

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Maia Magee and Sunfire, LLC

v.

Vita Cooper, Trustee, Utopia Revocable Trust

Supreme Court Case No.: 2020-0472

**BRIEF OF DEFENDANT VITA COOPER,
TRUSTEE UTOPIA REVOCABLE TRUST**

Appeal brought by Plaintiff of a Final Decision of the 9th Circuit Court-District Division-
Milford, in a Landlord-Tenant Matter

By her attorneys,
Bruce J. Marshall Law Offices, PLLC

Dated: May 18, 2021

Bruce J. Marshall, Esq. (NH Bar #12313)
48 Grandview Road, Suite #3
Bow, NH 03304
(603) 715-8720
Email: bmarshall@marshallawnh.com

The Appellee requests fifteen minutes of oral argument before the full court, to be
presented by Bruce J. Marshall, Esq.

TABLE OF CONTENTS

Table of Authorities2

Concise Statement of Case and the Facts3

Summary of the Argument.....9

Argument9

 I. The lower court lawfully considered all evidence presented in determining
 that the Plaintiff had not met her burden.....9

 II. The lower court lawfully determined no act of the Defendant constituted a
 violation of RSA 540-A.....12

 III. Damages.....14

Conclusion14

Request for Oral Argument.....15

Word Limit Certification.....15

APPENDIX.....16

TABLE OF AUTHORITIES

CASES

Crowley v. Frazier, 147 N.H. 387, 389 (2001)10

Echo Consulting Services v. North Conway Bank, 140 N.H. 566, 571 (2007)10, 14

Harkeen v. Adams. 117 NH 687, 691 (1977).....14

Lane v. Barletta, 172 N.H. 674, 676-77 (2019).....10, 14

R. Zoppo Co. v. City of Dover, 124 N.H. 666, 671 (1984).....10

STATUTES

RSA 540-A.....in passim

CONCISE STATEMENT OF THE CASE AND FACTS

This matter arises from the Appellant having contracted with the Appellee to lease a luxury home (“Home”) located at 245 Federal Hill Road in Milford New Hampshire (“Premises”). *Appellant’s Appx.* @ p. 17. The term of the lease was one year, beginning May 21, 2019 and expiring on May 31, 2020. *Id.* The Appellant, upset with Appellee, filed a total of four RSA 540-A claims in retaliation for not being let out of the lease early and for being notified that the lease would not be renewed. The subject RSA 540-A claim arose after an August 4, 2020 hearing on Appellee’s previously filed eviction proceeding (pending sister appeal). *Trial Trans.* @ p. 63. Despite the related lease having contractually expired and Appellant’s related breach of contract, the Appellant filed the underlying RSA 540-A claim seeking a finding that the Appellee had deprived Appellant of quiet enjoyment, Appellee had attempted to evict Appellant without legal process, and for damages and fees. *Appellant’s Appx.* @ p. 22.

In support of her Petition, Appellant attached a supplement alleging that three days after the August 4, 2020 discovery hearing in the eviction matter, the Appellee played loud rock music on a Friday morning, the subsequent Sunday morning, and then early Monday evening. *Id.* @ p.26, *Trial Trans.* @ p. 37, 100. Appellant also took offense that the Appellee had yelled from her own porch, to “get out of my house.” *Id.* @ p. 28, *Trial Trans.* @ p. 78, 100. Appellant noted that the Appellee had fired off some fireworks on the subject Sunday and Monday evenings. *Trial Trans.* @ p. 113. Finally, the Appellant took issue with a neighbor being found walking on the property upon which the leased Premises was located in the vicinity of a shared driveway that served the leased Home. *Id.* @ p. 78. Appellant’s Petition sought relief in the form of requesting that the Appellee be found to have deprived the Appellant of quiet enjoyment, willfully attempted to evict the Appellant, related injunctive relief, and for fees and costs and nothing more. *Appellee’s Appx.* @ p. 25. Appellant’s Petition was devoid of any argument of collective actions of the Appellee or any reference to any of the Appellant’s prior failed attempts at

an RSA 540-A claims that are asserted for the first time in Appellant's brief except for a passing reference to Appellee's eviction matter that was heard immediately prior to the subject hearing.

