

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT

JESSE E. TORRES III)
 JENNIFER J. ADAMS)
 Plaintiffs)
 vs.)
 SOPHIE J. TORRES)
 JESSE E. TORRES IV)
 DEBTMERICA, LLC.)
 DONALD F. TORRES)
 Defendants)

Civil Docket # BACV2011-00433

PLAINTIFFS' CONCISE STATEMENT IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

The Plaintiffs respectfully submit this concise statement of undisputed facts and of law pursuant to Superior Court Rule 9A(b)(5) in support of their motion for summary judgment.

UNDISPUTED FACTS

1. On April 24, 2009, the Plaintiff Jesse E. Torres III (Jet III) and his Mother, Defendant Sophie J. Torres (Mrs. Torres), did enter into a binding contract entitled "PERMANENT TRANSFER OF PROPERTY RIGHTS" (Contract) hereto attached as Exhibit "A".
2. The properties as defined in the Contract as the PROPERTIES (herein also referenced to as "PROPERTIES") were "*Grandma's House*" located at 345 Carriage Shop Road, "*Horse Property*" located across the street from Grandma's House, consisting of 5+ acres of land, Town of Falmouth Map 29, Sec 01, Parcel 009, Lot 000, Book 01121, Page 0060, and "*Uncle Fred's House*" located at 562 Waquoit Highway (formally, 1 Carriage Shop Road). All properties are located in East Falmouth, Barnstable County, Massachusetts. (Contract, Exh. A, pg. 2, [Agreement])
3. The appraised values of these PROPERTIES were assessed by licensed appraisers and/or

offers to purchase, and were valued, more or less, in the following amounts: Grandma's House four-hundred-twenty-thousand-dollars (\$420,000), Horse Property nine-hundred-sixty-thousand-dollars (\$960,000) and Uncle Fred's House two-hundred-sixty-thousand-dollars (\$260,000) for an amount totaling one-million-six-hundred-forty-thousand dollars (\$1,640,000). (Appr., Exh. J through K) (Plaintiffs' Aff., Sec. IV, ¶ 16).

4. The Contract, in summary, contained two (2) separate yet related assets that were its basis (Contract, Exh A, Pg. 2 [Agreement]) (Plaintiffs' Aff., Sec. IV, ¶ 17):

- a) the immediate permanent and persistent transfer of property rights to Jet III, properties upon which the Plaintiffs Jesse E. Torres III and Jennifer J. Adams have enjoyed the tenancy of, and improved the value of solely based on the Contract (Plaintiffs' Aff., Sec. IV, ¶ 17) (Contract, Exh. A, Pg. 2 [Agreement]), and
- b) [that] the PROPERTIES defined in the Contract were to be titled and transferred to Jet III by the Will of Mrs. Torres upon her death. (Will, Exh. H, Part 5, Pg. 1 & 2, ¶ 4 of Part 5) (Plaintiffs' Aff., Sec. IV, ¶ 17) (Contract, Exh. A, Pg. 2 [Agreement]).

5. The following documents were provided on or about the time Mrs. Torres entered into the Contract with her son, Jet III, and clearly set forth that Mrs. Torres was capable of and did execute the Contract, and did so as her free act and deed (Ref. follow):

- a. A statement from the long-time Doctor of Mrs. Torres, Dr. Arthur Crago, that she was of sound mind and body. (Doc., Exh. B, pg 1).
- b. A sworn, notarized affidavit from the long-term neighbors of Mrs. Torres, the Framsons, stating, among other things, that the Defendant Sophie J. Torres "*is as sharp as she was the day we met her, in fact sharper than many people half her age*", (Framson Aff, Exh. C, specific ref. ¶ 2).
- c. A Federal Certificate of HECM Counseling, stating that Mrs. Torres was fully capable of understanding and entering into a Reverse Mortgage in the same time-frame as the Contract, (Cer., Exh D, entire doc.).
- d. A sworn Affidavit by the Massachusetts Notary Public attesting to the sworn testimony of the Defendant Sophie J. Torres, that she signed the documents that day, by her own free act and not under any duress, (Mrs. Torres Aff., Exh E, entire doc.).

