

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH

CARROLL COUNTY

SUPERIOR COURT - OSSIPEE

TOWN OF OSSIPEE,  
Plaintiff,

v.

DIANNE SHEEHAN,  
Defendant,

and

JOHN G. SEDA AND PAUL S. FITTS,  
Intervenors/Defendants

Case No.: 212-2017-CV-00160

**DIANNE SHEEHAN'S ANSWER, AFFIRMATIVE DEFENSES,  
AND COUNTERCLAIMS AGAINST THE TOWN OF OSSIPEE**

COMES NOW the Defendant, Dianne Sheehan ("Sheehan"), by and through her counsel of record, the Law Offices of Marbury & Marbury, PLLC (Phillip E. Marbury), and for her Answer to the Town of Ossipee's Complaint and Request for Temporary Restraining Order and Preliminary Injunction, Damages, and other Relief (the "Complaint") states as follows:

**Synopsis of the Case**

1. Sheehan admits that, on August 16, 2017, a Purchase and Sale Agreement was executed between the Town of Ossipee (hereinafter, the "Town") and Sheehan (the "Purchase Agreement"), and states that the referenced Purchase Agreement speaks for itself and is the best and highest evidence of what is contained therein. Sheehan denies the remaining allegations contained in Paragraph 1 of the Complaint to the extent such paragraph requires an Answer.

### **Jury Trial**

2. Paragraph 2 of the Complaint simply states Plaintiff's wishes and states a legal conclusion, to which no answer is required.

### **Parties**

3. Sheehan admits the allegations contained in Paragraph 3 of the Complaint.

4. Sheehan admits the allegations contained in Paragraph 4 of the Complaint.

### **Jurisdiction and Venue**

5. Sheehan incorporates by reference her answers to Paragraphs 1 – 4, as though fully stated herein.

6. Sheehan concurs with the legal conclusion posed in Paragraph 6 of the Complaint.

7. Sheehan concurs with the legal conclusion posed in Paragraph 7 of the Complaint, namely that this Court has personal jurisdiction over the parties to this matter, but denies any remaining allegations contained in Paragraph 7 to the extent an answer is required.

8. Sheehan concurs with the legal conclusion posed in Paragraph 8 of the Complaint, namely that venue for the above-captioned case is proper before this Court.

### **Facts**

9. Sheehan admits that the Purchase Agreement was executed on August 16, 2017 between the Town and Sheehan, and that the purchase price in the Purchase Agreement was \$1,200,000.00, but affirmatively states that such Purchase Agreement is invalid and unenforceable, for reasons articulated in Sheehan's Affirmative Defenses, as well as Sheehan's Motion to Dismiss.

10. Sheehan admits the allegations contained in Paragraph 10 of the Complaint, but states that terms and phrases such as “primarily out-of-town vacationers,” is vague and ambiguous, and subject to varying definitions and/or meanings.

11. Sheehan is without sufficient information to admit or deny the allegations contained in Paragraph 11 of the Complaint and therefore denies the same. Sheehan does admit that Paragraph 11 of the Complaint articulates her understanding of the Town’s planned use, but cannot speak on behalf of the Town.

12. Sheehan is without sufficient information to admit or deny the allegations contained in Paragraph 12 of the Complaint, and therefore denies the same, excepting the fact that Sheehan did request a close date no later than December 31, 2017 be included in any proposed purchase agreement.

13. Sheehan admits that the Town applied for and received permission to hold a special town meeting, and that such permission was granted on October 16, 2017. Sheehan affirmatively states that the Order attached as Exhibit 2 to the Complaint speaks for itself and is the best and highest evidence of what is contained therein.

14. Sheehan admits the allegations contained in Paragraph 14 of the Complaint only to the extent that they apply to the negotiations leading up to the execution *and prior to the date of said execution* of the Purchase Agreement, but affirmatively states that, on the day of execution, Rich Morgan, the Chairman of the Board of Selectmen and Agent for the Town, coerced Sheehan into signing the Purchase Agreement under threat of litigation, misrepresentation, and fraud, and

therefore denies that the negotiations that occurred on the day of the Purchase Agreement's execution were cordial.

