

**Martin's Management Associates, LLC**  
124 Pinecrest Road  
Manchester, New Hampshire 03104

v.

**The Mortgage Specialists, Inc.**  
2 Main Street  
Plaistow, New Hampshire 03865  
and  
**Michael Gill**  
69 Conley Grove Road  
Derry, New Hampshire 03038

**VERIFIED COMPLAINT, REQUEST FOR TEMPORARY RESTRAINING ORDER  
AND PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION**

NOW COMES the Plaintiff, Martin's Management Associates, LLC ( the "Plaintiff"), by and through its attorneys, Cronin, Bisson & Zalinsky, P.C., who bring this Verified Complaint, Request for Temporary Restraining Order and Petition for Preliminary and Permanent Injunction against The Mortgage Specialists, Inc. ("Mortgage Specialists") and Michael Gill ("Gill"), each a "Defendant" and collectively the "Defendants." In support thereof, the Plaintiff states as follows:

**Parties**

1. Plaintiff Martin's Management, LLC, is a New Hampshire limited liability company with a principal business address of 124 Pinecrest Road, Manchester, New Hampshire 03104.
2. Defendant The Mortgage Specialists, Inc. is a New Hampshire corporation with a principal business address 2 Main Street, Plaistow, New Hampshire 03865.
3. Defendant Michael Gill is a natural person residing at 69 Conley Grove Road, Derry, New Hampshire 03038.

4. Gill is the primary if not sole shareholder of Mortgage Specialists and serves as its President.

### **Jurisdiction and Venue**

5. Jurisdiction and Venue are proper in this Court because the Plaintiff is located in Manchester, New Hampshire. NH RSA 491.7

6. Mortgage Specialists owns an office in Manchester, New Hampshire.

7. The signage that is the subject matter of this action is also located in Manchester, New Hampshire.

### **Allegations**

8. The Plaintiff and Mortgage Specialists own units in a certain commercial condominium, known as the Melody Mall Condominium, located at 1031 Gold Street in Manchester (“Melody Mall”).

9. Melody Mall was created by Declaration of Condominium dated March 6, 2002, which is on file at the Hillsborough County Registry of Deeds at Book 6593 Page 1900 (the “Declaration”).

10. Melody Mall consists of a two-story building containing three separate units and a forty-eight space parking lot.

11. The Condo Site Plan and Condo Floor Plan of Melody Mall Realty Associates, LLC are on file at the Hillsborough County Registry of Deeds as Plan Numbers 31618 and 31619 respectively.

12. The Plaintiff is the owner of two Melody Mall units by virtue of a certain condominium warranty deed dated August 15, 2011, which is recorded at the Hillsborough County Registry of Deeds at Book 8341 Page 1168.

13. To wit the Plaintiff owns unit number two, which is situated in the northern side of the building's second floor, and unit number three, which consists of the entire first floor of the building.

14. Mortgage Specialists owns unit one, which occupies the southerly half of the building's second floor, by virtue of a certain condominium warranty deed dated March 6, 2002, which is recorded at the Hillsborough County Registry of Deeds at Book 6593 Page 1949.

15. The Plaintiff's total percentage ownership interest in Melody Mall is 76.6%.

16. Mortgage Specialist's percentage interest in Melody Mall is 23.4%.

17. When the Plaintiff took title to units two and three in August 2011, said premises were subject to a tenancy of Aspen Dental Management, Inc. ("Aspen"), by virtue of a certain lease agreement entered into by and between Aspen and the Plaintiff's predecessor, Melody Mall Realty Associates, LLC, in July, 2007 (the "Aspen Lease").

18. The Aspen Lease has been amended, extended and otherwise renewed several times since.

19. Aspen's business in the building is that of a family dental practice.

20. In or around January of 2014, Gill began broadcasting/displaying certain images and messages on large neon/high definition reader board signs located at various New Hampshire properties owned by Mortgage Specialists (the "Messages").

