

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

MARCO CERCONI and
KARI ANNE CERCONI,

Plaintiffs,

vs.

Index No.:

TRE'DAVIOUS WHITE, BRIAN SMITH,
SHIOBAN SMITH, JOSEPH G. SACCONE,
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS,
JOHN DOE #1, JANE DOE #1, and JOHN DOE #2 their names
being fictitious and unknown to plaintiffs,
the persons or parties intended being the parties, purchasers,
occupants, persons or corporations, if any, having
or claiming an interest in the premises, described in the
complaint and who tortuously interfered with plaintiffs'
purchase of the premises described in the complaint,

Defendants.

COMPLAINT

Plaintiffs, Marco Cercone and Kari Anne Cercone, by their attorneys, Rupp Baase
Pfalzgraf Cunningham LLC as and for their complaint against defendants, Tre'Davious White,
Brian Smith, Siobhan Smith, Joseph G. Saccone, Keller Williams Realty Buffalo Northtowns,
and John Doe #1, and Jane Doe #1, and John Doe #2, their names being fictitious and unknown
to plaintiffs, the persons or parties intended being the parties, purchasers, occupants, persons or
corporations, if any, having or claiming an interest in the premises, described in the complaint,
allege as follows:

INTRODUCTION AND PARTIES

1. Marco Cercone is a citizen of the State of New York, County of Erie, residing at 1 Alexander Road, West Seneca, New York 14224.
2. Kari Anne Cercone is a citizen of the State of New York, County of Erie, residing at 1 Alexander Road, West Seneca, New York 14224.
3. Upon information and belief, Tre'Davious White is a resident of the State of Louisiana and is employed as a professional football player for the Buffalo Bills of the National Football League, who transacts business in the State of New York. Mr. White also possesses a residence at 3750 Heatherwood Drive, Hamburg, New York 14075
4. Upon information and belief, Brian Smith is citizen of the State of New York, County of Erie, residing at 11 Kingfisher Court, Orchard Park, New York 14127.
5. Upon information and belief, Siobhan Smith is citizen of the State of New York, County of Erie, residing at 11 Kingfisher Court, Orchard Park, New York 14127.
6. Upon information and belief, Joseph G. Saccone is a licensed real estate salesperson employed by or at the direction of Keller Williams Realty Buffalo Northtowns, with

a business address of 5500 Main Street, Suite 108, Williamsville, New York, and a residence address of 343 Connecticut Street, Buffalo, New York 14213.

7. Keller Williams Realty Buffalo Northtowns, is a New York business/firm/corporation/partnership licensed in the State of New York and engaged in the business of serving as a real estate agency/brokerage with a business address of 5500 Main Street, Suite 108, Williamsville, New York.

8. John Doe #1, Jane Doe #1, and John Doe #2, their names being fictitious and unknown to plaintiffs, are the persons or parties intended being the parties, purchasers, occupants, persons or corporations, if any, having or claiming an interest in the premises, described in the complaint. More specifically, John Doe #1, Jane Doe #1, and John Doe #2, as set forth more fully herein are the persons or parties who tortiously interfered with plaintiffs' Contract to purchase the property known as 11 Kingfisher Court, Orchard Park, New York 14127 ("subject property") by submitting an 11th hour bid on the subject property after defendants Smith had executed and agreed to sell the subject property to plaintiffs. The names of John Doe #1, Jane Doe #1, and John Doe #2 are unknown to plaintiffs at the time of the filing of this complaint; however, upon information and believe, one of these individuals is believed to be Tre'Davious White, a cornerback for the Buffalo Bills of the National Football League.