15. Sheehan denies the allegations contained in Paragraph 15 of the Complaint.

16. Sheehan admits that she had misgivings regarding the sale of the Property and affirmatively states as follows: (1) such misgivings began prior to the execution of the Purchase Agreement on August 16, 2017; (2) Sheehan voiced such concerns to the Richard Morgan at the meeting with him on August 16, 2017, prior to signing the Purchase Agreement; and (3) Sheehan's concerns and misgivings were answered by Richard Morgan with fraudulent statements that Sheehan was already under a binding agreement to sell the Property to the Town, and threats that "If you don't sign this, we will sue you and the judge will find for us."

17. Sheehan denies the allegations contained in Paragraph 17 of the Complaint.

18. Sheehan denies the allegations contained in Paragraph 18 of the Complaint.

19. Sheehan admits that there was significant public discourse regarding the Town's proposed acquisition of the Property, but is without sufficient information to admit or deny the remaining allegations contained in Paragraph 19 of the Complaint, and therefore denies the same.

20. Sheehan admits that some of the Campers, which held annual leases to their respective portion of the Property, erected various signs, as was their right to do under their respective leases, but denies the remaining allegations contained in Paragraph 20 of the Complaint.

21. Sheehan admits the allegations contained in Paragraph 21 of the Complaint only to the extent that she exercised her *First Amendment* rights to engage in the political process leading up to the Town Vote, and had conversations, when the subject arose, about her opinions and

perspectives on the political issue. Sheehan denies Plaintiff's attempt to portray Sheehan as actively seeking out individuals in order to convince them to vote against it or in any way go out of her way to campaign against the Article. Additionally, Sheehan was not even in New Hampshire for the majority of the month of November, so she could not have been so engaged during this time. The remaining allegations contained in Paragraph 21 of the Complaint are denied.

22. Sheehan admits the allegations contained in Paragraph 22 of the Complaint.

23. Sheehan denies the allegations contained in Paragraph 23 of the Complaint.

24. Sheehan affirmatively states that the original of the referenced Article speaks for itself and is the best and highest evidence of what is contained therein.

25. Sheehan is without sufficient information to admit or deny the allegations contained in Paragraph 25 of the Complaint, and therefore denies the same.

26. Upon information and belief, Sheehan admits the allegations contained in Paragraph 26 of the Complaint, but affirmatively states that the official record of such vote is the best and highest evidence of such results.

27. Sheehan admits that the vote did not pass, but denies the remaining allegations contained in Paragraph 27 of the Complaint.

**Count I – Request for Temporary Relief  
(Temporary Restraining Order (TRO) and Preliminary Injunction)**

28. Sheehan incorporates by reference her answers to Paragraphs 1 – 27, as though fully stated herein.

29. Sheehan admits the allegations contained in Paragraph 29 of the Complaint.

30. Sheehan is without sufficient information to admit or deny the beliefs of the Town (presumably), and therefore denies the same.

31. Sheehan denies the allegations contained in Paragraph 31 of the Complaint.

32. Paragraph 32 states a legal conclusion to which no answer is required. To the extent factual allegations requiring an answer are determined to be found within Paragraph 32, Sheehan denies the same.

### **Count II – Breach of Contract**

33. Sheehan incorporates by reference her answers to Paragraphs 1 – 32, as though fully stated herein.

34. Paragraph 34 states a legal conclusion to which no answer is required. To the extent factual allegations requiring an answer are determined to be found within Paragraph 32, Sheehan denies the same.

35. Sheehan denies the allegations contained in Paragraph 35 of the Complaint.

36. Sheehan denies the allegations contained in paragraph 36 of the Complaint.

37. Sheehan denies the allegations contained in Paragraph 37 of the Complaint.

a. Sheehan denies the allegations contained in Paragraph 37a of the Complaint.

b. Sheehan denies the allegations contained in Paragraph 37b of the Complaint.

