

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' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGEMENT AGAINST THE DEFENDANT SOPHIE J. TORRES

PREFACE

This Memorandum supports the Plaintiffs' Motion for Summary Judgment on Counts I through IV of the Plaintiffs' Complaint, specific to the Defendant Sophie J. Torres (Mrs. Torres). It is clear 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 Mrs. Torres' words as were pleaded by her attorney in this very matter. Yet Mrs. Torres' attorney has also, in his pleadings, been relentless in pointing out that she is now ninety (90). Yes she is ninety, however, her age does not change the simple fact that she was, and is, capable and responsible for her actions, and we have provided five (5) additional documents from professionals that clearly affirm her capabilities and willingness to both enter into, and breach her Contract with the Plaintiffs. Neither Mrs. Torres nor her attorney should be allowed to claim to this Honorable Court that her age is relevant to this matter, anymore than this Honorable Court would allow her to be denied a loan based on her age.

This Memorandum and its family of pleadings and attachments clearly shows that 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, on April 24, 2009, which was both witnessed and notarized. Further, she swore an affidavit before a Notary, that she did so as her free act and deed. The Contract contained clear, concise and simple language as to the penalties if she were to breach the Contract. The Defendant did breach the Contract, did so knowingly, freely and with aforethought, and did refuse an opportunity to cure when she and her then attorney, Katheryn Wilson, each received a Notice of Breach of Contract by certified mail.

This memorandum affirms what is clearly stated in the Contract; the Defendant Sophie J. Torres owes to her Son, the Plaintiff Jesse E. Torres III, an agreed-to amount, in excess of one-million-six-hundred-forty-thousand-dollars (\$1,640,000).

INTRODUCTION

This is an action brought by two (2) Plaintiffs by means of Complaint with Summons and Order of Notice filed in Barnstable Superior Court on July 21, 2011. The Plaintiffs in this action consist of a couple in a long-term relationship, Jennifer J. Adams and Jesse E. Torres III. The Defendants in this matter are family members of the Plaintiff Jesse E. Torres III consisting of Donald F. Torres (Uncle), Jesse E. Torres IV, (Son), Sophie J. Torres (Mother) and Debtmerica, LLC, a Nevada Corporation, controlled by its Founder, Managing Partner and Chief Executive Officer, the Defendant Jesse E. Torres IV.

The Complaint is based on nineteen (19) Counts against four (4) named Defendants. We will limit our introduction to a brief summary of the Complaint as well as those Counts specific to the Defendant Sophie J. Torres, as she is the sole Defendant upon whom the current Motion for Summary Judgment is brought. The first four (4) counts were brought by the Plaintiffs solely against said Defendant. Count VIII includes Defendant Sophie J. Torres and in Count XIX by simple error, the Defendant was omitted, an error to be corrected, if allowed, in the Plaintiffs'

Motion to Amend their Complaint.

The Plaintiffs' Complaint sets forth a long-running conspiracy to extort funds from the Plaintiff Jesse E. Torres III. These extortion attempts included well-documented death threats to be carried out by Hells Angles who were/are the associates of the Defendant Donald F. Torres and/or his now deceased Son, James Kimberly Torres. James Kimberly Torres was a convicted and imprisoned felon who took his own life, arguably to avoid a "third strike" in California. All of these bad acts have been well-documented, by law enforcement offices in two countries, Mexico and the United States, and by the equivalent of a Mexican Warrant issued by the Mexican Attorney Generals Office.

In the Complaint, the Plaintiffs set forth that the Defendant Sophie J. Torres, in two (2) specific acts, did breach the Contract of April 24, 2009, first, by changing her Will of the same date and second, by ordering the Plaintiffs off the Property, which culminated in her serving the Plaintiffs on August 3, 2011 a Notice to Evict and a No Trespass Notice.

The Plaintiffs have provided herewith a detailed summary of this above-captioned action in their sworn Affidavit entitled "*Plaintiffs' Affidavit in Support of Plaintiffs' Motion for Partial Summary Judgment against the Defendant Sophie J. Torres*", and said affidavit is realleged and reasserted as if specifically stated herein.