A hearing on Appellant's Petition was scheduled for September 10, 2020 following the hearing on Appellee's related eviction matter. As noted in Appellee's brief in the pending eviction appeal, the parties had agreed to proceed by offers of proof. At the hearing the Appellant restated the same allegations as contained in her Petition. *Appellee Appx.* @ p. 26, *Trial Trans.* @ p. 63-78. More specifically, Appellant alleged that both the noise from the outdoor stereo and the fireworks were the basis of her Petition as she had mistaken the fireworks to be gunshots. *Trial Trans.* @ p. 63, 113. Appellant erroneously asserted that the music played for 12 plus hours a day from 8:00 am to 8:00 pm, 8:30pm, or 9:00pm. *Trial Trans.* @ p. 64. The audio the Appellant provided at the hearing was audio taken from outside the leased Home along the edge of the leased premises adjacent to the old rock quarry at the bottom of which lies the Appellee's private residence. *Trial Trans.* @ p. 64. The lower court noted the minimal back yard between the Home and Appellee's rock quarry. *Id.* The distance between the Home and the Appellee's residence is over four hundred feet with Appellee's residence being approximately sixty feet down and adjacent to the base of the rock quarry. In other words, the video recording was taken atop an amphitheater created by the old rock quarry. *Trial Trans.* @ p. 65. Appellant can see only a small corner of Appellee's residence from the second floor of her home. *Trial Trans.* @ p. 76. The audio was played over Appellee's objection that it could be manipulated too easily on play back depending on volume settings, etc. as no noise level recordings were taken. *Trial Trans.* @ p. 64, 68. The first video played was allegedly taken on the subject Sunday morning. *Trial Trans.* @ p. 70. The next video that played was alleged to be of two gun shots, yet the lower court identified them as two noises. *Trial Trans.* @ p. 71. Despite all Appellant's assertions, she admitted to the lower court that it wasn't even clear to her whether the Appellee had "a bona fide legitimate purpose" for the music. *Trial Trans.* @ p. 77.

Appellant argued that she was concerned about the fireworks she mistakenly thought were gun shots because of the prior no trespassing sign that was installed on the shared driveway to deter others from accessing the open construction site for the new location of the Home. *Trial Trans.* @ p. 78, 85, 87. Finally, Appellant provided a video of a neighbor walking in the vicinity of the shared driveway and Appellee's construction site claiming that although she didn't know if it was relevant to the RSA 540-A hearing, she thought it was unusual. Appellant admits she has no idea who the gentleman was, yet she blames the Appellee for her encounter with a neighbor as support for her Petition. *Trial Trans.* @ p. 78. The Appellant concluded that her encounter with the neighbor was either purely circumstantial and a coincidence or something more. *Trial Trans.* @ p. 79.

In response to Appellant's representation of her case, the Appellee proved that the Appellant had previously complained that a neighbor, other than the Appellee, was shooting in the direction of the Home. *Trial Trans.* @ p. 88, 81. The related police report showed that on April 4, 2020 the Appellant had called the police alleging that a neighbor was shooting in the woods two houses down. *Appellee's Appx.* @ p. 46. Upon arrival, the officer said he spoke with the neighbor Matt at 271 Federal Hill about target shooting in his backyard. *Id.* Matt was over 300 feet from other residents' houses. *Id.* Matt showed the police where he was shooting and it was confirmed there were no barriers as he was shooting into a pile of wood, with a stone wall behind it. *Id.* The police recommended that Matt should place some dirt securing where he was shooting to prevent ricochet. *Id.* The police then informed the Appellant that they had confirmed that the shooting was not in the direction of the Home. *Id.* On April 5, 2020 the Appellant called the police a second time this time alleging the neighbor Matt was shooting at her house. *Appellee's Appx.* @ p.47. Despite two calls to police, Appellant never even sought a restraining order or further relief. And despite this history, when the Appellant alleged she heard gun shots more than 400 feet away she didn't first call the police, instead she got out her video camera. In the instant matter when Appellant mistakes fireworks for gun shots, she conveniently files an RSA 540-A claim as opposed to her response with the neighbor

Matt. It is important to note that although the Appellant accused the neighbor Matt of shooting at her twice, the video she provided the police proved he was shooting with his back to the Appellant. *Appellee's Appx.* @ p. 47. Similarly, the Appellant had previously alleged that Andrea Kokko, Appellee's former property manager, had harassed and bullied her. *Appellee's Appx.* @ p. 48. However the police questioned how that was even possible as they had no contact with her. *Appellee's Appx.* @ p. 48, 49. Appellant's perception of such instances appears at best to be a sensationalized view of things.

