

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

Appellate Court Docket No.
2012-P-0524

JESSE E. TORRES III
JENNIFER J. ADAMS
Appellants

v.

JESSE E. TORRES IV, DONALD F. TORRES
DEBTMERICA, LLC. and SOPHIE J. TORRES
Appellees

Appeal from Superior Court, County of Barnstable,
Civil Docket #BACV2011-00433

BRIEF FOR APPELLANTS

Appellants; Pro Se

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STATEMENT OF THE ISSUES

- 1) Did the trial judge show bias or prejudice during the proceedings in the above-captioned matter that a) affected his rulings in that matter, and/or b) demonstrated an appearance of impropriety, and/or c) caused him to abuse his discretion in his decision to dismiss the Plaintiffs' Complaint.
- 2) Did the trial judge err in matters of law, and did he apply these interpretations when he dismissed the Plaintiffs' case.
- 3) Did the Judge, in contravention of the Massachusetts Declaration of Rights and/or the United States Constitution, deprive the Appellants their right to their demanded civil jury trial [App. A59] and its constitutional responsibility to do justice.

STATEMENT OF THE CASE

The Appellants, the Plaintiffs in the Lower Court case of record, Jesse E. Torres III and Jennifer J. Adams filed Pro Se, a Civil Complaint [App. A2] together with Summons and Order of Notice [App. A49] in Barnstable Superior Court on July 21, 2011. The

Defendants in that matter were Donald F. Torres of Baja North, Mexico, Debtmerica, LLC. a Nevada Corporation, with a usual place of business in California, Jesse E. Torres IV a California Resident, and Sophie J. Torres of Barnstable County, Massachusetts.

Filed with the Complaint were four (4) Emergency Ex Parte motions; which included a Restraining Order [App. A50], Status Quo Order [App. A52], and two (2) motions on procedural issues, one concerning service of this complaint by Electronic means and/or Certified U.S. Mail [App. A55 and A60], the other to obtain the address of the Defendant Donald F. Torres [App. A57].

On July 26, 2011 a hearing was held on the Plaintiffs' four motions filed with their complaint. The motions were set aside without prejudice [Trans A, 11,15-16], in material part, for *improper service, emphasis added*, by the Honorable Regina Quinlan.

On August 30, 2011, a hearing was held on the Defendants Motion "*For Plaintiffs To Cease And Desist (RESTRAIN) From Posting Information In The Internet*" [App. A70]. The motion was denied with prejudice by Judge Christopher J. Muse, *but with specific warnings to the Plaintiff's in Court and in his order* [App.

A125].

On November 17, 2011 a hearing was held on the Defendants three Motions to Dismiss [App. A75, A126 and A173] pursuant to M.R.C.P. 12(b)(6).

On November 28, 2011, the Court, Christopher J. Muse, Justice, issued an order in favor of the Defendant Jesse E. Torres IV, for *Summary Judgment* pursuant to Mass. R. Civil Procedure 56; *Emphasis Added*, and further, dismissed all complaints against the Defendants, Sophie J. Torres, Jesse Torres IV, Debtmerica LLC, and Donald Torres. [App. A201]

STATEMENT OF FACTS

Jennifer J. Adams and Jesse E. Torres III filed a Civil Complaint [App. A2] in Barnstable Superior Court, Pro Se, on July 21, 2011. The Complaint set forth that, after enduring many years of relentless extortion attempts, threats on their lives, the loss of their home and the life-shortening Heart Failure of Jesse E. Torres III, the Defendants broke, or caused to be broken, a Contract between the Plaintiff, Jesse E. Torres III and his Mother, the Defendant Sophie J. Torres. This bad act lead to the financial devastation of the Plaintiffs who are now Indigent.

Of Judicial Notice: The Plaintiffs have been declared Indigent by the Barnstable Superior Court [App. A205] and this Honorable Court [Att. C], concerning this matter.

The day the Complaint [App. A2] was entered, Thursday, July 21, 2011, four related Ex Parte motions [App. A50, A52, A55 and A60] were filed with said Complaint. That afternoon, the Court ordered, via a phone call from its assistant clerk, that the Plaintiffs were to serve each of the Defendants a Summons and Complaint with Order of Notice [App. A2, A49] that the motions were to be heard in two work days on Tuesday, July 26, 2011.

Of note is that the Plaintiffs' Complaint [App. A2] specifically contained notice that, due to the financial limitations of the Plaintiffs, they requested that they be allowed to serve the out-of-state/country defendants by Certified Mail, Return Receipt Requested, as allowed under M.R.C.P. Rule 4(e)(3). Additionally, this was one [App. A55] of the four attached motions to be heard in two workdays on July 26, 2011.

While the Complaints, exhibits and Summons and Order of Notice were served on the Massachusetts

Defendant, Sophie Torres, by Licensed Process Server, [Trans A, 8, 5], the California Defendants and their Attorneys of record were sent the packages via certified mail [Trans A, 9, 5-9], and although not required, were also notified by emails containing a link to a private website that had been created by the Plaintiffs, which contained PDF documents of all of the pleadings and exhibits filed in this matter [Trans A, 8, 16-18].

It was argued [Trans A, 5, 17-18], that while not required, this was done as a matter of simple fairness to the California Defendants who were being notified of a hearing scheduled 2500+ miles away in two workdays. A notice that they would not receive even by Express Mail, until the day before the hearing.

The facts are without argument, Judge Quinlan had ordered an impossible undertaking, to produce a return receipt from the service made on Defendants in California within two workdays. Return of Service that the official U.S. Post Office website [<http://www.usps.com>] states takes one week or more.

At the July 26, 2011 hearing on the Plaintiffs' motions, the four motions were set-aside without

prejudice [Trans A, 11, 15-16] as we had not served the Defendants properly, since we did not have, nor did we file with the Court, the signed returned receipts.

Attorney Jeremy Carter of Wilkins and DeYoung appeared in Court at the July 26, 2011 hearing. Attorney Carter was unknown to the Plaintiffs prior to that appearance [Trans A, 4, 23-25]. We received no notice of his appearance until August 3, 2011 [App. A64]. Nor were we clear if he was representing Mrs. Torres for just the motion hearing, or was now replacing Kathryn Wilson of Mackey and Foster [Trans C, 8, 18-19] [App. A40].

On August 3, 2011, the office Wilkins and DeYoung, under the authority of the Massachusetts District Court, served both a 90 Day Notice to Quit [App. A67] and a No Trespass Notice [App. A66] on the Plaintiffs, knowing that the properties in question were part of the Plaintiffs Status Quo Motion [App. A52] now before the Massachusetts Superior Court.

On August 30, 2011, Mr. Carters "Motion For Plaintiffs To Cease And Desist (RESTRAIN) From Posting Information In The Internet" [App. A70] was heard. The Plaintiffs opposition to the Defendants Motion [App.

A119] was not heard, claiming as grounds thereof, that the Plaintiffs' responses to the Defendants Motions filed with *Short Order of Notice*, were not filed in accordance with M.S.C.R. 9A [Trans B, 3, 8-10, 13, 21-25 and 4, 1]. The Decision by Judge Muse was obviously in error. M.S.C.R. 9A(e) Exception

In the responses filed by the Plaintiffs [App. A102-A122] there was indisputable documentation that all of the claims made by Attorney Jeremy Carter, had nothing to do with this case, his Client, the 90-year-old Sophie J. Torres, or the website that contained the public Court Record of the case. Mr Carter, in his Client's Motion [Id.], asked for personal protection (3) separate times. All of Mr. Carter's claims were in reference to a news website [Trans B, 13, 10-11] and their story about cronyism within the Falmouth Police Department and how it related to Mr. Carter. This news website is not part of this or any action before the Court. Mr. Carter used his Client's name and age effectively, along with representing his own interests in a case where he had no standing. This could only be perceived by the average person, as having being done to prejudice the Court and/or in furtherance of Mr.

Carters personal interest.