PLEADINGS

The Complaint was filed by the Plaintiffs Jesse E. Torres III and Jennifer J. Adams, Pro Se, and in summary, it sets forth two separate yet intermingled claims, 1) for damages from attempted extortion, which included death threats, to be carried out by certain of the Defendants associates, Hells Angles, in Mexico, California and New Mexico, and 2) for breach of contract by the Defendant Sophie J. Torres.

The Plaintiffs are limiting their restatement of their claims to Counts I through IV of their

Complaint that are specific to these pleadings for Summary Judgment against the Defendant Sophie J. Torres for Breach of Contract as well as breach of her fiduciary responsibilities.

Count I is for breaching her contract with her Son whereby, in specific violation of the contract, a) she did change her Will, b) she did order the Plaintiffs to vacate properties to which the property rights had been transferred to her Son by the Contract. Further, Mrs. Torres is attempting to enforce her verbal order, and has now served the Plaintiffs an Eviction Notice and a No Trespass Notice.

Count II is for Breach of Contract with a violation of specific fiduciary obligation to complete the in-process construction of the home defined below as Grandma's House, for which the Defendant has not completed or made any progress thereon. Of note: the entire building will be lost if it is not completed.

Count III and **Count IV** are for Breach of Contract, with violation of specific obligation to maintain the properties defined below as Uncle Fred's House and Horse Property, for which the Defendant has a fiduciary responsibility to maintain and to preserve their values. Further, the Defendant is in breach of contract with the holder of her Reverse Mortgage for not maintaining her property (Uncle Fred's House) and is cause for the mortgage holder to foreclose.

FINANCIAL HISTORY

Through the years, the Plaintiff Jesse E. Torres III provided services and loaned hundreds of thousands of dollars to his parents, Jesse E. Torres Jr. ("Dad") and the Defendant Sophie J. Torres, to cover their numerous and considerable business and personal losses. On or about 1983, Dad had a life-altering accident where he spent three and one-half (3 1/2) months in Falmouth Hospital, two and one-half (2 1/2) of which were in intensive care.

This accident came within a few months of a financially devastating partnership in an AMC Dealership in Falmouth, with a Mr. Kevin Mann, who subsequently disappeared and left the state

with no known forwarding address. This left them in financial chaos as their former Partner had left them not only deeply in debt and many months behind on their properties mortgages, but had also left the business checking accounts severely overdrawn with uncollected checks to many of their and the Dealership's vendors.

The Plaintiff Jesse E. Torres III did cover these loses, bring their mortgages up to date, facilitate payment of Dad's hospital bills, and provide income to his parents for the many years that followed, until his father was able to return to work in a new automobile repair business for which his son provided the capital to start. On or about 1996, Dad was falling deep into debt with his new business which the Plaintiffs believe was a direct result of Alzheimer's Disease from which Dad later died. The Plaintiff Jesse E. Torres III did settle the debts of this failed business at a cost to him of \$140,000 more or less. The Plaintiffs' Affidavit contains a detailed history and supporting exhibits of the financial history of the parties referenced herein, (See Plaintiffs' Affidavit, Sec. VII, ¶ 33 – 45).

CONTRACT OF APRIL 24, 2009

On April 24, 2009, the Plaintiff Jesse E. Torres III (Jet III) and his Mother Sophie J. Torres (Mrs. Torres), both residents of Barnstable County, Massachusetts, did enter into a binding contract entitled "PERMANENT TRANSFER OF PROPERTY RIGHTS" (Contract) hereto attached as Exhibit "A".

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.

The appraised values of these properties were assessed by licensed appraisers 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).

The Contract, in summary, contained two (2) separate yet related assets that were its basis:

- 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 their benefits given by the Contract, and
- b. [that] the PROPERTIES defined in the Contract were to be titled and transferred to Jet III in the Will of Mrs. Torres upon her death.

