationship is ordinarily a question of law and fact. Id".

In the present case, this court from review of the aforementioned factors (see 1 – 6 above) does not find that the essential characteristics (all the necessary elements for a landlord-tenant relationship) exist to include:

i. permission or consent on the part of the landlord to occupancy by the tenant,
ii. subordination of the landlord's title and rights on the part of the tenant,
iii. a reversion in the landlord,
iv. the creation of an estate in the tenant,
v. the transfer of possession and control of the premises to him,

vi. and, generally speaking, a contract, either express or implied, between the parties. [Emphasis added.] see, In Grant v. Detroit Ass'n of Women's Clubs, 443 Mich. 596, 605, n. 6, 505 N.W.2d 254 (1993); See, 51C CJS, Landlord and Tenant, § 1, p. 32.[9]

Finally, the Court in reviewing the Plaintiffs pleadings/memorandum makes note of the fact that:

A. neither of the Plaintiffs designate the hotel as their "domicile" either at check-in, in Mr. Bisasor's subsequent bankruptcy filing, nor prior to the initiation of this action,

B. the arguments proffered (definitions of recreational/vacation use, innkeeper statute, boarding houses, extent of housekeeping, etc.) were not found to be persuasive,

C. the facts relied upon in the case law cited by the Plaintiff (Evans v. J Four Realty, 164 N.H. 570 (2013) is distinguishable as the dwelling referred to was an actual apartment and not part of the hotel portion of the resort.

D. The Defendants representations, in light of the documentation/pleadings reviewed, were found to be the most credible.

The Court, in adopting the rationale used in the Defendant's Memorandum of Law, (as to the question of whether the Plaintiff is a guest or a tenant) found the above referenced case law dispositive as it supports the Defendant's position that a tenant has exclusive legal possession and control of the premises against the owner for a term of his lease hold, whereas a guest is a mere licensee and only has a right to use the premises he or she occupies, subject to the proprietor's retention of control and right of access.

This Court finds that the Plaintiffs are considered to be guests at the Defendant's hotels, whose occupancy was summarily terminated pursuant to RSA 353:3-c.

In regards to the parties' Findings of Fact and Rulings of Law, any of the parties request for Findings of Fact and Rulings of Law that are consistent with this opinion is granted. The remaining requests are denied or determined to be unnecessary for resolution of this matter. *Harrington v. Town of Warner*, 152 N.H. 74, 85-86 (2005).

So Ordered.

2-21-17
Date

Hon. Paul S. Moore, Judge

A TRUE COPY ATTEST

Sherry L. Bisson
Clerk

ADD-244

19

ADDENDUM B

Case Summary/Docket Entry Sheet from the District Court

This contains within it all of the lower court judge's rulings, orders and decisions on the post-judgment motions and pleadings

[NB: The lower court clerk's office did not produce separate clerk's notices of orders for the post-judgment decisions in this case, but instead only provided copies of the entire motion submitted, upon which the judge scribbled his written orders at the end of the motion. As a result, the petitioner has to rely on the district court case summary produced by the clerk's office as a proxy for the clerk's notices of orders from the judge. Otherwise, it would be too voluminous to reproduce all of the entire motions with the judge's orders on the back of the motion here for purposes of attaching the decisions being appealed along with the brief as an addendum. For the actual motions with the orders written on them by the lower court judge, see the attached **appendix (volume 1, 2 and 3)**. See also the attachments for the previously submitted notice of appeal, which are also incorporated here by reference]

9TH CIRCUIT - DISTRICT DIVISION - NASHUA

CASE SUMMARY

CASE NO. 459-2017-LT-00010

Natalie Anderson v. Adam Robitaille §§§§

Location: **9th Circuit - District Division - Nashua**
Filed on: **01/09/2017**

CASE INFORMATION

Case Type: **Landlord Tenant Under 540-A:4 VIII**

Case Status: **05/04/2017 Appeal to Supreme Court**

PARTY INFORMATION

Plaintiff **Anderson, Natalie**
15 Tara Blvd.
Nashua, NH 03062

Defendant **Robitaille, Adam**
15 Tara Blvd.
Homewood Suites of Nashua
Nashua, NH 03062