### **Count III - Fraud**

38. Sheehan incorporates by reference her answers to Paragraphs 1 – 37, as though fully stated herein.

39. Sheehan denies the allegations contained in Paragraph 39 of the Complaint.

40. Sheehan denies the allegations contained in Paragraph 40 of the Complaint.

41. Sheehan denies the allegations contained in Paragraph 41 of the Complaint.

a. Sheehan denies the allegations contained in Paragraph 41a of the Complaint.

### **Reservation of Rights**

42. Paragraph 42 of the Complaint states no allegations requiring admission or denial.

To the extent it is determined that there are such allegations, they are denied.

43. Paragraph 43 of the Complaint states no allegations requiring admission or denial.

To the extent it is determined that there are such allegations, they are denied.

### **Request for Relief**

Sheehan denies that the Town is entitled to any of the relief it has requested in the Complaint.

### **SHEEHAN'S AFFIRMATIVE DEFENSES**

#### **A. First Affirmative Defense: Duress**

The Town's claims are barred by the doctrine of duress. Sheehan signed the Purchase Agreement under threat of litigation by Richard Morgan, who claimed that the Town of Ossipee would sue her if she did not sign the Purchase Agreement.

#### **B. Second Affirmative Defense: Estoppel**

The Town's claims are barred by the doctrines of Estoppel. (1) Richard Morgan falsely asserted that Sheehan was bound by some prior verbal "agreement" when she was not, in fact, so bound. (2) Sheehan was ignorant of the fact that no supposed verbal agreement could be binding as to the sale of the Property; (3) Richard Morgan made this false assertion intending to induce

Sheehan to sign the Purchase Agreement; and (4) Sheehan was induced to sign the Purchase Agreement in reliance upon the false assertion and representation of Richard Morgan.

**C. Third Affirmative Defense: Fraud**

The Town's claims are barred by the doctrine of Fraud and Fraudulent Misrepresentation, both as to the false assertion that Sheehan was legally obligated to sign the Purchase Agreement and as to Richard Morgan's promise that the Town would not remove any of the campers renting campsites on the Property until at least the 2020 season, when Richard Morgan knew he was, at a minimum, going to immediately remove 15 or more of the existing camp sites.

**D. Fourth Affirmative Defense: Unclean Hands**

The Town's claims are barred by the doctrine of Unclean Hands.

**E. Fifth Affirmative Defense: Failure to State a Claim**

The Town's fails to state a claim against Sheehan on which relief can be granted. Even if all of the allegations contained in the Complaint were true, which Sheehan denies, the Town's claims must fail because they constitute an impermissible attempt to unconstitutionally restrain and prohibit Sheehan's First Amendment rights, specifically her right to engage in political speech pertaining to governmental matters.

**F. Sixth Affirmative Defense: Failure of Consideration**

The Town's claims are barred by the doctrine of Failure of Consideration. Even if the Vote had been approved, the Town would not have been able to obtain the necessary funding to close by the date required under the Purchase Agreement.

*[Counterclaims begin on following page]*



## DIANNE SHEEHAN'S COUNTERCLAIMS AGAINST TOWN OF OSSIPEE

COMES NOW the Defendant, Dianne Sheehan ("Sheehan"), by and through her attorneys of record, the Law Offices of Marbury & Marbury, PLLC (Phillip E. Marbury), and respectfully submits the following Counterclaims against the Town of Ossipee (the "Town") for Fraudulent Misrepresentation, Negligent Misrepresentation, Duress, Tortious Interference with Contractual Relations, and Breach of Contract.

### Introduction

1. Sheehan owns a series of contiguous parcels of real property, located at 130 Gretchen Road, Ossipee, Carroll County, New Hampshire (the "Property"), and said Property includes frontage on Ossipee Lake.
2. In the Summer of 2017 Richard Morgan approached Sheehan, on behalf of the Town of Ossipee and in his official capacity as Chairman of the Ossipee Board of Selectmen, regarding the possibility of the Town of Ossipee purchasing the property.
3. Intrigued by the idea, Sheehan and the Town engaged in a series of back and forth negotiations regarding the potential purchase of the Property by the Town, such negotiations occurring primarily through the months of July and August of 2017.
4. A draft of the Purchase and Sales Agreement (the "Purchase Agreement") was generated by the Town, and negotiations continued with changes being requested and additional considerations and inquiries occurring.

