COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPT.
C.A. NO.
2182CV00603

E STREET LLC

Plaintiff

v.

TOWN OF BRAINTREE, MAYOR CHARLES C. KOKOROS, INDIVIDUALLY, and MAYOR CHARLES C. KOKOROS, TRUSTEE OF PETERSEN TRUST

Defendants

COMPLAINT

A. PARTIES, JURISIDICTION AND VENUE

1. Plaintiff E Street LLC ("E Street") is a Massachusetts limited liability company with a principal place of business at 1105 East Street, Dedham, MA 02026.
2. Defendant the Town of Braintree (the "Town") is a body politic and corporate organized and existing under the laws of the Commonwealth of Massachusetts and located in Norfolk County.[1]
3. Defendant Mayor Charles C. Kokoros ("Kokoros") is the Mayor of the Town of Braintree with an office address of 1 John F. Kennedy Memorial Drive, Braintree, MA 02184. Kokoros is being sued in his individual capacity.
4. Defendant Mayor Charles C. Kokoros is the Trustee of a charitable trust created by the Will of Captain August J. Petersen ("Petersen Trust"). Kokoros, Trustee is responsible for the

[1] Braintree has a mayor-council form of government and is considered a city under Massachusetts law. Regardless it is referred to as "Town of Braintree" in the vernacular and will be so referenced here.

oversight of the Petersen Trust and carrying out Captain Petersen's intention that a pool be constructed for the Town of Braintree.

5. This court has jurisdiction over this matter pursuant because the contract that is the subject of this dispute calls for dispute resolution in this court and the amount in controversy exceeds $50,000.

6. Venue is proper as plaintiff maintains its principal place of business in Norfolk County.

B. FACTUAL ALLEGATIONS

Background Regarding the Petersen Pool

7. On November 28, 1963, a Braintree resident named Captain August J. Petersen died testate in Braintree, MA.

8. Captain Petersen, through his will, bequeathed a portion of his estate, approximately $65,000, to be held in a trust named The Petersen Memorial Pool Trust (the "Petersen Trust") with income accumulating until sufficient to help fund a pool complex for the Town of Braintree.

9. In 1964 at its Annual Town Meeting, the Town of Braintree voted to accept Captain Petersen's bequest.

10. As a result of a *cy pres* complaint filed by the Town of Braintree in Norfolk Probate Court, a judgment entered granting the Mayor of Braintree the authority to oversee the construction of the pool intended by Captain Petersen.

11. By June 20, 2013, the Petersen Trust had accumulated at least $1,500,000 from the original gift made by Captain Petersen. Some reports indicate the Trust corpus grew to over $2,100,000.

12. The Town of Braintree proposed construction of a recreational facility that would include ice rinks and a swimming pool.

13. To facilitate the transition to a sports complex, it appears from public records that the Town sought approval by the Legislature (General Court) for a home rule petition for a design/build ice arena and swimming pool, which would be exempt from a fair bidding process. The approval can be found in Chapter 151 of the Acts of 2011.
14. In 2015, Braintree Mayor Sullivan issued a Request for Proposals ("RFP") from privately funding Developers to develop a sports complex which would feature both an ice arena and pool complex.
15. In the RFP, Developers would agree to fund the project privately in exchange for the right to manage the operations.
16. The Town committed to funding $1,500,000 of the construction from the Petersen Trust.
17. The Town also agreed to supply a parcel of land of approximately 6 acres on the grounds of Braintree High School whereupon it would act as a co-developer of the project.

The Town's Agreements with Developer No. 1

18. As a result of the RFP, the Town entered into a Lease and Developments Components Agreement dated April 15, 2015 (the "Development Agreement") with 5 Capital Management of 52 Hope Street, North Attleboro and BSC Partners LLC of 1395 A Commerce Way, Attleboro, MA. 5 Capital Management and BSC Partners LLC will be referred herein collectively as "Developer 1."
19. The Town and Developer 1 executed a Ground Lease dated February 28, 2018 (the "Ground Lease") at which point, Developer 1 began seeking permits to construct the rink and pool. One such permit included was a stormwater discharge permit.
20. The Ground Lease has a term of fifty (50) years.

