THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2020-0472

MAIA MAGEE AND SUNFIRE, LLC

V.

VITA COOPER, TRUSTEE, UTOPIA REVOCABLE TRUST

Brief of the Plaintiffs, Maia Magee and Sunfire, LLC, in this Appeal of a Final Decision of the 9th Circuit Court – District Division – Milford, in a Landlord-Tenant Matter Under RSA 540-A

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Oral Argument Requested to be Argued by Craig Donais, Esq.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS..2

TABLE OF AUTHORITIES...4

QUESTIONS PRESENTED...6

TEXT OF APPLICABLE STATUTES/RULES...........................8

STATEMENT OF THE CASE AND STATEMENT OF FACTS.........22

SUMMARY OF THE ARGUMENT..28

ARGUMENT...31

I. Standard of Review..31

II. The trial court improperly failed to analyze whether all of the Defendant's bad actions, collectively, constituted a violation of RSA 540-A...........32

III. Because the trial court found multiple bad acts to have occurred, such should have sufficed, as a matter of law, to demonstrate a violation of RSA 540-A...37

IV. The trial court failed to properly account for the timing of the complained-of actions, which all occurred effectively simultaneously and immediately following a hearing in the related possessory action..................................39

V. The trial court improperly failed consider whether the Defendant's actions constituted a breach of the parties' Lease when engaging in the quiet enjoyment analysis.................................43

VI. The trial court improperly relied upon a lack of evidence as to local sound ordinances..............47

VII. The trial court erred by misconstruing and mischaracterizing numerous pieces of evidence..............49

VIII. Damages, reasonable attorney's fees and costs in Plaintiffs' favor are all warranted.....................51

CONCLUSION..52

REQUEST FOR ORAL ARGUMENT..53

DECISION APPEALED..53

CERTIFICATION..54

ADDENDUM...55

TABLE OF AUTHORITIES

Case **Page**

Adams v. Woodlands of Nashua, 151 N.H. 640 (2005)........31, 45, 48

Berthiaume v. McCormack, 153 N.H. 239 (2006)..................31

Blagbrough Family Realty Tr. v.
A & T Forest Prod., Inc., 155 N.H. 29 (2007)........................31

Choquette v. Roy, 167 N.H. 507 (2015)..............................31

Crowley v. Frazier, 147 N.H. 387 (2001).............................48

Currier v. Amerigas Propane, L.P., 144 N.H. 122 (1999)..........38

DiMinico v. Centennial Estates Coop., Inc.,
173 N.H. 150 (2020)...32, 45, 47, 48

Echo Consulting Servs., Inc. v.
N. Conway Bank, 140 N.H. 566 (1995)...............................44

Ellis v. Candia Trailers & Snow Equip., Inc.,
164 N.H. 457 (2012)...31-32, 42, 49

Great Lakes Aircraft Co. v.
City of Claremont, 135 N.H. 270 (1992)..............................46

Holt v. Keer, 167 N.H. 232 (2015)......................................35

In re Liquidation of Home Ins. Co., 157 N.H. 543 (2008)...........52

Leeds v. BAE Sys., 165 N.H. 376 (2013)..............................38

Malachy Glen Assocs., Inc. v.
Town of Chichester, 155 N.H. 102 (2007).............................39

McCabe v. Arcidy, 138 N.H. 20 (1993)..................................32

New Hampshire Fish & Game Dep't v.
Bacon, 167 N.H. 591 (2015)..48

O'Malley v. Little, 170 N.H. 272 (2017)..................................43

Rossini & Smith Companies, Inc. v.
Locke, 139 N.H. 572 (1995)..51

Seabrook Police Ass'n v. Town of Seabrook,
138 N.H. 177 (1993)..34

Wass v. Fuller, 158 N.H. 280 (2009).....................................38

Wolfgram v. New Hampshire Dep't of Safety,
169 N.H. 32 (2016)..34

Statutes/Rules/Other Authorities

RSA chpt. 540-A...in passim

RSA 358-A:10...28, 52

RSA 21:3...36

N.H. S. Ct. R. 16..6

QUESTIONS PRESENTED[1]

1. Whether the trial court erred when it dismissed Plaintiffs' RSA 540-A petition, even though various improper actions by Defendant – including the continuous playing of loud music and setting off of gunshots/firecrackers, and which actions the trial court found to have occurred – constituted, as a matter of law, a violation of RSA 540-A:2. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

2. Whether the trial court erred when it failed to analyze the Defendant's bad acts in a collective sense to determine whether all of the actions taken together, rather than each bad act on an individual basis, constituted a violation of RSA chpt. 540-A. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

3. Whether the trial court erred when it dismissed Plaintiffs' RSA 540-A petition, despite finding that many of the Defendant's improper actions first occurred only after a hearing in the related possessory action between the parties, and, thus, necessarily demonstrated

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[1] Many of the questions presented are interrelated and may be subsumed within the context of another question presented; therefore, each question may not be explicitly addressed on an individual basis. See N.H. S. Ct. R. 16(3)(b) (stating that the "questions presented for review . . . need not be worded exactly as it was in the appeal document . . . [and] [t]he statement of a question presented will be deemed to include every subsidiary question fairly comprised therein").

Defendant's attempt to circumvent lawful eviction procedures. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

4. Whether the trial court erred when it failed to analyze whether Defendant's actions also constituted a breach of the parties' Lease when conducting its quiet enjoyment analysis. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

5. Whether the trial court improperly relied upon the lack of evidence relating to sound ordinances when dismissing Plaintiffs' RSA 540-A petition. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

6. Whether the trial court erred when it misconstrued or mischaracterized various pieces of evidence and yet relied upon the same in its Order. See generally Add.; Trans.; Appx. at p.52-74; Notice of Appeal.

TEXT OF APPLICABLE STATUTES/RULES

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.

Source. 1979, 305:1. 1985, 100:3, eff. July 9, 1985.

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.

Source. 1979, 305:1, eff. Aug. 21, 1979.

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.
II-a. Notwithstanding paragraph II, and subject to the notice requirements of paragraph II-b:
(a) A landlord may remove, at the expense of the item's owner, any vehicle, motorcycle, trailer, ATV, or other property that blocks vehicular access to a common driveway, fire lane, parking area, or travel lane, or blocks access to a dumpster.
(b) A landlord may remove, at the expense of the item's owner, any property that is leaking fluids that are damaging the parking surface or creating an environmental hazard.
(c) A landlord may remove, at the expense of the item's owner, any property that is located in a posted no-parking area, is unregistered or inoperable, or is parked or stored in a manner prohibited under the terms of a lease agreement.
II-b. Prior to removing an item pursuant to paragraph II-a, the landlord shall provide notice as follows:
(a) In cases under RSA 540-A:3, II-a(a), prior to removal of the item the landlord shall make such efforts to notify the tenant who owns or possesses the item, if the landlord knows such tenant's identity, as are reasonable under the totality of the circumstances. If there is an immediate threat to the health or safety of another tenant or person, no notice shall be required.
(b) In cases under RSA 540-A:3, II-a(b), the landlord shall provide written notice no fewer than 48 hours prior to removing the property by:
(1) Placing a written notice on the item; and
(2) If the landlord knows the identity of the tenant who owns or possesses the item, placing a written notice on the door of such tenant's unit; or
(3) If the landlord does not know the identity of the tenant who owns or possesses the item, placing a written notice in a conspicuous location in one common area of each building in the apartment complex.
(c) In cases under RSA 540-A:3, II-a(c), the landlord shall provide the following notices to the tenant prior to removing the property:
(1) First notice, at least 7 days prior to removal of the item, by:
(A) Placing a written notice on the item; and
(B) If the landlord knows the identity of the tenant who owns or possesses the item, placing a written notice on the door of such tenant's unit; or
(C) If the landlord does not know the identify of the tenant who owns or possesses the item, placing a written notice in a conspicuous location in one common area of each building in the apartment complex; and

(2) Final notice, at least 24 hours, but not more than 48 hours, prior to removal of the item, by:
(A) Placing a written notice on the item; and
(B) If the landlord knows the identity of the tenant who owns or possess the item, placing a written notice on the door of such tenant's unit; or
(C) If the landlord does not know the identity of the tenant who owns or possesses the item, placing a notice in a conspicuous location in one common area of each building in the apartment complex.
II-c. A landlord who removes a tenant's property pursuant to paragraphs II-a and II-b shall not initiate any possessory action based on the tenant's failure to remove the item; provided that if such failure caused substantial damage to the property of the landlord or another tenant, or injury to another person, the landlord may initiate eviction pursuant to RSA 540:2, II(b) or (d).
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.
Source. 1979, 305:1. 1991, 373:2, eff. Jan. 1, 1992. 1998, 25:8. 2001, 277:2. 2003, 271:1, eff. Jan. 1, 2004. 2011, 247:1, eff. Jan. 1, 2012. 2013, 48:4, 5, eff. Jan. 1, 2014. 2015, 225:1, eff. Jan. 1, 2016.

Section 540-A:3-a

540-A:3-a Testing for Presence of Lead in Drinking Water. – Any time a child tests positive for lead which exceeds the standards established in RSA 130-A:5, I, the department of health and human services shall test the water in the unit for lead. If the presence of lead in the drinking water exceeds the action level established by the Environmental Protection Agency, the landlord shall notify the tenant or prospective tenant and shall install on the kitchen faucet a filtering device certified to reduce lead by

NSF International/American National Standards Institute and follow all standards for the replacement of the filtering device and cartridges. The landlord shall not be required to maintain or install water filters where the source of the lead has been removed and the water tests below the action level established by the Environmental Protection Agency, as verified by the department of health and human services.
Source. 2018, 4:19, eff. Apr. 9, 2018.