Although the lower court had found for the Appellant in a prior RSA 540-A claim related to a single no trespassing sign located at the entrance of a shared driveway in the vicinity of Appellee's construction site and related tree clearing, the police had previously responded to Appellant's calls regarding same and found no issue with the sign. *Appellee's Appx.* @ p. 50. The lower court ignored the fact that the police had already addressed the sign and that the same type of sign had been in use elsewhere on the property for more than a year. *Trial Trans.* @ p. 94, *Appellee's Appx.* @ p. 57, 58. The lower court also ignored that the signs were located on the dirt road leading to the lower part of Appellee's property and the other more recent sign on the top portion of the property was located along the shared driveway to the Home and Appellee's construction site. *Trial Trans.* @ p. 95, *Appellee's Appx.* @ p. 58. Neither sign was on the leased premises. *Appellee's Appx.* @ p. 57, 58 and *Id.* The shared driveway connects two roads through the properties and on one end a sign was placed at the main entrance and the second, as complained of, was at the entrance of where the construction work was taking place to deter people from accessing the construction work. *Id.* The police concluded the Appellee could post the signs where she wanted to. *Appellee's Appx.* @ p. 50. The lower court found otherwise as a result of the lower court's admitted personal objection to same instead of basing its decision on the law. *Appellee's Appx.* @ p. 50, 57, 58. It should be noted that the subject "no trespassing" sign had been taken down prior to the alleged snooping neighbor walking the property. *Trial Trans.* @ p. 110. The Appellant had contacted the police about the no trespassing sign before she filed the related RSA 540-A

claim. Although the police advised her that the sign was to deter others from entering the shared driveway to snoop at the construction work in progress, Appellant furthered her conspiracy theory and harassed the Appellee by filing yet another RSA 540-A claim. When the clearing for the new building site began, the Appellant again sought police assistance as the clearers were on site to retrieve their equipment in response to the lower court's related cease and desist order. *Appellee's Appx.* @ p. 52, 53. As is clear from the police report, the Appellant was seeking to make something from nothing in her ongoing efforts to harass the Appellee. *Appellee's Appx.* @ p. 52. Although the Appellant was in the habit of calling the local police and fire departments for any matter she may have taken issue with, she did not call about the alleged stranger walking the property. Instead she assumed he was somehow connected with the Appellee. *Trial Trans.* @ p. 78, 79.

In the instant matter, Appellant argues that the Appellee played loud music to interfere with Appellant's quiet enjoyment. *Appellee's Appx.* @ p. 27. Yet the Appellee's playing of music in the natural amphitheater created by the walls of the granite quarry was something the Appellee had done since 2008 from the area of her current home at the base of the granite cliff. *Trial Trans.* @ p. 93. Appellee had even constructed a shed to house her home stereo system. *Appellee's Appx.* @ p. 55, 56. Appellee would periodically play music from the shed with the speakers facing the face of the old granite quarry wall, which created the effects of a natural amphitheater. *Trial Trans.* @ p. 93.

In February of 2020, Appellee's then property manager sought to see whether the Appellant wanted out of the lease to which she replied, "Hi Andrea, yes, we should be released from the contract and reimbursed from November." *Appellee's Appx.* @ p. 59. Despite the above, the Appellant has remained in the possession of the Premises for an additional year beyond the lease term and brought the subject RSA 540-A action raising false allegations. Paragraph 3 of the Petition stated, "subsequent to a recent hearing and the eviction action mentioned above the Defendant began on Friday, August 7, 2020, blaring loud music from Defendant's home." Appellant's counsel described it as being like a rock concert, yet during the video played by the Appellant to support same you