6. The witnesses to the Contract, Will, Health Care Proxy and Power of Attorney, that were signed on April 24, 2009, were retired Falmouth Police Officer, Drew Framson and his wife Gail. (Framson Aff's., Exh. C, ¶ 1, and Exh. L, ¶ 2)

7. The witnesses, Gail and Drew Framson were the long-term neighbors of Mrs. Torres and her late husband, Jesse E. Torres Jr. (Framson Aff's., Exh. C, ¶ 1, and Exh. L, ¶ 1)
8. Gail and Drew Framson were in attendance during the entire signing process of the Contract, Will, Health Care Proxy and Power of Attorney. (Framson Aff., Exh. L, ¶ 2 & 3)
9. Gail and Drew Framson accompanied the Defendant Sophie J. Torres to, and were in attendance during, the notarization of Mrs. Torres' and their signatures at the UPS store located in the Kenyon's Shopping Plaza in East Falmouth, Barnstable County, Massachusetts. (Framson Aff., Exh. L, ¶ 4).
10. Mrs. Torres, through her Counsel, received the Affidavit of Gail and Drew Framson dated September 19, 2011, (Framson Aff., Exh. L) as an attachment to the Plaintiffs' Response and Oppositions to Debtmerica on Sept. 20, 2011, and to Jesse E. Torres IV on Sept. 26, 2011, for their Motions to Dismiss For Failure To State A Claim. (Cer. of Ser., Exh. T & U).
11. Regarding the circumstances under which the Contract was signed, the Defendant, through Counsel, has stated in numerous of their pleadings in the above-entitled action, that it was signed under "*suspected circumstances*" and/or that Mrs. Torres was "*induced*" into signing it, and/or other baseless and untrue claims. (Plaintiffs' Aff., Pg. 3, Sec. II, ¶ 7) (Memos., on Aug. 04, 2011: Exh. V, ¶ 1 ["Argument"]; on Sep. 09, 2011: Exh. W, ¶ 1 ["Argument"]; Exh. X, Sec. II, ¶ 1 ["Factual Summary"], Sec. III, ¶ 1 ["Legal Argument"])
12. The Defendant, individually or through her Counsel, has never provided a sworn affidavit attesting to any of the pleadings in the above-entitled matter. (Plaintiffs' Aff., Sec. II, ¶ 7)
13. In the Framsons' affidavit of September 19, 2011, they attested under oath as to their observations of the circumstances at the time of the signing of the aforementioned documents which states in part the following:

“...The documents which we refer to, were Last Will and Testament of Sophie J. Torres, Health Care Proxy of Sophie Torres, and Transfer of Property Rights Document. Present were Sophie J. Torres, her son Jesse Jr. [III] Jennifer Adams

and ourselves. We distinctly recall that Jesse Torres Jr [III] took painstaking and methodical care to slowly read each document word for word for Sophie Torres. Sophie Torres was continuously asked by Jesse Torres Jr. [III] if she understood what was being read aloud. We further recall that Sophie Torres was given a copy to read along with. This took place at Sophie Torres kitchen table, and she asked questions and was answered by her son. Sophie neither objected to anything presented to her, and was in fact, jovial, lucid and happy throughout. (Framson Aff., Exh. L, ¶ 3)

“...The Notary also signed and placed a seal on the documents. Again, Sophie Torres was in our opinion fully aware what she had signed, quite happy what she had done, and had complete understanding. There is no doubt in our minds that she did this freely.” (Framson Aff., Exh. L, ¶ 4)

14. The Defendant Sophie J. Torres, has stated to this very Court her capabilities, on August 8, 2011, when she filed an Opposition to the Plaintiffs' Verified Motion for Mental Exam, which states in part:

“As grounds for her opposition, Sophie Torres maintains that she is and at all relative times was of sound mind and capable of making decisions concerning her personal and legal affairs.” (Opp., Exh. G, Pg. 1, ¶ 2).

15. The supporting documents and affidavits by the witnesses, clearly show beyond any reasonable doubt, that the Defendant Sophie J. Torres was fully capable and did by her free voluntary act, execute and sign the Contract, Will, Health Care Proxy and Power of Attorney on April 24, 2009. (Mrs. Torres Aff., Exh E, entire doc.) (Supra ¶ 5 – 10, 13 & 14) .

16. The Defendant, by her own words through competent legal counsel, in pleadings before this very Court stated, “*she is and at all relative times was of sound mind and capable of making decisions concerning her personal and legal affairs*” (Opp., Exh. G, Pg. 1, ¶ 2) and is therefore, fully capable, and did by her free voluntary act, breach the Contract of April 24, 2009 with the Plaintiff Jesse E. Torres III (Supra ¶ 5 – 10, 13 & 14) (Notice, Exh. F) (Plaintiffs' Aff., Sec. IV, ¶ 23).