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.
(c) The provisions of subparagraph (a) shall not apply to petitions brought in good faith by a landlord or a tenant to determine whether a request for entry under RSA 540-A:3, V is reasonable and lawful.
(d) The provisions of subparagraph (a) shall not apply to any violation of 540-A:3, V-a, V-b, or V-c.
(e) Landlord damages for any unlawful dispossession or lock-out of a tenant from the premises where the landlord has re-let the premises or has a new tenant in the premises shall not be less than $3,000. In the event the damages exceed the $3,000 minimum, the award shall not exceed the amount that would have been awarded pursuant to subparagraph (a).
X. If an action initiated under RSA 540-A:3 is found to be frivolous or brought solely for harassment, the plaintiff shall pay to the defendant the costs of said action including reasonable attorney's fees. If such frivolous action was brought by the tenant, he shall not be entitled to the protection of paragraph XI of this section.
XI. No action for possession may be maintained by the landlord against a tenant who proves a violation of RSA 540-A:3 except for nonpayment of rent, violation of a substantial obligation of the rental agreement or lease, or violation of this subdivision within 6 months of an action instituted under this subdivision by a tenant; nor shall the landlord take any other action in reprisal.

XII. Relinquishment of possession or abandonment of possession shall be an affirmative defense to an action brought pursuant to this chapter.
(a) Relinquishment of possession occurs when the landlord receives a statement signed by each adult tenant of a rented or leased premises stating that the tenant has relinquished possession of the rented or leased premises and has no intent to return.
(b) Abandonment of possession means all tenants have physically vacated the premises without the intent to return. There shall be a rebuttable presumption that the tenants have abandoned the premises if:
(1) The landlord provided all tenants with a written property abandonment notice, by leaving the notice at the rented or leased premises and by sending the notice by certified mail to the last known address of at least one adult tenant. The property abandonment notice shall also comply with subparagraph (d); and
(2) At least 2 of the following conditions were present:
(A) All adult tenants of the rented or leased premises have notified the landlord in writing of their intent to vacate the premises by a certain date and that date has passed, provided that the written notice of one adult tenant who has lawful possession to the premises pursuant to an order under RSA 173-B shall suffice.
(B) All keys to the rented or leased premises have been returned to the landlord, which shall include leaving all keys in the rented or leased premises.
(C) The tenant or tenants have removed from the rented or leased premises all or the majority of their personal property, and the only items remaining in the premises are inconsistent with the continued use of the premises.
(D) The tenant or tenants have failed or neglected to pay rent for the rented or leased premises for a period of more than 91 days, provided that during those 91 days the landlord, if requested to do so, provided ordinary and reasonable verification of rental information to any agency assisting the tenant or tenants, and that the landlord did not refuse to accept payment on behalf of the tenant or tenants by any agency offering assistance.
(c) The defense of abandonment does not abrogate the landlord's duty under RSA 540-A:3, VII to maintain and exercise reasonable care in the storage of the personal property of tenants who have vacated the premises for a period of 7 days after the date upon which such tenants have vacated the rented or leased premises. The 7 days shall begin the day after the landlord serves the written property abandonment notice.

(d) In providing the property abandonment notice required under subparagraph (b), the landlord shall use conspicuous language identifying, with specificity, the reasons the landlord deems the property abandoned. The notice shall also advise the tenant or tenants of their right to retrieve any personal property as well as their right to file an action under RSA 540-A. The notice must be signed by the landlord, or the landlord's agent. The use of the following notice language, in at least 12-point type, shall be deemed sufficient notice language:

NOTICE OF PROPERTY ABANDONMENT

This residence, known as ____________________________, has been abandoned. I certify that, on this date, the property is believed to have been abandoned for the following circled reasons:

(1) You notified me in writing that you intended to vacate the premises.

(2) You have returned your keys to the premises.

(3) You have removed from the premises all or the majority of your personal property, and the only items remaining in the premises are inconsistent with the continued use of the premises.

(4) You have failed or neglected to pay rent for the premises for a period of more than 91 days.

Because you have abandoned the premises, we will retake possession of this property and the locks may be changed. We will store your personal property for 7 days from the date of the notice, and you have a right to get your personal property during that time.

If you disagree with any action we take, you should notify us immediately. You are also entitled to file what is called a "540-A petition" at your nearest court. You may have other additional legal rights as well.

Signed: ____ Date:

Landlord's or Landlord's Agent's Mailing Address:

Landlord's or Landlord's Agent's Telephone Number:

Source. 1979, 305:1. 1985, 100:4, 5. 1990, 218:1. 2003, 271:2, eff. Jan. 1, 2004. 2010, 116:1, eff. June 1, 2010. 2011, 247:2, eff. Jan. 1, 2012. 2013, 48:8, 237:1, 2, eff. Jan. 1, 2014.

Security Deposits

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.

Source. 1985, 100:6, eff. July 9, 1985.

Section 540-A:6

540-A:6 Procedure. –

I. (a) A landlord shall not demand or receive any security deposit in an amount or value in excess of one month's rent or $100, whichever is greater. Nothing in this section shall prohibit a landlord from entering into a written lease that requires the quarterly or less frequent payment of rent; provided, however, that the security deposit received in addition to the initial rent payment may not exceed the equivalent of one month's rent.

(b) Except as provided in subparagraph (c), upon receiving a deposit from a tenant, a landlord shall forthwith deliver to the tenant a signed receipt stating the amount of the deposit and specifying the place where the deposit

or bond for the deposit pursuant to RSA 540-A:6, II(c) will be held, and shall notify the tenant that any conditions in the rental unit in need of repair or correction should be noted on the receipt or given to the landlord in writing within 5 days of occupancy.

(c) No receipt shall be required when the tenant furnishes a security deposit in the form of a personal check, a bank check, or a check issued by a government or nonprofit agency on behalf of the tenant. Regardless of whether or not a receipt is required, the landlord shall provide written notice to the tenant that a written list of conditions in the rental unit in need of repair or correction, if any, should be given to the landlord within 5 days of occupancy.

II. (a) Security deposits held by a landlord continue to be the money of the tenant and shall be held in trust by the person with whom such deposit is made and shall not be mingled with the personal moneys or become an asset of the landlord until the provisions of RSA 540-A:7 are complied with, but may be disposed of as provided in RSA 540-A:6, III.

(b) A landlord may mingle all security deposits held by him in a single account held in trust for the tenant at any bank, savings and loan association or credit union organized under the laws of this state in satisfaction of the requirements of RSA 540-A:6, II(a).

(c) A bond written by a company located in New Hampshire and posted with the clerk of the city or town in which the residential premises are located in an amount equivalent to the total value of a security deposit held by the landlord on property in that city or town shall exempt the landlord from the provisions of RSA 540-A:6, II(a) and (b).

III. (a) Any landlord who holds a security deposit shall turn the security deposit over at the time of delivery of the deed or instrument of assignment, or within 5 days thereafter, or within 5 days after a receiver has been qualified, to one of the following:

(1) his grantee upon conveying the premises in which the rental unit is located;

(2) his assignee upon assigning his lease to the rental unit;

(3) the receiver in a foreclosure action or other lien of record affecting the property in which the rental unit is located, upon the judicial appointment and qualification of the receiver; or

(4) the purchaser at a foreclosure sale or other lien of record, if a receiver has not been qualified, upon the conveyance to another person by the referee of the property in which the rental unit is located.

(b) The landlord shall notify the tenant by registered or certified mail of such turning over, including the name and address of the grantee, assignee, purchaser, or receiver who then holds the security deposit.
(c) Any landlord who turns over to his grantee, his assignee, a purchaser at a foreclosure sale, or the receiver in a foreclosure action the amount of such security deposit with interest due, if any, is thereby relieved of liability to the tenant for repayment of the deposit. The transferee of the security deposit is then responsible for the return of the security deposit to the tenant or licensee, unless, before the expiration of the term of the tenant's lease or licensee's agreement, he transfers the security deposit to another, pursuant to RSA 540-A:6, III(a) and gives the requisite notice pursuant to RSA 540-A:6, III(b). A receiver shall hold the security subject to its disposition as provided in an order of the court to be made and entered in the foreclosure action.
(d) RSA 540-A:6, III(c) shall not apply if there is an inconsistent agreement between the landlord and tenant or licensee.
IV. (a) A landlord who holds a security deposit for a period of one year or longer shall pay to the tenant interest on the deposit at a rate equal to the interest rate paid on regular savings accounts in the New Hampshire bank, savings and loan association, or credit union in which it is deposited, commencing from the date the landlord receives the deposit or from September 13, 1977, whichever is later. If a landlord mingles security deposits in a single account under RSA 540-A:6, II(b), the landlord shall pay the actual interest earned on such account proportionately to each tenant.
(b) Upon request, a landlord shall provide to the tenant the name of any bank, savings and loan association, or credit union where his security deposit is on deposit, the account number, the amount on deposit, and the interest rate on the deposit and shall allow the tenant to examine his security deposit records.
(c) Notwithstanding RSA 540-A:7, I, a tenant may request the interest accrued on a security deposit every 3 years, 30 days before the expiration of that year's tenancy. The landlord shall comply with the request within 15 days of the expiration of that year's tenancy.
Source. 1985, 100:6. 1988, 167:1. 1992, 184:4. 2006, 296:1, eff. July 1, 2006. 2014, 56:1, eff. July 26, 2014.