21. The Lease and Construction Agreement entered into by Developer 1 set forth certain milestones for permitting and construction. It appears some of the permitting milestones were met and the Town of Braintree reimbursed Developer 1 for certain development and permitted related expenses.
22. However, Developer 1 did not timely begin construction of the project pursuant to the milestones set forth in the Ground Lease and Construction Agreement.
23. Accordingly, in April 2019, the Town declared a default under its agreement with Developer 1.
24. The Town and Developer 1 then sought to assign the development rights to a successor developer.
25. As of the Town's defaulting of Developer 1, the progress on the project and design was minimal.

E Street Takes Over as Developer 2

26. E Street is an experienced developer of ice rink facilities, having previously successfully developed the Boch Ice Arena in Dedham, Bavis Arena in Rockland, the Canton Sportsplex in Canton, the Falmouth Ice Arena in Falmouth, and the Stow Vermont Ice Arena.
27. E Street negotiated a take-out of Developer 1 culminating in several agreements in August through September of 2019 which, in effect, modified the original agreements between the Town of Braintree and Developer 1.
28. Specifically, E Street ("Developer 2") and the Town of Braintree entered into (1) a Ground Lease Modification Agreement dated September 26, 2019 (the "Modification Agreement"); and (2) a Lease Development Agreement Components Modification Agreement. In addition,

Developer 1, E Street, and the Town of Braintree entered into an Assignment and Assumption Agreement ("Assignment Agreement").

29. In the Modification Agreement, while the original Ground Lease was to remain in full force and effect, certain language changes were made to reflect new timelines. One such change was in defining construction completion timelines.

30. The Modification Agreement redefined the completion date for the project to be not later than 15 months from the project start date, defined as "the latest date beyond applicable appeal periods of the required permits unless extended pursuant to Section 3.1(b)(Original Ground Lease) due to the occurrence of an Unavoidable Delay or for other reasons described in this Ground Lease."

31. Developer 2 diligently performed the customary tasks to keep the project progressing to the next phase.

32. Developer 2 also worked to secure a pre-committee approval letter from a bank as was a requirement under the Lease. Developer 2 had a previous relationship with Main Street Bank which had a mortgage on Boch Ice Center and received a pre-committee commitment to fund the project in writing in the fall of 2019. The letter was delivered to the Town, which receipt has been has acknowledged.

33. Despite receiving a preapproval letter, Paul Cokinos, a principal of E Street, as the main source of equity for Developer 2, elected to self-fund the early development costs out of my own resources. Cokinos believed that by self-funding the early stages, Developer 2 could move more quickly. Having reviewed Developer 1's plans, Cokinos anticipated the need to make one or more amendments to Developer 1's design which was, in some respects, not economical or efficient.

Events Causing Unavoidable Delays

34. Despite its diligence, Developer 2 experienced events beyond its control in 2020 that cause Unavoidable Delays which in turn automatically extended the construction completion deadline for the period of unavoidable delays as set forth in the Modification Agreement.

35. The Unavoidable Delays related to (1) the COVID-19 pandemic; and (2) necessary modifications to the stormwater management system for the site.

36. In March 2020, Gov. Baker declared a Public Health Emergency due to the outbreak of a worldwide pandemic, COVID-19. As a result of said Orders and Directives, Developer 2 was forced to stop work indefinitely. The Pandemic caused an Unavoidable Delay as that term is defined in the Ground Lease, Section 3, the effect of which was to automatically extend the construction completion date for the period in which construction could not occur.

37. More specifically, Unavoidable Delays as set forth in the Ground Lease:

> "shall include but not be limited to delay, obstruction or interference resulting from: (i) an act of god, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, war, blockage, or insurrection, riot or civil disturbance; (ii) any legal proceeding commenced by any party seeking judicial review of this Agreement, or any government approvals, or any restraint of law, (e.g. Injunction, court or administrative orders, or moratorium imposed by a court, or administrative or governmental authority; (iii) the failure of any utility or governmental entity required by law to provide and maintain utilities, services, water, and sewer lines and power transmission lines to the premises, which are required for the construction of the project or for other obligations of the Tenant; (iv) any unexpected or unforeseen subsurface condition at the construction site inconsistent with typical background conditions of a similar site, which shall prevent construction, or require a material redesign or change in the construction of, or materially adversely affect the completion schedule for , the project, such determination to be made by a qualified engineer; (v) any unexpected or unforeseen subsurface environmental conditions on or from or otherwise affecting the Premises but not reasonably identifiable by visual inspection and which originated from the premises: (vi) strikes, work stoppages, or other substantial labor disputes; (vii) the failure or inability of any subcontractor or supplier to furnish supplies or services if such failure or inability is itself caused by an Unavoidable Delay and/or could not have been reasonably prevented and the affected party cannot reasonably obtain substitutes therefore; (viii) a change in

