

18

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A. NO. 2006-02328 D

WILLIAM M. LONERGAN and
DIANE WHITNEY-WALLACE,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs and Defendants-in-Counterclaim

v.

JAMES W. FOLEY, PETER A. FOOTE,
ALEXANDER B. C. MULHOLLAND, JR.,
DONALD F. WHISTON,
ELIZABETH A. KILCOYNE, PATRICK J. MCNALLY,
AND EDWARD B. RAUSCHER,
FEOFFEEES OF THE GRAMMAR SCHOOL
IN THE TOWN OF IPSWICH,

Defendants and Plaintiffs-in-Counterclaim

v.

DISTRICT ATTORNEY FOR THE ESSEX DISTRICT,
ATTORNEY GENERAL OF THE COMMONWEALTH
OF MASSACHUSETTS, ET ALS,

Defendants-in-Counterclaim

ANSWER TO COUNTERCLAIM BY PLAINTIFFS,
DEFENDANTS-IN-COUNTERCLAIM AND OTHERS

FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX

FEB 23 2007

Sharon A. Russell
CLERK

The Plaintiffs, Defendants-in-Counterclaim, William M. Lonergan and Diane Whitney Wallace and those other Counterclaim Defendants as listed on the attached Schedule "A" (collectively "Counterclaim Defendants") file their Answer to the Counterclaim of the Defendants, Plaintiffs-in-Counterclaim, James W. Foley, Peter A. Foote, Alexander B. C. Mulholland, Jr., Donald F. Whiston, Elizabeth A. Kilcoyne, Patrick J. McNally, and Edward B. Rauscher, Feoffees of the Grammar School in the Town of Ipswich ("Feoffees"), by utilizing the paragraph numbers as contained in the Feoffees' counterclaim, as follows:

INTRODUCTION AND OVERVIEW

1. The Counterclaim Defendants admit that the Feoffees own the land at Little Neck, Ipswich, Massachusetts, but that said land is owned by the Feoffees, in trust. The Counterclaim Defendants restate their answers to the allegations contained in paragraphs 175 through 193 in response to the Feoffees' incorporation, in paragraph 1, of said allegations. The Counterclaim Defendants deny the remaining allegations contained in paragraph 1.

2. The Counterclaim Defendants admit that the land at Little Neck is held by the Feoffees, in trust, for the benefit of the grammar school in Ipswich and deny the remaining allegations contained in paragraph 2.

3. The Counterclaim Defendants admit that they have built homes on lots located on Little Neck and that up to the present time, 167 cottages have been constructed, 24 of which are used year-round and the remainder of which are used seasonally. The Counterclaim Defendants deny the remaining allegations contained in paragraph 3.

4. The Counterclaim Defendants deny the allegations contained in paragraph 4 except that the Counterclaim Defendants admit their timely payment of monies to the Feoffees.

5. The Counterclaim Defendants deny the allegations contained in paragraph 5 except that the Counterclaim Defendants admit that the "take it or leave it" lease proffered by the Feoffees demanded that the Counterclaim Defendants pay \$9,700 per year for seasonal use of the land and \$10,800 per year for year-round use of the land. The Counterclaim Defendants also admit that the demanded rent, as stated, was to remain the same for three years and that the Counterclaim Defendants could terminate the lease upon 60 days written notice. In further answering, however, the Counterclaim Defendants state that the Feoffees' proffer of the "take it or leave it" lease, as partially described, followed the Feoffees' refusal to negotiate the terms of a 20-year lease in good faith and was proffered in bad faith, in an attempt to force the Counterclaim Defendants into accepting untenable terms under the threat of the loss of their homes.

6. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations concerning the assessed values of the lots for fiscal year 2007. The Counterclaim Defendants deny the remaining allegations contained in paragraph 6.

7. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 7.

8. The Counterclaim Defendants admit that the two named Plaintiffs have brought this action on behalf of themselves and all others similarly situated and that the

Counterclaim Defendants have not signed the proffered lease. The Counterclaim Defendants deny the remaining allegations contained in paragraph 8.