Snow, R. Brian, ESQ
Retained
603-882-4000(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
01/09/2017	LT Petition under RSA 540-A:4 Party: Plaintiff Anderson, Natalie	*Index #1*
01/09/2017	Temporary Orders Under RSA 540-A:4 (Judicial Officer: Moore, Paul S) *Issued : Any eviction proceedings stayed until the courts 1-18-17 Hearing at 1pm.*	*Index #2*
01/11/2017	*CANCELED* **Final Hearing**	
01/13/2017	Motion (Judicial Officer: Moore, Paul S) *Pro hac vice. Granted on 1/17/17.*	*Index #3*
01/13/2017	Return of Service *Temp. Rest. Order returned served in hand by HCSO.*	*Index #4*
01/13/2017	Appearance for the Defendant	*Index #5*
01/17/2017	Motion to Dismiss Party: Attorney Donais, Craig S, ESQ *Defendant's Motion to Dismiss and to Vacate Ex-Parte Temporary Order, filed by Karl Terrell and Craig Donais; Exhibits A - J attached*	*Index #6*
02/01/2017	Order *Per Judge Moore: "Motion Granted as to (Paragraphs) A - B."*	*Index #52*
02/03/2017	Vacated *Order vacated per Judge Moore*	
01/18/2017	**Final Hearing**	
01/18/2017	Appearance for the Plaintiff *Elliott Berry, Esq*	*Index #7*
01/23/2017	Withdrawal Party: Attorney Donais, Craig S, ESQ	*Index #8*

[redacted] XLIII

Printed on 12/21/2017 at 12:57 PM

21

Craig Donais, Esq.

01/24/2017	Request for Sound Recording Party: Plaintiff Anderson, Natalie *1st request for audiq tape of final hearing*	*Index #42*
01/26/2017	Motion Party: Attorney Berry, Elliott, ESQ *Plaintiff's Motion for Extension of Time*	*Index #9*
01/27/2017	Order *Via email, Judge Moore ordered: "Motion to Continue (Filed as Motion for Extension of Time) is granted until 2/2/17. So ordered."*	*Index #54*
01/27/2017	Other *Email to Judge Moore and Elliott Berry from Karl Terrell: "Our response (to Motion for Extension of Time, or "Motion to Continue" as referred to by Judge Moore: "Dear Judge Moore, Our response is attached, and will be filed later today. Please note new local counsel, Brian Snow - copied here - has entered his appearance." This is taken from email only, there is no physical document in the file.*	*Index #55*
01/26/2017	Appearance for the Defendant Party: Attorney Snow, R. Brian, ESQ *R. Brian Snow, Esq.*	*Index #10*
01/26/2017	Other *Defendant's Supplement to Defendant's Motion to Dismiss and Motion to Vacate Ex Parte Temporary Order; Affidavit Verifying Facts stated in Motion and Striking Certain Evidence in the Motion, Filed by Karl Terrell, Esq.and Brian Snow. Esq.*	*Index #45*
02/01/2017	Order *Judge Moore wrote: "The Court is entering an order in which the Plaintiff's (Anderson and Bisasor) are not entitled to the rights of tenancy pursuant to RSA 540/504-A as the Plaintiffs are hotel guests with no rights of tenancy. The Court sdopts the raional contained in the Defendant's Memorandum and Objection."*	*Index #53*
02/03/2017	Vacated *Order vacated by Judge Moore*	
02/03/2017	Objection Party: Attorney Berry, Elliott, ESQ *Plaintiff's Objection to motion to dismiss and Memorandum of Law*	*Index #18*
02/08/2017	Other Party: Plaintiff Anderson, Natalie *Notice of Errata*	*Index #17*
02/10/2017	Other Party: Attorney Snow, R. Brian, ESQ *Reply to plaintiff's objection to defi's motion to dismiss.*	*Index #16*
02/14/2017	Other Party: Attorney Berry, Elliott, ESQ *Plaintiff's Sur-Reply to Defendants' Reply*	*Index #11*
02/14/2017	Exhibit *Plaintiff's Supplemental Exhibits for Plaintiff's Sur-Reply*	*Index #48*
02/22/2017	Request for Sound Recording Party: Plaintiff Anderson, Natalie	*Index #12*