> Tenant Financing which could not have been reasonably anticipated by Tenant; or (ix) any unreasonable delay which is caused or created by a board or officer of the Town from whom a Required Permit (as defined in Section 3.3) is sought, provided that the Tenant shall have timely complied with the reasonable requests and requirements of any governmental authority. The time or times for performance under this Agreement shall be extended for the period of the Unavoidable Delay, and in calculating the length of the unavoidable Delay, there shall be considered not only actual work stoppages but, also, any consequential delays resulting from such stoppages as well. "Unavoidable Delay shall mean any delay, obstruction, or interference resulting from any act or event whether affecting the project or the premises, which has a material adverse effect on the Tenant's rights, or duties, provided that such act or event is beyond the reasonable control of the Tenant after pursuing all diligent efforts to remedy the delaying condition in an expedient and efficient manner and was not separately or concurrently caused by any negligence or willful act or omission of the Tenant or could not have prevented by reasonable actions on the Tenant's part."

38. There is no dispute that the COVID-19 pandemic triggered an Unavoidable Delay of the construction of the project for the period that construction was shut down due to Governor Baker's Orders.

39. In addition, in early April of 2020, heavy rains caused extreme flooding to the site whereupon it became very apparent that the stormwater drainage design (which called for installation of an 18-inch pipe and use of tanks to divert water to the swamp) was wholly deficient and would need to be reworked.

40. Site work had to stop in April 2020 due to the drainage problems and could not resume until the stormwater drainage design was re-engineered and approvals of the new design were obtained by all applicable government authorities. Approvals were needed from Braintree Planning Board and Braintree Conservation Commission.

41. The requirement to seek a new stormwater discharge permit triggered an Unavoidable Delay under the lease which automatically extended the 15-month construction timeline in the lease modification agreement.

42. In connection with the redesign of the stormwater management system, Developer 2 engaged

a site contractor to dig test pits in many locations on the site to establish the correct water table height. The testing revealed that the water table was much higher than what was previously reported by the Developer 1's engineer.

43. Developer 2 determined that not only would the system have to be totally redesigned to have greater capacity but also the surface area would have to be lifted (in-filled) up to five feet.
44. Developer 2 filed an application for a new stormwater drainage plan in summer 2020.
45. In between the application and approval of the new stormwater plans, the Town held hearings concerning the need to switch to a new stormwater design. The Town subjected Developer 2's engineer's plan to a peer review study. Upon approval of the new stormwater discharge design, Developer 2 was required to seek and receive approval by the Conservation Commission to restart site work under new conditions.
46. After the Town approved a new stormwater discharge permit, the Conservation Commission heard the parties and issued new Orders of Conditions in the last week of March 2021.
47. Thus, the new plan was not finally approved such that site work could resume until late March of 2021 when the Braintree Conservation Commission signed off.
48. Within five days of the final approval, Developer 2 restarted site work.
49. Because of the previous engineer's miscalculation regarding the water table height, the site had to be lifted five feet.
50. The effect of raising the site is significant. Not only did site costs increase significantly, but also the foundation design could not be drawn until the new site surface dimensions were set, which in turn would determine the new depths of footings.
51. As a result, the change in site conditions caused a delay in seeking the building permit.
52. In a design/build project such as this one, the first step in obtaining the building permit is

obtaining a foundation permit.

53. The design of a foundation had to be delayed until footing depths could be established, only after the site surface lifting work was substantially completed.

54. The site lifting work required mobilization of many hundreds of truckloads per day of fill, moving the fill in place and building retention basins. This undertaking took place between April 2021 and the present, and it delayed permit applications for 8-12 weeks.

55. In terms of funding the new site work, Cokinos continued to self-fund the more expensive site work until the redesigned stormwater system was tested by heavy rains. The drainage system is working well.

56. Cokinos, on behalf of Developer 2, has spent approximately $800,000 between the time site work resumed and the current date. To date, the site has been lifted to the appropriate height, the catch basins were constructed, and the drainage has been partially installed.

The Town Issues a Notice of Default

57. On or about April 16, 2021, the Town, through its Town Solicitor, Nicole Taub, sent a Notice of Default alleging E Street had defaulted by failing to meet previously established construction milestones.

