

HAND- DELIVERED

Martina M. Sullivan
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(lawcourt.clerk@courts.maine.gov)

Maine Supreme Judicial Court
Matthew Pollack, Clerk
205 Newbury Street Room 139
Portland, Maine 04101

December 15, 2021

Dear Mr. Matthew Pollack,

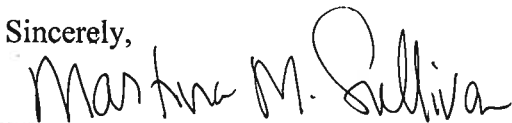
Re: Martina M. Sullivan v. Samuel Kilbourn, et al
Docket No: Cum-21-208

Dear Mr. Matthew Pollack,

Please find for filing 10 copies of the Appellants' Reply Brief in the above matter. I can also be reached by phone at (207) 865-1597 if you have any questions or concerns.

Thank you for your attention to this matter. Merry Christmas and Happy New Year.

Sincerely,



Martina M. Sullivan
martina.sullivan@gmail.com

cc: by email and USPS Thompson Bowie and Hatch, LLC 415 Congress Street, P.O Box 4630,
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BDWalker@grsm.com (Jay Gordon, esq)

STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. Cum-21-208

Title to Real Estate is Involved

MARTINA M. SULLIVAN
APPELLANT/PLAINTIFF

v.

SAMUAL KILBOURN, Author “old road description”
OWEN HASKELL, Inc Land Surveying Company
SEBAGO TECHNICS, Land Surveying Com
NATHANIEL W. WHITE, et al South Freeport, Maine
APPELLEE/DEFENDANTS

**ON APPEAL FROM MAINE SUPERIOR COURT
CUMBERLAND COUNTY**

APPELLANT REPLY BRIEF

Martina M. Sullivan
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INTRODUCTION

Defendants/Appellees, Mr. Samuel Kilbourn, Owen Haskell, Inc., Warren-White and Sebago Technics, Inc all hide behind the doctrine of res judicata; “a matter decided” yet without any proper review, evidence, hearing or examination of the Complaint as required. The Court does not have all the facts or evidence and Sullivan was not required to prove anything more at this stage. To make a reasonable determination to dismiss the Sullivan Complaint at this early stage is premature and speculative without enough information, facts and evidence to do so. The Court cannot and should not allow the doctrine of res judicata to be a blanket excuse or just thrown around in order to allow continual on going wrongdoing. Res judicata cannot quench claims that did not exist and which, therefore, could not possibly have been raised in a prior lawsuit.

The Complaint also points squarely to the failures and negligence of Sullivan’s title insurance surveyor, Sebago Technics, Inc and Maine Licensed Surveyor, Mr. Matthew Ek who had a duty of care requirement, under any set of rules and circumstances, in addition given the legal obligations under their contract. Sebago Technics failed to perform the basic care under those standards or to follow their own contract.

ARGUMENT

In *Sanderson v Aetna* 10S.E 2d802 “res judicata is an affirmative plea in bar which must be taken by answer and supported by competent evidence. When

properly raised, the issue will be determined according to the practice of the Court, but the defense is not available on motion to dismiss.”

Here, only the Defendant/Appellee, White provided an “answer” to the Complaint and in that answer never acknowledged or honestly declared that there was ever any hearing, examination or trial held on the claims alleged in the Complaint. Warren-White does concede the new evidence existence but still misleads the Court regarding hearings, altering evidence and even mocks the Sullivan recent survey as “not a real survey” attempting to dissuade and deprive the Court of competent evidence but instead relying on the premise that the claims here had been decided or had a fair hearing which they have not, there has yet to be even a proper examination or investigated of the facts. This is not an adverse possession matter, as much as defendants would like to connect the two.

Defendant/Appellee, Sebago Techincs fails to even file a Brief, but rather asks to be joined with other defendants. Sebago Techincs perhaps miscalculates that position and strategy- as Sebago Techincs, has a contract and a duty to the Appellant Sullivan. The Complaint alleges that contract was breached and the claim and allegation of professional negligence is perhaps supported here by a pattern of inaction, even failing in good faith to respond fully to the Court, which further establishes the deviation from an “appropriate standard of care” and a arrogances. As a hired agent in these matters there was a professional and contractual requirement. The Court erred by dismissing Sullivan’s Complaint without trial or even a proper hearing or did the Court address the Sebago Technics and Sullivan contract. Joining with the other defendants now while having a duty to Sullivan,

weakens all defendants' defenses and any legitimate reason for granting a motion to dismiss any part of the Complaint. Experts are required to practice a reasonable degree of care when working on a case. Standard of care professional malpractice is for a fact finder to decide, after all the evidence is collected (discovered). Sebago Technics cannot and should not be just given a pass here from their legal responsibilities.