2nd request for audio tape of Final Hearing

02/23/2017	Final Orders Under RSA 540-A:4 (Judicial Officer: Moore, Paul S) *This Court finds that the Plaintiffs are considered to be guests at the Defendant's hotels, whose occupancy was summarily terminated pursuant to RSA 353:3-c. Copies sent.*	*Index #13*
02/23/2017	**Order Issued** (Judicial Officer: Moore, Paul S)	
03/06/2017	Withdrawal Party: Attorney Berry, Elliott, ESQ	*Index #15*
03/06/2017	Motion (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *to disqualify counsel and/or motion for new trial and to set aside/vacate judgment. Denied. Copies sent. 3-10-17.*	*Index #20*
03/06/2017	Motion (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *to correct the docket. Noted. 3-10-17.*	*Index #21*
03/06/2017	Motion to Reconsider (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *Denied. The court adopts the rational contained within Attorney Snow's objections. 3-10-17. Copies sent.*	*Index #22*
03/09/2017	Objection *to motion for Recusal.*	*Index #23*
03/09/2017	Objection Party: Attorney Snow, R. Brian, ESQ *To plaintiff's motion for Reconsideration and Motion to Strike for Failure to Comply with court rules. Judge Moore wrote: "The plaintiff's motion to reconsider has been denied with the court adopting the rational contained within the defendants' objection and motion to strike. 3-10-17."*	*Index #24*
03/13/2017	Other (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *Pltff's request for time to reply to deft's objections and notice of inient to file motions to exceed page limits or in the alternative to amend. On 3/15/17, the judge ruled: 'Motion to exceed is Denied as untimely filed. Motion for Extension is Denied as motions have been ruled on by the court." Copies sent.*	*Index #25*
03/16/2017	Objection *to motion to disqualify counsel and/or for new trial.*	*Index #26*
03/21/2017	Motion (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *to exceed/waive page limits or in the alternative to amend motion to reconsider. Denied as untimely filed. The court notes that the aforementioned motion was filed 28 days after the courts decision was rendered. The court adopts the rational contained within the defendant's objection thereto.Per Judge Moore 3-31-17. Copies sent.*	*Index #27*
03/21/2017	Other (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *Plaintiff's Reply to deft's objection to motion for recusal or in the alternative plaintiff's motion to reconsider recusal; On 3/31/17, Judge Moore ruled "Denied"*	*Index #28*
03/21/2017	Other Party: Plaintiff Anderson, Natalie *Plaintiff's Reply to Defendants' Objection and Plaintiff's Objection to Defendants' Motion to Strike : On 3/31/17, Judge Moore wrote: "This Court after review of the pleadings filed to include the Motions for Reconsideration, Motions for Recusal, Motions for Reconsideration re-formatted,*	*Index #29*

	plaintiff's multiple reply, Motions to Exceed Page Limit and Motion to Amend Motion to Reconsider as well as the accompanied exhibits and documentation - denies the relief requested in the above referenced pleadings and notes that this Court will not accept any further motions associated with reconsideration of the Court's 2-21-17 order."	
03/21/2017	Motion to Reconsider (Judicial Officer: Moore, Paul S) Party: Plaintiff Anderson, Natalie *Reformatted. (Also included is set of Exhibits) See court Order dated 3-31-17 contained within the plaintiff's reply to defendant's objection to defendant's motion to strike.*	*Index #30*
03/24/2017	Affidavit *Plaintiff's Affidavit Verifying Facts Stated in Motions*	*Index #49*
03/24/2017	Motion Party: Plaintiff Anderson, Natalie *Plaintiff's Motion to Void Judgment Based on Defective Affidavit; Judge Moore wrote: "Denied as untimely filed. The Court notes that the Petitioner was represented by counsel during the time in which the aforementioned pleadings were filed and had ample opportunity to raise any issues relative to the status of the pleadings filed by any party and failed to do so." (There is no date provided on this order.)*	*Index #50*
03/27/2017	Objection Party: Attorney Snow, R. Brian, ESQ *Further objection to motion to reconsider. On 3/31/17, Judge Moore ruled: "Granted. The Court adopts the rational contained in the Defendants' motion.*	*Index #33*
03/27/2017	Objection Party: Attorney Snow, R. Brian, ESQ *Further objection to motion for recusal.On 3/31/17, Judge Moore ruled: "Motion granted. Petitioner's Motion is untimely filed."*	*Index #34*
03/29/2017	Other Party: Plaintiff Anderson, Natalie *Pltff's reply to deft's further objection to motion for recusal.on 3/31/17, Judge Moore ordered: "Motion denied as untimely filed. The Court notes that the Petitioner was represented by counsel during the Parties' 1/18/17 hearing, and had a number of opportunities to raise any of the issues contained within the aforementioned motion that day, or for that matter, prior to the court rendering it's 2-21-17 decision. Furthermore, the court notes that the Petitioner's representations in paragraph 12 in which she states that she had no knowledge of the Presiding Justice's comments until after she received and reviewed the tape recording from the Court to be contradictory to her 3-6-17 statement (see paragraph 4 of Motion to Recuse) in which she acknowledges that her attorney "considered raising a concern about possible bias" and made a conscience decision not to do so. Finally, the petitioner's motion ignores the fact that the comment made by the Presiding Justice was based upon the court's initial review of the plaintiff/petitioner's RSA 540-A petition in which the court was concerned with the petitioner's attempt to modify the RSA 540-A petition to accomodate their particular claims."*	*Index #35*
03/29/2017	Other Party: Plaintiff Anderson, Natalie *Pltff's reply to deft's further objection to motion for reconsideration. On 3/31/17, Judge Moore wrote: "Reply reviewed and noted."*	*Index #36*
04/17/2017	Request for Sound Recording Party: Plaintiff Anderson, Natalie	*Index #47*
04/25/2017	Letter *from Supreme Court stating that this case is being appealed to that court.*	*Index #37*
05/04/2017	Notice of Appeal to Supreme Court	*Index #38*
06/02/2017	Letter *from Supreme Court. Plaintiff's emergency motion for stay of removal pending appeal and/or*	*Index #39*

partial remand is Denied.