5. On or about August 14, 2017, Richard Morgan and Ellen White, the Ossipee Town Administrator, met with Sheehan and her husband, William Sheehan, at their home in Ossipee, and presented her with a draft of the Purchase Agreement the Town hoped she would sign.

6. As a result of this meeting, Sheehan had directed that the town make a few additional changes to the Purchase Agreement. The meeting was amicable and ended amicably.

7. As of August 14, 2017, Sheehan still considered a sale to the Town as a real possibility, but had not committed to any agreement to sell the Property.

8. On or about August 16, 2017, Richard Morgan and Ellen White again came to Sheehan's house to meet with Sheehan and her husband (the "August 16 Meeting") with a revised draft of the Purchase Agreement, with the hope that Sheehan would sign it.

9. By the time of the August 16 Meeting, Sheehan had serious concerns and hesitations regarding the sale of the Property to the Town, and voiced these concerns to Richard Morgan at the August 16 meeting.

10. At the August 16 Meeting Sheehan also proposed an alternate plan whereby she might gift a portion of the lakefront property to the Town in lieu of a sale of the entire Property.

11. At the August 16 Meeting Sheehan also communicated to Richard Morgan that she needed more time to consider and think about the transaction and did not want to sign the Purchase Agreement at that time.

12. Upon hearing Sheehan's concerns, desire for more time, and potential alternate proposal to donate some land rather than selling the entire Property, Richard Morgan became

visibly agitated and angered; his demeanor toward Sheehan and her husband quickly turned threatening and intimidating.

13. He repeatedly told Sheehan that they [the Town and Sheehan] already had an agreement, and that “we shook hands on an agreement.” Morgan represented to Sheehan that they already had a legally binding and enforceable agreement that she had to comply with, and that she was irretrievably committed and could not back out.

14. When Sheehan continued to express her unwillingness to sign the presented Purchase Agreement, in an escalating dialogue that became increasingly hostile and intimidating, Richard Morgan told Sheehan and her husband that “if you don’t sign this, we will sue you, and the judge will find for us.”

15. Rattled and intimidated by Morgan, believing his false statements regarding her legal obligation to go through with the sale were true and terrified by his threats to sue her and take the Property through legal action, Sheehan signed the Purchase Agreement.

16. During the preliminary negotiations that occurred leading up to the August 16 Meeting, one of the key requirements Sheehan insisted upon was that the Town, if sold the Property, would continue to operate the Property as a campground.

17. This concern was condensed into the language found in Paragraph 22(c) of the Purchase Agreement, wherein it states:

The Purchaser will continue to allow campers to rent campsites on the Property through at least the 2020 season. The rent charged by the Seller during the 2017 season shall not be increased before January 1, 2021.

(Hereinafter, the “Campsite Maintenance Provision”)

18. From her conversations with Morgan, Sheehan was led to believe that the Campsite Maintenance Provision actually ensured that the Town would not remove or eliminate the Campground's functionality as such.

19. Morgan repeatedly told Sheehan and her husband that the Town would continue to operate the Campground as the revenue from the Campground would make the beach essentially operate free of cost to the taxpayers; that the rent from the camp sites would pay the bond required to purchase the Property.

20. Sheehan's understanding of the terms related to the Town's intentions and obligations, the language included in the Purchase Agreement, and then Morgan's understanding of the Town's obligations under the Purchase Agreement are all different, and demonstrate a lack of any sort of "meeting of the minds" on this condition and provision.

21. At the very next Selectmen Meeting, held on August 21, 2017, after describing the Property as including 45 seasonal campsites, Morgan went on to state, "there is an opportunity to keep maybe 30 of the seasonal sites. Possibly keep many of the boat slips and the revenue generated by those campsites and those boat slips will pay the bond for the beach."