could hear Mr. Sean Mulkern talking in a normal voice and his voice was much louder than the music heard off in the distance. Said paragraph continued to the second page where Appellant alleged that there was a professional sound system being used. Again this was not true. The related photos showed that it was just a typical 1970's version of a home stereo. *Appellee's Appx.* @ p. 56. Furthermore, the home stereo was not directed at the Appellant but rather at the cliff face of the natural amphitheater created by the former rock quarry, which was part of the reason the Appellee built her house there. *Trial Trans.* @ p. 93. Appellee has historically sat outside her house next to the trout pond and listened to music because it sounds great bouncing back off the natural amphitheater. There is no record of any neighbor ever having complained. Yet somehow Appellant classifies it as retaliation. *Trial Trans.* @ p. 93. Appellee argued that someone's normal conduct on their own property within the applicable zoning regulations cannot be considered retaliation under any reasonable standard. *Trial Trans.* @ p. 104. In paragraph 4, Appellant alleged the loud music began early Friday morning. *Trial Trans.* @ p.103. To the contrary it was played late Friday morning. At paragraph 5, Appellant admits to leaving the leased premises on Friday, therefore it would be impossible for her to know what took place on Friday after her departure. There is no ordinance against playing the music.

On the day of trial, during one of the breaks, the parties went to the abutting properties and the undersigned represented to the lower court that while he was standing on the porch of the Appellee's home he could hear opposing counsel talking to Appellant at the back of the leased Home on top of the ledge face. *Trial Trans.* @ p.105. In paragraph 8, Appellant falsely asserted that the music had never been played before, yet it had been played periodically since 2008. *Trial Trans.* @ p.112. In paragraph 9, Appellant falsely alleged that she heard gun shots. The Appellee did ignite some fireworks as was permitted by the town, yet on the video they were not much louder than the crickets you could hear in the background. *Trial Trans.* @ p.121. And even after the police confirmed for the Appellant that the noises heard were fireworks that are legal in

Milford, Appellant responds by filing the subject RSA 540-A continuing to misrepresent the noises to be gun shots. *Appellee Appx. @ p. 28,54*. Appellant then subsequently admitted that they “heard a noise” and thought it to be “either fireworks or like firecracker/fireworks type of thing or a gunshot.” *Trial Trans. @ p.113*. Appellant also acknowledged that the police documented it as a reported firecracker. *Trial Trans. @ p.113*. When the police responded to the home of the Appellee, she had to get out of bed to answer the door. *Trial Trans. @ p.108*. The fireworks were ignited off the Appellee’s front porch which cannot be seen from the Appellant’s leased premises. *Trial Trans. @ p.109*. Despite the police having investigated and found no gunshots had occurred, the Appellant continues to misrepresent, even to this Supreme Court, that they did. Appellant’s outrageous assertions even go as far as accusing the Milford Police department of corruption in an attempt to discredit police reports and further her conspiracy theories. *Trial Trans. @ p.114*. Nor did the Appellee ever threaten the Appellant as repeatedly alleged by the Appellant. *Trial Trans. @ p.109*. In paragraph 13 Appellant complains of a photographer being in the vicinity of the leased premises, yet the Appellee had no knowledge of his ever being on the property at any time. *Trial Trans. @ p. 95*. At paragraph 19 Appellant alleged that the Appellee was somehow trying to circumvent lawful eviction procedures. Appellants’ argument is that collectively combined the firework noises, the previously removed no trespassing sign, and the one instance Appellant heard the Appellee yell “get out of my house” from her own porch somehow equates to a reasonable fear for one’s safety. Based on what Appellant considered the “weird convergence of all of these things happening all at the same time” it somehow equates to a RSA 540-A violation. *Trial Trans. @ p. 120*. The Appellant was essentially asking the lower court to ignore reason and classify lawful acts any abutter has a right to do on their own property as somehow being retaliatory if conducted by the Appellee.

