

EXHIBIT V

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
NO. BACV2011-00433

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

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT, SOPHIE J. TORRES,
MOTION TO DISMISS**

The Plaintiffs have filed a nineteen (19) count complaint against multiple Defendants. The only Defendant that has been served to date is Defendant, Sophie J. Torres, the mother of Plaintiff, Jesse E. Torres, III.

The counts that pertain to Defendant, Sophie Torres, are counts 1 through 4, alleging a breach of contract between the Defendant, Sophie Torres, and the Plaintiff, Jesse Torres, III.

As indicated above, the Defendant, Sophie Torres, is the mother of one of the Plaintiffs, Jesse E. Torres, III. The other Plaintiff apparently is a significant other or common law wife of Jesse E. Torres, III. According to the statements within the Complaint, the Plaintiffs drafted a Will for the Defendant, Sophie Torres, of which its terms basically transferred the majority of her estate to the Plaintiff, Jesse E. Torres, III. Further, an addendum to the Will indicated that it was a permanent and irrevocable transfer of property rights; however there was no actual transfer at the Barnstable County Registry of Deeds. Therefore, the Plaintiff is relying on the Will that

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he drafted on behalf of his mother, Sophie Torres, with respect to his claims.

The different counts are under the same cause of action, to wit a breach of contract. Count I deals with the Defendant, Sophie Torres, allegedly signing over certain properties to her son, Plaintiff, Jesse Torres, III. The transfer, according to Count I, consisted of property rights to land known as "Grandma's house", "Horse property" and "Uncle Fred's house". The allegation is that the Defendant, Sophie Torres, breached this contract by executing a new Will, thus invalidating the Will created by the Plaintiff.

Count II is a breach of contract under the same theory as Count I, except that Count II deals with property known as the "Farmhouse".

Count III is essentially the same as the first two counts, except that it deals with property known as the "Waquoit" home, which is located at 562 Waquoit Highway, East Falmouth, MA.

Count IV is the same as the previous counts, except that it deals with property which consists of six (6) acres +/- located directly across the street from the "Farmhouse", which has an address of 345 Carriage Shop Road, East Falmouth, MA.

ARGUMENT

The Plaintiffs' Complaint concerns a Will that the Plaintiffs drafted and had the Defendant, Sophie Torres, sign on or about April 24, 2009. Disregarding the suspected circumstances under which this Will was executed and the motives of the Defendant at the time of its execution, the Plaintiffs' claims are simply not a cause of action that can be prosecuted at this time.

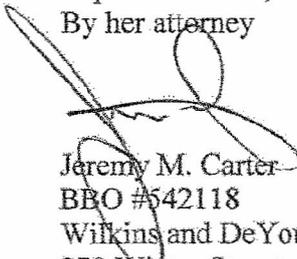
Massachusetts case law is clear that, even in the case of an enforceable contract to make a Will, a plaintiff cannot recover from a defendant for breach of contract in such a matter until such time for performance has arrived, which is at the time of death. See Johnson v. Starr, 321

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Mass. 566, 569 (1947), citing *Daniels v. Newton*, 114 Mass. 530. It is clear from *Johnson v. Starr*, that a claim for an anticipated breach of contract is not legally valid until the death of the promissor/declarant; and therefore, the Plaintiffs' claims against Defendant, Sophie Torres, for breach of contract cannot be prosecuted, nor can the Plaintiffs recover on their claims, at this time. Further, as stated in *Daniels v. Newton*, even if there is an indication of denial of the obligation, and a purpose to refuse compliance with the terms of a written agreement, it is in itself not a breach of the agreement. See *Daniels v. Newton*, 114 Mass. 530, 542 (1874).

WHEREFORE, the Defendant, Sophie Torres, requests dismissal of Counts I through IV of the Plaintiffs Complaint.

Respectfully submitted,
Sophie J. Torres,
By her attorney



Jeremy M. Carter
BBO #542118
Wilkins and DeYoung
270 Winter Street
Hyannis, MA 02601
(508) 771-4210

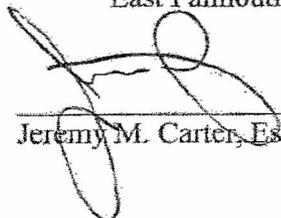
Dated: August 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Memorandum of Law has been sent via first class mail, postage prepaid this 4 day of August, 2011 to the Plaintiffs:

Jesse E. Torres, III
562 Waquoit Highway
East Falmouth, MA 02536

Jennifer J. Adams
562 Waquoit Highway
East Falmouth, MA 02536



Jeremy M. Carter, Esq.