21. Two such signs are affixed to the exterior of Melody Mall's building, facing out on one of the city's busiest intersections at South Willow Street and the ramps of Interstate 293 West near the Mall of New Hampshire (the "Reader Boards").

22. The content of Gill's Messages have gained wide notoriety in the state for their negative, outlandish, offensive and inflammatory allegations that certain local, prominent business people in New Hampshire, otherwise well-known for their public service and philanthropy, and New Hampshire politicians and institutions, such as the Governor, New

Hampshire's United States Senators, the State's Judiciary, Banking Commission and the Attorney General's Office, are all deeply engaged in organized crime, public corruption, extortion and/or drug dealing.

23. Gill also disseminates his Messages on the internet through Mortgage Specialists website and YouTube.

24. To date, the Messages have inspired two separate superior court actions for defamation.

25. On April 23, 2016, the Manchester Union Leader reported that of particular public dismay has been Gills use of vulgar language in his Messages.<sup>1</sup>

26. This is corroborated by Gill's own statements made on the front page of Mortgage Specialists' website:

#### PUBLIC STATEMENT

I understand that some of you are upset at my using the word shitheads on my signs. I want you to know first, I am extraordinarily sensitive to your children, what I am doing is for them, not you. From all I can see is that you are all cowards. You question the word shithead and not extortion by a senator of your state. Shaheen and the criminal cover-up of your other senator Ayotte with a Ponzi scheme. So I am telling you I can say this because it is true. Yet your issue is with the word shitheads. Wake up, what kind of future do you want for your children. The law firms in this state control the courts and the politicians. They are controlled by their own self interests. Ayotte represents McLane law firm and Shaheen owns her own. The Attorney General in this state has been run by McLane for 30 years.

I have proven the corruption with hard evidence. It is only through your own fear that you refuse to see it.

I will continue to fight for all of those children that have been abused by the family court, that have been victimized by the family court. Lives forever altered, I will fight for you.

~Mike Gill<sup>2</sup>

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<sup>1</sup> "Manchester business leaders sue Michael Gill for defamation over sign claims," Manchester Union Leader, April 23, 2016, available at <http://www.unionleader.com/Manchester-business-leaders-sue-Michael-Gill-for-defamation-over-sign-claims>.

<sup>2</sup> Available at <http://themortgagespecialists.com/> as of the date of this filing.

27. The Reader Boards on Melody Mall's building are adversely affecting Aspen's family dentist business and by extension, Aspen's landlord, the Plaintiff.

28. It is the information and belief of the Plaintiff that many of Aspen's clients are upset, offended and/or confused by the Messages on the Reader Boards.

29. It is the information and belief of the Plaintiff that some of Aspen's clients think that Aspen must condone the Messages by virtue of Aspen being located at Melody Mall.

30. The Aspen Lease is now up for amendment, renewal and a ten year extension.

31. As part of negotiating the same, Aspen is demanding new lease terms that Aspen be allowed to abate fifty percent (50%) of the rent for so long as the Plaintiff is unable to ensure that the Reader Boards does not display negative and offensive political messages and profanity.

32. Aspen contends that the presence and proximity of Gill's messaging has halved the market value of the Melody Mall premises that Aspen rents from the Plaintiff - premises at which Aspen has done business and built good will for nearly ten (10) years.

33. In short, Gill's messaging represents an immediate, significant and severe financial problem for the Plaintiff that, if allowed to continue, will result in loss of income and/or loss of the Plaintiff's long time tenant.

34. However, the Reader Boards are not just disrupting the Plaintiff's business with Aspen.

35. They are causing ongoing and long lasting damage to the reputation and good will of the location itself and by extension the reputation of the Plaintiff who owns more than three quarters of Melody Mall.

36. In or around the latter half of February 2017, Plaintiff's counsel contacted Gill by telephone and then by letter to explain the situation with Aspen and the extent to which Gill's Messages were harming the Plaintiff.

37. In his discussions with Plaintiff's counsel, Gill was unable to differentiate between his issues with the individuals and institutions described at Paragraph 22 and the Plaintiff's complaint that the Reader Boards are harming the Plaintiff's business with Aspen.