SUMMARY OF ARGUMENT

The issue before the lower court was whether or not the Appellee’s conduct rose to

the equivalent of an RSA 540-A violation. Following a final hearing and despite Appellant's unsupported assertions of retaliation, the lower court lawfully dismissed Appellant's Petition. Furthermore, the subject Petition should be dismissed as moot as the alleged acts occurred well after the Appellant had been lawfully evicted from the premises. Simply put, the lower court, weighed the evidence and upon giving all evidence and testimony its proper weight, lawfully found for the Appellee.

ARGUMENT

I. The lower court lawfully considered all evidence presented in determining that the Plaintiff had not met her burden.

The Appellant's Petition under RSA 540-A:4 ("Petition") limited her requested permanent relief to a finding that the Appellee had somehow deprived her of quiet enjoyment of the leased premises, the Appellee had willfully attempted to evict her without legal process and fees and costs. *Appellant Appx.* @ p. 26. No further permanent relief was requested. Although Appellant improperly attempts to expand the basis of her argument in her brief beyond the scope of the hearing below, only those matters raised below will be addressed herein. For instance the Appellant never alleged any breach of the lease itself yet included that argument in her brief. Regardless, the reference portion of the lease is only applicable to restrictions placed on the Appellant and not the Appellee. *Appellee Appx.* @ p. 18. As New Hampshire Courts are to consider the situation of the parties, their intent, together with all the provisions of the contract taken as a whole the clear and unambiguous language can only be interpreted to be a restriction on the Appellant. *R. Zoppo Co. v. City of Dover*, 124 N.H. 666, 671 (1984).

In support of her Petition, the Appellant's Supplement to the Petition made four specific allegations. Namely that the Appellee allegedly played loud music, yelled get out of my house on one occasion, shot off fireworks on two occasions, and a neighbor was found walking nearby the leased premises on a Sunday afternoon. *Id.* @ p. 29. Appellant alleges the above allegations have deprived her of quiet enjoyment of the leased premises and that they amount to a willful attempt to evict her. *Id.* @ p.29, 30. At

the hearing below the Appellant failed to offer sufficient evidence to prove same.

The covenant of quiet enjoyment is a common law doctrine that places the obligation upon the landlord to not interfere with a tenant's possession during the tenancy. *Crowley v. Frazier*, 147 N.H. 387, 389 (2001). A breach of the covenant of quiet enjoyment occurs when there is a substantial interference with the tenant's beneficial use of or enjoyment of the premises. *Echo Consulting Services v. North Conway Bank*, 140 N.H. 566, 571 (2007). Whether a breach of the covenant of quiet enjoyment has occurred is a question of fact for the trial court to determine. *Id.* @ 572. This Supreme Court will not disturb a lower court's ruling on this issue unless it is unsupported by the evidence or is erroneous as a matter of law. *Lane v. Barletta*, 172 N.H. 674, 676-77 (2019).

In reaching its decision, the lower court considered the allegations exactly as required by law and noted above. *Appellee Appx.* @ p. 34, 35. Recall first the lower court affirmed that it considered all evidence presented at the hearing in reaching its decision. *Id.* @ p. 34. The lower court then lawfully determined that the credible evidence at the hearing was that occasional fireworks are common during the summer in Milford. *Id.* The tenant had also not demonstrated that the alleged snooping photographer had any connection to the landlord, though the conversation was awkward from start to finish. *Id.* If the alleged snooping photographer was of real concern, why didn't the Appellant seek an order of contempt from the lower court given the June 11, 2020 order in the 458-2020-LT-00031, RSA 540-A matter prevented the Appellee from photographing, videoing or monitoring the Appellant in any way, personally or through an agent. The answer is clear, it was a bogus claim. Regardless, the remaining allegations to address were the music and one instance of Appellee being heard to yell "get out of my home" from more than four hundred feet away.

The lower court lawfully determined that the music played during the course of a weekend could be heard from outside the Appellant's Home in the yard area adjacent to the top of the granite cliff but was not as loud as the normal voice of the camera operator.