22. Morgan's announcement came as a shock to Sheehan, who understood, based on Morgan's representations, that all 45 campsites would be protected under the Purchase Agreement.

23. Morgan's announcement that 15 sites would be removed constituted a repudiation of the Campsite Maintenance Obligation under the Purchase Agreement, and Sheehan began to seek legal counsel regarding Morgan's repudiation of the Campsite Maintenance Provision.

24. Morgan then stated that the only restriction or stipulation related to the campsites was that “any seasonal campsites which remain, we will not go up on their rent for 3 years. Those are the only restrictions or stipulations that are in that P & S Agreement.”

25. This statement reinforced the reality of the Town’s repudiation of the Town’s obligation under the Campsite Maintenance Obligation not to remove any such campsites until the end of the 2020 season.

26. The following week, at the Selectmen’s Meeting on August 28, 2017, Morgan stated that “There is an agreement in the Purchase and Sales that for those campers who are allowed to stay, we will not go up on their rate for three years.”

27. At the August 28, 2017 meeting, Morgan stated, “I am, in fact, having some people who are saying they want the beach, but they don’t want to be in the campground business... nothing is etched in stone. I am only 1 of 4400 people who live in this town.”

28. At the Selectmen’s Meeting on September 25, 2017, in response to some questioning by Carol Lyons regarding whether Morgan asserted the validity of a verbal agreement, Morgan stated, “There was an agreement made . . . we agreed to everything that was asked, and we shook hands on that, so it’s not just a verbal agreement, and you may again, and maybe you have some legal experience I don’t know about, but it is what it is and was in fact an enforceable agreement.”

29. At the September 25, 2017 meeting, Morgan again confirmed that 15 of the 45 sites would have to be removed to establish the necessary parking for the beach.

30. At the Selectmen's Meeting on September 16, 2017, Morgan articulates the proposal that the Town of Ossipee is going to put forward as follows:

. . . the proposal at this point, that the Town of Ossipee is going to put forward; correct me if I'm wrong, is that we are going to proceed with the purchase of the Camp Sokokis property and to eliminate the campground in its entirety. We never wanted to be in the campground business; that wasn't our desire. We wanted a beach.

31. At the Selectmen's Meetings on October 23, 2017 and October 30, 2017, Morgan expressly confirms that the Town will acquire the property exclusively for a beach, and will close the campground upon acquisition.

32. Morgan's statements at the October 23, 2017 meeting constitute an absolute repudiation of the Campsite Maintenance Provision of the Purchase Agreement.

33. On November 28, 2017 the Town held its special meeting for the purpose of voting on the approval of obtaining a bond for \$1,000,000.00 and to use \$200,000 of the Town's surplus to comprise the purchase price under the Purchase Agreement of \$1,200,000.00 ("Article I").

34. Article I failed to achieve the requisite 2/3 approval.

35. Section 22(a) of the Purchase Agreement states as follows:

The Purchaser shall hold a special meeting in the autumn of 2017 to secure permission from the voters to raise the funds necessary to acquire the property. In the event the Purchaser fails to secure the number of votes required to purchase the Property, this Agreement shall be null and void.

36. Accordingly, upon the failure to approve Article I on November 28, 2017, the Purchase Agreement was "null and void."

37. On November 30, 2017, Sheehan entered into a new Purchase and Sale Agreement with John Seda ("Seda") and Paul Fitts ("Fitts") for the sale of the Property for the same price

previously provided in the Purchase Agreement with the Town (the “Second Purchase Agreement”).

38. On December 5, 2017, the Town filed suit against Sheehan alleging breach of contract (via a breach of the implied duty of good faith and fair dealing) and Fraud, and procured a temporary restraining order preventing the sale of the Property pursuant to the Second Purchase Agreement.

