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STATE OF NEW YORK
SUPREME COURT : COUNTY OF FULTON

BALBOAA LAND DEVELOPMENT CORPORATION,

Plaintiff,

-against-

TOWN OF CAROGA,

Defendant.

Index # 07599
Date Purchased:

SUMMONS WITH NOTICE AND COMPLAINT

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to serve upon the plaintiff's attorneys an answer to the complaint in this action within (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. **In case of your failure to appear in this action, judgment will be taken against you by default for the relief demanded in the annexed complaint.**

The basis of venue is the plaintiff's place of business: Gloversville, New York.

Defendant's Address: Town of Caroga, 1840 State Highway 10, Caroga Lake NY 12032.

NOTICE: The relief sought is set forth in the annexed complaint.

Dated: July 22, 2019

By: _____
ROBERT ABDELLA, Esq.
ABDELLA LAW OFFICES
Attorneys for Plaintiffs
8 West Fulton Street, P.O. Box 673
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BY: Judith C Aldinger

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STATE OF NEW YORK
SUPREME COURT COUNTY OF FULTON

BALBOAA LAND DEVELOPMENT CORPORATION,

Plaintiff,

-against-

VERIFIED COMPLAINT

TOWN OF CAROGA,

Defendant.

The plaintiff, as and for their complaint in the above captioned action, hereby alleges:

1. That the plaintiff, Balboaa Land Development Corporation, is a corporation duly organized and existing under the laws of the State of New York and duly authorized to conduct business in the State of New York, and has its principal place of business being located at 8 West Fulton Street, Gloversville, County of Fulton, State of New York.

2. At all times herein relevant, George Abdella was and still is the President and sole stock holder of the Balboaa Land Development Corporation.

3. Upon information and belief, the defendant, the Town of Caroga, New York, is a municipal corporation duly organized under the laws of the State of New York, with its main office located on 1840 State Highway 10, Town of Caroga, County of Fulton, State of New York.

4. That a notice of claim was served by certified return mail return receipt on July 8, 2019.

5. Upon receipt of said Notice of Claim, following acknowledgment of service thereof, the defendant's attorney on July 17, 2019, waived any and all rights defendant had under General Municipal Law Section 50-h including the right to a 50-h hearing. The plaintiff has therefore met and satisfied all conditions precedent to the instant action.

5. Upon information and belief, at all times herein relevant, prior to the occurrences hereinafter described, the plaintiff, Balboaa Land Development Corporation, was the sole and unencumbered owner of the subject premises, lands, buildings, and personalty located in the Town of Caroga commonly referred to as Sherman's Amusement Park.

6. That prior to entering into the contract and donation agreement hereinafter discussed, the plaintiff's President George Abdella was approached by Town of Caroga Supervisor, Ralph Ottuso, concerning the possibility of the plaintiff donating a portion of the subject property to the Town of Caroga.

7. That the plaintiff advised said supervisor that the waterline providing water to a building commonly referred to as the main pavilion had been damaged by the Caroga Town Highway Department and was in need of repair. That said Town Supervisor assured the plaintiff that the repair would be made promptly.

8. The waterline was the sole source of water for various buildings, structures and lawn maintenance.

9. Negotiations were entered into between the plaintiff and the Town Supervisor with the participation of the Director of the Fulton County Planning Board, James Mraz.

10. That the plaintiff agreed to donate a portion of the realty, outbuildings and personalty of the aforesaid Sherman's Amusement park on condition that the Town of Caroga would hold the property in perpetuity, never sell the aforesaid property or otherwise dispose of the aforesaid property, and that the Town of Caroga "shall, at all times, maintain the Property to the highest of standards."

11. That the Town Supervisor represented to the plaintiff that he, the Town Supervisor, had the support and authority of the Town Board and that the terms and conditions of the donation would be fully complied with.

12. That the plaintiff would not have donated any portion of the aforesaid lands or appurtenances without the aforesaid conditions and express representations from the Town of Caroga by and through its elected officials.

13. That in furtherance of this proposal, the office of the Fulton County Planning Board drafted a donation agreement which was presented to the plaintiff and the Town Supervisor for approval and signature.