Id. @34, 35. Furthermore, playing music and talking to yourself from your own porch can in no reasonable manner be considered to interfere with one's quiet enjoyment. Not only wasn't the music loud on the video evidence there was no evidence that it violated any local noise ordinances. *Id.* The Appellant never provided any evidence that she could even hear the music from inside her home. *Id.* Appellant's brief is devoid of any legal basis for the notion that what one is legally permitted to do on one's own property could somehow be considered to impact one's quiet enjoyment of an abutting property. Appellant's argument would result in an abutting landlord being restricted from playing outdoor music, igniting fireworks or talking to oneself from their own porch because of a pending eviction proceeding, while any other abutter could do the same so as long as it was in accordance with local noise ordinances and related regulations. Such an outcome would be ridiculous.

II. The lower court lawfully determined no act of the Defendant constituted a violation of RSA 540-A.

Appellant furthers the argument that the lower court should have specifically included in its final order that the four allegations of the Appellant, cumulatively considered, would still result in dismissal of Appellant's ridiculous claim. Appellant erroneously claims in her brief that lower court "found each bad act to have occurred." *Appellant's Brief* @ p. 29. The lower court's order is devoid any reference to bad acts on the part of the Appellee. *Appellee Appx.* @ p. 33-35. Instead, the order clearly stated that the "credible evidence was that occasional fireworks are common in Milford." *Id.* @ p. 34. The lower court also noted that although the audio of the alleged snooping photographer may have sounded awkward, the Appellant failed to demonstrate that he had any connection to the Appellee. *Id.* Neither of which were considered to be "bad acts" by the lower court. As to the music and one instance of Appellee being heard to yell "get out of my house" from her own front porch, the lower court found that both were not loud enough to be considered substantial interference with a tenant's quiet enjoyment nor constructive eviction. *Id.* @ p. 35. In performing its analysis the lower

court never even used the phrase “bad acts.” *Id.* In further support of the lower court’s determination it noted that no evidence was produced that the music playing was loud enough to violate any applicable noise ordinance. *Id.* Furthermore, the videos produced in support of the music playing were taken outside of the leased premises. *Id.* Recall, what opposing counsel has repeatedly represented to the courts as sounding like a rock concert, appears as background music on the video not loud enough to block out the crickets chirping in the background nor interfere with the video operator’s self-serving comments.

It escapes sound logic that a course of conduct, each element of which was determined to be permitted, can somehow be determined to be unacceptable when taken as a whole. Nor was the Appellant able to cite any legal basis for arguing same in her brief. She certainly never furthered that argument during the hearing on the merits. In fact during the hearing on the merits Appellant’s argument was that “...as clear and as **loud** as that **music** was and as clear and as **loud** as those **sounds** were, whether it be **fireworks** or gunshots. When you combine that with the **sign** that had been there before, trespassers will be shot, get out of my house. That definitely leads to legitimate concerns for my client's fear and safety.”(*emphasis added*) The lower court’s order stated it collectively considered exactly that when it stated “The court has considered all of the evidence presented and finds that the tenant has failed to carry her burden of proof that the alleged gun shots and firecrackers (*loud sounds*) were in retaliation against the tenant for the outcome of the hearing on August 4, 2020. The credible evidence provided at the hearing was that occasional fireworks are common during the summer in Milford. The tenant had also failed to demonstrate that the alleged snooping photographer had any connection to the Appellee, though the conversation appeared awkward from start to finish. Recall Appellant admitted at the hearing that “(We) don't know who he is. We don't know where he came from...it just is really weird. It’s either purely circumstantial and coincidental or it’s more.” *Trial Trans.* @ p.78,79.

Regardless, any reasonable reading of the lower court’s order confirms that the

lower court collectively considered that all of the evidence presented, the playing of music, the prior RSA 540-A, Appellee talking to herself, and the wayward photographer, did not collectively equate to a substantial interference with the tenant's quiet enjoyment or constructive eviction. Appellant failed to prove there was a substantial interference with her beneficial use of or enjoyment of the premises. *Echo Consulting* at 571 (2007). The lower court lawfully answered the question of fact in favor of the Appellee. *Id.* @ 572. Given this, the lower court's ruling must not be disturbed. *Lane* at 676-77 (2019).