Section 540-A:7

540-A:7 Return of Security Deposit. –

I. Except as provided in RSA 540-A:6, IV(c), a landlord shall return a security deposit to a tenant and pay the interest due, if any, within 30 days from the termination of the tenancy. If there are any damages to the premises, excluding reasonable wear and tear, the landlord may deduct the costs of repair from the security deposit. The landlord shall provide the tenant with a written, itemized list of any damages for which the landlord claims the tenant is liable, which shall indicate with particularity the nature of any repair necessary to correct any damage and satisfactory evidence that repair necessary to correct these damages has been or will be completed. Satisfactory evidence may include, but not be limited to, receipts for purchased repair materials and labor estimates, bills or invoices indicating the actual or estimated cost thereof.

II. If the tenant is required under the lease agreement to pay all or part of any increase in real estate taxes levied against the property and becoming due and payable during the term of the lease, or if there is unpaid rent due, or if there are other lawful charges due under the lease which remain unpaid, the landlord may deduct such share of real estate taxes or unpaid rent or unpaid charges from the amount of the security deposit. The landlord shall provide the tenant with a written, itemized list of any claim for unpaid rent or share of real estate taxes or unpaid charges for which the landlord claims the tenant is liable, which shall indicate with particularity the period for which the claim is being made.

Source. 1985, 100:6. 1988, 167:2. 2006, 296:2, eff. July 1, 2006.

Section 540-A:8

540-A:8 Remedies. –

I. (a) Any landlord who does not comply with RSA 540-A:6, I, II or III shall be deemed to have violated RSA 358-A:2.

(b) Any landlord who does not comply with RSA 540-A:6, IV or RSA 540-A:7 shall be liable to the tenant in damages in an amount equal to twice the sum of the amount of the security deposit plus any interest due under this subdivision, less any payments made and any charges owing for damages, unpaid rent, or share of real estate taxes as specified in RSA 540-A:7.

II. Notwithstanding RSA 540-A:6, 540-A:7, and 540-A:8, I, a landlord shall not be liable nor forfeit any rights if his failure to comply with said

sections and paragraph is due to the failure of the tenant to notify the landlord of his new address upon termination of the tenancy. Any deposits plus interest due on the deposit that remain unclaimed after 6 months from the termination of the tenancy shall become the property of the landlord, free and clear of any claim of the tenant, absent fraud.
III. Any provision in any lease or rental agreement by which the tenant is purported to waive any of his rights under this subdivision, except as provided in RSA 540-A:6, III(d), shall be void.
Source. 1985, 100:6, eff. July 9, 1985.

Section 358-A:10

358-A:10 Private Actions. –
I. Any person injured by another's use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or $1,000, whichever is greater. If the court finds that the use of the method of competition or the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.
II. Upon commencement of any action brought under this section, the clerk of the court shall mail a copy of the complaint or other initial pleadings to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.
Source. 1970, 19:1. 1975, 417:9. 1981, 243:1. 1994, 226:3, eff. July 26, 1994.

Section 21:3

21:3 Number; Gender. – Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine

gender may extend and be applied to females. Gender-specific terms relating to the marital relationship or familial relationships, including without limitation, "spouse," "family," "marriage," "immediate family," "dependent," "next of kin," "man," "woman," "groom," "bride," "husband," "wife," "widow," or "widower," shall be construed to be gender-neutral for all purposes throughout New Hampshire law, whether in statute, state administrative or court rule, policy, common law, or any other source of civil state law.
Source. RS 1:1, 2. CS 1:1, 2. GS 1:3. GL 1:3. PS 2:3. PL 2:3. RL 7:3. 2014, 160:4, eff. July 10, 2014.

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This is a residential landlord-tenant matter brought by Plaintiffs – as tenants – against the Defendant landlord pursuant to RSA 540-A. The Plaintiffs entered into a Lease agreement with the Defendant in May 2019 with respect to the leased premises located at 245 Federal Hill Road in Milford, New Hampshire (the "Premises"). The Premises contains an approximately 4,000 square foot home, and the parties agreed to a rental rate of $3,500 per month. Appx. at p.3-9.

As is pertinent to this appeal, Section 5 of the Lease provides that any "disturbing noises" were prohibited and that Plaintiffs shall not "play upon, nor suffer to be played upon[] . . . any musical instrument, radio, television, or other like device in the leased premises in a manner offensive to other occupants of the building," nor between certain hours of the day. Appx. p.3. (emphasis added).

The current matter arose while a possessory action initiated by Defendant was then pending against the Plaintiffs with respect to the Premises. Although the trial court found in favor of the Defendant in that related possessory action, the Plaintiffs have appealed that decision as well, which appeal is also currently pending with this Court. See Vita Cooper, Trustee, Utopia Revocable Trust v. Maia Magee and Sunfire, LLC, Case No. 2020-0471. Given the overlap between the two appeals involving the same parties and the same Premises, there is important background information in the related appeal cited above that this Court may wish to review to provide additional context for this appeal. Such includes, but is

not limited to, a discussion in the other appeal concerning the significant retaliation that the Defendant has engaged in.

That said, on August 4, 2020, the trial court held a hearing in the related possessory action, which concluded with the trial court requiring the Defendant to respond to certain discovery requests that the Plaintiffs had propounded in that action. Appx. at p.22; 72.

Almost immediately after said ruling, on August 7, 2020, the Defendant, who lives on property adjacent to the leased Premises, began blaring loud rock music at all hours of the day, several days in a row. The Defendant also began, during pre-dawn and post-sunset hours, setting off firecrackers/gunshots near the leased Premises for several days in a row. Appx. at p.52-74; Add.; see generally Trans.; CD.

At no time prior to the August 4, 2020 hearing in the possessory action did the Plaintiffs ever hear any music or firecrackers/gunshots from Defendant's property. This was so even though the Plaintiffs began leasing the Premises in 2019. Appx. at p. 3, 52-74; Add.; see generally Trans.

Such actions, of course, impeded upon the Plaintiff's common law right to quiet enjoyment of the Premises and constituted a breach of the parties' Lease. However, the gunshots/firecrackers also caused Plaintiffs to fear for their safety, particularly given that the Defendant had been previously sanctioned by the trial court (in the context of a prior action pursuant to RSA 540-A between the parties)[2] for intimidating and

[2] In fact, there have been a multitude of actions between the parties during 2020, including multiple actions based upon RSA chpt. 540-A and, of course, the possessory action noted above. Given such contentious dealings between the parties, and especially given the trial court's sanctioning of the

threatening to shoot the Plaintiffs, in violation of RSA 540-A:2.[3] Appx. at p. 32-40, 52-74; 216-22; Add.; see generally Trans.

Moreover, on August 10, 2020 – again shortly after the August 4th hearing – the Defendant loudly shouted at Plaintiffs to "get out of my home!" This was not the first time that Defendant had yelled such to the Plaintiffs. Finally, on August 9, 2020, a man who purported to be a neighbor and insect photographer, with camera in hand, trespassed onto the leased land surrounding the Premises and confronted the Plaintiffs. This trespasser was likely connected to Defendant and effectively acted as Defendant's agent to spy on Plaintiffs and invade their privacy. Appx. at p. 52-74; Add.; see generally Trans.; CD.

Given such actions and the suspicious timing of them – all of which occurred shortly after the hearing in the possessory action concluded in Plaintiffs' favor – Plaintiffs filed a 540-A petition against the Defendant.

Defendant previously for intimidating and threatening to shoot the Plaintiffs, the Plaintiffs were, understandably, in great fear for their safety when hearing what sounded to be gunshots deriving from Defendant. See generally Appx.

[3] Given the prior history between the parties, as well as the various actions Defendant started engaging in immediately after the August 4th hearing, Plaintiffs understandably considered Defendant's actions to constitute an attack upon them. Not only was Defendant blaring loud rock music throughout the day (and for days on end) to intentionally disturb the Plaintiffs, but Plaintiffs were also being woken up to loud gunshots/firecrackers from Defendant during both pre-dawn and post-sunset hours. Given the same, and combined with both Defendant's prior threat to shoot Plaintiffs and the yelling by Defendant at Plaintiffs to get out of the home, it is no wonder that Plaintiffs were afraid, had to seek shelter in a hotel, and concluded that Defendant was doing anything possible to remove Plaintiffs from the Premises.

As part of that petition, the Plaintiffs sought various relief, including that the trial court: (a) find that the Defendant deprived the Plaintiffs of the quiet enjoyment of the Premises; (b) find that the Defendant willfully attempted to evict the Plaintiffs without proper legal process; (c) prohibit the Defendant from continuing such bad acts; and (d) award the Plaintiffs attorney's fees, costs, and appropriate damages. Appx. at p. 52-69.

Thereafter, the trial court held a final hearing, which was held simultaneously with the final hearing in the related possessory action. See generally Trans. At the final hearing, the Plaintiffs presented testimony (through offers of proof) and other evidence – including video evidence – to substantiate the above-mentioned facts. For example, videos were produced that demonstrated the volume of both the music and the gunshots/firecrackers that the Defendant blasted at the Plaintiffs. Additionally, a video of the trespasser was admitted into evidence. See generally Trans.; see also CD.

Following the final hearing, the trial court issued its final Order. The trial court found that: (a) Defendant, who lives on property adjacent to the Premises that Plaintiffs lease from Defendant, used an outdoor stereo system to play music over a multiple day period loud enough to disturb Plaintiffs; (b) Defendant, from her own house, shouted loudly up at Plaintiffs' premises to "get out of my home"; (c) Defendant set off gunshots and/or firecrackers near Plaintiffs and the leased premises during pre-dawn and post-sunset hours; and (d) a "snooping photographer," who was "awkward," appeared on the premises and confronted Plaintiffs. Although the trial court found that these incidents occurred, the trial court dismissed

the RSA 540-A petition, finding in favor of the Defendant. Add; Appx. at p. 70-74.