38. Rather than cease broadcasting Messages on the Reader Boards as requested, in or around the week of March 13, 2017, Gill caused the existing Reader Boards on the eastern exterior wall of the Melody Mall building to be removed and replaced with a new, larger, brighter, like Reader Boards of a higher picture definition and quality.

39. Gill did not seek or obtain approval of the Association to place the new sign on the common area.

40. Gill did not seek or obtain approval of the Association to display messages that are unrelated to the business of Mortgage Specialists.

41. After which removal and replacement, the Messages resumed.

42. The Bylaws of Melody Mall Condominium, dated March 6, 2002, are on file at the Hillsborough County Registry of Deeds at Book 6593 Page 1924 (the "Bylaws").

43. Article V section 7 of the Bylaws provides in pertinent part:

**5.7 Restrictions on Use of Units.** To assist the Condominium in providing for the protection of the value of the Units, it is necessary that the Board of Directors have the right and authority to exercise reasonable controls over the use and management of the Units. Violation of the following enumerated prohibitions shall not be permitted, and the Board of Directors is hereby authorized to take all steps necessary to prevent or discontinue any violations thereof, at the expense of the violator:

...

(b) No nuisance shall be allowed on the Condominium nor shall any use or practice be allowed which interferes with the proper use of the Condominium by others.

(c) No Unit, Common Area or Limited Common Area of the Condominium may be used for any unlawful purpose.

...

In the use of the Units and the Common Area and Limited Common Area of the Condominium, Owners shall obey and abide by all valid laws... and all applicable rules adopted by the Board of Directors. The Common Area and Limited Common Area shall be used only for the furnishing of the services and

facilities for which it has approved and which are incidental to the use and occupancy of the units.

44. Article VII of Melody Mall's Declaration defines the Common Area as the entire premise other than the units themselves.

45. The Declaration further provides that the Common Area is inclusive of the roofs, foundations, columns and supports of the building and its perimeter walls.

46. There is no question that the Defendants are operating the Reader Boards in Melody Mall's Common Area.

47. The operation of the Reader Boards, when displaying political, personal and offensive messages is not incidental in any way to the business of Mortgage Specialists.

48. Gill's Messages and Reader Boards are a nuisance that is interfering with the proper use and value of the Plaintiff's units.

49. The Reader Boards, when displaying any message not related to the business of Mortgage Specialists, violates the City of Manchester Zoning Ordinance which prohibits "off-premises signs."

50. Article XII of the Bylaws covers Compliance with the same in pertinent part:

**12.1 Relief.** Each Owner shall be governed by and shall comply with all of the terms of the Declaration, these Bylaws, and the Rules and amendments of the same. A default of any Owner shall entitle the Unit Owners' Association, acting through the Board of Directors or the Manager, to the following relief:

(a) Legal Proceedings. Failure to comply with any of the terms of the Declaration, these Bylaws, and the Rules shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, *injunctive relief*... and any other relief *afforded by a court of competent jurisdiction*, all of which relief may be sought by the Unit Owners' Association, the Board of Directors, the Manager, *or, if appropriate, by any aggrieved Owner.* (Emphasis Added)

51. The Plaintiff makes the following claims individually pursuant to Section 12.1 (a) of the Bylaws because of the immediate and irreparable harm the Plaintiff stands to suffer if it is unable to renew the Aspen Lease on commercially reasonable terms and because of the ongoing



and lasting harm to the reputation and good will of the location itself and by extension the reputation of the Plaintiff who owns more than three quarters of Melody Mall.

**Count I: Breach of Contract/Specific Performance: Mortgage Specialists, Inc.**

52. The Plaintiff realleges and incorporates herein all of the facts and allegations of the foregoing paragraphs.

53. The Declaration at Section 9.8 provides, “The acceptance of title to... any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws, and the Rules, as they may be lawfully amended from time to time, are accepted and ratified by such Owner....”

54. This means that Melody Mall’s Condominium Documents amount to a valid, enforceable written contract between and among Melody Mall and its Owners.