9. Plaintiffs bring this action seeking (1) an injunction enjoining defendants Smith from selling the subject property to Tre'Davious White, John Doe #1, Jane Doe #1, or John Doe #2 given the existence of an agreed-to Contract accepted and executed by defendants

Smith prior to the Smiths' acceptance of an offer from Tre'Davious White, John Doe#1, Jane Doe #1, and John Doe #2 at the 11th hour; (2) an award of compensatory, consequential, and punitive damages from defendants Saccone, Keller Williams Realty Buffalo Northtowns, Tre'Davious White John Doe#1, Jane Doe #1, and John Doe #2 for tortious interference with contract in connection with plaintiffs' accepted Contract for the subject property; (3) an award of compensatory, consequential, and punitive damages, arising from egregious, fraudulent and/or negligent misrepresentations made by defendants Smith, Saccone, and Keller Williams Realty Buffalo Northtowns ("Keller Williams") that usurped a valid, executed, and agreed-to Contract between plaintiffs and defendants Smith for the subject property; and (4) damages, including punitive and consequential damages, arising from all defendants' bad-faith conduct and breach of the implied covenant of good faith and fair dealing.

FACTUAL BACKGROUND

10. In 2019, defendants Smith listed the subject property for sale for a listing price of \$789,900. Some time thereafter, defendants Smith retained Keller Williams and its broker/agent, Joseph G. Saccone, to list the subject property for sale.

11. In September 2020, because defendants Smith had been unable to sell the subject property for the \$789,900 they were seeking, they lowered the list price of the home to \$749,900.

12. On September 26, 2020, plaintiff Marco Cercone contacted defendant Saccone and requested to tour/view the subject property. Thereafter, plaintiffs toured/viewed/inspected the subject property twice, on October 1, 2020 and October 3, 2020.

13. On October 4, 2020, plaintiffs made a purchase offer to defendants by and through their agent, Saccone and Keller Williams, to purchase the subject property for a sum certain.

14. After hearing nothing from defendants Smith or their agent for nine days, plaintiff Marco Cercone contacted defendants' Smiths' agent, Saccone, on October 13, 2020 to ascertain the status of plaintiffs' purchase offer. Saccone advised plaintiffs that defendants Smith accepted plaintiffs' purchase offer.

15. Indeed, approximately two hours later, on October 13, 2020 at 4:59p.m. Saccone, on behalf of defendants, forwarded a Contract to plaintiffs for the price plaintiffs offered to defendants Smith.

16. On October 14, 2020 at 2:33pm, plaintiffs forwarded the fully executed Contract to defendants' Smith's agent Saccone. Thereafter, less than one hour later, defendants Smith executed the Contract. A property inspection immediately was scheduled for October 17, 2020.

17. Armed with an executed Contract from the sellers, defendants Smith, and in reliance on same, plaintiffs engaged in the following activities in furtherance of the mutual agreement to purchase the Smiths' property: (1) retained the services of a home inspector to examine the subject property on their behalf; (2) notified their families, friends, colleagues, and acquaintances of the purchase of the new home; (3) began planning for renovations and improvements to the subject property; (4) began planning for the sale of plaintiffs' current home and move to the subject property; and (5) commenced the extensive process of meeting with and consulting financial professionals and bank representatives to secure financing for the purchase of the subject property.

18. Plaintiff Marco Cercone is a business owner with interests in several businesses and spent significant time away from his businesses, to the detriment of his businesses, in order to address each of the activities identified in paragraph 16 above.

19. On October 16, 2020 at approximately 2:18 p.m., defendants' Smiths' agent, Saccone, contacted plaintiff Marco Cercone and advised that defendants Smith had received a contract for the subject property from another agent. Saccone asked whether plaintiffs wished to increase their purchase offer, which already had been agreed to and accepted by defendants' Smith on October 14, 2020.

20. Aware that Saccone, on behalf of defendants Smith, was signaling that defendants Smith intended to consider an offer made by Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 on the subject property despite the fact that defendants Smith

already had accepted and signed the offer made by plaintiffs, plaintiff Marco Cercone informed Saccone that plaintiffs would not increase their offer, that plaintiffs' offer already had been accepted, and that any effort by defendants Smith to back-out of their agreement to plaintiffs' offer was outrageous and would be vigorously litigated, if necessary.