In rendering this decision, the trial court failed to analyze whether the bad acts, collectively, constituted a violation of RSA 540-A. Rather, the trial court determined whether each act, taken individually, each separately constituted a violation of RSA 540-A. This is so even though Plaintiff requested that the analysis be performed on a collective basis. Add; Appx. at p. 52-74; e.g., Trans. at p. 120, 127-28.

Additionally, the trial court did acknowledge that these bad acts occurred almost immediately following the August 4th hearing in the related possessory action and noted that the Defendant was "unhappy with the outcome of the August 4, 2020 hearing," as it required Defendant to respond to Plaintiffs' discovery requests. Nonetheless, the trial court failed to conclude that Defendant's actions were an unlawful attempt to circumvent lawful eviction procedures. Add; Appx. at p. 70-74; cf. RSA 540-A:2. This is so even though the trial court explicitly "confirm[ed] a connection between the dispute with the [Plaintiffs] and the decision to use the outdoor stereo for the first time on August 8, 2020." Add.; Appx. at p. 73. Despite such findings, according to the trial court, "[o]n balance, and acknowledging the admitted link between the music and the pending eviction, as well as the prior RSA 540-A finding against this same landlord, the landlord's playing music and talking to herself from her own porch,[4]

[4] As explained below, Defendant's counsel admitted at the final hearing that Defendant in fact yelled at Plaintiffs – rather than merely talked to herself – for Plaintiffs to get out of the leased premises, as such was a form of purported yelling therapy for Defendant. Such inaccuracies by the trial

even where the noise is carried across open water, is not a substantial interference with the [Plaintiffs'] quiet enjoyment or constructive eviction." Id.

With respect to whether the Defendant's actions constituted a breach of the parties' Lease, the trial court concluded that "[m]uch could be said about whether the noise terms in the lease binding the tenant somehow also apply to the landlord, and whether the landlord's conduct, if done by the tenant to the landlord, would violate the terms of the lease." Id. Then, without citation to any authority, the trial court stated that "[h]owever, RSA 540-A:2 adopts the common law definition of quiet enjoyment. The court does not believe that RSA 540-A was intended as an expedited lease interpretation and enforcement mechanism." Id. Thus, the trial court refused to engage in any analysis as to whether the Defendant's actions constituted a breach of the Lease – particularly Section 5 thereof – and impacted the quiet enjoyment analysis.

The trial court's Order also concluded, without citation to any precedent or authority, that because Plaintiffs "produced no evidence that the music [Defendant played] violated any local sound ordinances," the petition pursuant to RSA 540-A ought to be dismissed. Id.

Given the trial court's ruling, and the significant errors contained therein, the Plaintiffs timely filed a notice of intent to appeal with the trial court and then promptly initiated this appeal. Appx. at p.28-31; Notice of Appeal.

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court are emblematic of the numerous errors that the trial court committed here.

As set forth in the argument section below, the trial court's Order is erroneous, as there are numerous legal and factual errors contained therein. Accordingly, and for the reasons discussed in detail below, this Court ought to reverse the trial court's Order and conclude that a violation of RSA 540-A occurred here. Accordingly, appropriate damages and attorney's fees are also warranted in Plaintiffs' favor. See RSA 540-A:4, VII; RSA 540-A:4, IX; RSA 358-A:10.

SUMMARY OF THE ARGUMENT

The trial court erroneously dismissed the Plaintiffs' petition under RSA chpt. 540-A for numerous reasons.

First, the trial court failed to analyze whether all of the Defendant's bad actions – actions that occurred effectively simultaneously and immediately followed the August 4, 2020 hearing in the possessory action – taken together, constituted a violation of RSA chpt. 540-A. Instead, the trial court, contrary to the request of the Plaintiffs, erroneously analyzed each of the Defendant's bad acts in isolation, and concluded that each action, individually, failed to rise to the level of a RSA 540-A violation.

Although the statutory scheme might not be explicit on this issue, it is an important legal issue, and one that Plaintiffs posit should resolve in Plaintiffs' favor. This is particularly so when the Plaintiffs explicitly requested the trial court to analyze all of the bad acts collectively for purposes of determining a violation of RSA 540-A. Accordingly, it was incumbent upon the trial court to engage in such analysis here.

Second, the trial court concluded that each of the four bad acts complained of – the loud rock music (that continued for days on end), the gunshots/firecrackers, the audible demand for Plaintiffs to leave the Premises, and the trespasser incident – all occurred and occurred only after the hearing in the possessory action was decided in Plaintiffs' favor. Although the trial court may have downplayed such matters in its Order, the fact remains that the trial court found each bad act to have occurred. Given this finding and the fact that there is no dispute that such occurred, such should demonstrate as a matter of law that the Defendant violated RSA 540-A. This is so because such conclusively shows, as a matter of law, that Defendant willfully violated Plaintiffs' quiet enjoyment of the Premises or attempted to constructively evict Plaintiffs in violation of RSA 540-A:2. Any decision to the contrary is simply erroneous.

Third, the trial court's Order, although acknowledging that the Defendant's bad acts occurred following the hearing in the related possessory action, failed to properly account for the timing of the actions at issue. It is not mere coincidence that the bad acts at issue here all occurred almost immediately following the hearing in the related possessory action that concluded in the Plaintiffs' favor.

The timing alone here strongly suggests, and in fact demonstrates, a deliberate attempt to harass and intimidate Plaintiffs in violation of RSA 540-A:2, as the Defendant was doing nothing but trying to create such an inhospitable and hostile environment that Plaintiffs would leave the Premises. Such tactics, of course, worked, as the Plaintiffs were so concerned for their safety (particularly given the gunshot/firecracker sounds, which followed a prior finding by the trial court in the context of

another RSA 540-A action that the Defendant had threatened to shoot the Plaintiffs) that they had to seek shelter in a hotel. Thus, the trial court's Order, which discounts or overlooks the fact that the hearing in the possessory action on August 4th necessarily sparked the Defendant's actions complained of herein, is necessarily erroneous.

Fourth, the trial court's Order simply failed to analyze whether the Defendant's actions here – particularly the constant playing of loud music over a multiple day period – constituted a breach of the parties' Lease. Not only did such constitute a breach of the parties' Lease, but such should have also factored into the trial court's quiet enjoyment analysis. Yet, the trial court failed and refused to engage in such analysis, thereby leading to error.

Fifth, the trial court's Order is erroneously premised, at least in part, upon the conclusion that the Plaintiffs were required – and failed – to produce evidence at the final hearing concerning local sound ordinances and whether the loud music and other noises deriving from Defendant exceeded any maximum level set in such ordinances. Such is erroneous for the simple fact that there is no precedent or any authority whatsoever that requires such evidence pertaining to sound ordinances in the context of an action pursuant to RSA chpt. 540-A. For this reason alone, the trial court's Order must be reversed.

Moreover, much of the trial court's Order is based upon a mischaracterization of uncontroverted evidence presented at the final hearing. Although the trial court, as the fact finder, is entitled to make factual and credibility determinations, some of the factual findings made – particularly those related to the Defendant's demand to Plaintiffs to leave the Premises and the frequency and volume of the music and

gunshots/fireworks – simply contradict the undisputed evidence presented. Accordingly, with no valid basis to uphold the trial court's factual findings, reversal is warranted.

Finally, to the extent that this Court agrees with Plaintiffs that the trial court's decision should be reversed, appropriate damages, attorney's fees and costs in Plaintiff's favor are warranted per the plain language of the statutory scheme.

ARGUMENT

I. Standard of review.

To the extent that any issues on appeal involve questions of law or the appropriate application of law, this Court reviews the same de novo. See, e.g., Berthiaume v. McCormack, 153 N.H. 239, 244 (2006) (providing that questions of law are reviewed de novo).

As to any matters of statutory interpretation raised in this appeal, such constitute "a question of law, which we review de novo." Adams v. Woodlands of Nashua, 151 N.H. 640, 641 (2005). "The starting point in any statutory interpretation case is the language of the statute itself. Where the language of a particular statutory provision is at issue, we will focus upon the statute as a whole, not on isolated words or phrases. We will not consider what the legislature might have said or add words that the legislature did not include." Id.

To the extent that any issues on appeal involve the "interpretation of a trial court order," such is another "question of law, which we review de novo." Choquette v. Roy, 167 N.H. 507, 513 (2015). Likewise, this Court will review "a trial court's application of law to facts de novo."

Blagbrough Family Realty Tr. v. A & T Forest Prod., Inc., 155 N.H. 29, 33 (2007).

As to factual issues, this Court will generally "defer to the trial court's judgment on such issues as resolving conflicts in testimony, assessing the credibility of witnesses, and determining the weight of the evidence." Ellis v. Candia Trailers & Snow Equip., Inc., 164 N.H. 457, 466 (2012). "Our standard of review is not whether we would rule differently, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence." Id. However, this Court need not defer to such factual findings if "they are not supported by the evidence or are erroneous as a matter of law." McCabe v. Arcidy, 138 N.H. 20, 24 (1993); see also DiMinico v. Centennial Estates Coop., Inc., 173 N.H. 150, 156-57 (2020) (providing that whether the "covenant of quiet enjoyment has been breached in a particular case is a question of fact for the trial court to determine in the first instance" and that the Court will "not disturb the trial court's ruling on this factual issue unless it lacks evidentiary support or is erroneous as a matter of law" (quotation and brackets omitted)).

II. The trial court improperly failed to analyze whether all of the Defendant's bad actions, collectively, constituted a violation of RSA 540-A.