On November 17, 2011 a hearing was held on the Defendants' three (3) Motions to Dismiss pursuant to M.R.C.P. 12(b)(6) [App. A75, A126 and A173], before the Honorable Christopher J. Muse. The hearing, in material part was about two issues, a) whether the assistance of her son, the Plaintiff Jesse E. Torres III, to enter the answers into Quicken Will Maker for the Defendant Sophie J. Torres, constituted a drafting of her Will by her son and, b) whether the Addendum to the Will of Sophie J. Torres, dated April 24, 2009, [App. A36] was part of the Will or a stand-alone Contract attached to the Will [App. A42]. Of the 36 pages of the Transcript [Trans C], which contained approximately 7,875 words, approximately 669 came from Counsel for the Defendants, less than nine (9%) of those in the Transcript. The other 91% of the hearing was Judge Muse rapidly questioning the Plaintiff Jesse E. Torres III to make a case that a) he had acted as an attorney and had written his mother's Will [Trans C, P7, 24-25, P8, 1-22], and b) whether the document marked as an addendum attached to the Will of the Defendant Sophie J. Torres was part of the Will or a stand alone Contract [Trans

C, in its entirety].

SUMMARY OF ARGUMENT

Judge Muse was partly correct in his statement [Trans C, 32, 18-19] that the Plaintiffs' case depended on whether or not the document entitled "*Addendum to the Will of Sophie June Torres*" and "*PERMANENT TRANSFER OF PROPERTY RIGHTS*" [App. A36] was a *Will* or a *Contract*. Judge Muse stated that:

THE COURT: This agreement is a binding agreement by and between Jesse Enos Torres III and his natural mother Sophie dated April 24th. It is intended to be a binding addendum?

MR. TORRES: Yes, Your Honor.

THE COURT: I've never heard of that.
[Trans C, 6, 21-25]

Respectfully, we assert that just because Judge Muse has never heard of it, it doesn't make it so, nor does it make it a matter of law on which he can base his decision.

The Plaintiffs will set forth below numerous cases in support of well documented and, as defined in the Legal Dictionary, "Contract Wills", for which the above-entitled documents, when filed with the Will of the Defendant, are the very standard for a "Contract Will".

The Plaintiffs will clearly show that the

Defendants should have been estopped as a matter of law, from arguing that the Contract was a Will, as the Plaintiffs clearly, and to their detriment, relied on the written Contract signed by the Defendant.

It has long been upheld that to determine the meaning of a legal document, in this case, if the "Addendum to the Will" is really just an extension to the Will or indeed a Contract, you must refer to the actual writing of the Addendum. As Judge Muse pointed out in the November 17, 2011 hearing, "Terms mean something". [Trans C, 19, 1]. The record will show that it was clearly the intention of both parties to create a Contract, and at the Testator's (Sophie J. Torres') request, the documents were mailed to her CPA for filing as two separate documents, the Will [App. A98] and the Addendum to the Will [App. A100].

Judge Muse filed his memorandum decision [App. A201] stating it was based on unnamed Massachusetts Case Law. While we cannot be sure to which Massachusetts Case Law the Judge is referring, the only case-law entered and/or

argued in any of the Motions or hearings was the 1947 case of Johnson v. Starr, 321 Mass. 566, 569 (1947), Count I by Counsel for the Defendants and Johnson v. Starr, 321 Mass. 570 (1947), Count II by the Plaintiffs.

It is apparent that Johnson v. Starr is quoted as "*long standing*" and "*black letter law*" yet, upon detailed reading of the case, both Counts I and II, we find little or nothing in Count I applicable to this case. The Plaintiffs' claim was in regards to a written, not verbal, contract. The Plaintiffs' claim was not for the assets of the Will, nor to enforce the Will. The Plaintiffs' claim was for monies owed them by the Defendant Sophie Torres for loans to her and her deceased husband as well as services and monies loaned to her in order to save properties in her deceased husband's estate that were in severe disrepair. There was no applicable section of Johnson v. Starr as quoted in Judge Muse's decision, nor the Defendant's pleadings in the case at bar, other than to rely on an *out of context* quote that the time of performance has

not yet arrived. Our claim was triggered by a specific breach of a written condition of our Contract with the Defendant and was for the monies owed us and not for possession of the properties in her Will.

While Johnson v. Starr, Count I is not in any way applicable to the case at bar, Count II clearly states, that even in a verbal Contract, the Testator was liable for all services provided to them for the promises made by the Testator that were relied on by the Promisee.

On November 17, 2011 a hearing [Trans C] was held on the Defendants three Motions to Dismiss pursuant to M.R.C.P. 12(b)(6) [App. A75, A126 and A173]. On November 28, 2011, Judge Muse issued an order [App. A201] in favor of the Defendant Jesse E. Torres IV, for *Summary Judgment* pursuant to Mass. R. Civil Procedure 56; There was no motion for Summary Judgment before Judge Muse in this matter, there has never been one presented by the Defendants, nor was there ever a conversion by the Court on record, that changed the Defendants three (3) 12(b)(6) Motions to Dismiss, to a Summary Judgment Motion.

As the standards are very different for ruling and evidence on these motions, we herein object, as we were never allowed to present evidence as would have been allowed under Summary Judgment, M.R.C.P. 56 rules.

It is clear that the standard for a M.R.C.P.12(b)(6) Motion to Dismiss were not met, nor have the standards for Summary Judgment been met. Judge Muse erred as a matter of law in his decision to dismiss the Plaintiffs' Complaint as we will clearly set forth below.

It is not lightly that the Plaintiffs have set forth charges of bias in their Appeal, as they know full well from experience, how this can be perceived by this Court. Before making these charges, the Plaintiffs did not want to trust their memory, and did review the transcripts, and did further research Judge Muse's judicial record including contacting other Pro Se litigants who had been before him, and reviewed Judicial Conduct Commission complaints surrounding Pro Se litigants.

We will show that the record is riddled with statements by Judge Muse that clearly set forth comments and acts of bias against Pro Se litigants far

beyond what is acceptable, and which would certainly make the eyebrow of the average person rise. These comments and acts meet the bar for the legal definition of bias and/or prejudice, and the only conclusion that a reasonable person could derive is that this bias affected his decision in the Plaintiffs' case, and did deny them their right to be heard by a fair and impartial Jurist.

ARGUMENT

The Plaintiffs have been denied their rights under the Seventh Amendment of the United States Constitution and Part 1, Article 15 of the Massachusetts Constitution, to a Civil jury trial by their peers. Well documented herein are also numerous violations of the Plaintiffs' Fourteenth Amendment rights, as long upheld to include Civil procedural matters.

Bias

Bias is not a matter in and of itself, as a matter of law, justification to overturn a Judge's decision. However, when Bias denies a litigant their Constitutional Rights to a fair hearing and Jury Trial, it is justification, if not the obligation, of this Court, to overturn such a decision. These claims are

well supported by the record which contains numerous statements that would make the "*eyebrow of the average person rise*", concluding that the decision by the Judge was influenced by such Bias.

As we believe no reasonable Jurist would consider a claim of bias without a clear understanding of why such bias ensued, we have set forth four factors herein that were at large during the hearings of this matter. This Bias, we set forth, was the result of a chain of events, misconceptions and errors during the hearings of the case at bar:

1. Of Judicial Notice: It would have been difficult to not know that the Plaintiff Jesse E. Torres III, was the "*Founder and Chairman of The committee to Impeach Judge Shirley R. Lewis*" who was the then First Justice of the "*Barnstable County*" Probate Court. This was a major national news story for over two (2) years. That effort culminated in a hearing before the Massachusetts Supreme Judicial Court, and was argued by Appellant Torres before Chief Justice Paul J. Liacos. This effort did lead to the removal of Judge Lewis, and was only successful as there were

as many people of conscience inside the Court as outside.

2. The Plaintiffs were Pro Se in the Case which is the subject of this Appeal, and are now Pro Se before this Court, not as a matter of choice, but one of financial necessity. It is not relevant to this matter that Judge Christopher J. Muse has had well publicized complaints filed against him with the Massachusetts Judicial Conduct Commission ¹, specifically containing charges of bias against Pro Se Litigants. This does not alter the fact that the record in this matter clearly sets forth statements made by Judge Muse that clearly show bias against the Plaintiffs. Judge Muse expressed openly his opinions of two classes of Citizens, [Trans C, 7, 4-5] *"My family life is irrelevant. My judge and law life is very important."* Can there be a question as to how Judge Muse feels about Pro Se Litigants who are neither family members nor attorneys? The record is riddled with Judge Muse's statements demonstrating his opinions

¹<http://www.capecog.com/capecog/2011/12/judge-muses-total-disrespect-of-the-law-is-enough-to-make-me-puke-so-instead-i-filed-the-following-complaint-with-the-com.html>

of the *inferiority of non-attorneys*. As Judge Muse entered the following statement on the record, we feel we have no choice but to respond. "*But there's a lot more involved in all of this, and when you come in here the last time I had some pretty smart lawyers do a go-around on the intricacies of 93A. I knew you were here and you were listening. You could've blocked it out if you wanted. But the law is very complicated for a lot of reasons.*" [Trans C, P9, 23-25, P10 1-3]. Judge Muse was correct that I was listening, as I recall, while I am certainly not an attorney, it was because the argument about 93A was being made about a 93A demand letter not being sent, and it was a business to business 93A, Sec.11 claim, not a Sec.9 claim, and as such the letter wasn't required. The layers argued for quite a while until another Attorney from the same law firm approached the Attorney arguing this matter and advised him about the letter not being required.