21. On October 16, 2020 at 4:54p.m. following plaintiff Marco Cercone's telephone call with Saccone, plaintiff Marco Cercone provided Saccone with some legal authority supporting plaintiffs' position that defendants' Smith efforts to entertain the offer of Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 after defendants Smith already had agreed to and accepted plaintiffs' offer was a violation of New York law and constituted bad faith.

22. Defendants Smith by way of their agent, Saccone, subsequently canceled plaintiffs' inspection of the subject property that was scheduled for October 17, 2020.

23. On or about October 19, 2020 at approximately 10:41a.m., attorney Anastasios Bechakas, Esq. ("Bechakas"), forwarded a letter to counsel for the plaintiffs purporting to cancel the contract for plaintiff's purchase of the subject property. Bechakas's letter indicated that the purchasers were allegedly cancelling the contract. Bechakas's letter indicating that the purchasers had purportedly canceled the contract was wrong, as Bechaskas did not represent the purchasers in the transaction between the Smiths and plaintiffs.

24. In fact, on October 21, 2020, plaintiffs, the purchasers, wrote to Bechakas through their attorney and advised that they their attorney approved of the contract between plaintiffs and Smith for the subject property.

25. Upon information and belief, Bechakas's October 19, 2020 letter purportedly was sent so defendants Smith, so that defendants Smith could accept the 11th hour offer made by defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2, who interfered with the agreed-to and executed Contract between plaintiffs and defendants Smith made on October 14, 2020.

26. No valid cancellation of the contract between plaintiffs and defendants Smith occurred within the five business days following the parties' counsel's receipt of the contract. Accordingly, by operation of the terms of the contract, defendants' Smith waived their right to attorney approval of the contract. Therefore, plaintiffs and defendants Smith, who both executed the contract, possess a valid and enforceable contract for the purchase by plaintiffs of the subject property from the Smiths.

27. Given the egregious, fraudulent, unethical, and bad-faith conduct of all defendants in reaching an executed Contract, and subsequently attempting to back-out of same so they can accept, upon information and belief, a higher offer that defendants Smith received from Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2, plaintiffs have been forced to bring the instant action seeking injunctive relief to enjoin the sale of the subject property to defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2, as well as

compensatory, consequential, and punitive damages against all defendants for their tortious interference with contract, commission of fraud, and bad faith conduct, among other causes of action as articulated below.

FIRST CLAIM FOR RELIEF
AGAINST DEFENDANTS JOSEPH G. SACCONE,
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS, TRE'DAVIOUS WHITE
JOHN DOE #1, JANE DOE #1, AND JOHN DOE #2
(Tortious Interference with Contract)

28. Plaintiffs incorporate the allegations contained in paragraphs 1 through 27 of this complaint as if fully set forth herein.

29. On October 14, 2020, plaintiffs and defendants Smith entered into and executed a valid Contract whereby plaintiffs agreed to purchase the subject property from defendants Smith for a sum certain.

30. Defendants Saccone, Keller Williams, Tre'Davious White and John Doe #1, Jane Doe #1, and John Doe #2 each were aware of the existence of the agreement between plaintiffs and defendants Smith as Saccone prepared the agreement and facilitated the execution and negotiation of same between plaintiffs and defendants Smith.

31. Defendants Smiths' counsel failed to appropriately disapprove of the contract, thereby waiving the attorney approval provisions of same. Accordingly, plaintiffs possess a valid and enforceable contract for the purchase of the subject property.

32. Upon information and belief, defendants John Doe #1, Jane Doe #1, and John Doe #2, one of whom is believed to be, upon information and belief, Tre'Davious White of the Buffalo Bills of the National Football league, were made aware of the existence of plaintiffs' executed agreement to purchase the subject property at the time defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 submitted their offer to purchase the subject property to Saccone. Said another way, Saccone, Keller Williams, and defendants Smith continued to solicit and to review bids for the subject property notwithstanding the fact that defendants Smith already had assented to plaintiff's Contract on October 14, 2020 and possessed a valid and enforceable contract with the plaintiffs.