The Contract contained language, insisted upon by the Defendant Mrs. Torres, whereby she and the estate of her late husband were to be conditionally released from their obligation of the agreed-to amount in excess of \$1,640,000 owed to their Son, Jet III. A further condition as to her signing the Contract was, that a new Will be created for Mrs. Torres where she would leave to her adopted daughter, Mary C. Torres of Barnstable County, two (2) waterfront lots in Florida, that the then existing Will of her and her late husband, Jesse E. Torres Jr., clearly stated, were to be left to their Son, Jet III.

The Contract, in clear and concise language, states that if any of the provisions of the Contract were violated, including any modifications to the new Will which was a direct result of the Contract, all monies then owed to the Plaintiff were and are fully due and payable.

The Contract was signed before a Notary Public and Witnessed by Drew Framson, a retired Falmouth Police Officer and his wife Gail, who were the long-term neighbors of Mrs. Torres and her deceased husband, Jesse E. Torres Jr. The signatures of the parties to the Contract, Jet III and Mrs. Torres, as well as the witnesses' signatures, Gail and Drew Framson, were notarized.

It is clear that the Contract was entered into, and was signed, as the free act of Mrs.

Torres, who was at the time 88 years old, and who was, and is, blessed with both sound mind and body. The following documents were provided on or about the time Mrs. Torres entered into the Contract with her son, Jet III:

- a. A statement, from the long-time Doctor of Mrs. Torres, Dr. Arthur Crago, that she was of sound mind and body. Hereto attached and marked Exhibit "B".
- 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*", hereto attached and marked Exhibit "C".
- 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, Hereto attached and marked Exhibit "D".
- 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, Hereto attached and marked Exhibit "E".

The Contract clearly states that the value of the PROPERTIES (\$1,640,000) was less than the monies agreed to be owed to the Plaintiff Jesse E. Torres III, by the Defendant Sophie J. Torres and the Estate of her late husband Jesse E. Torres Jr., as of April 24, 2009.

The Contract clearly states in the paragraph entitled "*Conditional Release of Obligations*" that the Plaintiff Jesse E. Torres III would conditionally agree not to file claims against the estate of Jesse E. Torres Jr. nor the Defendant Sophie J. Torres, for the monies owed their son at the time of the Contract's execution:

"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. 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."

Further, the Plaintiff Jesse E. Torres III agreed that a new Will would be drawn up at the insistence of the Defendant Sophie J. Torres. This new Will would and did replace the existing

Will of the late Jesse E. Torres Jr. and Sophie J. Torres, that left to their son all of the properties and assets of their Estate. In the new Will, the Plaintiff Jesse E. Torres III had to agree to give up two water-front lots in Florida that were to be left to him, to instead be left to the Defendant Sophie J. Torres' adopted daughter, Mary C. Torres.

The Contract clearly states that the Property Rights to the PROPERTIES were Permanently and Persistently transferred to Jet III and that this provision cannot be modified as set forth in the Contract in the paragraph entitled "*Agreement*".

"...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..."

The above stated provision did set up at minimum, a permanent tenancy for the Plaintiffs that they have enjoyed since the Contract was executed. Further, relying on the Contract language that the permanent and persistent rights to the PROPERTIES had been transferred to Jet III, the Plaintiffs have upgraded and utilized the PROPERTIES for their contractual benefit and at their considerable expense.

WILL OF SOPHIE J. TORRES

It was the desire of Mrs. Torres to leave certain properties to her adopted daughter Mary C. Torres and as such she insisted that a new Will be drawn up and executed by her as a condition of her signing the Contract.

A new Will was drawn up by Mrs. Torres with the assistance of her son, the Plaintiff Jet III using Quicken Will Maker. The then existing Will of Mrs. Torres and her deceased husband Jesse E. Torres Jr., had left their entire estate to their son and only natural child, the Plaintiff Jesse E. Torres III. Mrs Torres insisted that two (2) water front lots owned by the estate of her late husband and her were to be left to their adopted daughter, Mary C. Torres. These properties transferred from the benefit of Jet III to the benefit of Mary C. Torres. As a condition of the Contract, a new Will would be drawn for Mrs. Torres' benefit and clear language was added that if the new Will

was changed in any way, that action would constitute a breach of contract whereby the monies owed to Jet III at the time of the signing of the Contract in the agreed-to amount of \$1,640,000 would be, and is, fully due and payable.