The Plaintiffs' petition pursuant to RSA 540-A here highlighted four particular actions by Defendant: (1) the loud rock music that continued for a several-day period; (2) gunshots/firecrackers directed at the Plaintiffs; (3) Defendant yelling at Plaintiffs to "get out of my home!"; and (4) the trespassing photographer. Appx. at p.52-59. As explained in Plaintiffs'

Supplement to Petition under RSA 540-A, all of these actions effectively occurred simultaneously and almost immediately following a hearing in the related possessory action. Id. Thus, the Plaintiffs' petition asserted, among other things, that: (1) "the timing of the above-mentioned activities. . . demonstrates a deliberate attempt to harass and intimidate the Plaintiffs"; (2) [g]iven all of the above, and with the great stress and anxiety that it has caused the Plaintiffs, the Plaintiffs were forced by the Defendant . . . to leave the leased premises and stay in a hotel – where the Plaintiffs knew that they would be safe. . . Accordingly, it is abundantly clear that the Defendant is intentionally and/or willfully violating the Plaintiffs' right to quiet enjoyment . . . in violation of RSA 540-A:2"; and (3) "the above-actions demonstrate that the Defendant is attempting to circumvent lawful procedures for eviction pursuant to RSA 540, thereby violating RSA 540-A:2 once again.[5] By playing the loud music constantly, lighting off firecrackers and/or shooting guns near the property over the past couple of days, and having someone snoop on the Plaintiffs, the Defendant is attempting to effectively and constructively evict the Plaintiffs by creating

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[5] It should be noted that the trial court previously sanctioned Defendant for violating RSA 540-A for "commencing a major non-emergency logging operation on the leased premises," coupled with "an offensive 'no trespassing' sign designed to intimidate the tenant," and which "did not respect the tenant's legal status." Appx. p. 32-39, 216-22. Such, of course, amounted to prior attempts by Defendant to constructively evict Plaintiffs or otherwise interfere with Plaintiffs' quiet enjoyment of the property. Thus, when Defendant started engaging in the particular actions at issue in this case, Defendant was merely building upon her prior improper actions – the trial court, however, simply ignored the same in this case.

such an inhospitable and hostile environment that the Plaintiffs feel unsafe." Id.

Accordingly, the entire petition was premised upon the assertion that all of these actions, collectively, rose to the level of a violation of RSA 540-A:2. At the final hearing, undersigned counsel explicitly argued the same, explaining multiple times before the trial court that the bad acts here, collectively, amounted to a violation of RSA 540-A. See, e.g., Trans. at p. 120, 127-28.

However, in its final Order, the trial court refused to address whether all of these actions, on a collective basis, amounted to a violation of RSA 540-A. Rather, the trial court's Order simply analyzed each action separately and determined that none of the actions, on an individual basis, constituted a violation of RSA 540-A. Add.; Appx. at p.70-74. Such is erroneous for multiple reasons.

First, because the trial court ruled against the Plaintiffs, it was incumbent upon the trial court to address all arguments raised by the Plaintiffs, including engaging in an analysis as to whether all of the bad acts complained of, collectively, constituted a violation of RSA 540-A. Had the Plaintiffs prevailed before the trial court, such an analysis might not have been necessary. See, e.g., Wolfgram v. New Hampshire Dep't of Safety, 169 N.H. 32, 40 (2016) ("Because the petitioner prevails on his statutory claim, we need not address his constitutional argument."); Seabrook Police Ass'n v. Town of Seabrook, 138 N.H. 177, 178 (1993) ("Because the town prevails on the first two arguments, we need not address the attorney's fees issue."). However, because the trial court found in favor of the Defendant, logic dictates that the trial court should have analyzed the actions at issue

collectively, as Plaintiffs requested – or, at a minimum, the trial court should have explained in its Order why only an analysis of each act, individually, was more appropriate. Yet, the trial court's Order is simply devoid of the same. Add; Appx. at p.70-74.

Second, as this Court has ruled before, a trial court's failure to address arguments raised by a party constitutes error. As concluded in Holt v. Keer, 167 N.H. 232, 244 (2015):

> [T]he trial court either misconstrued the nature of the Keers' request, or that it simply failed to address their statutory claims. In fact, the Keers advanced several theories before the trial court, including an argument that the 2012 amendment violated the requirements of the Act with respect to assignment of limited common area. The basis for that argument was purely statutory and not predicated upon the terms of prior court orders regarding the condominium rules. Therefore, the trial court erred when it stated that the Keers were only challenging "the court's past decisions regarding the Condominium rules," and when it failed to address the Keers' statutory argument. Accordingly, we conclude that the trial court's decision is unsustainable.

Similarly, here, the trial court's failure to address, in any way, the Plaintiffs' collective action-based argument is erroneous, unsustainable, and warrants either a vacating of the Order or reversal. See Holt, 167 N.H. at 244.

Third, common sense dictates that, if one petition under RSA 540-A is brought, then all actions complained of in said petition should be analyzed collectively to determine whether a violation of RSA 540-A has occurred. Such result follows because, if a party believed that a certain action (or certain group of actions) constituted a violation of RSA 540-A, then one RSA 540-A petition would be brought to cover and address the

same; a separate RSA 540-A petition (or petitions) could then be brought with respect to any other action (or group of actions) complained of. Such is confirmed by the actions taken by Plaintiffs here, as multiple petitions pursuant to RSA 540-A have been filed by Plaintiffs due to a variety of different bad actions by the Defendant. See, e.g., Appx. at p.12-15; 32-88, 216-22.

Such is further confirmed by the statutory scheme in RSA 540-A.[6] For example, RSA 540-A:4, II permits any tenant or landlord to "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." (Emphasis added). Although use of the singular may include the plural, see RSA 21:3, it appears that use of the singular in RSA 540-A:4 is particularly intentional and suggests that each petition brought pursuant to RSA 540-A should be analyzed as a whole to determine whether a violation of RSA 540-A has occurred. In other words, all the actions complained of in a single petition brought under RSA 540-A can and should be analyzed on a collective basis to determine whether a violation of RSA 540-A has occurred. To conclude otherwise, particularly here when a party requests such an analysis to occur, is simply erroneous and warrants reversal, or at least the vacating of the trial court's Order to permit the trial court to engage in such analysis.

Finally, given the timing of the actions complained of here, which all occurred effectively simultaneously across a multiple day period and which

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[6] It should be noted that, although suggestive, the statutory scheme does not explicitly expound upon this issue. Nor does there appear to be any decision by this Court specifically addressing this issue. Thus, it appears that this issue is one of first impression for this Court.

started occurring just after the August 4th hearing in the related possessory action, the only reasonable conclusion here is that such actions should have all been analyzed collectively when determining whether the Defendant violated RSA 540-A. Refusing to engage in such analysis simply ignores the basic facts and circumstances here. Disregarding this vital context, of course, drastically affects the evaluation of the evidence in this case, such that reversal of the trial court's Order (or vacating of the same) is warranted.

Accordingly, for these reasons, the trial court's failure and refusal to analyze whether all of the Defendant's bad actions, collectively, constituted a violation of RSA 540-A, is erroneous.

III. Because the trial court found multiple bad acts to have occurred, such should have sufficed, as a matter of law, to demonstrate a violation of RSA 540-A.

In its Order, the trial court explicitly found that: (a) Defendant, who lives on property adjacent to the Premises that Plaintiffs lease, used an outdoor stereo system to play music over a multiple day period loud enough to disturb Plaintiffs; (b) Defendant, from her own house, shouted loudly up at Plaintiffs to "get out of my home"; (c) Defendant set off gunshots and/or firecrackers near Plaintiffs and the leased Premises during pre-dawn and post-sunset hours; and (4) a "snooping photographer," who was "awkward," appeared on the premises and confronted Plaintiffs. Add.; Appx. at p.70-74. Although the trial court found that these things all occurred, and occurred essentially simultaneously, the trial court concluded that none violated RSA 540-A. Id.

This is so even though it was undisputed at the hearing that all of these actions occurred. Although there might have been some disagreements as to the frequency or volume of such actions (which factual issues are addressed in more detail below), such does not change the fact that these things all occurred and there is no dispute that they occurred. Such is especially so given that the Plaintiffs presented videos of each action, except for the audible demand by Defendant for Plaintiffs to leave the Premises. See generally Trans.; Add.; Appx. at p. 52-74; see also CD. That said, as to the latter matter, the Defendant at the final hearing admitted to yelling at Plaintiffs to "get out of my house," claiming that such constituted some sort of therapy for the Defendant. Trans. at p.107, 118. Thus, there is absolutely no dispute that these four actions all occurred and occurred effectively simultaneously as a deliberate attempt to try to force Plaintiffs out.

Accordingly, this is not a case where one party alleges that something happened and the other denies the same. Rather, there is no dispute as to any material fact here, and, thus, this issue is effectively akin to one that is ripe for summary judgment in Plaintiffs' favor. See, e.g., Leeds v. BAE Sys., 165 N.H. 376, 378 (2013) (discussing summary judgment standard); Currier v. Amerigas Propane, L.P., 144 N.H. 122, 123 (1999) ("Because no party disputes the essential facts, our inquiry is limited to whether the trial court erred as a matter of law.").

This is especially so given that the "focus of RSA chapter 540–A . . . is to deter unacceptable landlord conduct." Wass v. Fuller, 158 N.H. 280, 283 (2009) (quotation omitted). To conclude that the Defendant, as landlord, acted in an acceptable manner here towards the Plaintiffs –

particularly in light of the pending possessory action that Defendant had initiated and given the prior issues between the parties that led to other petitions by Plaintiffs pursuant to RSA 540-A[7] – defies logic and the plain language of RSA 540-A. Per RSA 540-A:2, the Plaintiffs were only required to show that the Defendant "willfully violate[d] [their] right to quiet enjoyment of his tenancy or attempt[ed] to circumvent lawful procedures for eviction pursuant to RSA 540."