33. Defendants Saccone, Keller Williams, Tre'Davious White, and John Doe #1, Jane Doe #1, and John Doe #2 intentionally and deliberately procured defendants Smiths' breach of their agreement with plaintiffs by eliciting, advising, and attempting to negotiate a sale of the subject property despite acknowledging the existence of a valid, executed Contract between plaintiffs defendants' Smith, to the detriment of plaintiffs.

34. By reason of the intentional, deliberate, and bad-faith conduct of defendants Saccone, Keller Williams, Tre'Davious White, and John Doe #1, Jane Doe #1, and John Doe #2 in encouraging, soliciting, negotiating, and making another offer on the purchase of the subject property despite the existence of a valid, written, and executed offer accepted by defendants Smith, plaintiffs have been damaged as defendants Smith attempted to rescind and back-out of a valid and legally enforceable agreement with the plaintiffs to the detriment of plaintiffs in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH, SIOBHAN SMITH, JOSEPH G. SACCONI
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS
(Fraud)

35. Plaintiffs incorporate the allegations contained in paragraphs 1 through 34 of this complaint as if fully set forth herein.

36. Defendants Smith, Saccone, and Keller Williams made false representations concerning a material fact when they negotiated, agreed to, drafted, and executed a Contract for plaintiffs to purchase the subject property for defendants' Smith.

37. Defendants Smith, Saccone, and Keller Williams falsely represented to plaintiffs that plaintiffs' offer for the subject property had been accepted and agreed to for the purchase of the subject property, and that defendants Smith indeed agreed to plaintiffs' offer to purchase the subject property. In addition, defendant Saccone falsely represented to plaintiff Marco Cercone that "it's yours" when Saccone advised plaintiffs that their offer on the subject property had been accepted by defendants Smith. Further, defendants Smith, Saccone, and Keller Williams falsely represented to defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 that plaintiffs' contract with defendants Smith had been canceled and was not valid.

38. Defendants Smith, Saccone, and Keller Williams also engaged in deceit and deception when they informed plaintiffs that their offer to purchase the property had been

accepted, but nonetheless concealed from plaintiffs that defendants continued to solicit, negotiate, receive, and accept other offers on the subject property, even though the purchase offer made by plaintiffs had been accepted to by defendants Smith and assented to by virtue of the execution of the offers by Smith and plaintiffs. Moreover, upon information and belief, at no time did defendants Smith, Saccone, and Keller Williams advise defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 that plaintiffs' contract with defendants Smith was valid and enforceable.

39. Defendants Smith, Saccone, and Keller Williams were aware that the 11th hour purchase offer they received from defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 was higher than plaintiffs' agreed-to offer, yet defendants Smith, Saccone, and Keller Williams attempted to use same as leverage to force plaintiffs to increase their purchase offer that already had been agreed to and accepted in lieu of proceeding to the closing of defendants' Smiths' sale with plaintiffs.

40. The misrepresentations made by defendants Smith, Saccone, and Keller Williams were made for the purpose of inducing plaintiffs to rely on them. Defendants Smith, Saccone, and Keller Williams representations that there was an agreement on the plaintiffs' purchase offer was done to make plaintiffs believe they had purchased the subject property, pending closing of the sale, and to prevent plaintiffs from withdrawing their offer to purchase another home. The misrepresentations made by defendants Smith, Saccone, and Keller Williams also were made to secure a purchase offer for the subject property that had been languishing on the real estate market since 2019.