17. There was an existing Will of the Defendant Sophie J. Torres and her late husband Jesse E. Torres Jr., in full force and effect, prior to the Will, created on her behalf, of April 24, 2009. (Plaintiffs' Aff., Sec. VI, ¶ 30).

18. The then existing Will of the Defendant Sophie J. Torres and her late husband Jesse E.

Torres Jr. left all of their properties and assets to their only natural child, the Plaintiff Jesse E. Torres III. (Plaintiffs' Aff., Sec. VI, ¶ 30).

19. The Defendant Sophie J. Torres, in her Will of April 24, 2009 did change the terms of her existing Will, and did transfer two (2) waterfront lots in Florida from being left to her Son, the Plaintiff Jesse E. Torres III, to being left to her adopted daughter, Mary C. Torres, of East Falmouth, Barnstable County Massachusetts. (Plaintiffs' Aff., Sec. VI, ¶ 30 - 32) (Will, Exh. H, Part 5, ¶ 5 of Part 5)
20. The Will of Mrs. Torres dated April 24, 2009, had no benefit to the Plaintiff Jesse E. Torres III over the prior existing Will of his late father Jesse E. Torres Jr. and the Defendant Sophie J. Torres, and did in fact, cause him to lose the benefit of inheriting two (2) waterfront lots in Florida. (Plaintiffs' Aff., Sec. VI, ¶ 30 - 32) (Will, Exh. H, Part 5, ¶ 5 of Part 5).
21. It was the Defendant Sophie J. Torres, who demanded that her Will of April 24, 2009 be created, and was created in accordance with her terms and conditions specific to taking from the benefit of her Son, and transferring to the benefit of her adopted daughter, two (2) water-front lots. (Plaintiffs' Aff., Sec. VI, ¶ 30 - 32) (Will, Exh. H, Part 5, ¶ 5 of Part 5).
22. The Will of the Defendant Sophie J. Torres dated April 24, 2009, (Will, Exh. H), was created using Quicken Will Maker. (Screen Shot, Exh. P) (Plaintiffs' Aff., Sec. VI, ¶ 32).
23. All answers to the Quicken Will Maker "interview process" came directly from, and with the approval of, the Defendant Sophie J. Torres. (Plaintiffs' Aff., Sec. VI, ¶ 32).
24. The Plaintiff Jesse E. Torres III did agree to not file claim in Barnstable Probate Court against the Estate of his late father Jesse E. Torres Jr. solely based upon the execution of the Contract and the conditions contained therein. (Plaintiffs' Aff., Sec. IV, ¶ 17).
25. It is an undisputed fact that the Plaintiffs Jesse E. Torres III and Jennifer J. Adams did:
 - a) expend thousands of dollars and do thousands of hours of maintenance, construction,

engineering, financial and accounting assistance as well as website design, on or for, the PROPERTIES where they now live and work, (Websites: jetiii.com/sophie, jetiii.com/waquoit, jetiii.com/freshpond/photos.asp)¹ and

b) did so solely in reliance upon the terms and conditions of the Contract. (Plaintiffs' Aff., Sec. IV, ¶ 17)

26. Mrs. Torres knew that the PROPERTIES were valued less than the amounts owed to her Son by her and the estate of her late husband. (Contract, Exh. A, ¶ 8).

27. As a condition to her agreeing to and signing the Contract, the Defendant Sophie J. Torres insisted that the Contract release her from any and all monies, and obligations owed her Son, notwithstanding the lesser property values, and as such the following language was specifically added to the Contract: (Plaintiffs' Aff., Sec. IV, ¶ 18) (Contract, Exh. A, ¶ 8).