Given the undisputed evidence, and the findings by the trial court, the only rational conclusion is that the various bad acts by Defendant demonstrated, as a matter of law, that the Defendant violated RSA 540-A:2 by willfully violating Plaintiffs' quiet enjoyment of the Premises and/or by attempting to constructively evict Plaintiffs from the Premises. See RSA 540-A:2. No other reasonable decision can be reached. Accordingly, the trial court's contrary conclusion cannot stand. Cf. Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 109 (2007) (concluding that the "record supports the trial court's conclusion, and we hold that no reasonable fact finder could find otherwise").

IV. The trial court failed to properly account for the timing of the complained-of actions, which all occurred effectively simultaneously and immediately following a hearing in the related possessory action.

As set forth above, on August 4, 2020, the trial court held a hearing in the related possessory action, which concluded with the trial court

[7] It is especially of note that the trial court found in favor of the Plaintiffs on one of the prior RSA 540-A petitions, thereby sanctioning the Defendant for threatening to shoot Plaintiffs. Appx. at p.32-51; 216-22.

requiring the Defendant to respond to certain discovery requests that the Plaintiffs had propounded in that action. Thus, said hearing resolved in Plaintiffs' favor. Add; Appx. at p. 22, 70-74.

Almost immediately following that hearing and the decision from the trial court, the Defendant then started playing the continuous loud music, setting off fireworks/gunshots during pre-dawn and post-sunset hours, and yelled at the Plaintiffs to get out of her home. The purported neighbor and photographer then trespassed onto the Premises and confronted the Plaintiffs. See Trans.; Add.; Appx. at p.52-74; CD.

The timing here was not mere coincidence: all of these actions started occurring just a couple of days after the Plaintiffs prevailed at the August 4th hearing. At no time prior to the August 4th hearing did the Plaintiffs ever hear any music or any firecrackers/gunshots from Defendant's adjacent property. This was so even though the Plaintiffs began leasing the Premises in 2019, and, thus, had been there for more than a year at that point. See generally Trans.; Add.; Appx. at p.3-9, 52-74.

Additionally, it is important to place these actions – particularly the gunshot/firecracker sounds – in the appropriate context. Prior to the August 4th hearing, the Defendant had been previously sanctioned by the trial court in the context of a different RSA 540-A action that the Plaintiffs had filed against the Defendant. In that prior RSA 540-A action, which resolved in Plaintiffs' favor and was never appealed by the Defendant, the trial court concluded that the Defendant violated RSA 540-A when Defendant threatened to shoot the Plaintiffs via an intimidating sign. See Appx. at p. 32-51, 216-22. Thus, and given other contentious dealings between the parties in 2020, including with respect to the possessory action and in yet

other RSA 540-A actions, see generally Appx., the Plaintiffs were, understandably, in great fear for their safety when hearing what sounded to be gunshots deriving from Defendant. In fact, Plaintiffs were so concerned for their safety that, on August 10, 2020 they left the Premises to stay in a hotel – where Plaintiffs knew they would be safe. These facts were uncontroverted at the final hearing. See Trans.; Appx. at p.52-74; CD.

In its Order, the trial court did acknowledge that the actions highlighted occurred almost immediately following the August 4th hearing in the related possessory action, and the trial Court even found that the Defendant was "unhappy with the outcome of the August 4, 2020 hearing" as it required Defendant to respond to Plaintiffs' discovery requests. The trial court further concluded that the Plaintiffs:

> testified credibly that at no time during the summer of 2020 did the landlord use [her] outdoor stereo system. The [Plaintiffs] also testified credibly that, for all times when they were present at the leased premises in the summer of 2019 after moving in . . . they never heard the landlord use the outdoor stereo system. The landlord agreed that August 8, 2020 was the first time she had use[d] the outdoor stereo system during the summer of 2020, and she further could not recall how many times she used the outdoor stereo system during the summer of 2019. The landlord further admitted that she felt the need to turn on the outdoor stereo system in order to relax while she was working outdoors on her property, because of all the stress associated with the litigation with the [Plaintiffs]. This confirms a connection between the dispute with the [Plaintiffs] and the decision to use the outdoor stereo for the first time on August 8, 2020.

Add.; Appx. at p.73. Despite such findings, the trial court somehow still concluded that "[o]n balance, and acknowledging the admitted link between the music and the pending eviction, as well as the prior RSA 540-A finding

against this same landlord, the landlord's playing music and talking to herself from her own porch, even where the noise is carried across open water, is not a substantial interference with the [Plaintiffs'] quiet enjoyment or constructive eviction." Id.

Respectfully, this decision is erroneous, as no reasonable person could have reached such a conclusion based upon the evidence here and the timing of these actions. See Ellis, 164 N.H. at 466 ("Our standard of review is not whether we would rule differently, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence."). The only way in which such a conclusion could be reached is if the trial court – although purporting to acknowledge the timing of the actions – effectively ignored the fact that the August 4th hearing was the catalyst that led to the Defendant starting to play music continuously for days on end (and which was loud enough to disturb the Plaintiffs), setting off gunshots/firecrackers near the Premises, yelling at the Plaintiffs to get out of her home, and enabling the trespasser to enter upon the leased property.

Given that such actions all occurred almost simultaneously and immediately following the August 4th hearing, combined with the fact that at least the loud music, gunshots/firecrackers, and trespassing incident had never occurred prior to the August 4th hearing,[8] it is simply mystifying that the trial court concluded that no violation of RSA 540-A occurred here. The only rational conclusion that could be drawn is that, besides the

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[8] As noted in the Plaintiffs' RSA 540-A petition, the Defendant had previously yelled at Plaintiffs to leave the Premises on multiple occasions. Appx. at p.52-59.

obvious violation of the Plaintiffs' right to quiet enjoyment, the Defendant also violated RSA 540-A:2 by attempting to circumvent lawful eviction procedures. See RSA 540-A:2.

Simply put, by playing the loud music constantly for several days and at all hours of the day, lighting off firecrackers and/or shooting guns near the property during pre-dawn and post-sunset hours so as to further disturb and intimidate Plaintiffs (especially in light of the Defendant having been previously sanctioned by the trial court for threatening to shoot the Plaintiffs), yelling at the Plaintiffs to get out of the leased home, and having someone snoop on Plaintiffs, there is no other conclusion that could be reached except that the Defendant was, of course, attempting to effectively evict the Plaintiffs by creating such an inhospitable and hostile environment that Plaintiffs felt unsafe and needed to seek shelter in a hotel, given the situation caused by Defendant. To conclude otherwise is erroneous, unreasonable, and/or an unsustainable exercise of discretion that warrants reversal of the trial court's Order. See, e.g., O'Malley v. Little, 170 N.H. 272, 275 (2017) ("We do not decide whether we would have ruled differently than the trial court, but rather, whether a reasonable person could have reached the same decision as the trial court based upon the same evidence." (Quotation omitted)).

V. The trial court improperly failed to consider whether the Defendant's actions constituted a breach of the parties' Lease when engaging in the quiet enjoyment analysis.

In the RSA 540-A petition, and at the final hearing in this matter, Plaintiffs argued that the Defendant violated the parties' Lease primarily by virtue of the loud music that Defendant began playing after the August 4th

hearing, and that such violation affects the quiet enjoyment analysis under RSA 540-A:2. See generally Trans.; Appx. at p.52-74. In particular, Section 5 of the Lease explicitly provides that any "disturbing noises" are prohibited and that Plaintiffs shall not "play upon, nor suffer to be played upon[] . . . any musical instrument, radio, television, or other like device in the leased premises in a manner offensive to other occupants of the building," nor between certain hours of the day. Appx. at p.3 (emphasis added).

Plaintiffs maintain that Defendant breached this Lease provision by continuously playing loud music at all hours of the day and night over a several-day period. This is especially so given the unambiguous and plain language of the emphasized portion of the Lease provision above, which is worded in the passive voice and, thus, necessarily protects the Plaintiffs from suffering any such loud music being played upon them – whether by the Defendant or anyone else. See, e.g., Echo Consulting Servs., Inc. v. N. Conway Bank, 140 N.H. 566, 569 (1995) (explaining that a "lease is a form of contract that is construed in accordance with the standard rules of contract interpretation," and that the "intent of the parties to a lease is to be determined from the plain meaning of the language used"). In fact, substantial emphasis is placed upon quietude in general throughout the Lease, which serves to only further bolster the conclusion that the Defendant, just like the Plaintiffs, were bound by Section 5 of the Lease to avoid making any disturbing noises and avoid playing loud music. Appx. at p. 3-9.

Despite making such arguments, the trial court's Order refused to address the same. Instead, the trial court focused only upon whether the

Defendant's actions violated the common law right to quiet enjoyment. According to the trial court, "[m]uch could be said about whether the noise terms in the lease binding the tenant somehow also apply to the landlord, and whether the landlord's conduct, if done by the tenant to the landlord, would violate the terms of the lease." Add.; Appx. at p.73. Then, without citation to any authority, the trial court concluded that "[h]owever, RSA 540-A:2 adopts the common law definition of quiet enjoyment. The court does not believe that RSA 540-A was intended as an expedited lease interpretation and enforcement mechanism." Id.

Thus, the trial court refused to even address whether: (1) the Defendant did breach the Lease here; and (2) assuming that there was a breach, how such impacted the quiet enjoyment analysis. Id.