14. That the said donation agreement, which is annexed hereto as Exhibit "A" and made a part hereof, provided the terms agreed upon by the parties and further provided that said contract could not be changed except by the written agreement of the plaintiff and the defendant.

15. That the contract was signed by the plaintiff and the defendant's representative, the Town Supervisor, on December 31st, 2014.

16. In conformance with the aforesaid donation agreement, the plaintiff executed the deeds as prepared by the Town of Caroga Attorney on December 31st, 2014.

17. That the plaintiff would not have agreed to donate the said property without the representation and terms agreed to by the Town of Caroga and the claimant in the donation agreement.

18. On or about and in March 2015, the entire board voted and accepted all of the terms and conditions contained in the aforesaid donation agreement.

19. That since the agreement and affirmation thereof, the said defendant has failed and continues to fail on a daily ongoing basis to abide by the terms of the agreement as hereinafter alleged, constituting a continuing breach of the aforesaid donation agreement.

20. That the value of the donated property was assessed at the time of the transfer at Three Million One Hundred and Five Thousand Dollars ($3,105,000.00).

FIRST CAUSE OF ACTION: BREACH OF CONTRACT

21. That the plaintiff repeats and reiterate the allegations contained in paragraphs "1" through "20" of this complaint.

22. That as aforesaid the plaintiff and defendant entered into a contract for the transfer of a portion of the aforesaid Sherman's amusement park from the plaintiff to the defendant.

23. That the material conditions of the contract, inter alia, are as outlined in in Exhibit "A."

24. The contract included good and valuable consideration for both parties thereto.

25. As part of said contract, the plaintiff received consideration in and among other things, of having the satisfaction of knowing that this valuable property, all of which the plaintiff had spent several million dollars to maintain over its years of ownership, and thousands of hours in sweat equity to maintain, would be available to the citizens of the Town of Caroga and visitors to the Town of Caroga and the public in general and that said property would be maintained in a manner which was consistent with standard expressly set forth in the contract.

26. As part of said contract, the defendant Town of Caroga received good and valuable consideration including the receipt and use of real property and the buildings and appurtenances thereon which included a public beach and a fully functional carousel and pavilion with a fully functional kitchen, all of which had been assessed as being worth Three Million One Hundred and Five Thousand Dollars ($3, 105,000.00).

27. That the defendant has breached said contract, and continues to breach said contract on an ongoing basis, in and among other things, by:

a.) Failing to maintain the buildings and grounds;

b.) Failing to paint or otherwise protect the exteriors of the pavilion and other out buildings;

c.) Failing to supply water to the buildings and grounds;

d.) Failing to repair or maintain the sheet rock within the pavilion;

e.) Failing to properly air the building causing the interior of the pavilion to deteriorate;

f.) Failing to test the septic system;

g.) Failing to maintain the mound septic system;

h.) Failing to clear trees, bushes, and other vegetation that grew over the top of the septic mound system all of which materially effects the function of said system;

i.) Failing to mow the grassy areas on the property, especially the grass covering the septic mound system;

j.) Failing to insure that the public has access to the property;

k.) Failing to maintain the beach;

l.) Failing to provide electricity to the main pavilion;

m.) Failing to wash or clean the interior of the building commonly referred to as the pavilion;

n.) Failing to replace roofing shingles that have been dislodged due to time;

o.) Failing to prevent damage to the interior and exterior of the pavilion caused by the Caroga lake highway department pushing snow against the pavilion;

p.) Failing to shovel the roofs of any of the outbuildings;

q.) Failing to maintain the sewer system to such an extent that it cannot obtain approval from the New York State Department of Health;

c.) Failing to properly groom the landscape of the aforesaid property;

d.) Failing to maintain the interior of the aforesaid property;

f) Failing to maintain the donated potion of the beach front and allowing it to become overgrown.