3. The record is clear that Judge Muse was not happy with the Plaintiffs for their defense of their First Amendment rights. [Trans B, 13, 3-4] It is

also clear that had the Plaintiffs, two Massachusetts Citizens, not had those rights guaranteed them under the First Amendment, they would not have been able to stop their wrongful eviction, nor their homelessness that would have resulted. The record is clear, the First Amendment worked exactly as it was intended by the framers. It allowed the Appellants to bring to the public attention, the fact that an ex-Mashpee Police Officer told his friends in the Falmouth Police Department to arrest the Plaintiffs for trespass from the properties that were the main subject of the Complaint of this matter, and did so with the full knowledge that the Plaintiffs were also served that same day, a Notice to Quit [App. A67] with 90 days notice to defend against same, or vacate the property. Mr. Carter in open Court sidestepped having any knowledge of a No Trespass Notice served on the Plaintiffs by his law firm [Trans B, 22, 7-8].

4. The record clearly shows a bias by Judge Muse to give far more weight to the Defendant's Attorney, Jeremy Carter, even when the documents on record

clearly supported, and were in fact indisputable, to the claims made by the Plaintiffs. As stated above, Mr. Carter denied that any knowledge of his office serving the Plaintiffs a No Trespass Notice [Trans B, 22, 21-22], yet the No Trespass Notice was on record with the Court. Mr. Carter filed a motion [App. A70] under the guise that it was for his "90 Year Old Client", one where he referred to the posting of public Court Documents on the Internet [Trans B, 13, 9]. The website to which he referred was originally created to make available the pleadings in this matter to out-of-state/country Defendants and their attorneys ², [Id]. Yet Mr. Carter's motion [App. A70], exhibits [App. A73] and testimony [Trans B, 13, 10-12] were against a separate news site that was not part of any litigation before the Court and which did not even mention his 90-year-old Client, Sophie Torres. The story to which he referred ³, was about cronyism between him, as a former Mashpee Police Officer, and the Falmouth Police Department. It included statements made by now

² <http://plaintiff.jetiii.com/>

³ <http://www.newatchdogs.com/2011/08/1st-amendment-challenge/>

retired Falmouth Police Officer, Cheryl Atherton, in support of the facts contained in that story [Trans B, P6, 21-22, P21, 5-6]. Judge Muse made numerous statements on the record about the Plaintiffs' postings [Trans B, P11-16]. However, those postings never existed [Id.]. Mr. Carter claimed that the Plaintiffs posted derogatory documents on the Internet about the Plaintiff Jesse Torres III's 90-year-old Mother [Trans B, 13, 19-21]. Yet the one document on which he bases his claim, an attachment, a letter from Mrs. Torres' doctor containing one sentence, "*Sophie Torres is of sound mental and physical health*" [App. A47]. Judge Muse stated that these acts would be considered and heavily weighed by him [Trans B, 11, 4-5, 12-16, 18-20,...]. Yet again, there were no such documents posted on the Internet, nor any evidence in support that there ever was. Judge Muse's bias was clearly demonstrated by his statement that: while we had a *very interesting argument*, someone in a "robe" [Trans. B, 27, 6-7] was going to view these charges which "*muddied the water*" [Trans B, 13, 3-

4] and their decision would reflect the same. Judge Muse did not hear, or consider our motions on this matter [App. A102-A22][Trans B, no mention] that were clear and concise in their support of all of the Plaintiffs' statements in this matter and clearly repudiated Mr. Carter's claims [Id]. Judge Muse instead, took verbatim the self-serving "testimony" [Trans B, P13, 5-25, P14, 1-24] of the Defendant's attorney, and, in the words of Mr. Carter, did "*admonish the Plaintiffs*" [Trans B, P14, 9-10] and it is certainly of consideration by this Court, the effect of this basis of Judge Muse dismissing their Complaint.

Chronology of Hearings: Bias

Claims of Bias, due to their very nature, are very difficult to prove and generally require voluminous documentation and arguments, to which this claim is no exception. Further, the sheer volume of the prejudicial statements made by Judge Muse would have exceeded the 50 pages we are allowed in this Brief, and as such, we pray the Court review the Transcripts in their entirety, and take specific note of how, after making prejudicial statements, attempts were then made to

soften their meaning.

Motion Hearing [Trans A] July 26, 2011

At the hearing of July 26, 2011 on our Motions, they were "*taken off the list*" without prejudice and we were told to re-submit them under M.S.C.R. 9A [Trans A, 11, 15-18]. Three (3) items of note came out of that hearing that we feel are central to the series of events that lead up to this Appeal:

1. The then unknown attorney of eventually three of the four Defendants, Jeremy M. Carter, of Wilkins and DeYoung, did not serve us with a Notice of Appearance on his first client Sophie J. Torres until August 3, 2011 [App. A64]. We had been dealing with Attorney Kathryn Wilson [Id.] of Mackey and Foster, P.A. Of 220 Main Street, Suite 202, Falmouth, MA 02541 on behalf of the Defendant Sophie J. Torres, and Attorney Arthur Aaronson [App. A63] of 16133 Ventura Blvd. #675, Encino, CA 91436 who represented Debtmerica, LLC and Jesse E. Torres IV. Attorney Carter did not at any time before the hearing introduce himself, nor did we have any knowledge of who

Mr. Carter was, nor that he represented Mrs. Torres at that time. Further, he never told us, when directly asked, whether he was representing Mrs. Torres solely for the current hearing, or whether he was to be her new attorney of record [Trans A, P4, 16-25, P5, 1-12].

2. There was considerable discussion and apparent confusion as to how to serve out-of-state/country Defendants and whether Certified Mail Return Receipt was acceptable Service under M.R.C.P. Rule 4(e)(3) [Trans A, P8, 5-25, P9, 5-15, 24-25, P10, 1-25, P11, 14]. It is clear that service can be made by certified mail without leave of Court [Id.], yet Judge Quinlan stated, *"Well, you didn't get--did you get authorization to serve by mail, ...rather than by a Sheriff?"* [Trans A, 10,12-15]
3. There was concern by the Court as to posting the public Court documents on the Internet, *"But I think you'd better be careful about what you post on-line for the public. Very*

Careful...And that's not my job to tell you,
but I'm going to tell you anyway." [Trans A,
11, 19-23]

Motion Hearing [Trans B] August 30, 2011

After the Court's allowance of the Defendant's
"Emergency Ex Parte Motion for Short Order of Notice"
[App. A68], the hearing of the "Defendant Sophie
Torres' Motion for Plaintiffs to Cease and Desist
(restrain) from Posting Information in the Internet"
[App. A70] was heard before the Honorable Christopher
J. Muse.

The Judge's statements at the hearing make it
clear that he was unsure as to what was before him at
said hearing when Counsel for the Defendant, Jeremy
Carter, answered the Judge's question as to what was
before him with, "It's defendants' motion, Judge, to
restrain certain publications over the Internet by the
Plaintiff" [Trans B, 2, 12-13], to which Judge Muse
responded, "Okay. Because I read a lot, and I guess I
didn't have to." [Trans B, 2, 14-15]

The Judge did not have before him Plaintiffs'
response to the Defendant's Motion now being heard
[App. A102-A122]. Plaintiff Jesse Torres III asked the

Judge if he had Plaintiffs' motions [Trans B, 3, 7-10]. The Judge then asked Mr. Carter if he had received the motions [Trans B, 3, 11] and Mr. Carter stated he had received them [Trans B, 3, 12]. The Clerk then stated that *"The Court has it, but it's not filed 9A"* [Trans B, 3,13]. The Clerk and the Judge then had a conversation that we could not hear, but the Judge did tell the Plaintiff, *"I'll tell you what the clerk just told me. -- That we had a motion that you filed to strike" -- "claims, and that has not been filed the right way so I'm giving it back to you with instructions as to how to do it. Okay?"* [Trans B,3,21-22,24-25 and 4,1]. The Judge and the Clerk both erred as to their conclusions, *as our motions were in response to the Defendant's Motion filed with Short Order of Notice and as such were not, and could not, be subject to 9A service, M.S.C.R 9(a)(e)(1) Exception, as we argued, "But that was in response to this hearing, Your Honor. That is specifically a motion to strike this motion."* [Trans B, 4,4-6].