Whether a party owes a duty of care is a question of law, while breach of the duty and causation are questions of fact. *Welch v. McCarthy*, 677 A.2d 1066, 1069 (Me.1996). Questions of law are reviewed de novo and questions of fact for clear error. *Wells v. Powers*, 2005 ME 62, ¶ 2, 873 A.2d 361, 363. Because Sullivan bears the burden of proof at trial on the issues of breach and causation, the Law Court reviews evidence and inferences that may be drawn there from, in the light most favorable to the trial court's judgment to determine whether competent evidence supports the judgment. See *Pratt v. Spaulding*, 2003 ME 56, ¶¶ 10–13, 822 A.2d 1183, 1186. Here there was no opportunity for a clear and balanced review of evidence.

Defendant, Kilbourn also fails to file a Brief in this matter. Any "Joining" motion with Defendant/Appellee Warren-White and motion for an enlargement of time was not filed timely and to be addressed here as part of the Appeal. As an attorney and hired agent, Mr. Kilbourn would be libel for his miscalculations and responsible for his role in misleading this Court.

Defendant/Appellee, Owen Haskell, Inc and specifically, Maine Licensed Surveyor Mr. John Schwanda, was designated as an "expert witness" only recently by Defendant Warren-White but never testified at any hearing or

was made available for any deposition even after being subpoenaed. Surveyor Schwanda placed markers on the land as a boundary line described as the “old abandoned road” from another surveyor -yet at least 4 other formal surveys with legal surveyor seals and signed land surveys from Owen Haskell, Inc dating back to the 1990’s and a number of others even older- Mr. Schwanda fails to place any “old road” or any road discontinued identified as a “land monument,” man made or otherwise (see CHAPTER 141 PROFESSIONAL LAND SURVEYORS SUBCHAPTER 1 GENERAL PROVISIONS footnote) as required on any formal signed and attached sealed survey, nowhere in that location or surrounding area, including the abutting neighbor Joyce 2012 Owen Haskell survey who Sullivan entered into an agreement with in 2012. Surveyor, Schwanda then modifies a court ordered description, removing the description as an old road and his attorney admitting and concedes on the record to intending to manipulate legal deed title descriptions for the purpose of filing at the Maine Registry of Deeds.

Sullivan’s Complaint also identifies and claims, the recent findings of both collusion and cooperation between abutting neighbors and alleges, both Warren-White and neighbor Joyce, whom Sullivan explains, have a contractual boundary agreement from 2012 and it is alleged here that both Joyce and Warren-White conspired and intentionally concealed evidence which was material to any agreement and the Court never adequately or reasonably addressed in just dismissing the Complaint.

These matters have yet to “be decided” and to dismiss the Sullivan Complaint before a proper review and examination would be unjustified under the Rules.

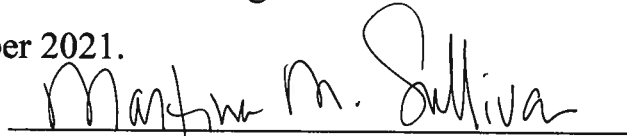
CONCLUSION

Courts must balance the finality of a matter with on going wrong. The Courts cannot rely on guesses, emotions, speculation, embellishment and exaggeration to decide a matter after the uncovering of new information, however that is exactly what the defendants hope for here, to fault Sullivan by either slander, dishonor or somehow by insult rather than facts.

To determine and decide a matter as basic as the filing of a complaint, the courts are required to view the complaint in light 'most favorable' to the plaintiff. In dismissing the Complaint at this stage violates fundamental fairness requirements. Justice deserves a voice and evidence and facts need to decide a matter.

Wherefore, Plaintiff/Appellant Sullivan moves this Court to vacate and remand this matter back to the trial court for hearing and trial.

Submitted this 15th day of December 2021.



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CHAPTER 141 PROFESSIONAL LAND SURVEYORS SUBCHAPTER 1 GENERAL PROVISIONS

(4) "Land surveying" means any service or work involving the application of special knowledge of the rules of evidence and boundary laws, principles of mathematics and the related physical and applied sciences for measuring and locating lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water. This service or work is for the purposes of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions of land, including topography, alignment and grades of streets and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.

CERTIFICATION OF SERVICE

Martina M. Sullivan, hereby certify copies of Plaintiffs' ^{Reply} Appeal Brief and ~~Appendix~~ was sent to the Defendants attorneys:

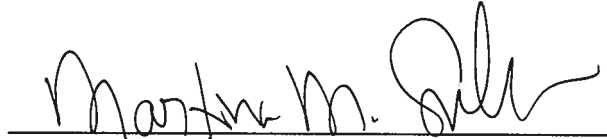
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December 15, 2021

Martina M. Sullivan

A handwritten signature in black ink, appearing to read "Martina M. Sullivan", is written over a horizontal line.

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