UNDISPUTED FACTS

In the interest of Judicial Economy the following text is reprinted herein from the Plaintiffs' Concise Statement in Support of their Motion for Summary Judgment:

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 their benefits given by 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:
 - I. 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
 - II. 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-

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.

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)

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 photos 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. Photos 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) week 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)

ISSUES

- I. ARE THE PLAINTIFFS ENTITLED TO SUMMARY JUDGEMENT ON COUNT I OF THE COMPLAINT SINCE THE COMPLAINT, EXHIBITS, AFFIDAVITS AND THE CONTRACT SHOW THAT THE FACTS ARE UNDISPUTED THAT THE DEFENDANT SOPHIE J TORRES WAS FULLY CAPABLE OF ENTERING INTO A CONTRACT, DID EXECUTE THE CONTRACT OF HER OWN FREE WILL, AND DID BREACH THE CONTRACT?
- II. ARE THE PLAINTIFFS ENTITLED TO SUMMARY JUDGEMENT ON COUNT II OF THE COMPLAINT SINCE THE FACTS ARE, AND THE PICTURES ATTACHED AS EXHIBITS CLEARLY SHOW, THAT SHE HAS BREACHED HER FIDUCIARY RESPONSIBILITY TO COMPLETE THE CONSTRUCTION OF "GRANDMA'S HOUSE" ON WHICH THE PLAINTIFFS RELIED AS AN EQUITY BASIS FOR SIGNING THE CONTRACT?
- III. ARE THE PLAINTIFFS ENTITLED TO SUMMARY JUDGEMENT ON COUNT III OF THE COMPLAINT SINCE THE FACTS ARE, AND THE PICTURES ATTACHED AS EXHIBITS CLEARLY SHOW, THAT SHE HAS BREACHED HER FIDUCIARY RESPONSIBILITY TO MAINTAIN "UNCLE FRED'S HOUSE" AND/OR HAS THIS BREACH ALSO PLACED THE PROPERTY AT RISK OF FORECLOSURE BY THE MORTGAGE HOLDER AND HAVE EITHER OF THESE ACTS BREACHED THE CONTRACT ON WHICH THE PLAINTIFFS RELIED ON AS AN EQUITY BASIS FOR SIGNING THE CONTRACT ?
- IV. ARE THE PLAINTIFFS ENTITLED TO SUMMARY JUDGEMENT ON COUNT IV OF THE COMPLAINT SINCE THE FACTS ARE, AND THE PICTURES ATTACHED AS EXHIBITS CLEARLY SHOW, THAT SHE HAS BREACHED HER FIDUCIARY RESPONSIBILITY TO MAINTAIN THE "HORSE PROPERTY" BY ALLOWING IT TO BECOME OVERGROWN THEREBY CAUSING THE DEVALUATION OF THE PROPERTY ON WHICH THE PLAINTIFFS RELIED AS AN EQUITY BASIS FOR SIGNING THE CONTRACT?

ARGUMENT

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 submit with it this Memorandum, Complaint, Concise Statement, Affidavit, and various Exhibits which demonstrate that all the facts necessary to resolve this dispute are uncontested and that there are no triable issues.

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. Plaintiffs include their Concise Statement ¶ 59 by refferance herein.

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).

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. While Mrs. Torres is now ninety (90), 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).

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.

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.

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.

CONCLUSION

- i. It is an indisputable fact that it was Mrs. Torres who insisted that a new Will be drawn up on April 24, 2009, as a condition of her signing the Contract.
- ii. It is an indisputable fact that the Will of April 24, 2009 took away from the properties left to her Son in the existing Will, two (2) waterfront lots in Florida, and instead left them to her adopted daughter, Mary C. Torres.
- iii. It is an indisputable fact that by signing the Contract, Mrs. Torres did evade her Son's just

claims against the estate of his deceased father, Jesse E. Torres Jr., and did thereby receive her deceased husband's entire estate.