The Judge's own words make it clear that he had not prepared for the hearing before him, but rather for a hearing on the Defendant's M.R.C.P. 12(b)(6) Motion

to Dismiss and Plaintiffs' Opposition, when the Judge stated: "*And the motion to dismiss is not on today?*" [Trans B, 5,15], when Mr. Carter for the Defendant replied no, [Trans B, 5,16], the Judge, in reference to what he had prepared for, (i.e. the Defendant's Motion to Dismiss), stated: "*That's what I read.*" [Trans B, 5, 20]. The Judge then asked the Clerk for the file of the action before him [Trans B, 5,24], to which the Clerk responded "*Number nine, Your Honor.*" [Trans B, 5,25] Emphasis added.

The record is clear that there were eight sets of pleadings filed before the motion being heard [Attachment D, Schedule of Pleadings], all unheard and/or not ruled on. All but one of these were filed by the Plaintiffs. The Defendant's motion was heard ahead of all other motions and within seven days of it being mailed to the Plaintiffs, in accordance with the Defendant's Certificate of Service dated August 23, 2011 [App. A71]. The Judge stated on numerous occasions during the hearing, in reference to the Plaintiffs' pleadings, that they were hard for him to understand, "*...Because I'm having a hard time with these pleadings.*" [Trans B, 3,3-4], yet the pleadings he

referenced were those of Mr. Carter, the Defendant's Attorney, *"It's actually my motion."* [Trans B, 3,5]

Of Judicial Notice: January 9, 2012 the Plaintiffs' motions were granted by the Honorable Robert C. Rufo to a) accept our affidavit of indigency, and b) *"Motion (P#33) ALLOWED as to court cassette recording and transcripts for motion hearings on July 26, July 30, and Nov 17, 2011"* [App. A70]. We have repeatedly requested copies of the tapes of the hearings as they would clearly express the demeanor of the Judge presiding in a way that reflects the bias demonstrated, far beyond that which can be expressed in written words. We received copies of the Transcripts of the Hearings but did not receive the tapes as ordered, and the order accompanied all of our requests for the tapes. We know the tapes exist, as we did receive a copy of the *"audio assessment forms"* from the stenographer who transcribed the tapes, Cindy J. Crowley, of the August 30, 2011 Hearing [Trans B] and the November 17, 2011 Hearing [Trans C]. As this can adversely affect the Appellants' Appeal, we have provided a sworn affidavit specific to this matter, with copies of our requests for the tapes/recordings

and the responses we received in our "Appellants' Affidavit Concerning the Requests for Trial Court Hearing Tapes".

It is very clear that the majority of this hearing was in reference to two items. First, that the Plaintiffs' pleadings were difficult for him to read, *"And I want to tell you that your pleadings are very difficult to go through, and that's not meant to be insult to you."* [Trans B, 10,9-11]. Yet, he did not have before him the Plaintiffs' pleadings, as it is reasonable to conclude that the Clerk had taken it upon himself to not give them to him, apparently because he wrongfully thought they had not been filed in accordance with M.S.C.R. 9A [Trans B, 3,13]. Second, the numerous references to the actual case and in particular, the Defendant's 12 (b)(6) Motion to Dismiss, and Plaintiffs' opposition to same, Judge Muse stated that he had read them in their entirety, and he stated an in-depth understanding of the arguments surrounding the Defendant's Motion to Dismiss and Plaintiffs' Opposition to same. The Judge stated, *"So you have a substantial issue, as I understand it, where you claim that you're entitled to pretty much the*

entire estate of your father that was given to your mother." ... "And you have a document that you purport to be a binding contract; correct?" ... "And you gave me a summary of the properties involved that went upwards of \$2 million worth of value." ... "So you're talking about a very substantial sum; right?" ... "Okay. No one has said at this point that you're not entitled to press that claim; correct?" ... "And that's the real heart and soul of this case, at least by you; correct." [Trans B, 10, 2-4, 6-7, 9-10, 12-13, 15-16, 18-19]

Without the audio tapes of the hearing, the depth of the contemptuous attitude of the Judge cannot be fully understood, but his statements are representative of the bias felt toward the Plaintiffs and what he deemed was a "significant" and "substantial" argument.

Of Judicial Notice: the Plaintiff Jesse E. Torres III, did present in his "*Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Combine Motions, and Opposition to, and to Combine With, the Scheduled Hearing of Defendant Sophie J. Torres' Motion to Cease and Desist*" [App. A110], that this matter had already been adjudicated when he was represented by Attorney

Victor Polk, then the head litigator for Bingham Dana. They had numerous hearings on the specific matter of posting public documents of a court action on the Internet. These matters were decided in the Plaintiff's favor, see Palms Technology vs. Datawatch, Middlesex Superior Court Civil Action #98-5570 (1998), the *Honorable Herman Smith presiding*. During the hearing of August 30, 2011, Plaintiff Jesse Torres III attempted to argue that this had been adjudicated by stating: "Okay. The first thing we did, and it's a motion that I heard in Middlesex court in 1998" [Trans B, 6,12-13], but the Judge did not allow the argument "No, no, no." [Trans B, 6,14]

The following statements on the record would clearly make the eyebrow of the average person rise, and was clearly biased and can be taken in no other way than was its intention. In reference to us defending our First Amendment Rights, Rights that had been specifically adjudicated and upheld by a Court of Competent Jurisdiction in Massachusetts, the Judge stated: "Why on earth do you want to start doing tangential things that are going to be totally distracting from the heart and soul of the matter?"

[Trans B, 11, 4-6], even though the Judge heard the Plaintiffs argue several times in response to his questions, that had it not been for them exercising their First Amendment Rights and publishing what was "cronyism" between the attorney representing the Defendants, a former Mashpee Police officer, and members of the Falmouth Police Department, they would have been homeless [Trans B, P7, 19-25, P8, 1-17, P11, 7-25, P12, 1-25, P13, 1-7]

While this Motion was brought on behalf of the Defendant Sophie J. Torres, it is clear and unarguable that it was a ruse to cloak the intentions of the true beneficiary of the Motion, Attorney Jeremy Carter, who included not less than three references to himself in the Motion [App. A70], supposedly filed by Mrs. Torres, a Motion in a Case in which he had no standing.

The record is clear, Mr. Carter was successful in prejudicing the Judge, as confirmed by the Judge's own statements: *"I've got a lot of work, but you're doing it and it's -- I'm just going to tell you it's defeating your primary goal. It's secondary to it. so secondary. It's secondary."* [Trans B, 25, 13-15].

Prior to us being forced to choose between being

homeless and, we assert, apparently upsetting Judge Muse, he stated that he felt our arguments were sound: *"It's a pretty interesting issue, and that's the one that you should be focusing on, not this other stuff."*[Trans B, 26,2-3]

The record makes it very clear that the Judge had been clearly biased by the posting of Court Documents on the Internet: *"I'm not going to identify it, but let me use this word because it certainly threatens other matters that are in the court."* [Trans B,26,15-16] and *"It doesn't seem right, and there's absolutely no gain from that kind of activity for anything that's happening in this courtroom, nothing. And it could have an adverse -- I'm not -- I can't give you the metrics on it, I can't figure out exactly what it is, and I don't intend to, but I can tell you that -- that it's going to be an unnecessary cloud on the litigation."* [Trans B,28,2-8]

Motion Hearing [Trans C] November 17, 2011

On November 17, 2011 the Defendants three (3) Motions to Dismiss [App. A75, A126 and A173] pursuant to M.R.C.P.12(b)(6) were held before the Honorable Christopher J. Muse. The hearing, in material part was

about two issues. First, whether the assistance of her son to enter her answers into Quicken Will Maker, constituted that her son, the Plaintiff Jesse E. Torres III, drafted her Will, and second, whether the Addendum to the Will of Sophie J. Torres dated April 24, 2009 was part of the Will or a stand-alone Contract attached to the Will. Of the 36 pages of the Transcript [Trans C], which contained approximately 7,875 words, approximately 669 came from Counsel for the Defendants, less than nine (9%). The other 91% of the hearing was Judge Muse rapidly questioning the Plaintiff Jesse E. Torres III to make a case that he had acted as an attorney and written his mother's Will, and arguing Defendants' case for them.