39. Ultimately, the claims raised by the Town in support of its interference with Sheehan’s contract with Seda and Fitts seek to enjoin her from engaging in her Constitutionally protected First Amendment liberties and to restrict and prohibit her ability to engage in political debate and discussion as they relate to an unequivocally public concern.

**Count I – Fraudulent Misrepresentation (Fraud in the Inducement)**

40. Sheehan incorporates by reference all of the allegations contained in Paragraphs 1 through 39 as if fully stated herein.

41. On August 16, 2017, Morgan falsely told Sheehan that their verbal negotiations leading up to the creation of a written Purchase and Sales Agreement constituted a binding and legally enforceable agreement between Sheehan and the Town (the “Misrepresentations”).

42. At the time the Misrepresentations were made, Morgan knew of their falsity or had a conscious indifference to their truth.

43. At the time the Misrepresentations were made, Morgan made them with the explicit intention of causing Sheehan to rely on their voracity to cause her to sign the Purchase Agreement.

44. Sheehan did not have the benefit of legal counsel prior to executing the final version of the Purchase Agreement before being coerced into signing.

45. Sheehan did in fact justifiably rely on the voracity of the Misrepresentations, and was fearful of being sued by the Town of Ossipee and that she had somehow blundered into an irreversible position.

46. Sheehan has suffered pecuniary loss as a result of her justifiable reliance upon Morgan's Misrepresentations in an amount to be determined at trial.

### **Count II – Negligent Misrepresentation**

47. Sheehan incorporates by reference all of the allegations contained in Paragraphs 1 through 46 as if fully stated herein.

48. On August 16, 2017, Morgan falsely told Sheehan that their verbal negotiations leading up to the creation of a written Purchase and Sales Agreement constituted a binding and legally enforceable agreement between Sheehan and the Town (the "Misrepresentations").

49. Morgan should have known his Misrepresentations were false, or was recklessly indifferent to the truth or falsity of such claims.

50. Morgan intended Sheehan to act upon the Misrepresentations and to sign the Purchase Agreement.

51. Sheehan did in fact justifiably rely on the veracity of the Misrepresentations, and was fearful of being sued by the Town of Ossipee and that she had somehow blundered into an irreversible position.



52. Sheehan has suffered pecuniary loss as a result of her justifiable reliance upon Morgan's Misrepresentations in an amount to be determined at trial.

### **Count III - Duress**

53. Sheehan incorporates by reference all of the allegations contained in Paragraphs 1 through 52 as if fully stated herein.

54. By the time of the August 16, 2017 meeting with Morgan, Sheehan did not want to sign the Purchase Agreement.

55. When this was communicated to Morgan, he immediately adopted an intimidating and aggressive demeanor, and threatened her with litigation, claiming that if she did not sign, the Town would sue her, and that the judge would find for the Town.

56. Morgan intended that his demeanor and threats would overcome Sheehan's resistance to executing the agreement prepared by Morgan and the Town's attorney.

57. This threat from Morgan caused Sheehan to be extremely upset and fearful, and in a panic wanting to avoid being sued by the Town of Ossipee and believing Morgan's Misrepresentations (as defined above), Sheehan signed the Purchase Agreement.

58. Morgan's intimidating and aggressive demeanor and his threat of filing a lawsuit in order to coerce Sheehan to sign the Purchase agreement was a wrongful exertion of pressure.

59. Feeling backed into a corner, and tricked into believing that she had someone blundered in the process resulting in her being in an irrecoverable position, Sheehan panicked and signed the Purchase Agreement, feeling as though it was her only option.

60. Accordingly, the Purchase Agreement should be adjudicated void, as it was executed under Duress from Morgan.

61. Additionally, Sheehan has suffered Sheehan has suffered damages as a result of Morgan's duress, in an amount to be determined at trial.

#### **Count IV – Tortious Interference with Contractual Relations**

62. Sheehan incorporates by reference all of the allegations contained in Paragraphs 1 through 61 as if fully stated herein.

63. Sheehan entered into the Second Purchase Agreement with Seda and Fitts on November 30, 2017, after the Purchase Agreement with the Town became null and void pursuant to its terms.

