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Meredith R. S. Kroon

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(Of Counsel)

November 28, 2014

Land Court Department
Clerk's Office
Three Pemberton Square, 5th Floor
Boston, MA 02108

Re: Brian O'Sullivan and Marina O'Sullivan, Plaintiffs/Defendants in
Counterclaim

v.

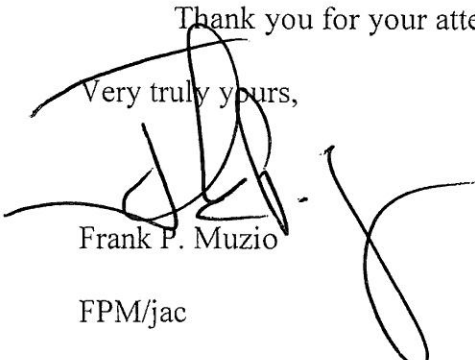
William R. Moriarty, Christopher Casey, Leon Drachman, William L.
Barlow IV, and Alan Lipkind, as they are members of the Town of
Marblehead Board of appeals, Jonathan G. Curtis, Leslie Demoraes, and
James L. Walters as Trustees of the Harborside Condominium Trust,
Defendants/Plaintiffs in Counterclaim
Miscellaneous Case No. 14 MISC 486956 (KCL)

Dear Sir/Madam:

Enclosed for filing please find CO-DEFENDANTS JONATHAN G. CURTIS, LESLIE
DEMORAES AND JAMES L. WALTERS, AS TRUSTEES OF THE HARBORSIDE
CONDOMINIUM TRUST'S ANSWER TO PLAINTIFFS' COMPLAINT AND THEIR
COUNTERCLAIM in connection with the above noted matter.

Thank you for your attention to this matter.

Very truly yours,


Frank P. Muzio

FPM/jac

Enc.

cc. Jeffrey T. Angley, Esq.
Adam J. Costa, Esq.
Client

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

LAND COURT DEPARTMENT
OF THE TRIAL COURT
MISC. CASE NO. 14MISC. 487181 (KCL)

BRIAN O'SULLIVAN and
MARINA O'SULLIVAN,

Plaintiffs/Defendants in Counterclaim

v.

WILLIAM R. MORIARTY, CHRISTOPHER
CASEY, LEON DRACHMAN, WILLIAM L.
BARLOW IV, and ALAN KIPKIND, as they are
MEMBERS of the TOWN OF MARBLEHEAD
BOARD OF APPEALS, JONATHAN G. CURTIS,
LESLIE DEMORAES, and JAMS L.
WALTERS, as TRUSTEES OF THE
HARBORSIDE CONDOMINIUM TRUST,
Defendants/Plaintiffs in Counterclaim

**CO-DEFENDANTS JONATHAN G. CURTIS, LESLIE DEMORAES AND
JAMES L. WALTERS, TRUSTEES OF THE HARBORSIDE
CONDOMINIUM TRUST'S ANSWER TO PLAINTIFFS' COMPLAINT
AND THEIR COUNTERCLAIM**

The first Paragraph of Plaintiffs' Complaint entitled "Introduction" sets forth no allegations of fact. Therefore no response is required. To the extent any allegations of fact are set forth in said paragraph, either express or implied, they are expressly denied.

PARTIES

1. Admitted.
2. The allegations set forth in Paragraph 2 of Plaintiffs' Complaint are directed to another Defendant. Therefore no response is required.
3. The allegations set forth in Paragraph 3 of Plaintiffs' Complaint are directed to another Defendant. Therefore no response is required.
4. The allegations set forth in Paragraph 4 of Plaintiffs' Complaint are directed to another Defendant. Therefore no response is required.
5. The allegations set forth in Paragraph 5 of Plaintiffs' Complaint are directed to another Defendant. Therefore no response is required.
6. The allegations set forth in Paragraph 6 of Plaintiffs' Complaint are directed to another Defendant. Therefore no response is required.
7. Admitted.
8. Admitted.
9. Admitted.

FACTS

10. Admitted.
11. Admitted that O'Sullivan's property is improved with a single family residence. Otherwise Defendants are without sufficient information or knowledge to either admit or deny the remaining allegations set forth in Paragraph 11 of Plaintiffs' Complaint.
12. Denied in the form alleged.
13. Admitted.

14. Admitted.
15. Admitted.
16. Denied as to the existence of a rock/shelf. Otherwise admitted.
17. Denied.
18. Denied as to the alleged encroachment. Otherwise, admitted.
19. Admitted.
20. Denied in the form alleged.
21. The substance of Paragraph 21 of Plaintiff's Complaint states a conclusion of law. Therefore, no response is required. To the extent Paragraph 21 contains allegations of fact, either express or implied, they are expressly denied.
22. Admitted.
23. The substance of Paragraph 23 of Plaintiff's Complaint states a conclusion of law. Therefore, no response is required. To the extent Paragraph 23 contains allegations of fact, either express or implied, they are expressly denied.
24. Denied.
25. Admitted.
26. Admitted.
27. Admitted.
28. Admitted.
29. Denied.
30. Denied.

31. Denied.
32. Admitted.
33. Denied in the form alleged.
34. Denied.
35. Defendants are without sufficient information or knowledge to either admit or deny the allegations set forth in Paragraph 35 of Plaintiffs' Complaint.
36. Denied that entry was not authorized. Otherwise, admitted.