THE COURT: There's a problem. Don't you think that's kind of a problem that you'd be using a computer-generated something for a third person? You drafted a will for your mother.

MR. TORRES: No, Your Honor. I just ran the keyboard.

THE COURT: Same thing.

MR. TORRES: My mother sat down with me.

THE COURT: What do you think lawyers do? We run keyboards and then we look at it and fill in the blanks and then we say this is a good will for you, and you get the money from the client.

MR. TORRES: I understand that, Your Honor.

THE COURT: So you drafted a will for your mother.

MR. TORRES: No, Your Honor. What I did is I entered the will for her. She actually sat down with me at the computer. I provided the computer

skills just like a secretary. She read -- the WillMaker just asks one question after another. She provided all the answers to every single question without interference or guidance from me. The thing I did with it, I said, "*Here it is. Take it to your attorney.*" The same attorney, Catherine Wilson.
[Trans C, P7, 24-25, P8, 1-19]

The Plaintiff denied repeatedly on the record that he had written the Will of the Defendant Sophie J. Torres [Trans C, P8, 3, 12-19]

Judge Muse's bias for "Attorneys Only", we assert, is clear. Either that or he is arguing that writing with a Word Processor or Computer Program nullifies Massachusetts General Law Chapter 191, Sec. 1, Persons authorized to make wills; capacity; execution

"Every person eighteen years of age or older and of sound mind may by his last will in writing, signed by him or by a person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses, dispose of his property, real and personal, except an estate tail, and except as is provided in this chapter and in chapters one hundred and eighty-eight and one hundred and eighty-nine and in section one of chapter two hundred and nine."

As all of the statutory requirements were clearly met or exceeded in the drafting of the Will [App. A42], the Court should consider whether Judge Muse based his decision, in whole or in part, on the fact that an

attorney did not, *"get the money from the client"*
[Trans C,8,8-9] and therefore the Will is invalid, was
correct as a matter of law.

Of Judicial Notice: What bears restating; there
were approximately 7,875 words said at the November 17,
2011 hearing [Trans C] on the Defendants 12(b)(6)
Motions to Dismiss. Only 669 came from Counsel for the
Defendants, less than nine (9%). Not one word was ever
argued, or even mentioned of the Plaintiffs' 71 pages
of opposition pleadings [App. A80-A101, A135-A72, A182-
A200] to the Defendants three (3) Motions to Dismiss
[App. A75-179, A126-A134, A73-A179], all filed 9A with
the Court. These opposition pleadings contained
approximately 31,808 words, and attached were numerous
exhibits [Id.]. There is little doubt that the average
person's eyebrow would clearly rise with the facts
surrounding this matter. The record is clear and
overwhelming, this Honorable Court should make the
determination that Judge Muse did argue the Defendants'
case for them, while he ignored the Plaintiffs'
opposition and pleadings. The result of which was that
the Plaintiffs were denied their rights to even argue
or present evidence in their case before a fair and

impartial jurist.

Argument of Law

The record and law are overwhelming that the ruling by Judge Muse should be overturned by this Honorable Court.

Judge Muse filed his decision stating it was based on unnamed Massachusetts Case Law. While we cannot be sure to which Massachusetts Case Law the Judge is referring, the only case-law entered and/or argued in any of the Motions or hearings was the 1947 case of Johnson v. Starr. It is apparent that this case is quoted as "*long standing*" and "*black letter law*" yet, upon detailed reading of the case, both Count I and II, we find little or nothing in Count I applicable to this case, nor was any applicable section quoted in Judge Muse's decision or in the Defendants' pleadings in the case. Further, we argue that the review of Johnson v. Starr by the Appellate Court is long overdue, as it is no longer relevant in today's electronic world. How can a 1947 case, when computers did not exist, be used to determine the applicable relevance of a computer-generated legal document, that under the most favorable light for the Defendants, through a "bug" in the

program, generated a three word title that is central to the issues before this Court. A bug that could cost the Plaintiffs 1.6 million dollars that they need.

Before arguing the non-applicability of Johnson v. Starr Count I in this matter, we will present our arguments in an order of Judicial Prudence.

Promissory Estoppel: The Defendants should never been allowed to argue whether the document in question was part of a Will or a Contract. This case fits the very definition of Promissory Estoppel, and as such, the Defendants should have been estopped from using the Will as a defense, and further from even being able to deny the existence of a separate contract. The record is clear, the Plaintiffs relied on the written promises of the Defendant Sophie J. Torres, and did so to their detriment [Trans C].

Contracts served from a Will: Judge Muse was clear in his admission that, *"I've never heard of an addendum to a will that's a contract. I've never heard of it"* [Trans C,7,5-7]. While it is clear that Judge Muse made his decision based on the belief that this was true, it clearly is not true. In fact, it is the opposite that is common as a matter of law. For example, a life

insurance policy is a contract that is routinely served from a Will.

Will Contracts: There are numerous examples to what is defined in the Legal Dictionary as: "*Will Contracts*". The Connecticut Courts in Murphy v. Glenn 964 P.2d 581 (1998) specifically defined that a "Will Contract" *is a contract by which one party promises the other that he will execute a will in which a devise or legacy as agreed upon will be given to the promisee or to a third party.*" Further, this same case sets forth that a Will Contract is in full force and effect *inter vivos*, and that the provisions agreed to are fully enforceable while the parties are living.

In Williams v. Mason, 556 So.2d 1045, 1048-49 (Miss. 1990) (citation omitted), the Court ruled that although transfers by will are normally donative, it is possible to use a will to form an obligatory, legally enforceable contract. A Will Contract is created when a promise is made and supported by consideration to leave property by will to the promisee or other third-party beneficiaries.

It this case at bar, the "Will Contract" described a contract to exchange a current performance for a

future bequest. In this agreement, the promisee, the Plaintiffs, set aside their legal claims to the Estate of the father of the Plaintiff Jesse E. Torres III, and further did provide considerable services and monies in exchange for a promise by the Defendant/Testator, Sophie J. Torres. A Will was drafted making a specific bequest to the promisee by the Testator on which the promisee relied. The guideline under law, is: the promisee cannot specifically enforce the contract if the testator later revokes or supersedes the will making the promised bequest, but can only sue the testator for breach of contract. This is the exact situation in this case:

THE COURT: So it's her will. It's her will. If she chooses to amend her will, she can do so.

MR. TORRES: Absolutely. And we're not arguing that, Your Honor.

THE COURT: And she's done it.

MR. TORRES: I'm not arguing that she's going to give us any properties. We don't want the properties.

THE COURT: That's not the point.

MR. TORRES: She owes me a million six. That's what I want.

THE COURT: That's different.

MR. TORRES: That's what our claim is for.

THE COURT: That's not what it is, though.

MR. TORRES: We claimed a breach of contract for her changing the will which is clearly stated in the addendum.

THE COURT: That's the point. It's not a breach of the contract. It's not a breach of a contract

to change the will.
[Trans C, P10, 11-25, P11, 1-2]

It is clear by the record that Judge Muse erred in his insistence that a Contract cannot be served from a Will, and that in the case before the Court, the Plaintiffs Complaint was correct and proper as a matter of law.

It is the construct that determines what the document is: Even if we were to assume, for the sake of argument, that the Will and Contract of this case was not a "*Will Contract*", a Contract is defined by its Context, not its Title.

If ever there were two documents that occupied the complete opposite sides of a legal spectrum, it would be a Will and a Contract, and to help decide which is which, regardless of what their maker(s) (in this case a computer program) has opted to label them, you need only look to the definition and the essential elements of each document.

It has been long established in Federal and Massachusetts Law, that in legal documents, it is the construct that determines what the document

is, not how it's entitled.

The Will is an instrument by way of which a person conveys and bequeaths real and personal property to heirs and others so identified therein, and it (the Will) does so without either looking to any reciprocation or undertakings by the grantees. A grantee is the recipient of what is for all intents and purposes a gift.

A Contract on the other hand, is an instrument which derives its legal potency, makeup, and enforceability as a result of the coming together of a myriad of essential elements, chiefly amongst them being offer, acceptance, capacity, conditions, consideration, and of course, the presence of a promise or a set of promises by the contracting parties to perform as to the terms of the Contract.