58. The April 16, 2021, notice alleged Developer 2 failed to provide "proof of financing necessary to proceed with the project, payment of outstanding balances for work performed, the pursuit of required permits to commence construction and the production of construction and architectural plans necessary to obtain the same."

59. Mayor Kokoros further alleged that "a substantial amount of time has passed without significant progress towards the construction of the facility."

60. This statement was obviously false or misinformed as Developer 2 had made substantial progress in the face of the COVID-19 pandemic and the inherited problems resulting from Developer 1's engineering and planning.

61. With regard to financing, the Town alleged that Developer 2 had failed to obtain a financing commitment and submit proof to the Town by December 24, 2019. This allegation was provably false, as Developer 2 had submitted written documentation to City Solicitor Taub within 60 days of signing the Ground Lease Modification. In fact, in the month preceding the April 16 Notice of Default, City Solicitor Taub had asked Developer 2 for an update regarding financing and Developer 2 was responding to that request.

62. The allegation that Developer 2 failed to obtain financing is a canard, as Developer 2 had been self-funding the work that had been done to date and was prepared to continue self-funding until the project was in a position to be presented to a lender for financing. Notably, most of the work that Developer 2 was self-funding was work required to correct the mistakes of Developer 1 such as raising the site and the redesign of the stormwater discharge system and related permitting.

63. With regard to "payment of outstanding balances for work performed," this referred to two subcontractors who had claims for payment. There were problems with the work performed by both contractors and the invoices are disputed. The Ground Lease does not have default provisions for failure to pay a disputed invoice but does have a procedure that obligates the developer to ensure that any disputed bills do not result in a mechanics lien or other lien against Town land. To date, there are no legal claims that have been initiated against E Street and thus no liens on Town land. There is no provision in the Ground Lease that gives the Town the right to default Developer 2 because contractors are seeking payment of disputed invoices.

Regardless, Developer 2 is negotiating to resolve their payment claims and set offs.

64. With regard to "pursuit of required permits to commence construction," when the stormwater discharge permit had to be rescinded and reissued as a result of the redesign of the system, this automatically extended the timeline for obtaining permits, the first of which is the foundation permit.

65. With regard to "the production of construction and architectural plans," the delay resulting from raising the site and the redesign of the stormwater discharge system necessarily delayed production of construction plans as the site levels had to be established before the plan could be completed.

66. Accordingly, the Town's notice of default was unsupportable and there is no factual or legal basis for the Town lawfully terminating Developer 2's contracts.

67. Developer 2, through its attorney Robert Kelley, wrote a May 7, 2021, letter to City Solicitor Taub in response and provided substantial factual detail in rebuttal to the allegations of default. Attorney Kelley reiterated his request for a face-to-face meeting to address the Town's issues and discuss a plan for moving forward. Prior to the May 7 letter, attorney Kelley and Paul Cokinos had made requests by phone and email to meet with the Town officials, which requests had been ignored the Town and its officials.

68. Under the Ground Lease, Section 16.20 calls for good faith negotiation before resorting to litigation.

69. On May 10, 2021, attorney Kelley, Paul Cokinos, Mayor Kokoros, and Town Solicitor Taub met at Mayor Kokoros' office. This meeting was in response to multiple attempts by Developer 2 to pursue negotiation under Ground Lease Section 16.20. While both parties reserved their rights with regard to the alleged April 16, 2021, Notice of Default, they discussed

the changes in circumstances due to the COVID-19 pandemic, the need to redesign the stormwater drainage plan, and the need to raise the site as a result of the water table.

70. Mayor Kokoros also expressed the need to be able to show progress to third parties that were putting pressure on the mayor regarding the project.

71. The parties agreed to some milestones to show progress with the construction.

72. Developer 2 agreed to June 15, 2021, as a milestone to finish lifting of the site, filing the foundation permit and providing a sufficient building plan to allow Mayor Kokoros to show third parties the building design, with the understanding modifications to the plan would be needed.

73. In addition, Cokinos agreed to attempt to obtain bank approval for Developer 2 and show a good faith effort in resolving any issues with creditors, with the understanding that due to the slow bank underwriting process, Cokinos would seek financing by June 15, 2021, and update Mayor Kokoros' office on the progress with any outstanding invoices. Attorney Kelley made it clear that the process to obtain financing was complicated by the changes to the work and the increasing costs resulting from the COVID-19 pandemic.