9. No answer is required of the Counterclaim Defendants to the Feoffees' description of their counterclaims as stated in paragraph 9.

PARTIES IN COUNTERCLAIM

10. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 10.

11. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 11.

12. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 12.

13. Counterclaim Defendant Nadine Wilkey denies that she is a mere "tenant" of the lot located at 59 River Road in Ipswich and lacks information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 13. As to the remaining Counterclaim Defendants, no answer is required to the allegations contained in paragraph 13.

14. The Counterclaim Defendants deny the allegations contained in paragraph 14 and in further answering state that the individuals identified as the owners of the home on the lot located at 50 River Road in Ipswich are not the owners.

15. Counterclaim Defendants Robert A. Schless and Christine Hawrylak deny that they are mere "tenants" of the lot located at 39 River Road in Ipswich and lack information sufficient to form a belief as to the truthfulness of the remaining

146. Counterclaim Defendant Robert MacRae denies that he is a mere "tenant" of the lot located at 3 River Road in Ipswich, lacks information sufficient to form a belief as to the truthfulness of the allegations concerning the assessed value of the lot and denies the remaining allegations contained in paragraph 146. As to the remaining Counterclaim Defendants, no answer is required to the allegations contained in paragraph 146.

147. Counterclaim Defendant Francine Amore Koris denies that she is a mere "tenant" of the lot located at 2 Cliff Road in Ipswich and lacks information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 147. As to the remaining Counterclaim Defendants, no answer is required to the allegations contained in paragraph 147.

148. Counterclaim Defendants Mark Sullivan, Kara Sullivan and Christopher Sullivan deny that they are mere "tenants" of the lot located at 8 Cliff Road in Ipswich and lack information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 148. As to the remaining Counterclaim Defendants, no answer is required to the allegations contained in paragraph 148.

149. Counterclaim Defendant Eleanor F. Mann denies that she is a mere "tenant" of the lot located at 63 River Road in Ipswich and lacks information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 149. As to the remaining Counterclaim Defendants, no answer is required of the allegations contained in paragraph 149.

150. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 150.

151. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 151.

152. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 152.

153. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 153.

154. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 154.

155. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 155.

156. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 156.

157. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 157.

158. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 158.

159. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 159.

160. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 160.

161. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 161.

162. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 162.

163. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 163.

164. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 164.

165. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 165.

166. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 166.

167. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 167.

168. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 168.

169. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 169.

170. No answer is required of the Counterclaim Defendants to the allegations contained in paragraph 170.

171. Counterclaim Defendants Stephen Moore and Nancy Moore, Trustees of the Nancy A. Moore Revocable Trust, deny that they are mere "tenants" of the lot located at 24 Plum Sound Road in Ipswich and lack information sufficient to form a belief as to the truthfulness of the remaining allegations contained in paragraph 171.

As to the remaining Counterclaim Defendants, no answer is required to the allegations contained in paragraph 171.

172. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 172.

173. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 173.

174. No answer is required by the Counterclaim Defendants to the allegations contained in paragraph 174.

FACTS COMMON TO COUNTS I AND II

175. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 175 or with respect to the authenticity of the attached Exhibits A and B.

176. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in the last sentence of paragraph 176 and otherwise admit the allegations contained in paragraph 176.

177. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 177.

178. The Counterclaim Defendants admit that Chapter 26 of the Province Laws of 1755-56 was enacted and they admit the accuracy of that part of Chapter 26 quoted in paragraph 178. The Counterclaim Defendants deny the remaining allegations contained in paragraph 178, including that the attached Exhibit C is a copy of Chapter 26.

179. The Counterclaim Defendants admit the accuracy of that part of Chapter 26 quoted in paragraph 179. The Counterclaim Defendants deny the remaining allegations contained in paragraph 179.

180. The Counterclaim Defendants admit the accuracy of that part of Chapter 26 quoted in paragraph 180. The Counterclaim Defendants deny the remaining allegations contained in paragraph 180.