06/02/2017	Letter *from Supreme Court.Case is accepted (2017-0195) This case appears to be eligible for Mediation.*	*Index #40*
12/11/2017	Letter Party: Plaintiff Anderson, Natalie *List of Certified Copies of Filings Requested for Record of Appendix for NH Supreme Court Appeal Brief.*	*Index #41*
12/15/2017	Other Party: Plaintiff Anderson, Natalie *Letter to court with "list of missing notations or rulings from the judge that are not notated on the case summary/docket."*	*Index #46*
12/15/2017	Order (Judicial Officer: Leary, James H) *Order on Request to Supplement Odyssey Docketing System*	*Index #51*
12/19/2017	Letter Party: Plaintiff Anderson, Natalie *"List of Additional Missing Entries from the Case Summary"*	*Index #56*
12/19/2017	Other Party: Plaintiff Anderson, Natalie *Request for confirmation of correction of case files*	*Index #57*
12/21/2017	Other *Staff has complied with court order dated 12/15/17 and has corrected the file as requested by the plaintiffs.*	*Index #58*

DATE	FINANCIAL INFORMATION	
	Attorney Donais, Craig S, ESQ	
	Total Charges	250.00
	Total Payments and Credits	250.00
	Balance Due as of 12/21/2017	**0.00**
	Attorney Snow, R. Brian, ESQ	
	Total Charges	120.00
	Total Payments and Credits	120.00
	Balance Due as of 12/21/2017	**0.00**
	Defendant Robitaille, Adam	
	Total Charges	35.00
	Total Payments and Credits	35.00
	Balance Due as of 12/21/2017	**0.00**
	Plaintiff Anderson, Natalie	
	Total Charges	105.00
	Total Payments and Credits	105.00
	Balance Due as of 12/21/2017	**0.00**

ADDENDUM C

ORDER
ON
PETITIONER'S MOTION TO RECONSIDER
(Denied March 10, 2017; clerk's note entered on case summary docket on March 10, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 1, Exhibit 16, page 280

ADDENDUM D

ORDER
ON
PETITIONER'S REFORMATTED/AMENDED MOTION TO RECONSIDER
(Denied March 31, 2017; clerk's note entered on case summary docket on March 31, 2017)

AND

ORDER
ON
PLAINTIFF'S REPLY TO DEFENDANTS' OBJECTION TO MOTION TO RECONSIDER
(noted March 13, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see appendix Volume 1, Exhibit 19, page 368 and Exhibit 16, page 355

ADDENDUM E

ORDER
ON
PETITIONER'S MOTION FOR RECUSAL

(Denied on March 10, 2017; clerk's note entered on the case summary docket on March 10, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 1, Exhibit 16, page 246

ADDENDUM F

ORDER
ON
PETITIONER'S MOTION TO RECONSIDER RECUSAL AND REPLY TO DEFENDANTS' OBJECTION

(Denied March 31, 2017; clerk's note entered on the case summary docket on March 31, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 1, Exhibit 13, page 256

ADDENDUM G

ORDER
ON
PETITIONER'S MOTION FOR TIME TO FILE MOTION TO EXCEED PAGE LIMITS/OR IN ALTERNATIVE TO AMEND

(Denied; clerk's note entered on case summary/docket on March 13, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 3, Exhibit 23, Page 590

ADDENDUM H

ORDER
ON
PETITIONER'S MOTION TO EXCEED PAGE LIMITS OR IN THE ALTERNATIVE TO AMEND

(Denied March 31, 2017; clerk's note entered on case summary-docket March 31)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 3, Exhibit 22, page 596

ADDENDUM I

ORDER
ON
PETITIONER'S MOTION FOR NEW TRIAL AND ATTORNEY DISQUALIFICATION

(Denied; clerk's note entered on case summary-docket on March 10, 2017)

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 1, Exhibit 28, page 634

ADDENDUM J

PLAINTIFF'S MOTION TO VOID JUDGMENT BASED ON DEFECTIVE AFFIDAVIT

(Filed March 24, 2017 but was not acted on by judge, so there is no order that exists and thus not attached)

Update: As of December 19, 2017, the petitioner discovered that recently Judge Moore issued an order on this motion

NB: To cut back on paper and for judicial economy, petitioner hereby relies on the previously include district court case summary in Addendum B for reference to the order.

For the actual order or the full motion/pleading, see Appendix Volume 1, Exhibit 25, page 611