74. Town Solicitor Taub and Attorney Kelley exchanged a May 12 letter and a May 14 email confirming the parties' discussions about a pathway for moving forward.

75. Following the May 10 meeting, Developer 2 caused the site contractor to work diligently to continue to raise the surface of the site in order to have the foundation designer finish the design work and get the foundation application filed by June 15.

76. From May 10, 2021, to date, Cokinos funded an additional $400,000 on work to meet the June 15, 2021, milestones.

77. Developer 2 met the June 15 milestones by filing the application to the Building Inspector for the Town of Braintree for the foundation permit and provided a full lay out of the proposed building in sufficient detail to present a 3D depiction of the outside and inside of the building as well as complete steel drawings.

78. Cokinos also informed Attorney Taub that he had made several attempts to resolve the claims that Developer 2 had with contractors who worked on the site and a written offer to settle had been made with one of the two subcontractors. Regardless, neither of the two subcontractors has filed a claim, attempted to establish a lien on the property, or otherwise interfered with construction progress.

79. On June 14, 2021, Cokinos, through counsel, informed the Town that he needed additional time to address the financing issue. Specifically, due to the rise in building materials costs of 30-35%, which resulted from the effect of the COVID-19 pandemic on supply chains, the estimated cost of the project had increased to an estimated $5,000,000. The rise in costs necessitated Developer 2 to seek and obtain a partner for the project and address the issue with the bank. Cokinos pledged to invest another $1,000,000 of his own funds which would take the construction progress through the foundation phase, thus assuring no interruption of construction progress.

80. In late May or early June, Cokinos and a potential partner spoke with the Mayor and Town Solicitor Taub to provide an update concerning financing and the effect of the changes to the project on obtaining financing commitments.

81. On June 15, 2021, Cokinos, through counsel, notified the Town he had filed a pre-approval bank commitment from the Main Street Bank with the expectation that he could receive final committee level approval by the end of July of 2021.

82. Despite Developer 2 meeting the agreed June 15 milestones, on June 16, Mayor Kokoros issued a press release stated that he was terminating the lease with Developer 2 and posted a News Flash on the Town of Braintree website headed by, “Mayor Kokoros has announced that he has terminated the agreement with Paul Cokinos and E Street LLC (collectively “E Street”) regarding the Petersen Pool and Rink Project (the “Project”).”
83. Developer 2 found out about the termination from phone calls from third parties and did not receive any notification from the Town or its counsel.
84. While both parties reserved their rights regarding the Town’s April 16 allegation of default, Mayor Kokoros’ actions clearly show a lack of good faith, especially in contrast to the yeoman efforts having been made by Developer 2 to continue progress on the project.
85. On June 17, 2021, the Town sent a notice stating that it intended to proceed with its claims of default, against Developer 2 alleging it “identified significant numerous deficiencies in both the plans, which are wholly insufficient to support the issuance of a foundation or structural frame permit and in the letter that purports to be indicative of a financing commitment sufficient to commence and complete construction.”
86. Surprised to learn that the plans were being dubbed as wholly deficient, Cokinos immediately sent the Building Inspector the steel drawings as it was mentioned that those were missing (it should be noted that no one, even the Building Inspector, said they needed to be filed with the Foundation Permit application).
87. Cokinos made numerous attempts to call the Building Inspector asking for an explanation concerning the Town’s termination notice. To date, he has received no communication from the Building Inspector.
88. On June 21, 2021, Mayor Kokoros caused a written Stop Work Order to be posted at the site.

When Developer 2's site superintendent inquired if he could discuss the matter with Town officials, most notably the building inspector, he was informed that Mayor Kokoros has informed all town officials that they are not to discuss the Petersen Pool project with Cokinos or his team.

89. Upon information and belief, Mayor Kokoros has harbored an intent to close down the project in response to a petition that was sent to the Massachusetts Attorney General by a group identified as the "Petersen Pool Advocates." Specifically, these advocates brought to the attention of the Attorney General the apparent mismanagement of funds during the dealings with Developer 1.

90. While the project is eligible for funding from the Trust, Cokinos agreed to privately fund the development until a later date when the disposition of the Petersen Trust funds could be revisited. Additionally, Mayor Kokoros informed Cokinos that he personally opposes the project.