55. Mortgage Specialists is in breach of this contract with respect to the Restriction on the Use of Units provisions of the Bylaws.

56. Specifically, the Reader Boards and the Messages amount to a nuisance and improper and illegal use of the Condominium and the Condominium Common Area that is causing a diminution in the value of the Plaintiff’s Units.

57. The Plaintiff respectfully requests this Honorable Court find Mortgage Specialist in breach of its obligations under the condominium documents and order Mortgage Specialists to cease operating the Reader Boards at Melody Mall.

**Count II: Common Law Nuisance: Michael Gill**

58. The Plaintiff realleges and incorporates herein all of the facts and allegations of the foregoing paragraphs.

59. “A private nuisance exists when an activity substantially and unreasonably interferes with the use and enjoyment of another’s property.” Dunlop v. Daigle, 122 N.H. 295, 298, (1982). To constitute a nuisance, the defendants’ activities must cause harm that exceeds the customary interferences with land that a land user suffers in an organized society, and be an



appreciable and tangible interference with a property interest. Cook v. Sullivan, 149 N.H. 774, 780 (2003) “In determining whether an act interfering with the use and enjoyment is so unreasonable and substantial as to amount to a nuisance and warrant an injunction, a court must balance the gravity of the harm to the plaintiff against the utility of the defendant's conduct, both to himself and to the community.” Treisman v. Kamen, 126 N.H. 372, 375 (1985).

60. Gill is using his ownership and control of Mortgage Specialists to broadcast his Messages on the Reader Boards at Melody Mall in such a way to create a nuisance with respect to the Plaintiff's Melody Mall properties.

61. This nuisance is interfering with the Plaintiff's use and enjoyment of the Plaintiff's Property and his reasonable expectation that he be able to rent his Melody Mall units at a fair market value in line with their size, condition and location.

62. This activity is a nuisance in part because it is not in keeping with the Melody Mall's status as multi-owner commercial condominium.

63. The utility and benefit of the Messages for the community is questionable.

64. Gill has various other avenues for the decimation of his Messages that do not interfere with the Plaintiff's economic interest in Melody Mall.

65. The Plaintiff respectfully requests this Honorable Court order that Gill cease operating the Reader Boards at Melody Mall.

### **Count III: Request for Preliminary Relief**

66. The Plaintiff realleges and incorporates herein all of the facts and allegations of the foregoing paragraphs.

67. Preliminary injunctive relief is appropriate if there “is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law.” UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14–15 (1987) (quoting Murphy v. McQuade Realty, Inc., 122 N.H. 314, 316 (1982)). The petitioner must show “a likelihood of success on

the merits by a balance of the probabilities.” Thompson v. New Hampshire Board of Medicine, 143 N.H. 107, 611 (1998). Additionally the Court must determine that the harm to the Petitioner if the relief is denied outweighs the harm to the Respondent if the relief is granted and that the public interest will not be adversely affected by the injunctive relief. See, Kukene v. Genualdo, 145 N.H. 1, 4 (2000). The decision whether to grant an injunction “is a matter within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity.” UniFirst Corp. v. City of Nashua, 130 N.H. at 14-15 (quoting Gauthier v. Robinson, 122 N.H. 365, 368 (1982); Varney v. Fletcher, 106 N.H. 464, 467-68 (1965)).

68. The Plaintiff is in immediate danger of losing a high quality long term tenant or otherwise taking a 50% loss in revenues on its Melody Mall property.

69. More importantly, the goodwill and reputation of Melody Mall itself is being damaged, as well as by extension the reputation of the Plaintiff who owns more than three quarters of the property.

70. The balance of probabilities with respect to success on the merits favors the Plaintiff both in Contract under the Condominium Documents and at common law for the reasons set forth above.

71. The balance of harms favors the Plaintiff because it stands to lose a good tenant or significant revenue while the Defendants will lose only one single outlet of many for the dissemination of their Messages.