“...Further, JET does herein acknowledge that he fully understands that the monies he receives from the PROPERTIES will most likely not fully repay him for the services he provided, the monies he advanced and the interest to which he is entitled.” (Contract, Exh. A, ¶ 8)

28. The Contract contained clear and concise language that if any of the terms of the Contract were changed, including, but not limited to the Will of the Defendant Sophie J. Torres, then all monies owed to her Son, the Plaintiff Jesse E. Torres III, in the agreed-to amount, in excess of, one-million-six-hundred-forty-thousand-dollars (\$1,640,000), would and did become fully due and payable (Ref. follow):

“...this provision is both permanent and persistent and cannot be modified, including but not limited to, any future Wills or Codicils. This is a binding and durable provision...” (Contract, Exh. A, ¶ 6)

“Solely in consideration of receiving the PROPERTIES, JET does herein relinquish any and all claims against the Estate of SJT and DAD for the services rendered and the monies loaned to SJT and/or DAD *as long as the terms and conditions of this agreement are fully complied with*. If any of these provisions are violated, any monies and interest (at a rate not to exceed that of a normal bank loan during the same time frames and considerations) *will become fully due and payable...* (Contract, Exh. A, ¶ 8)

¹ A CD has been provided with a snapshot of the websites hereto attached and marked as exhibit “AA”. The websites contain hundreds of pages of documents and represent hundreds of hours of work by the Plaintiffs. The “sophie” website is password protected (user: sophie, pass: sophie821). Note that certain private files have additional passwords as they were used to acquire financing and contain personal information. The password will be provided to the court and parties as required.

29. The Defendant Sophie J. Torres did breach the Contract by changing the terms of the Contract specific to the permanent and persistent transfer of the property rights of “Uncle Fred's House” by ordering the Plaintiffs off the property, and later serving on the Plaintiffs a Notice to Quit, to Evict the Plaintiffs from a property whose property rights had been transferred permanently and persistently to the Plaintiff Jesse E. Torres III. (Notice, Exh. **M**, Entire doc.).
30. The Defendant Sophie J. Torres did breach the Contract by changing the terms of the Contract specific to the permanent and persistent transfer of the property rights of “Uncle Fred's House” by ordering the Plaintiffs off the property, and later serving on the Plaintiffs a Notice of No Trespass on a property whose property rights had been transferred permanently and persistently to the Plaintiff Jesse E. Torres III, (Notice, Exh. **N**, Entire doc.)
31. On or about May 28, 2009 , the Defendant Sophie J. Torres did notify the Plaintiff Jesse E. Torres III (Jet III) that she had talked with her grandson, the Defendant Jesse E. Torres IV, and that he was paying for, and they were in the process of, having Attorney Kathryn Wilson of Mackey and Foster (Kate) draw up a new Will. (Notice, Exh. **F**, Entire doc.) (Plaintiffs' Aff., Sec. IV, ¶ 23).
32. From May 28, 2011 through July 6, 2011, Jet III, who was the then Attorney-in-fact of Mrs. Torres (Exh. **I**, Entire doc.) had numerous communications in that capacity with Mrs. Torres' attorney, Kate, in an attempt to stop her from completing a new Will that was being written for the Defendant Sophie J. Torres. (Emails Exh. **O**, docs. (email hist.)).
33. The Defendant Sophie J. Torres did execute a new Will, replacing her Will of April 24, 2009, in violation of the clear and concise language contained in the Contract. (Notice, Exh. **F**, Entire doc.) (Plaintiffs' Aff., Sec. IV, ¶ 23 - 26).

34. The Plaintiffs did on or about July 11, 2011 send by certified mail Notices of Breach of Contract to the Defendant Sophie J. Torres and her Attorney Kathryn Wilson, and did give them a right to cure said defaults. (Notice, Exh. F, Entire doc.) (Plaintiffs' Aff., Sec. IV, ¶ 24 & 26).
35. The Defendant never responded to the Plaintiffs' Notice of Breach of Contract, nor did she make any attempt to cure the defaults contained therein. (Plaintiffs' Aff., Sec. V, ¶ 26).
36. The Defendant Sophie J. Torres has failed to complete the construction of Grandma's House. See photo of October 5, 2011 (Picture, Exh. Q) (Plaintiffs' Aff., Sec. V, ¶ 27 - 29).
37. The Defendant Sophie J. Torres has failed to maintain the property known as Uncle Fred's House. See photos of October 5, 2011 (Picture, Exh. R) (Plaintiffs' Aff., Sec. V, ¶ 27 - 29).
38. The Defendant Sophie J. Torres has, by not maintaining Uncle Fred's House, placed said property in jeopardy of foreclosure as this act is in specific violation of her Reverse Mortgage contract. Photos taken Oct. 5, 2011. (Picture, Exh. R) (Plaintiffs' Aff., Sec. V, ¶ 27 - 29).
39. The Defendant Sophie J. Torres has, by not maintaining the Horse Property and allowing its pasture land to become overgrown, effectively turned the property from highly valued pasture land, into property which will require significant excavation and landscaping to again be of that use. This has detrimentally affected its value. Photo taken Oct. 5, 2011 (Picture, Exh. S) (Plaintiffs' Aff., Sec. V, ¶ 27 - 29).