181. The Counterclaim Defendants admit the allegations contained in paragraph 181.

182. The Counterclaim Defendants admit that Chapter 5 of the Province Laws of 1765-66 was enacted for the term of 21 years, but deny the remaining the allegations contained in paragraph 182.

183. The Counterclaim Defendants admit that by Chapter 54 of the Acts of 1786, Chapter 5 of the Province Laws of 1765-66 was made perpetual. The Counterclaim Defendants deny the remaining allegations contained in paragraph 183.

184. The Counterclaim Defendants admit the accuracy of that part of Chapter 5 quoted in paragraph 184. The Counterclaim Defendants deny the remaining allegations contained in paragraph 184.

185. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 185.

186. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 186.

187. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 187.

188. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 188.

189. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 189.

190. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 190.

191. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 191.

192. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 192.

193. The Counterclaim Defendants lack information sufficient to form a belief as to the truthfulness of the allegations contained in paragraph 193.

COUNT I

194. The Counterclaim Defendants restate their answers to the allegations of paragraphs 1 through 193 in answer to the allegations contained in paragraph 194.

195. No answer is required by the Counterclaim Defendants to what purports to be partial quotes from G. L. c. 39, §23B as stated in paragraph 195.

196. No answer is required by the Counterclaim Defendants to what purports to be partial quotes from G. L. c. 39, §24 as stated in paragraph 196.

197. No answer is required by the Counterclaim Defendants to what purports to be partial quotes from G. L. c. 39, §23A stated in paragraph 197.

198. No answer is required by the Counterclaim Defendants to the conclusion of law recited in paragraph 198.

199. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 199.

200. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 200.

201. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 201.

202. The Counterclaim Defendants admit the allegations contained in paragraph 202.

203. No answer is required by the Counterclaim Defendants in response to their "conten[tion]" asserted in paragraph 203.

204. No answer is required by the Counterclaim Defendants in response to the conclusion recited in paragraph 204.

205. No answer is required by the Counterclaim Defendants in response to the conclusion recited in paragraph 205.

COUNT II

206. The Counterclaim Defendants restate their answers to the allegations contained in paragraphs 1 through 193 and 195 through 205 in answer to the allegations contained in paragraph 206.

207. No answer is required by the Counterclaim Defendants to what purports to be partial quotes from G. L. c. 30B, §2 stated in paragraph 207.

208. No answer is required by the Counterclaim Defendants to the conclusion of law recited in paragraph 208.

209. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 209.

210. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 210.

211. No answer is required by the Counterclaim Defendants to the "contention]" asserted in paragraph 211.

212. No answer is required by the Counterclaim Defendants to the conclusion recited in paragraph 212.

COUNT III

213. The Counterclaim Defendants restate their answers to the allegations contained in paragraphs 1 through 148 in response to the allegations contained in paragraph 213.

214. The Counterclaim Defendants deny the allegations contained in paragraph 214.

215. The Counterclaim Defendants deny the allegations contained in paragraph 215.

216. The Counterclaim Defendants deny the allegations contained in paragraph 216.

217. The Counterclaim Defendants deny the allegations contained in paragraph 217.

218. The Counterclaim Defendants deny the allegations contained in paragraph 218.

219. The Counterclaim Defendants deny the allegations contained in paragraph 219.

AFFIRMATIVE AND OTHER DEFENSES

The Counterclaim Defendants assert the following affirmative and other defenses:

1. Count III fails to state a claim upon which relief can be granted.
2. Count III is barred by the statute of frauds.
3. The Feoffees failed to properly oversee and manage the design, construction and cost of the centralized wastewater collection system and, as a result, they are estopped from recovering anything as against the Counterclaim Defendants.
4. If, as the Feoffees allege, the Counterclaim Defendants "offered" to pay the costs of the installation of the centralized wastewater collection system (which the Counterclaim Defendants deny), the same does not constitute an unambiguous promise on the part of the Counterclaim Defendants to pay the costs of the installation; the Counterclaim Defendants did not intend the offer to be legally binding; the Feoffees did not reasonably rely upon said offer; and any reliance by the Feoffees was neither reasonable nor justified.
5. In order that the Feoffees recover under Count III based upon the alleged theory of an "injustice" were they not permitted to do so, the Feoffees are required to come to court with clean hands and they have not done so.
6. Any actions and/or statements and/or representations allegedly made by any individual or entity allegedly on behalf of the Counterclaim Defendants, upon which the Feoffees base their claims as asserted in Count III, were not authorized by

the Counterclaim Defendants and were not performed or given with actual, implied or apparent authority of the Counterclaim Defendants.

7. The claims of the Feoffees, as asserted in Count III, fail for lack of consideration.

8. The claims of the Feoffees, as asserted in Count III, are barred, in whole or in part, by the Feoffees' own conduct and failure to mitigate any alleged damages.

9. The claims of the Feoffees, as asserted in Count III, are barred, in whole or in part, by the doctrine of laches.

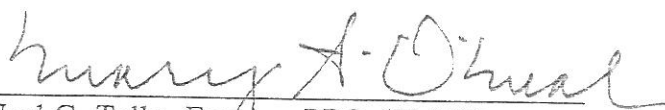
10. The Counterclaim Defendants hereby reserve the right to assert other affirmative defenses, when and if appropriate.

WHEREFORE, the Counterclaim Defendants request that this Honorable Court enter judgment in favor of the Counterclaim Defendants on the Feoffees' claims against them.

Respectfully submitted,

WILLIAM M. LONERGAN AND
DIANE WHITNEY-WALLACE

On behalf of themselves and
all others similarly situated,



Neal C. Tully, Esquire--BBO #504280

Mary E. O'Neal, Esquire--BBO #379325

MASTERMAN, CULBERT & TULLY LLP

One Lewis Wharf

Boston, Massachusetts 02110

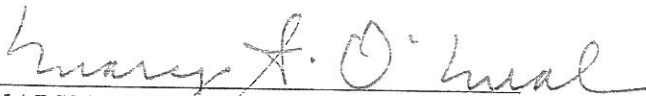
(617) 227-8010

Dated: February 22, 2007

CERTIFICATE OF SERVICE

I, Mary E. O'Neal, Attorney for the Counterclaim Defendants listed on the attached Schedule "A", hereby certify that I have this date made service of the foregoing Answer to Counterclaim by Plaintiffs, Defendants-in-Counterclaim and Others, by mailing a copy of the same, postage prepaid, to the following counsel of record:

William H. Sheehan, III, Esquire
MacLEAN HOLLOWAY DOHERTY ARDIFF & MORSE, P.C.
8 Essex Center Drive
Peabody, Massachusetts 01960



MARY E. O'NEAL

Dated: February 22, 2007

SCHEDULE "A"

Aiello, Robert
Allen, Thomas and Mary
Anthony, Paul and Laurel A.
Anthony, Michael J. and Michelle M.
Attridge, Margaret
Bagnell, Walter and Mary
Barton, Richard and Joan
Benjamin, Peter A. and Linda L.
Benjamin, Roy and Sally
Berman, Jeffrey A. and Beth C. Luchner
Blum, Dawna
Bouley, Patricia
Brennan, Brian and Eileen
Brown, Cynthia
Carmichael (sic), Wendy and James Weaver
Carroll, David and Carol
Carroll, Peter, Trustee of the Carroll Family Trust
Casey, Michael S. and Kathleen A.
Ciolek, Theodore
Cogan, Herbert B., Jr.
Cole, Robert F., Jr.
Connor, John and Janet
Cowdry (sic), Marcia and Richard and Nadine Wilkery (sic)
Currie, Norma J. and Yvette A. Beeman
Cutler, Garrett and Bruce and Joyce Thompson
Davis, Francis J., Jr. and Carol R.
Deven (sic), Philip and Ann Dever
Dever, Elaine C.
Devlin, Charles M., Jr., Mark A., William G. and Nancy J.
Dieringer, Mary G., Trustee of the 25 Bay Road Trust
Dieringer, Mary and Douglas
Disalvo (sic), Mark S.
Dody (sic), Deborah, Trustee of the Buckley Family Trust
Doherty, Richard and Ann
Donaldson, Malcolm and Nancy
Donaldson, Nancy
Donohoe, Anne B.
Donovan, Gerald J.
Dowling, Joseph
Duran, John F., Jr. and Ruth M., Trustees of the Duran Realty Trust
Eaton, Lillian V., Trustee of the Lillian V. Eaton Living Trust
Ferrino, Joseph and Marie