41. Plaintiffs relied on the misrepresentations of defendants Smith, Saccone, and Keller Williams in that plaintiffs (1) retained the services of a home inspector to examine the subject property on their behalf; (2) notified their families, friends, colleagues, and acquaintances of the purchase of the new home; (3) began planning for renovations and improvements to the subject property; (4) began planning for the sale of plaintiffs' current home and move to the subject property; and (5) commenced the extensive process of meeting with and consulting financial professionals and bank representatives to secure financing for the purchase of the subject property.

42. Plaintiffs reliance the on the misrepresentations of defendants Smith, Saccone, and Keller Williams caused them significant injuries in that (1) plaintiffs are unable to purchase their dream home; (2) plaintiffs have suffered emotional distress to themselves and their children who are distraught at the loss of the subject property and their children's inability to live near their close friends which was one of the primary reasons to purchase the subject property from defendants Smith; (3) plaintiffs' reputations have been damaged as they advised their families, friends, and colleagues of their purchase of the subject property and now are in the unenviable position of having to back-track causing plaintiffs much embarrassment, (4) plaintiffs incurred expenses in the form of lost business income in spending time addressing issues and financing relating to the purchase of the subject property that defendants Smith backed out of.

43. By reason of the foregoing, plaintiffs have been damaged in an amount to be determined at trial, plus accrued interest, costs, disbursements, and attorneys' fees.

THIRD CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH, SHIBON SMITH, JOSEPH G. SACCONI
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS
(Constructive Fraud and Fraud in the Inducement)

44. Plaintiffs incorporate the allegations contained in paragraphs 1 through 43 of this complaint as if fully set forth herein.

45. Defendants Smith, Saccone, and Keller Williams made false misrepresentations of material fact to plaintiffs when they falsely represented to plaintiffs that plaintiffs' offer for the subject property had been accepted and agreed-to for the purchase of the subject property. Defendant Saccone falsely represented to plaintiff Marco Cercone that "it's yours" when Saccone advised plaintiffs that their offer on the subject property had been accepted. Defendants Smith, Saccone and Keller Williams falsely represented to plaintiffs that they did not possess a valid and enforceable contract.

46. Upon information and belief, defendants Smith, Saccone, and Keller Williams knew at the time they made their misrepresentations to plaintiffs that they were false as the material misrepresentations were made to plaintiffs to induce them not to pursue the purchase of another home other than the subject property and to complete the sale of the subject property upon the closing of same so defendants Smith could pursue securing a higher offer for the subject property from defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2.

47. Plaintiffs relied on the material misrepresentations made by defendants Smith, Saccone, and Keller Williams and did not submit an offer on the purchase of another property in light of the agreed to, executed purchase offer defendants Smith, Saccone, and Keller Williams provided to plaintiffs. Plaintiffs also relied on the misrepresentations by virtue of their engagement in the actions identified in paragraph 41 of this complaint above and also are incorporated by reference herein.

48. Saccone and Keller Williams had a significant financial interest in the outcome of the fraud they perpetrated in an effort to sell the subject property for a figure higher than the sum offered by plaintiffs and agreed to by defendants Smith. Defendants Saccone and Keller Williams attempted to leverage the 11th hour offer made by Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 to secure an increase in plaintiffs' offer, and when plaintiffs refused, attempted to cancel the Contract previously agreed-to and executed by defendants Smith, which they legally did not do as Bechakas's letter attempted to cancel the contract for the purchasers, who he did not represent.

49. Plaintiffs have been injured by relying upon the material misrepresentations of defendants Smith, Saccone, and Keller because plaintiffs did not make a purchase offer on another home as a result to being bound by the Contract accepted by defendants Smith, and by virtue of the emotional damage defendants have caused to plaintiffs, as well as their lost income and expenses incurred in reliance on defendants' misrepresentations. Plaintiffs additional damages are identified in paragraph 42 of this complaint above and also are incorporated by reference herein.

50. By reason of the foregoing, plaintiffs have been damaged in an amount to be determined at trial, plus accrued interest, costs, disbursements, and attorneys' fees.