Sophie J. Torres: History

40. The Defendant Sophie J. Torres was the Executor of the Estate of her late sister Lillian R. Souza/Sousa (Sister), formally of Falmouth, Barnstable County, Massachusetts. (Plaintiffs' Aff., Sec. IX, ¶ 60).
41. The Defendant Sophie J. Torres was sued in her capacity as Executor of her Sister's

estate, and/or individually in Barnstable Probate Court on or about 1995, by numerous of her direct family members, over her Sister's Estate and/or her direct acts concerning the Estate. (Plaintiffs' Aff., Sec. IX, ¶ 61) (Ver. Complaint, ¶ 109(b)).

42. The Defendant Sophie J. Torres and her late husband, did secure a loan using, as collateral, the monies in trust for the estate of her late mother-in-law, Amelia Torres of Barnstable County, Massachusetts. These monies in trust were in the amount of sixty-thousand-dollars (\$60,000) more or less. The Defendant Sophie J. Torres and/or her late husband did use the proceeds received from said loan for their personal benefit, and/or for the benefit of the businesses owned or controlled by them. (Plaintiffs' Aff., Sec. IX, ¶ 59) (Ver. Complaint, ¶ 109(a)).
43. This bad act in ¶ 42 above, was done without the knowledge or permission of, the other heirs to said Estate. (Plaintiffs' Aff., Sec. IX, ¶ 59) (Ver. Complaint, ¶ 109(a)).
44. The Defendant Sophie J. Torres did send her husband Jesse E. Torres Jr. (DAD) *“for a three (3) visit with her son in Mexico”*. She never told the Plaintiffs, nor did the Plaintiffs have any knowledge of, the fact that DAD was suffering from severe Alzheimer's. (Plaintiffs' Aff., Sec. IX, ¶ 62, 64) (Ver. Complaint, ¶ 109(c)).
45. The late father of the Plaintiff Jesse E. Torres III, did stay with Plaintiffs, Jennifer J. Adams and Jesse E. Torres III, at their home in Baja California North, Mexico for a period of approximately five (5) months. (Plaintiffs' Aff., Sec. IX, ¶ 63) (Ver. Complaint, ¶ 109(c))
46. Several years before, during and after his stay in Mexico with the Plaintiffs, Jesse E. Torres Jr. was suffering from severe Alzheimer's. (Plaintiffs' Aff., Sec. IX, ¶ 62 - 64) (Ver. Complaint, ¶ 109(c)(d))
47. During the entire five (5) month stay by her late husband with the Plaintiffs, Sophie J. Torres did receive and cash DAD's Social Security Checks. (Plaintiffs' Aff., Sec. IX, ¶ 66).

48. Not once did the Defendant Sophie J. Torres during her late husband's five (5) month stay with the Plaintiffs, ever provide any monies to the Plaintiffs, for his care, living or medical expenses.(Plaintiffs' Aff., Sec. IX, ¶ 67).
49. The Defendant Sophie J. Torres was offered an amount of approximately eight-hundred-fifty thousand dollars (\$850,000) for the Horse Property during the period her late husband had Alzheimer's prior to his death on January 8, 2007. (Plaintiffs' Aff., Sec. IX, ¶ 75).
50. The Defendant Sophie J. Torres did refuse the offer of \$850,000, more or less, on the Horse Property, as stated in ¶ 49 above. (Plaintiffs' Aff., Sec. IX, ¶ 76).
51. After he had been in the care of the Plaintiffs for five (5) months more or less, the Defendant Sophie J. Torres was asked by her Son for financial assistance for the medical care of his late father, Jesse E. Torres Jr., as the Plaintiffs' money had run out due to paying for his high medical costs. She refused and instead said to send him home. (Plaintiffs' Aff., Sec. IX, ¶ 62, 68) (Ver. Complaint, ¶ 109(c)(ii)).
52. During DAD's five (5) month stay with the Plaintiffs they modified their home and yard to best insure DAD's safety, installing locks and gates on all critical areas. (Plaintiffs' Aff., Sec. IX, ¶ 70).
53. Prior to and upon DAD's return to Falmouth, the Plaintiff Jesse E. Torres III had numerous conversations with the Defendant Sophie J. Torres as to DAD's condition, and that it was imperative that she have gates and locks installed throughout their home, in particular, at stairways and the kitchen. (Plaintiffs' Aff., Sec. IX, ¶ 71).
54. Along with their personal experience caring for DAD, the Plaintiffs did send to the Defendant Sophie J. Torres, numerous reading materials on caring and protecting Alzheimer patients. (Plaintiffs' Aff., Sec. IX, ¶ 72).
55. On January 8, 2007, after his return from Mexico, while the Defendant Sophie J. Torres