COUNT I

37. Defendants repeat and incorporate by reference each of their answers and responses to the allegations set forth in Paragraphs 1-37 of Plaintiffs' Complaint as if set forth fully herein.
38. Admitted.
39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Denied.
45. Denied.

The paragraph following Paragraph 45 of Plaintiffs' Complaint entitled "Prayers for Relief" contains no allegations of fact therefore no response

is required. To the extent said Paragraph contains any allegations of fact, either express or implied, they are expressly denied.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss Plaintiffs' claims with prejudice and that Defendants be awarded their costs and attorney's fees and any other relief that is just and proper.

COUNTERCLAIMS

PARTIES

1. Plaintiffs in Counterclaim Jonathan Curtis, Leslie DeMoraes, and James Walters are Trustees of the Harborside Condominium Trust ("Harborside") which owns property located at 24 Lee Street, Marblehead, MA.
2. Defendants in Counterclaim Brian O'Sullivan and Marina O'Sullivan (O'Sullivan") own property and reside at 30 Lee Street, Marblehead, MA.

FACTS

3. The O'Sullivan's property located at 30 Lee Street and Harborside's property located at 24 Lee Street abut one another on the easterly side of O'Sullivan's property for a distance of approximately forty (40) feet.
4. Certain plantings, a fence and other amenities and improvements located on the easterly most portion of O'Sullivan's property encroach beyond the

common easterly boundary between the O'Sullivan and Harborside properties on to the Harborside property by up to approximately four (4) feet.

5. O'Sullivan's authorized agent/representative has been advised of, examined and has in fact acknowledged the existence of the encroachments.
6. The encroachments are located upon Harborside property without lawful authority and against Harborside's rights.

COUNT I

(Encroachment)

7. Plaintiffs in Counterclaim repeat and incorporate by reference the allegations set forth in Paragraphs 1-7 above as if set forth in full herein.
8. Insofar as the fence, plantings, amenities and other improvements extend into, are located upon, and encroach upon Harborside's property, O'Sullivan is maintaining the same without legal authority or justification and as such the O'Sullivans are liable to remove the encroachments immediately.

COUNT II

(Equity)

9. This proceeding entails a review of the approval by the Marblehead Board of Appeals of Harborside's Application for a variance or a special permit.
10. This Honorable Court has the authority in such proceedings to make decrees as justice and equity may require.

11. Harborside's property is a non-conforming use coupled with two dimensional non-conformities; (i) open space ratio and (ii) side line set back.
12. The Marblehead Zoning Bylaw at Section 200-36 expressly authorizes the Board of Appeals to grant zoning relief by special permit in circumstances, like this one, in which both use and dimensional non-conformities exist.
13. The Marblehead Board of Appeals could have and should have granted a Special Permit as requested in Harborside's Application as such relief is expressly available under the Marblehead Zoning Bylaw.
14. The Marblehead Board of Appeals did not consider that part of Harborside's Application seeking a Special Permit on the belief that such relief was not available under either the By-Law or Massachusetts Law and instead granted a variance.

WHEREFORE, Plaintiffs in Counterclaim respectfully request that this Honorable Court:

1. Order Defendants in Counterclaim to remove all of the encroaching structures, plantings, amenities and other improvements immediately, that the affected area be returned to a condition consistent with the natural surroundings, and that the work be conducted in such a manner that upon completion Harborside's property is not damaged and in the event any damage occurs it is repaired properly and immediately;

2. That the Defendants in Counterclaim be ordered to pay damages to Harborside including the costs and attorney's fees Harborside has incurred in bringing this action;
3. That the matter of a Special Permit be remanded to the Marblehead Board of Appeals with instructions that given the express terms of the Marblehead Zoning Bylaw a Special Permit is permitted under the circumstances in this case or alternatively that this Honorable Court convert the Variance to a Special Permit; and
4. That any other relief that is just and proper be awarded.

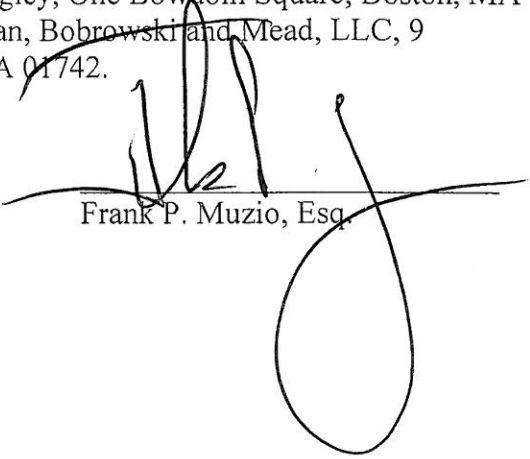
Dated: November 28, 2014

William R. Moriarty, Christopher Casey, Leon Drachman, William L. Barlow IV, and Alan Lipkind, as they are members of the Town of Marblehead Board of appeals, Jonathan G. Curtis, Leslie Demoraes, and James L. Walters as Trustees of the Harborside Condominium Trust
By their Attorney

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CERTIFICATE OF SERVICE

I, Frank P. Muzio, hereby certify that on the 28 day of November, 2014 I served the foregoing document by mailing the same, postage prepaid, directed to: Jeffrey T. Angley, Esq., Phillips & Angley, One Bowdoin Square, Boston, MA 02114 and Adam J. Costa, Esq. Blatman, Bobrowski and Mead, LLC, 9 Damonmill Sq., Ste 4A4, Concord, MA 01742.



Frank P. Muzio, Esq.