72. The public will not be harmed by the cessation of the Reader Boards Messages.

73. To wit those members of the public interested in the Defendants’ Messages can find them readily available on the internet and at other Mortgage Specialist locations.

74. It is unfair and inequitable for a co-owner of a commercial property to use the property in a manner that devalues the interest in the property of a fellow owner and disrupts its business.

75. This is especially so here where Mortgage Specialists owns less than a quarter (1/4) of Melody Mall and the operation of the Reader Boards has exactly zero to do with its business as a mortgage broker.

76. The balance of equities favors the Plaintiff.

77. The Plaintiff respectfully requests this Honorable Court temporarily restrain and preliminarily enjoin the Defendants from operating the Reader Boards pending final adjudication of this matter.

#### **Count IV: Attorney's Fees**

78. The Plaintiff realleges and incorporates herein all of the facts and allegations of the foregoing paragraphs.

79. A litigant may recover attorney's fees if it is forced to litigate a matter for which it had a clearly defined right to recovery that should have been enjoyed without the need for litigation. Harkeem v. Adams, NH 117 N.H. 687 (1977).

80. The Plaintiff has a clearly defined right to the use and enjoyment of its Melody Mall property in line with reasonable expectations for a commercial condominium.

81. The Defendants should have removed the Reader Boards or ceased or altered its operation when the Plaintiff informed the Defendants that the Reader Boards were needlessly disrupting Aspen's business and by extension the Plaintiff's enjoyment of Melody Mall.

82. The Plaintiff should not have had to bring this action to secure said right.

83. The Plaintiff seeks an award for reasonable attorney's fees and costs.

WHEREFORE, the Plaintiff prays the Honorable Court:

A. Temporarily Refrain the Defendants from operating the Reader Boards;

B. Schedule a hearing on the Temporary Restraining Order at the earliest possible date, but not between March 31, 2017 and April 17, 2017 as the Plaintiff's principal will be out of the country;

C. Issue a Summons and Orders of Notice;

D. Preliminary Enjoin the Defendants from operating the Reader Boards during the pendency of this action;

E. Find for the Plaintiff;

F. Issue Orders permanently enjoining the Defendants from operating the Reader Boards; or

G. Restrict the Defendants' use of the Reader Boards to advertising its mortgage brokerage business instead of broadcasting Gill's Messages;

H. Award the Plaintiff costs and reasonable attorney's fees; and

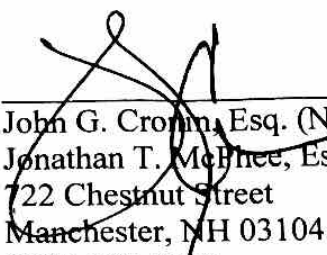
I. Issue such other orders as the Court deems just and necessary.

Respectfully submitted,

MARTIN'S MANAGEMENT  
ASSOCIATES, LLC  
By Its Attorneys  
CRONIN BISSON & ZALINSKY, P.C.

Dated: March 27 2017

By:

  
\_\_\_\_\_  
John G. Cronin, Esq. (NHBA #6818)  
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**VERIFICATION**

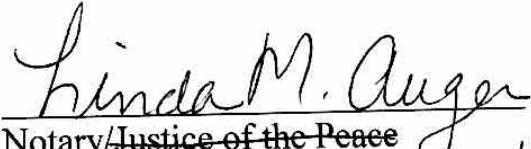
I, David Goldstein, Managing Member of Martin's Management Associates, LLC on this 27 day of March 2017, do hereby swear that the above statements are true to the best of my knowledge, information and belief.

  
\_\_\_\_\_  
David Goldstein

**STATE OF NEW HAMPSHIRE  
Hillsborough County**

On this 27<sup>th</sup> day of March 2017 appeared the above named David Goldstein, personally known to me or sufficiently proven, in his capacity as Managing Member of Martin's Management Associates, LLC and acknowledged his signature on the foregoing Pleadings to be his free act and deed, and that of the company, Before me.



  
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Notary/Justice of the Peace  
My Commission Expires: 12/21/21