FOURTH CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH, SIOBHAN SMITH, JOSEPH G. SACCONI
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS
(Bad Faith Punitive Damages)

51. Plaintiffs incorporate the allegations contained in paragraphs 1 through 50 of this complaint as if fully set forth herein.

52. The misrepresentations of defendants Smith, Saccone, and Keller Williams that (1) plaintiffs' offer had been accepted by defendants Smith; (2) by referring to the subject property as "it's yours;" (3) plaintiffs should consider increasing their offer after being notified of the offer by Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2; and (4) the contract between plaintiffs and defendants Smith had been disapproved by Bechakas (which it was not) constitutes an independent tort actionable under New York law, separate and apart from plaintiffs other claims giving rise to this litigation.

53. Upon information and belief, the misrepresentations identified above by defendants Smith, Saccone, and Keller Williams, were egregious in that they were morally culpable and/or actuated by reprehensible motives, such as the desire to induce plaintiffs to bid more for the subject property after Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 made an offer on the property after plaintiffs' offer had been accepted and agreed-to by defendants Smith. Further, the solicitation, consideration, review, and acceptance of another

offer by defendants Smith, Saccone, and Keller Williams also were performed in contravention of defendants' duty to follow through to the closing of the Contract for the subject property that had been accepted by plaintiffs and defendants Smith prior to the issuance of any offer made by defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2.

54. The misrepresentations by defendants Smith, Saccone, and Keller Williams was a breach of the covenant of good faith and fair dealing that is implied in every contract, such that the parties will carry out their rights, duties, roles, and/or responsibilities in a timely and good faith manner, because defendants Smith, Saccone, and Keller Williams refusal proceed to the closing of plaintiffs' Contract after it had been executed and assented to by defendants' Smith in order to accept a higher offer for the subject property that was presented after execution and agreement as to the plaintiffs' Contract constitute gross deviations from accepted principles of contract law, real property law, and demonstrate a gross indifference to the rights of plaintiffs.

55. Upon information and belief, the actions of defendants Smith, Saccone, and Keller Williams have ramifications for the public at large and are not unique to plaintiffs, because defendants Smith, Saccone, and Keller Williams non-compliance with the Contract and gross-manipulation of the real estate listing, negotiation, and sale process has harmed and will continue to harm all purchasers and prospective purchasers of real property in the State of New York should defendants Smith, Saccone, and Keller Williams continue to engage in the pattern and practice of making binding Contracts between sellers and purchasers of real property and

then subsequently allowing sellers of real property to attempt to cancel a valid Contract at the 11th hour for a higher offer.

56. Upon information and belief, defendants Smith, Saccone, and Keller Williams, do and will continue to harm purchasers of real property by entering into valid, executed Contracts for the purchase of real property in New York and then attempting to cancel those Contracts whenever a new offer is made by a third-party that is higher than the agreed-to Contract. This conduct is reprehensible and is charged by greed and evil motives, and will continue to harm any citizen of the State of New York engaged in the negotiation and purchase of real property throughout the State of New York.

57. By reason of the foregoing, plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial, but not less than \$1,000,000.00, plus accrued interest, costs, disbursements, and attorneys' fees.

FIFTH CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH, SIOBHAN SMITH, JOSEPH G. SACCONE
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS
(Declaratory Relief)

58. Plaintiffs incorporate the allegations contained in paragraphs 1 through 57 of this complaint as if fully set forth herein.

59. Plaintiffs and defendants Smith entered into a valid Contract for the subject property on October 14, 2020 that was executed by them.

60. Defendants Smith waived the attorney approval contingency when they failed to have an attorney provide, in writing, that sellers disapproved of the contract between plaintiffs and defendants Smith.