Fidrocki, Walter, Trustee of the Fidrocki Trust
Fogarty, John
Fankos (sic), Elizabeth
Friske (sic), Joanne M.
Gillette, James and Patricia
Girdwood, Douglas and Susan McDonald (sic)
Goodwin, Edward
Gorham, Dorothy
Gorman, Mary
Gottlieb, William A. and Roberta A. Crowley
Gresek, Donald
Hamlin, Ross
Hanson, Grace
Hardy, William and Marion D.
Harris, Cornelia
Holden, Peter
Horsman, Byard and Jean
Hough, Sarah D. and Willis S.
Hull, Peter R.
Huntley, Charles and Alberta
Johnson, Cynthia
Johnson, Mary F.
Kaine, Edwin and Diane
Kelley, Kara E. and Frederick R., III and Nancy G. Lydon, Trustees of the Kelley
 Little Neck Trust
Koris, Francine Amore
Krupanski, James
Kurnick, James
Kutz, Eleanor
Lalikos, Florence
Lichoulas, Catherine D'Amico
Lonergan, William and Carol
Lowden, Arthur and Diane
Lyons, Joyce V.
MacRae, Robert
Maloney, Janet R.
Maloney, Jason
Maloney, Robert M., Jr. and Susan
Mann, Eleanor F.
Marchisio, Alida M., Trustee of the Marchisio Trust
Mastrogiovanni, Maura
Mattson, Paul and Patricia
McDonald, Peter and Kimberly A.
McGilvray, Cornelia and Paul
Merlino, Patrick, Trustee of the River Road Trust

Moore, Steven and Nancy, Trustees of the Nancy A. Moore Revocable Trust
Morrison, Wayne W. and Phyllis J.
Norieka, John F. and Donna A.
O'Brien, Michael
O'Flahavan, Mildred K.
O'Keefe, Timothy
Pulsford, Barbara A.
Raynard, Edward L. and Shirley M.
Robinson, Cecily
Rocco, David S.
Rodman, Scot
Rogal, Peter and Pamela
Rowell, Barbara
Ruta, Stephen and Dolores
Saline, Craig A. and Sharon M.
Sandberg, Martha
Santoro, Barbara Carbone, Trustee of the Barbara K. Carbone Trust
Saunders, Richard
Scannell, Francis J. and Brenda Pearse
Schless, Robert A. and Christine Hawrylak
Sciple, Patricia A.
Seger, Robert and Renee Loth
Simkins, Sandra
Spatz, Bruce H.
Spenser, John and Jane Kennedy
Stallard, Marilyn
Stocker, Richard W. and Myrone (sic)
Story, Charles and Douglas
Stover, Kathryn A., individually and as trustee of 158 Little Neck Trust
Sullivan, Mark, Kara and Christopher
Surette, Philip and Nancy
Survilas, Joseph and Nancy
Todd, Deborah O.
Torrissi, Elizabeth S.
Varney, Robert
Varney, Mary
Vieno, Susan E.
Walker, Diane and Michael
Watson, Robert, Susan and Sally
Whitney-Wallace, Diane
Wilkey, Nadine
Yemma, Antonio and Cheryl
Yacubian, Richard H. and June H.