Therefore, while the consequences for a grantee to a Will not satisfying the condition would only be a Reversion of the property, the consequences for a party to a Contract not performing a promise or breaching the contract in

any way, would be litigation and payment of damages to the aggrieved party.

It has long been upheld that to determine the meaning of a legal document, in this case, if the "Addendum to the Will" is really just an extension to the Will or indeed a Contract, you must refer to the actual writing of the Addendum.

It was clearly the intention of both parties to create a Contract as reflected in the clear, concise and simple language of said Contract. This Contract, regardless of its title, derived its legal potency, makeup, and enforceability as a result of the coming together of a myriad of the essential elements of a contract, including an offer, acceptance, capacity, conditions and consideration, and has the presence of a set of promises by the contracting parties to perform as to the terms of the Contract. As Judge Muse emphasized, "Terms mean something" [Trans C,P19,1].

Intentions of the Parties: There can be no clearer evidence that it was the clear intention of both parties to create a Contract than the Testator's (Defendant Sophie Torres') own request

that the Will and the Contract/Addendum be mailed in two separate envelopes by Express, Certified Mail, Return Receipt Requested, to her CPA, Jeffrey Cooper, 82 Bowker Street, Norwell, MA 02061 for filing [App. A98, A100]. The package containing the Contract was clearly marked with the Testator's demand and condition: "*Addendum to the Will of Sophie J. Torres, Open only if contested*". Of note, these packages are still unopened.

Johnson v. Starr 321 Mass. 570 (1947): In the interest of Judicial Economy, we have argued Johnson v. Starr as introduced by the Defendants in their three (3) Motions to Dismiss pursuant to M.R.C.P. 12(b)(6) [App. A75, A126, A173], all filed under M.S.C.R. 9A. We ask the Court that those documents be considered as if specifically stated herein, and as such we have included those cases relied on in our arguments in the Table of Cases attached hereto. The following is an excerpt from that argument:

The Defendants, through Counsel wrongfully made claims with reliance on Johnson v. Starr, Count I, which clearly and additionally do not apply, as the

Contract between Sophie J. Torres and Jesse E. Torres III was a written agreement, where in Johnson v. Starr Count I, the Court's decision was based on an oral contract wherein the Court was forced to interpret the meaning of the contract. The Contract [App. A36] between Plaintiff Jesse E. Torres III and Defendant Sophie J. Torres contains clear and concise language which includes the conditions and penalties for breaching said Contract, and in Johnson v. Starr Count I, breach of contract was claimed by the plaintiff, as the defendant had transferred a deed to property promised to the plaintiff upon the death of the defendant. The Court ruled that in this limited context, as the defendant was still alive, the performance under the contract had not yet arrived. There was no written provision in the Will of the defendant in Johnson v. Starr Count I specific to:

1. permanently transferring property rights not conditional on the Will, but on which the Will was materially bound, and
2. that the named properties' rights were permanently and persistently transferred from the Defendant Sophie J. Torres to the Plaintiff Jesse E. Torres

III on April 24, 2009, and

3. there was no "Conditional Release of Obligations"

clause whereby the Plaintiff Jesse E. Torres III agreed to set aside his right to file claim against the estate of his late father, Jesse E. Torres Jr., before it was probated, for claims of amounts agreed to by the parties of the Contract that exceeded the values of the named properties. These properties were appraised by licensed appraisers to have a total worth in the amount of one-million-six-hundred-forty-thousand dollars (\$1,640,000) more or less. and

4. there was no specific language in Johnson v. Starr

Count I stating specific conditions of breach of contract as is contained in the Contract; specifically and in clear and concise language, of which materially changing the Will was a specific breach of contract:

"that 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..."

5. and that the Contract contained specific penalties

for the above stated breach of contract which

clearly states:

"Solely in consideration of receiving the PROPERTIES, JET does herein relinquish any and all claims against the Estate of SJT and/or SJT and DAD for the services rendered and 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" [App. A36]

Considerations for a 12(b)(6) Motion to Dismiss:

The Order by Judge Muse in this matter [App. A201] makes it unclear as to what we should argue herein, the Motion to Dismiss, or that for Summary Judgment as stated in Judge Muse's Order. We ask the Court's indulgence as we are running out of allowed space and as such will argue the only motions that were served on us, and therefore the only ones opposed by the Plaintiffs, the Defendants Motions to Dismiss pursuant to M.R.C.P. 12(b)(6) [App. A75, A126 and A173].

The Defendants' Motions to Dismiss fail to meet the rigorous standards required by Rule 12(b)(6): "A court may grant the radical relief of dismissal only if

the plaintiff can set forth no set of facts which would entitle [them] to relief." Coraccio, 415 Mass. at 147. It is well established that "[t]he rules of pleading in Massachusetts are generous. A cause may not be dismissed for failure to state a claim upon which relief could be granted 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Spence v. Boston Edison Company, 390 Mass. 604, 615 (1983) (citations omitted).

These "generous and indulgent criteria" reduce "a plaintiff's obstacle in surmounting a rule 12(b)(6) motion to dismiss for failure to state a claim to a minimal hurdle," and mean that a "plaintiff is to be given the benefit of any doubt . . . and must prevail over the motion unless it appears with certainty that he is entitled to no relief under any combination of facts that could be proved in support of his claims." Brum v. Town of Dartmouth, 44 Mass. App. Ct. 318, 321-22 (1998) (citations omitted, emphasis in original).

The sufficiency of the claims raised in the plaintiff's complaint is examined by accepting the

allegations, and such reasonable inferences as may be drawn therefrom, as true. See Eyal v. Helen Broadcasting Corp., 411 Mass. 426 , 429 (1991)

Further, the Court may also look to materials outside of the pleadings to satisfy itself that it has subject matter jurisdiction without converting the motion for summary judgment. See Flynn v. Ohio Bldg. Restoration, Inc., 260 F. Supp. 2nd 156, 161 (D.D.C. 2003).

CONCLUSION

The Plaintiffs' Complaint [App. A2] set forth clear, well documented facts. These facts were documented by federal and state law enforcement agencies from two countries who investigated certain of the Defendants in unrelated and related investigations. The Plaintiffs endured many years of relentless extortion attempts, threats on their lives, the loss of their home and the life-shortening Heart Failure of Jesse E. Torres III, which finally caused them to move back to Massachusetts to escape.

The Co-Defendants, some of whom were the subject of the above-referenced criminal investigations,

disavowed, or caused to be disavowed, the Contract between the Plaintiff, Jesse E. Torres III and his Mother, the Defendant Sophie J. Torres. This bad act lead to the financial devastation of the Plaintiffs.

The Plaintiffs, now declared Indigent [App. A205, Att. C] due to the specific acts of the Defendants, three of whom are direct family members, had no choice but to represent themselves Pro Se before the Court.

Plaintiff Jesse Torres III was once a Senior Computer Scientist at the Think Tank for Los Alamos that designed the parallel processing Operating System and languages allows the emulation of nuclear explosions. The other Plaintiff, Jennifer Adams, was an engineer for the JPL/NASA deep space network that oversaw the development and installation of the Satellite network that bring us the pictures from deep space. They are now Indigent, soon homeless, and statistically, Mr. Torres is living on borrowed time.

What is the greater injustice, having one's own family try to destroy them for money, or to be denied justice by being deprived their day in Court to make their claims to a Jury of their peers?

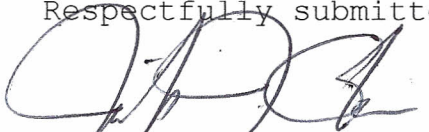
Regardless if the error came from undeserved bias

or simply error in matters of law, the painful result is the same.

WHEREFORE for all of the reasons contained herein, individually or in totality, we pray this Honorable Court reverse the lower Court's ruling and send this matter back to the trial court where it may be tried before a Jury of Peers as was demanded by the Plaintiffs and as guaranteed them by the Seventh Amendment of the United States Constitution, Part 1, Article 15 of the Massachusetts Constitution and under the Due Process clauses of the 5th and 14th Amendments to the United States Constitution.

By the Appellants, Pro Se,

Respectfully submitted,



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Respectfully submitted,



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Dated: May 7, 2012

STATUTORY ADDENDUM

UNITED STATES CONSTITUTIONAL PROVISIONS

Amendment 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 7

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MASSACHUSETTS CONSTITUTIONAL PROVISIONS

Declaration of Rights

Article 15. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it.