Plaintiffs insist that the trial court was required to engage in this two-step analysis, especially when such was requested by the Plaintiffs. Appx. at p.52-69; see generally Trans. Although this Court has noted that it generally relies upon the common law doctrine of quiet enjoyment when construing the statutory protection for quiet enjoyment provided in RSA 540-A:2, see, e.g., Adams, 151 N.H. at 641, there is no precedent (at least none that the Plaintiffs could find) to support the trial court's conclusion here that a breach of a lease provision pertaining to loud music/noises – and thus, which necessarily addresses quiet enjoyment issues – has no bearing upon whether such also may contribute to a violation of RSA 540-A:2. See DiMinico, 173 N.H. at 156 (explaining that a "breach of the covenant of quiet enjoyment occurs when the landlord substantially interferes with the tenant's beneficial use or enjoyment of the premises").

In other words, although a breach of a lease might not necessarily equate to a violation of quiet enjoyment per RSA 540-A:2, the trial court's refusal to analyze the same or even address whether there was a breach by Defendant here as to the loud music and other noises is certainly erroneous as the analysis could help determine whether there was, in fact, a violation of RSA 540-A:2. This is especially so given that any common law right to quiet enjoyment could certainly be affected by an express covenant in a lease. As explained by this Court, in "general, implied covenants are qualified and restrained by any express covenants of a more limited character." Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 284 (1992) (quotation omitted). "This rule does not eliminate implied covenants from agreements with express terms; rather, it serves only to check anything inconsistent with those express covenants, or which might otherwise have implied an undertaking of a more enlarged character." Id. (quotation omitted). Thus, the "implied covenant of quiet enjoyment may be as extensive as that of an express covenant, yet it does not go further." Id. (quotation and ellipsis omitted).

Accordingly, this Court's precedent makes clear that if there was a breach of the above-mentioned Lease provision, such should have at least been addressed by the trial court in its quiet enjoyment analysis, as the breach could have impacted such analysis. To simply refuse – as the trial court did here – to even consider this issue and the effect that it could have had in potentially qualifying or otherwise altering the common law right to quiet enjoyment that is imputed in RSA 540-A:2 is erroneous, see id., and warrants reversal or at least a vacating of the trial court's Order with instructions to engage in such analysis in the first instance.

VI. **The trial court improperly relied upon a lack of evidence as to local sound ordinances.**

The trial court's Order concluded, in part, that Plaintiffs "produced no evidence that the music [Defendant played] violated any local sound ordinances," and, therefore, the petition pursuant to RSA 540-A ought to be dismissed. Add.; Appx. at p.73. Although the Plaintiffs did not produce any evidence concerning local sound ordinances in this matter, the reality is that no such evidence is, or should have been, required here in order to demonstrate whether a violation of RSA 540-A occurred.

In fact, the trial court failed to cite to any precedent or other authority that requires the submission of such evidence in an action under RSA 540-A. See id. Nor are Plaintiffs aware of any statute, regulation, case, or anything else that requires the submission of evidence as to local sound ordinances or whether the volume of any music and/or noises must exceed a maximum level set in an ordinance, before the same can constitute a violation of the quiet enjoyment portion of RSA 540-A:2.

Such a requirement appears nowhere in RSA 540-A or in any other applicable statutory or regulatory scheme. Moreover, such conflicts with the Lease provision discussed above and the fact that the right to quiet enjoyment is a common law right independent of any statutory or regulatory requirements. See, e.g., DiMinico, 173 N.H. at 156-57 (describing the common law doctrine of quiet enjoyment). Thus, to the extent that the court's Order is premised upon the lack of evidence as to local sound ordinances, it is erroneous, unreasonable and/or an unsustainable exercise of discretion.

This is especially so when this Court has decided numerous cases involving quiet enjoyment breaches, and yet not a single one (at least none that Plaintiffs could find) refers to any obligation upon the moving party to produce evidence concerning local sound ordinances before a violation of RSA 540-A:2 could be found. See, e.g., DiMinico, 173 N.H. at 156-60; Adams, 151 N.H. at 641-42; Crowley v. Frazier, 147 N.H. 387, 389-391 (2001).

Rather, such cases simply discuss whether a landlord has substantially interfered with a tenant's beneficial use or enjoyment of the leased premises, as such is the general standard applied when assessing quiet enjoyment claims. See, e.g., DiMinico, 173 N.H. at 156-60; Adams, 151 N.H. at 641-42; Crowley, 147 N.H. at 389-391. Although music and other noises that violate maximum decibel levels set forth in a sound ordinance could certainly constitute a violation of a tenant's right to quiet enjoyment, there is absolutely nothing that requires a tenant to present evidence concerning sound ordinances (or whether the same have been violated) in order for there to be a quiet enjoyment violation under RSA 540-A:2.

Stated differently, there is no legal basis for the requirement that the trial court imposed here concerning local sound ordinances. Accordingly, the trial court's Order here was based at least in part upon a legally erroneous premise, and, as such, reversal – or at least a vacating of the trial court's Order – is warranted. See, e.g., New Hampshire Fish & Game Dep't v. Bacon, 167 N.H. 591, 596 (2015) ("We will uphold the trial court's findings and rulings unless they lack evidentiary support or are legally erroneous.").

VII. The trial court erred by misconstruing and mischaracterizing numerous pieces of evidence.

As the finder of fact, the trial court was, of course, entitled to resolve "conflicts in testimony, assess[] the credibility of witnesses, and determine[e] the weight of the evidence." Ellis, 164 N.H. at 466. However, the trial court here went well beyond such functions and, instead, ignored uncontroverted evidence presented at the final hearing and made other findings that have no support in the record.

For example, in part of the trial court's Order, the trial court refers to the Defendant merely "talking to herself from her own porch." Add.; Appx. at p.73. This is so even though it was undisputed at the final hearing that Defendant yelled at Plaintiffs to "get out of my home" multiple times. Defendant's counsel even admitted at the final hearing that his client yelled "get out of my house" at the Plaintiffs, claiming that such yelling was some form of purported therapy for the Defendant. Trans. at p. 107, 118.

Additionally, the trial court's Order significantly downplayed the frequency of the music and firecrackers/gunshots so as to conclude in Defendant's favor. For instance, the trial court's Order fails to indicate that: (a) the gunshots/firecrackers occurred during both pre-dawn and post-sunset hours over a multiple day period; and (b) the loud music was played continuously for several days on end. Such evidence was uncontroverted at the final hearing. See generally Trans.; Appx. at p.52-74; see also CD.

Nor does the trial court's Order accurately reflect the actual volume associated with the music and firecrackers/gunshots. Although the trial court correctly noted that the music derived from an "outdoor stereo system" and was "loud enough that the tenant[s] could hear it from the

outside of the leased premises," the trial court's Order went on to incorrectly conclude that the music "did not appear to overpower regular conversation" and could not be heard from inside the leased Premises.[9] Add.; Appx. at p.72-73. Nor does the trial court's Order mention in any manner the volume associated with the loud firecrackers/gunshots that were set off by the Defendant near the Premises during pre-dawn and post-sunset hours. See id.; see also CD.

These were not simply isolated incidents of inconsequential music playing and fireworks as the trial court attempted to describe in its Order. Rather, the continuous loud music and gunshots/firecrackers that the Defendant intentionally directed at the Plaintiffs over a multiple day period evidenced nothing but a thinly veiled attempt by Defendant to try to constructively evict the Plaintiffs. This is especially so when combined with: (1) the Defendant shouting at Plaintiffs multiple times to "get out of my home"; (2) the timing of the bad actions, which all occurred almost immediately following the August 4th hearing in the related possessory action; and (3) the prior dealings between the parties, which included the Defendant being previously sanctioned for threatening to shoot the Plaintiffs. See generally Appx.; Trans.; CD.

In fact, given what had previously transpired between the parties, upon hearing what sounded to be gunshots deriving from Defendant, Plaintiffs were in such fear that they were forced to leave the Premises for a

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[9] Plaintiffs never stated that they could not hear the music from inside the home. Although Plaintiffs may not have had video footage from inside the home concerning the music, Plaintiffs could certainly hear the loud rock music from inside the house.

period of time to seek shelter in a hotel – where they knew that they would be safe. The trial court's Order, however, makes no mention of the same, even though such facts were uncontroverted at the final hearing. Add.; see generally Trans.; Appx. at p.52-74.

Accordingly, the trial court's Order is laced with factual omissions, inaccuracies and mischaracterizations that the trial court, nevertheless, relied upon in its Order so as to conclude in Defendant's favor. Perhaps such was a function of the fact that the trial court held the final hearing in this matter simultaneously with the final hearing in the related possessory action. See generally Trans. Regardless of the reasoning, however, such was clearly erroneous and not supported by the record presented before the trial court. This is particularly so with respect to the trial court diminishing and otherwise downplaying the significance of the bad actions taken by the Defendant, including with respect to the volume and frequency thereof. Thus, the trial court's Order here, which relies upon such flawed factual findings, cannot stand. See, e.g., Rossini & Smith Companies, Inc. v. Locke, 139 N.H. 572, 573 (1995) ("We will not disturb the trial court's finding unless it is unsupported by the evidence or erroneous as a matter of law.").

VIII. Damages, reasonable attorney's fees and costs in Plaintiffs' favor are all warranted.

Assuming that the Court agrees with the Plaintiffs above and determines that the trial court erred here (thereby signifying that the Defendant violated RSA 540-A), then this Court should additionally order the trial court to award the Plaintiffs appropriate damages, reasonable attorney's fees and costs incurred in this matter.

Such derives from the plain language of RSA 540-A:4, which mandates that the trial court award the same. See RSA 540-A:4, VII (providing that "[u]pon 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 . . . 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." (Emphasis added.)); RSA 540-A:4, IX(a) (providing that "[a]ny 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" (emphasis added)); see also RSA 358-A:10; In re Liquidation of Home Ins. Co., 157 N.H. 543, 553 (2008) (providing that it is the "general rule that in statutes the word 'may' is permissive only, and the word 'shall' is mandatory" (quotation omitted)).