61. An actual controversy between the parties exists as defendants Smith never disapproved of the contract as Bechakas's letter dated October 19, 2020 referred to the purchasers of the subject property disapproved of the contract. Bechakas never represented the purchasers in the contract between plaintiffs and defendants Smith. Accordingly, plaintiffs are entitled to an order from this Court declaring that (1) defendants' Smiths' did not cancel the Contract with plaintiffs and any efforts in that regard were wrongful and void; (2) the Contract between plaintiffs and defendants Smith is valid and enforceable; and (3) the Contract between plaintiffs and defendants Smith must proceed to closing; and (4) plaintiffs are entitled to damages as a result of defendants willful and wrongful conduct as referenced in this complaint.

SIXTH CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH AND SIOBHAN SMITH
(Injunctive Relief)

62. Plaintiffs incorporate the allegations contained in paragraphs 1 through 61 of this complaint as if fully set forth herein.

63. Because defendants Smith failed to appropriately and to adequately disapprove of the contract with plaintiffs, a valid and enforceable contract for plaintiffs' purchase of the subject property exists, and plaintiffs seek injunctive relief from this Court enjoining

defendants Smith from completing a sale, closing, and/or transfer of the subject property to any third-party, and directing defendants Smith to close on the sale of the subject property to plaintiffs.

SEVENTH CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH AND SIOBHAN SMITH
(Breach of Contract)

64. Plaintiffs incorporate the allegations contained in paragraphs 1 through 63 of this complaint as if fully set forth herein.

65. Plaintiffs and defendants Smith entered into a valid Contract for the subject property on October 14, 2020.

66. Plaintiffs performed under the contract by executing same and scheduling the property inspection for October 17, 2020.

67. Defendants Smith did not have an attorney for the sellers disapprove of the contract and thereby waived their right to do so under the contract's terms when no attorney disapproval for the sellers was not issued within five days of the execution of the agreement with plaintiffs.

68. Defendants Smith breached the contract when they entered into an agreement to sell the subject property to defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 after defendants Smith already had executed the Contract with plaintiffs.

69. Because defendants Smiths' actions in disregarding a valid and enforceable contracts with plaintiffs was premised solely on their selfish and scurrilous desire to secure a higher bid for the subject property from defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2, notwithstanding the fact that defendants Smith already had accepted plaintiffs' Contract, defendants' Smiths' actions were improper and constitute a breach of their contract with plaintiffs.

70. Plaintiffs have suffered damages as a result of defendants' Smiths' breach in an amount to be determined at trial, including consequential damages, plus accrued interest, costs, disbursements, and attorneys' fees.

EIGHTH CLAIM FOR RELIEF
AGAINST DEFENDANTS BRIAN SMITH, SIOBHAN SMITH, JOSEPH G. SACCONI
KELLER WILLIAMS REALTY BUFFALO NORTHTOWNS
(Consequential Damages - Breach of the
Implied Covenant of Good Faith and Fair Dealing)

71. Plaintiffs incorporate the allegations contained in paragraphs 1 through 70 of this complaint as if fully set forth herein.

72. Implied in every contract is the covenant of good faith and fair dealing, such that the parties will carry out their rights, duties, roles, and/or responsibilities in a timely and good-faith manner.

73. Defendants Smith attempted to and failed correctly to disapprove of a

valid, executed contract with plaintiffs made on October 14, 2020. Defendants Saccone and Keller Williams participated in the failed efforts to cancel of the subject Contract by aiding, abetting, soliciting, and negotiating with third-parties after the Contract with plaintiffs had been executed by defendants Smith. Plaintiffs relied on the Contract with defendants Smith after it was executed by defendants Smith to their detriment.

74. When confronted with the impropriety of their intention to elicit, and to accept an offer on the subject property after one already had been agreed to and executed by defendants Smith, defendants Smith, Saccone, and Keller Williams refused to reverse their position and to proceed with the closing of the subject property to plaintiffs. Instead, defendants Smith wrongfully and inappropriately attempted to cancel the contract after plaintiffs refused to increase their offer on the subject property. Defendants' efforts to disapprove of the contract failed.