MASSACHUSETTS STATUTES

Massachusetts General Law

Chapter 191, Sec. 1. Every person eighteen years of age or older and of sound mind may by his last will in writing, signed by him or by a person in his presence and by his express direction, and attested and subscribed in his presence by two or more competent witnesses, dispose of his property, real and personal, except an estate tail, and except as is provided in this chapter and in chapters one hundred and eighty-eight and one hundred and eighty-nine and in section one of chapter two hundred and nine.

MASSACHUSETTS RULES OF CIVIL PROCEDURE

Rule 4(e)(3). Personal Service Outside the Commonwealth. When any statute or law of the Commonwealth authorizes service of process outside the Commonwealth, the service shall be made by delivering a copy of the summons and of the complaint: (1) in any appropriate manner prescribed in subdivision (d) of this Rule; or (2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction; or (3) by any form of mail addressed to the person to be served and requiring a signed receipt; or (4) as directed by the appropriate foreign authority in response to a letter rogatory; or (5) as directed by order of the court.

Rule 12(b) (6) Motion to Dismiss.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(6) Failure to state a claim upon which relief can be granted.

Rule 56: Summary Judgment.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President

and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and responses to requests for admission under Rule 36, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an

affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Amended March 7, 2002, effective May 1, 2002.

SUPERIOR COURT RULES

Rule 9A(e) Exceptions. The provisions of this rule shall not apply to the following motions:

(1) Ex Parte, Emergency, and Other Motions. A party filing an ex parte motion, emergency motion, or motion for appointment of a special process server is excused from compliance with Paragraphs (b)(1) and (b)(2) of this rule. Ex parte motions shall be served within 3 days of a ruling on the motion. Emergency motions shall be served on all parties forthwith upon filing.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION
NO. BACV2011-00433

JESSE E. TORRES, III and others¹

vs.

SOPHIE J. TORRES and others²

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs, Jesse Torres and Jennifer Adams, filed this action against Defendants for, *inter alia*, alleged breach of contract, conspiracy, slander, defamation, coercion, extortion, and intentional infliction of emotional distress. All counts other than those against Defendant Jesse E. Torres, IV, appear to arise from an alleged breach of contract between Plaintiff Jesse E. Torres, III and Defendant Sophie Torres. Before the court is Defendant Jesse E. Torres, IV's motion for summary judgment. For the following reasons, Defendant's motion for summary judgment is **ALLOWED**.

BACKGROUND

The summary Judgment record, viewed in a light most favorable to the non-moving party, reveals the following.

¹Jennifer J. Adams.

²Jesse E. Torres, IV, Debtmerica, LLC, and Donald F. Torres.

On or about April 24, 2009, Plaintiffs assisted Defendant Sophie Torres in drafting a will, which she then signed. Sophie then executed an Addendum to the Will, which Plaintiffs also helped her to draft, which purported to transfer all of her rights in real property to the Plaintiffs. Plaintiffs allege that the execution of this Addendum created an enforceable contract between the parties, and that Sophie's decision to change and/or revise her will by executing a third and subsequent will constitutes a breach of contract.

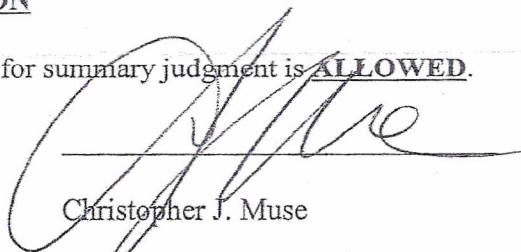
The parties agree that all counts, must fail if the breach of contract count against Sophie fails.

DISCUSSION

Massachusetts case law is clear that an enforceable contract to make a will cannot be litigated for breach of contract until such time for performance has arrived, i.e. at the time of death. Furthermore, even if this court found an enforceable contract, which it does not, a breach is not arguable. The court has reviewed all of the remaining counts, and all parties agree that a ruling as to count I would impact all remaining claims. As count I is dismissed, all remaining counts must be dismissed. Therefore, summary judgment is appropriate at this time.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is ALLOWED.


Christopher J. Muse

Justice of the Superior Court

Dated: November 23, 2011

A true copy, Attest:


Clerk

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

Appellate Court Docket No.
2012-P-0524

JESSE E. TORRES III
JENNIFER J. ADAMS
Appellants

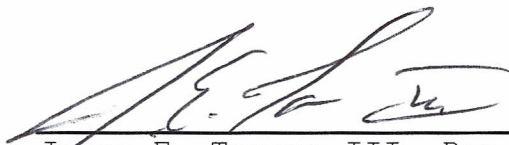
v.

JESSE E. TORRES IV, DONALD F. TORRES
DEBTMERICA, LLC. and SOPHIE J. TORRES
Appellees

Appeal from Superior Court, County of Barnstable,
Civil Docket #BACV2011-00433

Certificate of Service

I, Jesse E. Torres III, hereby certify under the pains and penalties of perjury, that on May 9, 2012, I have served the Defendants through their attorney of record, a true copy of the Brief and Record Appendix and related documents by postage prepaid U.S. Mail, addressed as follows: Jeremy Carter, Wilkins & DeYoung, 270 Winter St., Hyannis, MA 02601



Jesse E. Torres III, Pro Se
562 Waquoit Highway
East Falmouth, MA 02536
Telephone: 617-418-4497

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE
John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106; mass.gov/courts/appealscourt

March 28, 2012

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

RE: No. 2012-P-0524
Lower Ct. No.: BACV2011-00433

JESSE E. TORRES, III & another vs. SOPHIE J. TORRES & others
NOTICE OF DOCKET ENTRY

Please take note that, with respect to the Motion for allowance of plaintiff's affidavit of indigency, filed by Jesse E. Torres, III & Jennifer J. Adams. (Paper #1), on March 27, 2012, the following order was entered on the docket:

RE#1: Allowed as to the Appeals Court entry fee, and as to manner of service of the within motion on counsel for the defendants. *Notice.

ELECTRONIC NOTIFICATION. The Clerk's Office requests that all counsel of record and self-represented litigants register to receive electronic (i.e., e-mail) notification of actions, orders, judgments, rescripts, and decisions entered by the Appeals Court, including notices scheduling oral argument, in an appeal in which they are participating.

HOW TO REGISTER. Registration is simple. Visit the e-notification page of the court's website at mass.gov/courts/appealscourt/e-notification.html and click on Consent to Electronic Notification Form. Complete and print a copy of the form, then email it to enoticesignup@appct.state.ma.us.

FILINGS AFTER ASSIGNMENT OF APPEAL TO PANEL. Once an appeal is assigned to a panel for consideration on the merits, with or without oral argument, all further filings in the appeal are required to be filed electronically by e-mailing the document in PDF to emotions@appct.state.ma.us.

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. When filing any document containing confidential, impounded, or sealed material, compliance with Mass.R.App.P. 16(d), 61(m), 18(a), 18(g), and the S.J.C.'s Interim Guidelines for the Protection of Personal Identifying Information is required.

Very truly yours,
The Clerk's Office

To: Jesse E. Torres, III, Jennifer J. Adams, Jeremy M. Carter, Esquire

Attachment C

SCHEDULE OF PLEADINGS

Thursday July 21, 2011: [*Complaint*] On the afternoon of filing their Complaint, the Plaintiffs were notified by the assistant Clerk of Barnstable Superior Court that their Ex Parte Motions would not be heard and that the Plaintiffs were to serve on the Defendants a copy of the Complaint with Summons and Order of Notice, along with copies of the Plaintiffs' Motions and the scheduled hearing of them on Tuesday, July 26, 2011 at 2:00 PM.

Friday, July 27, 2011: [*Summons*] The Complaint and Summons was sent via U.S. Express Certified Mail, Return Receipt Requested, to Debtmerica, LLC, Jesse E. Torres IV and their then attorney of record, Arthur Aaronson of 16133 Ventura Blvd. #675, Encino, CA 91436. Served by Licensed Massachusetts Process Server was the Defendant Sophie J. Torres. The Defendant Donald F. Torres was not served as his address in Mexico was unknown.

Tuesday, July 26, 2011: [*Hearing*] The scheduled hearing of the above-named four (4) motions before the Honorable Regina Quinlan was held. None of the four Defendants were in attendance and only Sophie J. Torres

was represented by Council. Said Council had not served a Notice of Appearance on the Appellees.