28. That by reason of the breach of contract, the plaintiff has been and continues to be severely damaged. The plaintiff has donated property upon express, agreed upon conditions that have not been fulfilled and the purpose, and motivation of the donation has been fully frustrated and nullified. The plaintiff has been deprived of the use and enjoyment and monetary value of the property which would have otherwise been that of the plaintiff. The plaintiff has been induced to give away property assessed at Three Million One Hundred Five Thousand Dollars which plaintiff otherwise would not have done but for plaintiff's expectation of compliance with the contract and as such the plaintiff has sustained money damages in an amount of Three Million One Hundred and Five Thousand Dollars ($3,105,000.00). In the event the Court orders return of said property plaintiff is also damaged to the extent of diminution of value of said property during the time the defendant exercised possession and control of said property, all in an amount which exceeds the jurisdictional limits of all lower Courts.

SECOND CAUSE OF ACTION: PROMISSORY ESTOPPEL

29. That the plaintiffs repeat and reiterate the allegations contained in paragraphs "1" through "28" of this complaint.

30. That prior to the completion of the transaction as aforesaid, the defendant, by and through its agents, servants and employees, made certain promises to the plaintiff, including, but not limited to promises that they would maintain the buildings and grounds; paint or

otherwise protect the exteriors of the pavilion and other outbuildings; supply water to the buildings and grounds; fix the water line to the pavilion which their employees had broken; repair or maintain the sheet rock within the pavilion; properly air the building to prevent the interior of the pavilion from deteriorating, reasonable test and inspect the septic system; maintain the mound septic system; clear trees, bushes and other vegetation that developed on said mounds; mow the grassy areas of the property; make reasonable efforts to make the property open to the public; maintain the beach; furnish electricity to the main pavilion; regularly clean the interior of the pavilion; maintain the roofs and replace dislodged shingles; properly groom the landscape and otherwise that the defendant Town of Caroga would fulfill the obligations set forth in the donation agreement.

31. That the plaintiff reasonably and detrimentally relied on those promises when the plaintiff transferred said property to the defendant on December 30th, 2015.

32. That the defendant knew, or in the exercise of reasonable diligence should have known, that the plaintiff was relying upon said promises in agreeing to donate said property.

33. That the defendant benefitted in the amount of Three Million One Hundred and Five Thousand Dollars ($3,105,000.), and the defendant should be legally estopped from benefitting from the use, enjoyment and monetary value of said property without having executed and otherwise fulfilled the promises upon which the plaintiff's donation was induced.

34. By reason of the foregoing, including the defendant's failure to fulfill the promises as aforesaid, all of which remains ongoing, the property should be returned to the plaintiff and plaintiff is entitled to damages including diminution of value of said property

caused by said failure to fulfill said promises during the period of time the defendant maintained possession and control of said property.

THIRD CAUSE OF ACTION: UNJUST ENRICHMENT

35. That the plaintiffs repeat and reiterate the allegations contained in paragraphs "1" through "34" of this complaint.

36. That the defendant was unjustly enriched when the defendant obtained the disputed property from the plaintiff.

37. That the defendant's enrichment was at the expense of the plaintiff as it was solely and exclusively owned by the plaintiff prior to the transfer.

38. That to allow the defendant to benefit as aforesaid would be inequitable and unjust.

39. That the plaintiff herein is entitled to relief preventing such unjust enrichment with such just relief being either damages of the assessed value of said property of Three Million One Hundred and Five Thousand Dollars ($3,105,000), or alternatively return of said property to the plaintiff together with such damages, including diminution of value, caused during the period the defendant maintained possession and control of said property.

WHEREFORE, plaintiff, Balboaa Land Development Corporation, demands judgment in the amount of Three Million One Hundred and Five Thousand Dollars ($3,105,000) against the defendant for the property commonly referred to as Sherman's Amusement Park and more fully described above, or, alternatively, the plaintiff demands an Order directing the defendant to transfer said property back to the plaintiff, and for such damages occasioned by any diminution

in value during the time which said property was in the possession and control of the defendant. The plaintiff further demands that the plaintiff be awarded interest for any judgments awarded to the plaintiff as well as any additional costs incurred in the future, together with the interest and the costs and disbursements of this action as well as any and all equitable relief as the Court deems just and proper.

GEORGE ABDELLA

Dated: July 22, 2019

By:

Robert Abdella, Esq.
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