64. The Town knew of this relationship and agreement at the time it filed the above-captioned lawsuit.

65. The Town filed the above-captioned lawsuit with the express intention of interfering in the contractual relationship between Sheehan and Seda and Fitts.

66. The Town has no valid basis for the filing of the above-captioned lawsuit, as it seeks essentially to obtain a Court Order that would prohibit Sheehan from engaging or participating in political discussion and discourse as it relates to matters of public concern and government, in explicit violation of Sheehan's Constitutionally Protected First Amendment Rights.

67. Additionally, the Town does not even attempt to plead an actual causal connection between the alleged actions Sheehan engaged in and the failure of the voting residents of Ossipee to pass Article I, as proving such a causal relationship is impossible.

68. Additionally, the Town's Fraud claim is based exclusively upon a demonstrably false allegation that Sheehan engaged in discussions, and an eventually execution of the Purchase Agreement, simply to drive up the sales price of the Property so she could breach her agreement and then sell it for an increased price to a third party.

69. The Purchase Price under the Second Purchase Agreement is the exact same as the purchase price under the Purchase Agreement with the Town: \$1,200,000.00.

70. Sheehan has been damaged by the Town's unreasonable and meritless lawsuit and is entitled to damages in an amount to be determined at trial in addition to her reasonable attorney's fees.

#### **Count V – Breach of Contract**

71. Sheehan incorporates by reference all of the allegations contained in Paragraphs 1 through 70 as if fully stated herein.

72. Morgan's statements and actions following the execution of the Purchase Agreement demonstrate that the Town had no intention of complying with its obligation under the Purchase Agreement to "allow campers to rent campsites on the Property through at least the 2020 season."

73. Morgan's representations, on behalf of the Town, that they would not comply with the Campsite Maintenance Provision constitutes a repudiation and breach of the Contract.

74. Furthermore, Section 22(a) of the Purchase Agreement specifies that the Purchase Agreement was null and void as soon as the Town failed to secure the number of votes required to

purchase the Property at the special meeting held on November 28, 2017 (the “Failed Vote Contingency”).

75. Despite the clear language of the Failed Vote Contingency, the Town has persisted in its attempts to force Sheehan to comply with its desire to acquire the Property.

76. Section 17 of the Purchase Agreement specifies as follows: “In the event that either party breaches the terms of this Agreement and a suit is instituted to enforce the same, the prevailing party shall be entitled to all reasonable attorney’s fees and court costs incurred in such action.”

77. The Town’s filing of this lawsuit in violation of the Failed Vote Contingency constitutes a breach of contract.

78. Accordingly, Sheehan is entitled to all reasonable attorney’s fees and court costs incurred in defending against the Town’s erroneous claims and in prosecuting these counterclaims, in addition to any damages, in an amount to be determined at trial.

**NOW THEREFORE**, Sheehan respectfully requests this Honorable Court grant the following relief:


- A. Dismiss the Town of Ossipee’s Complaint against Dianne Sheehan;
- B. Enter judgment against the Town of Ossipee for all damages incurred as a result of the Town’s Fraudulent Misrepresentation, Negligent Misrepresentation, Duress, Tortious Interference with Contractual Relations, and Breach of Contract;
- C. Award Sheehan her reasonable attorney’s fees in defending the Town’s meritless claims and in prosecuting these counterclaims;

D. Remove the TRO preventing the sale of the Property to Seda and Fitts pursuant to the Second Purchase Agreement; and

E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,  
Dianne Sheehan, Defendant

By her attorneys,  
The Law Offices of Marbury & Marbury, PLLC

By:   
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Dated: 01/03/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 3<sup>rd</sup> day of January 2018, a copy of the foregoing pleading was mailed and emailed to the following counsel of record:

Richard D. Sager, Esq.  
Sager & Smith, PLLC  
5 Courthouse Square – POB 385  
Ossipee, NH 03864

John E. Laboe, Esq.  
6 Loudon Road, Ste 502  
Concord, NH 03301

  
Phillip E. Marbury