- iv. It is an indisputable fact that in addition to her receiving her late husband's estate, she was also, by the language inserted into the Contract she insisted upon, conditionally released of all obligations for monies owed to her Son.
- v. It is an indisputable fact that Mrs. Torres did know that the PROPERTIES as defined in the Contract were not sufficient to cover the monies owed to her Son, the Plaintiff Jesse E. Torres III, and that said PROPERTIES were then appraised at \$1,640,000 more or less.
- vi. It is an indisputable fact that Mrs. Torres did knowingly and specifically write a new Will replacing her Will of April 24, 2009, which was in specific violation of the Contract.
- vii. It is an indisputable fact that the Defendant Sophie J. Torres did order the Plaintiffs off the property, whose rights had been permanently, persistently and irrevocably transferred to the Plaintiff Jesse E. Torres III, and did follow up her verbal eviction and:
 - a) did knowingly and deliberately on or about August 3, 2011 serve a Notice to Quit to Evict the Plaintiffs Jesse E. Torres III and Jennifer J. Adams, and,
 - b) did knowingly and deliberately on or about August 3, 2011, serve a Notice of No Trespass to the Plaintiffs Jesse E. Torres III and Jennifer J. Adams.

The Undisputed Facts Are: The Defendant Sophie J. Torres was capable and did sign a legal, binding contract on April 24, 2009 with her Son, the Plaintiff Jesse E. Torres III. Further, Mrs. Torres was capable of, and did, as her own free act and deed, and with aforethought, breach her contract with her Son, even after she and her attorney were notified of her breach and the consequences thereof.

Count I. Mrs. Torres did breach the Contract by a) writing a new Will, b) ordering the Plaintiffs off the property to which the Plaintiff Jesse E. Torres III has permanent and persistent property rights. She then followed up on her verbal eviction and did issue a Notice to Evict, and a No Trespass Notice. Any one of these acts constituted a breach of the Contract individually and on its own merit.

Count II. Mrs. Torres did breach the Contract by failing in her fiduciary responsibility, by not completing construction on the property known as Grandma's House, which a) did cause its devaluation, and b) has placed the property at risk of major damages from exposure that could

lead to the loss of the entire home.

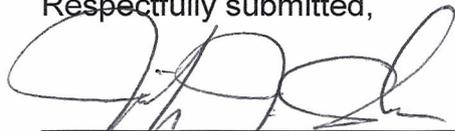
Count III. Mrs. Torres did breach the Contract by failing in her fiduciary responsibility, by not maintaining the property known as Uncle Fred's House, which a) did cause its devaluation, and b) has placed the property at risk of foreclosure with its mortgage holder.

Count IV. Mrs. Torres did breach the Contract by failing in her fiduciary responsibility, by not maintaining the property known as Horse Property, which a) did cause its devaluation, and b) by the loss of its pasture land by lack of said maintenance will cause it to be significantly devalued.

Counts II, III, IV. All contracts by Massachusetts Law, must be interpreted as to contain an implied covenant of good faith and fair dealing, and as such, the Plaintiffs relied on this long upheld interpretation of contract law, as an equity basis for signing the Contract. See Fortune v. National Cash Register Co., 373 Mass. 96, 101-02 (1977)

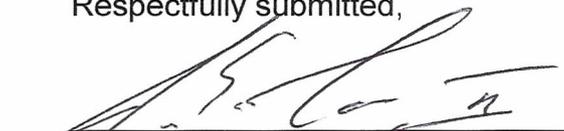
WHEREFORE, the Plaintiffs Jennifer J. Adams and Jesse E. Torres III respectfully request that this Motion for Summary Judgment be granted, and if this Honorable Court deems it is just and proper, that it allow the Plaintiffs their prayers 1(a – e), as are contained within their Complaint specific to the Defendant Sophie J. Torres, and any other relief this Honorable Court deems just and proper.

Respectfully submitted,



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Dated October 17, 2011