91. Developer 2 has diligently pursued this project and despite being slowed by a worldwide pandemic and extensive flooding, it has met contractually required milestones and well as the progress milestones discussed at the May 10 meeting.

92. Developer 2 stands ready, willing, and able to obtain funding to complete the project. Developer 2 has the experience building ice arenas, and enough private and personal funds to proceed with at least a million dollars in additional construction work along with plenty of opportunities to raise additional equity from outside investors if needed to complete a capital stack of debt and equity and complete the project.

93. While it is true that building material costs will continue to be an issue, Developer 2 has caused new revenue assumptions to be built into a pro-forma budget and with confidence that the

spending public will absorb the new building costs in the ice and pool fees.

94. If Mayor Kokoros gets his wish to shut down this project, ostensibly stop the Attorney General from asking questions about mismanagement issues, Developer 2 will be out over 1.2 million dollars, will be deprived of an interest in real property which rights include a 50-year lease which can be extended, plus the rights to profits from operating a sports complex. This is harm that is irreparable.

95. If Mayor Kokoros gets his wish to enforce the termination of the project, then immediately, it will cause irreparable harm to the Town and to the project because with unfinished drainage as is the case currently, water runoff is expected to begin washing away the surfaces until the site becomes unrecognizable. The water and soil runoff are likely to spill onto the nearby parking facilities of the Braintree High School.

96. The only construction deadline set out in the Ground Lease and construction components agreement is a construction completion date of 15 months after all permits are obtained. With automatic extensions issued in the Ground Lease for events constituting Unavoidable Delays, at the earliest, the date the foundation permit was filed would have signified the date the clock would have started running on the 15 months. However, because the Town issued a cease-and-desist notice, it has created another Unavoidable Delay.

C. COUNTS

COUNT I
(Breach of Contract v. Town of Braintree)

97. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

98. Plaintiff and the Town entered into valid and enforceable contracts, namely the Ground Lease, as modified, by the Ground Lease Modification Agreement, the Lease and

Development Agreement Components Modification Agreement, and Assignment Agreement as detailed above.

99. The Town has breached the contracts by attempting to terminate without having a legal or factual basis to do so.

100. As a direct and proximate result of the foregoing, the plaintiff has suffered money damages plus interest and costs.

101. As a direct and proximate result of the Town's breach, the plaintiff has suffered and continues to suffer irreparable harm. No amount of money damages can compensate for the deprivation of a real property right.

COUNT II
(Breach of Implied Covenant of Good Faith and Fair Dealing v. Town of Braintree)

102. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

103. The actions of the Town constitute breach of the implied covenant of good faith and fair dealing that is implied by law in the parties' contracts.

104. As a direct and proximate result of the Town's breach of the implied covenant of good faith and fair dealing, the plaintiff has suffered and continues to suffer irreparable harm.

105. As a direct and proximate result of the Town's breach of the implied covenant of good faith and fair dealing, the plaintiff has suffered damages plus interest and costs.

COUNT III
(Fraud v. Town of Braintree and Kokoros)

106. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

107. Mayor Kokoros and the Town made representations to plaintiff that the Town would continue to work with plaintiff in good faith to establish and meet reasonable milestones to allow continued progress with the constriction project.

108. Mayor Kokoros and the Town made those representations with the intention to induce reliance by plaintiff.

109. Plaintiff in fact relied upon those representations, continued construction, and continued self-funding the construction.

110. Mayor Kokoros and the Town knew that those representations were false as it would now appear that Mayor Kokoros had no intention of continuing to work with plaintiff in good faith but instead, sought to obtain the benefit of additional work from plaintiff before proceeding with efforts to terminate the contracts.

111. As a direct and proximate result of plaintiff's reasonable reliance on those false statements, plaintiff has suffered and continues to suffer irreparable harm.

112. As a direct and proximate result of plaintiff's reasonable reliance on those false statements, plaintiff has suffered damages plus interest and costs.

COUNT IV
(Interference with Contract v. Kokoros)

113. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

114. At all times relevant hereto, the plaintiff and the Town have been parties to the contracts described above.

115. Defendant Mayor Kokoros is aware of the contracts.

116. Defendant Mayor Kokoros intentionally and willfully interfered with the plaintiff's contracts with the Town through improper motive and means.