August 3, 2011: [*District Court*] the Defendant through Council, filed and Served a *Notice to Quit* and *No Trespass Notice* to both evict the Appellees from the property which was the subject of their Complaint and to at the same time immediately prohibit them from entering the property which the Notice to Quit gave them 90 days to vacate. Further, this specific matter was awaiting a hearing before the Barnstable Superior Court.

July 28, 2011: [*Discovery*] Plaintiff Jesse E. Torres III's First Request for Production of Documents from the Defendant Sophie J. Torres.

July 29, 2011: [*Discovery*] Plaintiff Jesse E. Torres III's First Interrogatories to the Defendant Sophie J. Torres.

August 10, 2011: [*Ruling*] Motion Allowed: by Plaintiffs to Allow Summons and Complaint for Service of Process Out of State by US Mail Return Service. Judge Christopher J. Muse.

August 18, 2011: [*Discovery*] Plaintiff Jesse E. Torres III's First Request for Production of Documents

from the Defendant Debtmerica, LLC

August 19, 2011: [Defendant's *Motions*]

- ⤴ Defendant Sophie Torres' Ex Parte Motion For Short Order Of Notice
- ⤴ Defendant Sophie Torres' Motion For Plaintiffs To Cease And Desist (RESTRAIN) From Posting Information In The Internet

August 22, 2011: [Defendant's *9A Package*]

- ⤴ Defendant's Motion to Dismiss for Failure to State a Claim;
- ⤴ Memorandum of Law in Support of Defendant, Sophie J. Torres, Motion To Dismiss
- ⤴ Plaintiffs' Response And Opposition To Defendant Sophie J. Torres' Motion To Dismiss For Failure To State A Claim;
- ⤴ Request For Hearing

August 23, 2011: [Plaintiffs' *Motion*] Plaintiffs' Verified Ex-Parte Motion For Massachusetts Superior Court Rule9(A) Exception.

August 23, 2011: [Plaintiffs' *Discovery*]
Plaintiff Jesse E. Torres III's First Request For Production Of Documents from The Defendant Jesse E. Torres IV.

August 25, 2011: [Plaintiff's *Pleadings*]

- ▲ Plaintiffs' Ex Parte Motion for Short Order of Notice or in the Alternative: Motion to Combine
- ▲ Plaintiffs' Memorandum of Law in Support of Motion of Evidentiary Hearing
- ▲ Plaintiffs' Motion to Combine Motions, and to Combine With, the Scheduled Hearing of Defendant Sophie J. Torres' Motion to Cease and Desist
- ▲ Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Combine Motions, Opposition to, and to Combine With, the Scheduled Hearing of Defendant Sophie J. Torres' Motion to Cease and Desist
- ▲ Plaintiffs' Opposition to the Defendant Sophie J. Torres' Motion for Plaintiffs to Cease and Desist (Restrain) from Posting Information in the Internet.

August 29, 2011: [Plaintiffs' *Motion*] Plaintiffs' Motion To Strike Any And All Claims From/To New England Watchdogs, The Personal Interests Of Attorney Jeremy Carter, Defendants Not Represented By Mr. Carter, Any References To Any Warning To "DISCONTINUE All Internet Postings" Within The "DEFENDANT Sophie J. Torres' Motion For Plaintiffs To Cease And Desist (RESTRAIN) From Posting Information In The Internet"

August 30, 2011: [Defendant's *Hearing*] The Defendants Motion; "*Defendant Sophie Torres' Motion for Plaintiffs to Cease and Desist (restrain) from Posting*

Information in the Internet" was heard by the Honorable Christopher Muse. The Defendants Motion was Denied.

September 1, 2011: [Plaintiffs' *Discovery*]

Plaintiff Jesse E. Torres Ill's First Interrogatories
To The Defendant Jesse E. Torres IV.

September 21, 2011: [Plaintiffs' *9A Package*]

- ⤴ Plaintiffs' Ex Parte Motion For Short Order Of Notice Of Plaintiff's Verified Motion To Compel Limited Expedited Discovery
- ⤴ Plaintiff's Verified Motion To Compel Limited Expedited Discovery.

- ⤴ Defendant, Jesse E. Torres IV, Motion To Dismiss For Failure To State A Claim
- ⤴ Memorandum Of Law In Support Of Defendant, Jesse E. Torres, IV, Motion To Dismiss
- ⤴ Plaintiffs' Response And Opposition To "DEFENDANT, Jesse E. Torres IV, Motion To Dismiss For Failure To State A Claim";
- ⤴ Request For Hearing
- ⤴ Affidavit In Support Of Plaintiffs' Response And Opposition To "DEFENDANT, Jesse E. Torres IV, Motion To Dismiss For Failure To State A Claim"; Request For Hearing, Verification Attestations

October 17, 2011: [Plaintiffs' *Motions*]

- ⤴ Motion for Summary Judgment against Sophie J. Torres.
- ⤴ Plaintiffs' Emergency Motion For Hearing of Plaintiffs' Motion For Summary Judgment With Defendants' Scheduled Hearing of Three (3) 12(b) (6) Motions to Dismiss and Other Scheduled Motions on November 17, 2011

October 18, 2011: [Defendant's 9A Package]

- ⤴ Defendant, Debtmerica, LLC, Motion to Dismiss;
- ⤴ Defendant Debtmerica, LLC's Memorandum in Support of Motion to Dismiss;
- ⤴ Plaintiffs' Response And Opposition To "DEFENDANT, Debtmerica, LLC's, Motion To Dismiss For Failure To State A Claim";
- ⤴ Request For Hearing
- ⤴ Affidavit In Support Of Plaintiffs' Response And Opposition To "DEFENDANT, Debtmerica, LLC's, Motion To Dismiss For Failure To State A Claim"; Request For Hearing

October 26, 2011: [Plaintiffs' Motion] Plaintiffs'

Motion for hearing Plaintiffs' Motion for Summary

Judgment with Defendants' Scheduled Hearing of Motions

to Dismiss on 11/17/11.

November 1, 2011: [Defendants' 9A Package]

- ⤴ DEFENDANTS, Sophie J. Torres, Jesse Torres, IV, and Debtmerica, LLC, Motion to Continue
- ⤴ Plaintiffs' Verified Response and Opposition to Defendants Jesse E. Torres IV's, Sophie J. Torres' and
- ⤴ Debtmerica, LLC's Motion to Continue with Attestations and Certificate of Service

November 15, 2011: [Defendants Ruling] DEFENDANTS,

Sophie J. Torres, Jesse Torres, IV, and Debtmerica,

LLC, Motion to Continue. Denied Judge Christopher J.

Muse.

November 17, 2011: [Defendant's, *Hearing*]

Defendants three (3) Motions to Dismiss pursuant to M.R.C.P. 12 (b) (6). Memorandum of Decision and Order on Defendant's Motion for Summary Judgment

November 23, 2011: [Defendants' *Ruling*] Memorandum of Decision and Order on Defendant's Motion for Summary Judgment. *Allowed.* Judge Christopher J. Muse.

Three Motions to Dismiss pursuant to rule 12 (b) (6) were filed by the Defendants through Council: On 22, 2011 on behalf of the Defendant Sophie J. Torres, on October 12, 2011, on behalf of the Defendant Jesse E. Torres IV, and on October 18, 2011 on behalf of the Defendant, Debtmerica, LLC.

**CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 16(K) OF THE
MASSACHUSETTS RULES OF APPELLATE PROCEDURE**

I, Jesse E. Torres Jr., hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision)

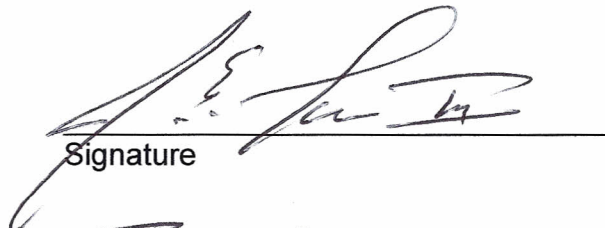
Mass. R. A. P. 16(e) (references to the record);

Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations);

Mass. R. A. P. 16(h) (length of briefs);

Mass. R. A. P. 18 (appendix to the briefs); and

Mass. R. A. P. 20 (form of briefs, appendices, and other papers).


Signature

Jesse E. Torres Jr. Pro Se
Printed name & B.B.O. number

562 Wapvoit Highway
Address

E. Falmouth, MA 02536

Attachment E