CONCLUSION

As set forth above, the trial court's Order contains numerous errors. Simply put, the trial court rendered an erroneous decision that failed to address many vital issues, and those matters that the trial court did address were done so in a flawed manner. Thus, and for the reasons discussed above, the trial court's Order must be reversed, or, at a minimum, vacated with instructions to the trial court to engage in a proper analysis. Additionally, to the extent that this Court agrees with Plaintiffs that the trial court erred and that the Defendant did violate RSA chpt. 540-A, then the

trial court should be further ordered to award appropriate damages, reasonable attorney's fees, and costs in Plaintiffs' favor.

REQUEST FOR ORAL ARGUMENT

Pursuant to New Hampshire Supreme Court Rule 16, the Plaintiffs request 15 minutes of oral argument to be presented by Craig Donais, Esq.

DECISION APPEALED

The decision appealed is in writing and is included in the addendum hereto. Said decision is also included in the Appendix accompanying this brief.

Respectfully submitted,

MAIA MAGEE AND SUNFIRE, LLC

By their Attorneys,

WADLEIGH, STARR & PETERS, PLLC

Date: March 15, 2021

By:/s/ Craig Donais
Craig Donais, Esq., NH Bar #12466
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CERTIFICATION

I hereby certify that a copy of this brief has this 15th day of March 2021 been served upon all counsel of record by e-filing with this Court. I further certify that this brief complies with the word limitations set forth in Rule 16, as there are 9,362 words in this brief, exclusive of any pages containing the table of contents, tables of citations, pertinent texts of statutes, rules, regulations, and other such matters. I also certify that this brief complies with all typeface and other formatting requirements set forth in Rule 16.

/s/ Stephen Zaharias
Stephen Zaharias, Esq.

ADDENDUM

See attached.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
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http://www.courts.state.nh.us

FINAL ORDER
(Pursuant to RSA 540-A:4)

Case Name: **Maia Magee v. Vita Cooper**
Case Number: **458-2020-LT-00068**

On September 10, 2020, a hearing was held on the above entitled matter at said Court.

Defendant ☒ was present ☐ was not present.

After hearing the evidence presented, the Court,

☐ Finds that the Defendant has violated RSA 540-A: ______________________

☐ Orders the defendant to restore and maintain all utility services provided as part of the rental agreement with the plaintiff until such time as the rental agreement is lawfully modified or the plaintiff's tenancy is lawfully terminated.

☐ Orders the defendant not to interfere directly or indirectly with plaintiff's access to or use and enjoyment of the premises rented by the plaintiff (or any part thereof) without prior judicial authorization.

☐ Orders the defendant not to interfere directly or indirectly with plaintiff's access to a possession of his/her personal property without prior judicial authorization.

☐ Orders the defendant not to enter the premises rented by the plaintiff without permission from the plaintiff or a court of competent jurisdiction, except to make emergency repairs which include the formulation of a plan for remediation of, or to engage in emergency remediation of, an infestation of insects, including bed bugs or rodents.

☐ Orders the defendant not to interfere with the quiet enjoyment of the premises by the plaintiff or members of his/her household.

☐ Orders the defendant not to damage or permit any damage to any part of the premises he/she is renting from the plaintiff.

☐ Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to make necessary repairs.

☐ Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to evaluate whether bed bugs are present.

☐ Orders the defendant to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.

☐ Orders the defendant to investigate the plaintiff's report of an infestation of insects, including bed bugs or rodents.

☐ Orders the defendant to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.

☐ Orders ☐ plaintiff ☐ defendant to pay damages to the ☐ plaintiff ☐ defendant in the amount of $ ________

☐ Orders ☐ plaintiff ☐ defendant to pay attorney's fees in the amount of $ __________ to the ☐ plaintiff ☐ defendant

☒ Other orders:

By way of background, the landlord came to what would have been the merits hearing on August 4, 2020 in Docket No. 458-2020-LT-00032 ("Case #32), having objected to and declined to answer any of the tenant's interrogatories except for her name and address. The court reviewed the interrogatories and determined that some of the interrogatories were reasonably calculated to lead to discoverable information and should have been answered. The hearing was continued to September 10, 2020 to allow the discovery to occur.

The tenant claims that the landlord retaliated against her because the landlord was unhappy with the outcome of the August 4, 2020 hearing.

The court has considered all of the evidence presented and finds that the tenant has failed to carry her burden of proof that the alleged gun shots and firecrackers were in retaliation against the tenant for the outcome of the hearing on August 4, 2020. The credible evidence at the hearing was that occasional fireworks are common during the summer in Milford. The tenant has also not demonstrated that the alleged snooping photographer had any connection to the landlord, though the conversation was awkward from start to finish.

The remaining issue is the landlord's use of an outdoor stereo system to play music between August 8 and August 10, as well as the landlord shouting "get out of my house" from her home, both of which were loud enough that the tenant could hear it from the outside of the leased premises.

The leased premises include a single family home located close to the top of an abandoned quarry filled with water. The landlord's primary residence is a single-family home located on the adjacent real property, which is also owned by the landlord. This residence is located to the north of the quarry/pond and at a significantly lower elevation than the leased premises. As the crow flies, the landlord's residence is approximately 400 feet northwest of the leased premises. Exhibits 5-I and 5-J in Case #32 depict the general layout of the area. The court can take judicial notice of the basic scientific fact that sound waves travel more easily across open water than they do through a wooded area, hence the description of the quarry as a "natural amphitheater". Most of the neighborhood is wooded. The court viewed videos taken outside of the leased premises, where the sound of the landlord's outdoor stereo could clearly be heard. The sounds included identifiable classic rock with DJ announcements and radio advertisements between songs. The voice of the

person who was taking the video was louder than the music recorded coming from the landlord's property, but the music and spoken words were easily recognizable from the video.

Based on Exhibit C, the outdoor stereo system on the landlord's property appears to have been in place for some time. The landlord said without contradiction that it had been there since 2008. There was some suggestion that in the past the outdoor stereo system had been used for outdoor concerts in the "natural amphitheater" created by the quarry walls in the area. The tenant testified credibly that at no time during the summer of 2020 did the landlord use that outdoor stereo system. The tenant also testified credibly that, for all times when they were present at the leased premises in the summer of 2019 after moving in at the end of May, 2019, they never heard the landlord use the outdoor stereo system. The landlord agreed that August 8, 2020 was the first time she had use the outdoor stereo system during the summer of 2020, and she further could not recall how many times she used the outdoor stereo system during the summer of 2019. The landlord further admitted that she felt the need to turn on the outdoor stereo system in order to relax while she was working outdoors on her property, because of all the stress associated with the litigation with the tenant. This confirms a connection between the dispute with the tenant and the decision to use the outdoor stereo for the first time on August 8, 2020. The tenant claims that this playing of loud music and the audible demand that she get out of the landlord's house, impairs her quiet enjoyment of the leased premises and is an effort by the landlord to constructively evict her.

With the landlord having previously admitted that there is a connection between her decision to use the outdoor stereo and the litigation with the tenant, it falls to the court to determine whether that decision interferes with the tenant's quiet enjoyment of the leased premises.

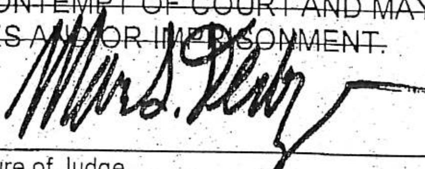
Much could be said about whether the noise terms in the lease binding the tenant somehow also apply to the landlord, and whether the landlord's conduct, if done by the tenant to the landlord, would violate the terms of the lease. However, RSA 540-A:2 adopts the common law definition of quiet enjoyment. The court does not believe that RSA 540-A was intended as an expedited lease interpretation and enforcement mechanism. At common law, a breach of the covenant of quiet enjoyment requires a substantial interference with the beneficial use of the leased premises. On balance, and acknowledging the admitted link between the music and the pending eviction, as well as the prior RSA 540-A finding against this same landlord, the landlord's playing music and talking to herself from her own porch, even where the noise is carried across open water, is not a substantial interference with the tenant's quiet enjoyment or constructive eviction.

The tenant produced no evidence that the music violated any local sound ordinances, nor was there any evidence of whether the music could be heard from inside the building. The music was played during a summer weekend when people generally listen to music outside, and it did not appear to overpower regular conversation. Finally, some of the videos appear to have been taken at the very edge of, if not over, the property line separating the leased premises from the landlord's 'home' lot, and/or the crushed stone that forms the boundary under Section 30 of the lease. Case dismissed.

Case Name: Maia Magee v. Vita Cooper
Case Number: 458-2020-LT-00068
FINAL ORDER PURSUANT TO RSA 540-A:4

☐ Orders ☐ plaintiff ☐ defendant to pay the following fees to the sheriff/police:
Service: ______ $ ______ Travel: ______ $ ______
Other: ______ $ ______ TOTAL ______ $ ______

~~WILLFUL VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN THE IMPOSITION OF CIVIL PENALTIES, FINES AND/OR IMPRISONMENT.~~



September 18, 2020
Date

Signature of Judge

Mark S. Derby
Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - District Division - Milford
4 Meadowbrook Drive
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September 18, 2020

CRAIG S DONAIS, ESQ
WADLEIGH STARR & PETERS PLLC
95 MARKET ST
MANCHESTER NH 03101

___Case Name: **Maia Magee v. Vita Cooper**
Case Number: **458-2020-LT-00068**

Enclosed please find a copy of the Court's Order dated September 18, 2020 relative to:

Final Order (Pursuant to RSA 540-A:4)

Lynn R. KillKelley
Clerk of Court

(458939)

C: Bruce J. Marshall, ESQ