117. Defendant Mayor Kokoros has harbored an intent to close down the project in response to a petition that was sent to the Massachusetts Attorney General by a group identified as the "Petersen Pool Advocates." Specifically, these advocates brought to the attention of the Attorney General the apparent mismanagement of funds from the Captain Petersen bequest during the Town's dealings with Developer 1.

118. Mayor Kokoros seeks to terminate the contracts and shut down the project to advance his own personal agenda. Mayor Kokoros is interfering with plaintiff's contracts to ostensibly stop the Attorney General or others from asking questions about his financial mismanagement of the funds from the Captain Petersen bequest.

119. Defendant Mayor Kokoros' interference with the plaintiff's contract has harmed the plaintiff by causing the Town to fail to perform those obligations that the plaintiff reasonably expected would be performed when it entered into the contracts.

120. As a direct and proximate result of defendant Mayor Kokoros' unlawful interference, plaintiff has suffered and continues to suffer irreparable harm.

121. As a direct and proximate result of defendant Mayor Kokoros' unlawful interference, plaintiff has suffered damages plus interest and costs.

COUNT V
(Declaratory Judgment v. Town of Braintree)

122. Plaintiffs reallege and incorporate by reference the relevant allegations contained in the numbered paragraphs above.

123. There is an actual dispute between the parties regarding whether the Town has the right to terminate the contracts.

124. The dispute is subject to resolution by this Court.

125. Pursuant to G.L. c. 231A §1, plaintiff seeks a declaratory judgment that the Town of Braintree does not have legal or factual basis for justification for terminating the parties' contracts.

COUNT VI
(Declaratory Judgment v. Town of Braintree and The Petersen Trust)

126. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

127. There is an actual dispute between the parties regarding the rights and obligations of the parties as to how the Petersen Trust funds should be spent.

128. The dispute is subject to resolution by this Court.

129. Pursuant to G.L. c. 231A §1, plaintiff seeks a declaration of the rights and obligations of the parties as to how the Petersen Trust funds should be spent.

COUNT VII
(Preliminary Injunction v. Town of Braintree)

130. Plaintiff realleges and incorporates by reference the relevant allegations contained in the numbered paragraphs above.

131. Plaintiff seeks preliminary and permanent injunctions restraining and enjoining the Town of Braintree, its mayor, agents, and representatives from:

a. terminating E Street LLC's contracts concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School;

b. issuing an RFP or entering into agreements with any other parties concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School; and

c. maintaining the Stop Work Order concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School.

132. Plaintiff has a reasonable likelihood of success on the merits of its substantive claims above.

133. Specifically, without limitation, the Town's attempt to terminate the contracts without factual or legal justification, is a material breach of the contracts.

134. Specifically, without limitation, the Town has breached the implied covenant of good faith and fair dealing implied in the contracts.

135. Plaintiff has a valid real property interest arising from the Ground Lease, as modified.

136. The Town's attempt to terminate the contracts is depriving the plaintiff of its real property interest.

137. The deprivation of a real property interest is *per se* irreparable harm.

138. In balancing the equities, the irreparable harm to be suffered by plaintiff in the absence of an injunction outweighs any harm to the Town if the injunction is issued.

139. There is a public interest in enjoining the Town from terminating the contracts. If plaintiff is blocked from performing under the contract, with unfinished drainage as is the case currently, water runoff is expected to begin washing away the surfaces until the site becomes unrecognizable. The water and soil runoff are likely to spill onto the nearby parking facilities of the Braintree High School.

D. PRAYERS FOR RELIEF

WHEREFORE, plaintiff prays that this Court enter relief for plaintiff and that this Court take the following action:

1) Enter Judgment for the declaratory relief sought in Count V;

2) Enter Judgment for the declaratory relief sought in Count VI;

3) Enter orders for preliminary and permanent injunctions restraining and enjoining the Town of Braintree, its mayor, agents, and representatives from:

   a. terminating E Street, LLC's contracts concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School;

   b. issuing an RFP or entering into agreements with any other parties concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School; and

   c. maintaining the Stop Work Order concerning the skating rink and swimming pool construction project on six acres of land located on the campus of Braintree High School.

4) Issue a Short Order of Notice for a hearing on Plaintiff's Motion for Preliminary Injunction;

5) Enter judgment for the full amount of plaintiff's damages plus interest and costs;

6) Provide for such other and further relief as it may deem just and proper.

E STREET LLC

By its attorneys,

MORISI & OATWAY, P.C.

Dated: 6/28/2021

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