was at home watching her husband, he went upstairs, got into her jewelery, fell down the stairs while carrying it, and broke his neck and died. (Plaintiffs' Aff., Sec. IX, ¶ 74(d)) (Ver. Complaint, ¶ 109(d)).

56. The Defendant Sophie J. Torres never expended any of her and/or her late husband's funds for a home caretaker on behalf of her husband, nor sold any of the properties he had inherited from his family, for his care. (Plaintiffs' Aff., Sec. IX, ¶ 77).
57. Dad, Jesse E. Torres Jr., stated to his Son, the Plaintiff Jesse E. Torres III, in his first visit to his Son's home in Mexico in 2001, that his biggest worry was that he would become a burden to his family if he got sick, as the Defendant Sophie J. Torres would refuse to sell his properties for his care, and that the burden would once again fall on his Son. (Plaintiffs' Aff., Sec. IX, ¶ 78)

STATEMENT OF RELEVANT LAW

58. The Plaintiffs Jennifer J. Adams and Jesse E. Torres III, in accordance with the provisions of M.R.C.P. 56, respectfully move for Summary Judgment on Count I through Count IV of the Plaintiffs' Complaint specific to the Defendant Sophie J. Torres and submits with it this Concise Statement in Support of their Motion for Summary Judgment, the Complaint, Memorandum, Affidavit, and various Exhibits which demonstrate that all the facts necessary to resolve this dispute are uncontested and that there are no triable issues.
59. Summary judgment should be granted where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983); Community National Bank v. Dawes, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56c. The moving party bears the burden of affirmatively demonstrating the absence of a triable issue, and that the moving party is entitled to judgment as a matter of law. Pederson v. Time, Inc., 404 Mass. 14, 16-17 (1989). Where

the party moving for summary judgment does not have the burden of proof at trial, this burden may be met by either submitting affirmative evidence that negates an essential element of the opponent's case, or by "demonstrating that proof the at that element is unlikely to be forthcoming at trial." Flesner v. Technical Communications Corp., 410 Mass. 805, 809 (1991); Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). Once the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts establishing the existence of a material fact in order to defeat the motion. Pederson, supra at 17.

60. This Motion for Summary Judgment clearly sets forth that the Contract Language was both clear and concise. Even if we were to assume for the purposes of this memorandum, that any of the provisions of the Contract were in dispute by the parties, it remains that questions of the interpretation of contracts are not contested issues of fact for Summary Judgment purposes. The Theory of interpretations of the provisions of the contract are not issues of fact. See Fay, Spofford and Thorndike, Inc. v Massachusetts Port Authority, Mass. App. 336, 387 N.E. 2D 206 (1979).

61. It is a clear and indisputable fact that the Defendant Sophie J. Torres, was and is: "*of sound mind and capable of making decisions concerning her personal and legal affairs*". These are the very words used by the attorney of Mr. Torres, in their response to the Plaintiffs' Motion for Mental Exam. Mrs. Torres' attorney also argues that she is now ninety (90), however, it is clear that she was, and is, responsible for her actions in this matter and should not be allowed to claim otherwise, anymore than this Court would allow her to be denied a loan based on her age, as such discrimination would be in violation of GL c. 151B, and age discrimination should never be tolerated; See: First Fed. Sav. & Loan Ass'n, 455 F.2d 818, 822-825 (5th Cir. 1972); Taylor v. Safeway Stores, Inc., 365 F. Supp.

468, 472-473 (D. Colo. 1973).