75. Further, when informed that an after-the-fact offer by defendants John Doe #1, Jane Doe #1, and John Doe #2 was improper, defendants Saccone and Keller Williams argued that defendants Smith could merely cancel the executed Contract with plaintiffs if the offer from defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 was higher and was accepted by defendants Smith. The actions of defendants Smith, Saccone, and Keller Williams upon information and belief, were an attempt to manufacture a market for the subject property when one had not existed in the two years the subject property had been on the market, and was done so as to force plaintiffs to increase their purchase offer, notwithstanding the fact that it already had been agreed to and was reduced to writing signed by plaintiffs and

defendants Smith. The contract between plaintiffs and defendants Smith never was disapproved appropriately as they failed to follow the procedures for same outlined in the contract

76. Defendants Smiths', Saccone's, and Keller Williams' efforts to proceed with the 11th hour purchase offer of defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2 constitute gross deviations from accepted practices of the real property and real estate industry and demonstrate gross indifference to plaintiffs' rights as purchasers of real property. Such gross deviations and indifference are violations of the covenant of good faith and fair dealing.

77. Plaintiffs have been injured by defendants Smiths', Saccone's and Keller Williams' breaches of the implied covenant of good faith and fair dealing, in an amount of consequential damages to be determined at trial, with accrued interest to date, plus costs, disbursements, and attorneys' fees.

78. Such damages were contemplated by the parties as foreseeable consequences of defendants Smiths', Saccone's and Keller Williams' failure to follow-through to the closing on the Contract offer plaintiffs and defendants Smith had negotiated and accepted in writing prior to any offer that was made by defendants Tre'Davious White, John Doe #1, Jane Doe #1, and John Doe #2.

PRAYER FOR RELIEF

Plaintiffs pray for relief and demand judgment against the defendants as follows:

1. On their first claim for relief for Tortious Interference with Contract, an Order awarding damages in an amount to be determined at trial, plus accrued interest, costs, disbursements, and attorneys' fees;
2. On their second claim for relief for Fraud, an Order awarding damages in an amount to be determined at trial, plus accrued interest, costs, disbursements, and attorneys' fees;
3. On their third claim for relief for Constructive Fraud and Fraud in the Inducement, an Order awarding damages in an amount to be determined at trial, plus accrued interest, costs, disbursements, and attorneys' fees;
4. On their fourth claim for relief for Bad Faith Punitive Damages, an Order awarding punitive damages in an amount to be determined at trial, but no less than \$1,000,000.00, plus accrued interest, costs, disbursements, and attorneys' fees;
5. On their fifth claim for relief for Declaratory Relief, an Order declaring that: (1) defendants' Smiths' efforts to cancel the Contract with plaintiffs was wrongful and void; (2) the Contract between plaintiffs and defendants Smith is valid and enforceable; and (3) the Contract between plaintiffs and defendants Smith must proceed to closing; and

(4) plaintiffs are entitled to damages as a result of defendants willful and wrongful conduct as referenced in this complaint;

6. On their sixth claim for relief for Injunctive Relief, an Order enjoining defendants Smith from completing a sale, closing, and/or transfer of the subject property to any third-party, and directing defendants Smith to close on the sale of the subject property to plaintiffs;

7. On their seventh claim for relief for Breach of Contract, an Order awarding damages in an amount to be determined at trial for defendants' breach, plus accrued interest, costs, and disbursements;

8. On their eighth claim for relief for Consequential Damages from Breach of the Implied Covenant of Good Faith and Fair Dealing, an Order awarding consequential damages in an amount to be determined at trial, with accrued interest to date, plus costs, disbursements, and attorneys' fees;

9. The costs and disbursements of this action, together with any other legal or equitable relief, or both, as the Court deems just and proper.

Dated: October 22, 2020
Buffalo, New York

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