62. On April 24, 2009, the Defendant Sophie J. Torres did freely, and to her benefit, enter into a binding contract with her son, the Plaintiff Jesse E. Torres III, which was witnessed and notarized. Further, on that day, she swore an affidavit before a Notary, and did so as her free act and deed. The Contract contained clear, concise and simple language as to the penalties if she was to breach the Contract. The Defendant did breach the Contract, did so knowingly and freely, and did refuse an opportunity to cure when she and her then attorney each received a Notice of Breach of Contract by certified mail. These facts are undisputed. See Cassesso v. Commissioner of Correction, (1983); Community National Bank v. Dawes, Id.
63. The Defendant's argument is not that Mrs. Torres signed the Contract and Will, not that the Contract doesn't say what it says, nor that Mrs. Torres did not breach the contract. Instead, the Defendant's argument states that Mrs. Torres is 90. This argument is clearly discriminatory, and as such should not be allowed, see: First Fed. Sav. & Loan Ass'n & Taylor v. Safeway Stores, Inc. Id. The Defendants make unsubstantiated claims that she was coerced to sign the Will and Contract in this matter, claims that have been clearly repudiated herein. All of these claims by the Defendants are made without the benefit of a sworn affidavit, in specific violation of M.S.C.R. 9A(a)(4), and as such, the Court need not, and should not consider these claims.
64. Mrs. Torres' attorney as well as a trained police officer who was a neighbor of over 10 years, along with her doctor and a federally licensed HECM counselor who evaluated her, and even Mrs. Torres herself, all show that Mrs. Torres knew exactly what she was doing when she signed the Contract, and that she did so because it benefited her, and further, that she knew exactly what she was doing when she breached the Contract. It is

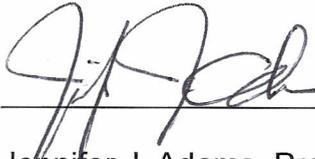
unfortunate, but the facts are, Mrs. Torres has a well documented history of similar bad acts, all of which have borne fruit for her. While the Plaintiffs have not made claims of criminal acts in their Motion for Summary Judgment and supporting documents thereof, the evidence and the permissible inferences drawn from this evidence are sufficient to *"bring minds of ordinary intelligence and sagacity to the persuasion of beyond a reasonable doubt."* quoting from Commonwealth v. Cooper, 264 Mass. 368 , 373 (1928). This evidence is overwhelming and should therefore be considered as undisputed fact by this Honorable Court.

65. The Plaintiffs did rightfully rely on the Defendant Sophie J. Torres' completing and maintaining the PROPERTIES as an equity basis for signing the Contract. Counts II, III and IV of the Plaintiffs' Complaint, in part, relied on Mrs. Torres to perform her fiduciary responsibility. Massachusetts Law, must be interpreted as to contain an implied covenant of good faith and fair dealing, and as it is a long upheld interpretation of contract law, as an equity basis for signing the Contract, this honorable Court should allow Counts II, III and IV of their complaint and the Summary Judgment thereof. See Fortune v. National Cash Register Co., 373 Mass. 96, 101-02 (1977).

66. As the Defendants arguments of age, rather than capabilities, and *"suspected circumstances"* have been clearly exposed for what they were, a desperate attempt to divert the attention of the Court away from the true facts in this matter. The only questions of fact before the Court are, a) was an offer made by one party and accepted by the other, b) was something of valued exchanged, c) were the parties capable of entering into the Contract, d) did the parties sign the Contract, e) did they sign the Contract as their own free act, f) was the language of the contract clear, and g) did the Defendant Sophie J. Torres Breach the Contract? It has been clearly set forth herein, and in the supporting

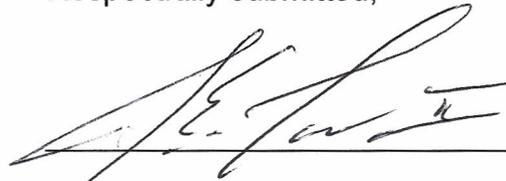
documents of this matter, that all of these questions of fact have been clearly and indisputably affirmed, and as such, there are no facts in dispute, and therefore, as a matter of law, The Plaintiffs' Motion for Summary Judgment must be allowed. See *Cassesso v. Commissioner of Correction*; *Community National Bank v. Dawes*; *Pederson v. Time, Inc*; *Flesner v. Technical Communications Corp.*; *Kourouvacilis v. General Motors Corp.* Id.

Respectfully submitted,



Jennifer J. Adams, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 840-7880
jadams@jetiii.com

Respectfully submitted,



Jesse E. Torres III, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
(617) 291-0862
jtorres@jetiii.com

Dated October 17, 2011