III. Damages

As outlined above and highlighted in Appellee's sister brief, Appellant has repeatedly conducted herself in a manner intended to frustrate the eviction process by repeatedly initiating frivolous RSA 540-A claims in an effort to cause the Appellee financial harm. Such outrageous abuse of process is exactly the type of frivolous bad faith acts that warrant an award of attorney fees incurred by the Appellee in defense of Appellant's bad faith and frivolous claims. *Harkeen v. Adams*, 117 NH 687, 691 (1977). Appellant's repeated assertions to the courts of alleged facts they know to be false fly in the face of justice and can best be described as an abuse of the litigation process. It certainly appears the Appellant never had any intention of moving out of the premises, as previously represented to the lower court on numerous occasions. Rather it has been her ongoing intent to use litigation to unjustly cause the Appellee financial harm. In addition, the lease itself provides that the Appellant shall be liable to the Appellee for all attorney fees and costs incurred in obtaining possession of the premises. *Appellee Appx.* @ p. 17. Therefore based on the above, the Appellee should be awarded all fees and costs incurred.

CONCLUSION

This matter was initiated after the sister appeal of the lower court's finding for the Appellee as to the eviction. As the eviction must be upheld on the facts, this appeal should be dismissed as moot. As explained above, the lower court at all times acted lawfully both in interpreting the applicable law and applying it reasonably to the

undisputed facts. The lower court's order clearly confirms it considered all arguments raised by the Appellant at the hearing on the merits. Review of the record below will show that the Appellant's brief repeatedly mischaracterizes the proven facts and misapplies and/or ignores the law. Based on the clear application of applicable law the lower court's decision should be upheld as lawful.

REQUEST FOR ORAL ARGUMENT

Appellee respectfully renews its prior request for oral argument, to be presented by Bruce J. Marshall, Esq.

WORD LIMIT CERTIFICATION

This Brief contains less than 9500 words and therefore complies with the word limitation set forth in New Hampshire Supreme Court Rules 26(7) and 16(11).

The undersigned counsel hereby certifies that a copy of the appealed decision has not been included in an appendix hereto as it has been included in Appellant's appendix.

Respectfully submitted,

Vita Cooper, Trustee, Utopia Revocable Trust

By and through her Attorneys,

Bruce Marshall Law Offices, P.L.L.C.
48 Grandview Road, Suite #3
Bow, NH 03304
(603) 715-8720

Date: May 18, 2021

/s/Bruce J. Marshall
Bruce J. Marshall, Esq. NH Bar# 12313

CERTIFICATE OF SERVICE

I, Bruce J. Marshall do hereby certify that a copy of the foregoing document has been sent through the Court's electronic filing system to all parties.

/s/ Bruce J. Marshall
Bruce J. Marshall, Esquire

APPENDIX

Standard Form Apartment Lease	17
Temporary Orders and Notice of Hearing dated August 12, 2020	22
Final Order dated September 18, 2020	32
Final Order dated June 11, 2020	37
Police Report for February 14, 2020	45
Police Report for April 4, 2020	46
Police Report for April 5, 2020	47
Police Report for April 10, 2020	48
Police Report for May 1, 2020	49
Police Report for May 31, 2020	50
Police Report for June 2, 2020	51
Police Report for June 4, 2020 calling party Maia Magee	52
Police Report for June 4, 2020 calling party Vita Cooper	53
Police Report for August 9, 2020	54
Photograph of Storage Shed	55
Photograph of Music Equipment	56
Photograph of Sign Postings	57
Photograph of No Trespassing Colburn Rd	58
Email dated February 12, 2020	59
Email dated February 13, 2020	60
Email dated February 18, 2020	61



Chardelli Fuel 673-1336

STANDARD FORM APARTMENT LEASE

DATE: May 21, 2019

Lessor: KOKKO REALTY, INC., 480 NASHUA STREET, MILFORD, NH (603) 673-2885, Agent for Utopia Revocable Trust hereby leases to Sunfire, LLC and Maia Magee Lessee, who hereby hires the following premises, viz.: House #246 Federal Hill Road, in Milford, NH 03055 consisting of 2 Bedrooms, 3.5 Baths, Living Room, Kitchen, Range, Refrigerator, Dishwasher, Wine Fridge, Full Finished Basement 3 Car Garage and Elevator for the term of 1 year beginning May 30, 2019. The term rent to be paid by the Lessee for the leased premises shall be \$ Forty Two Thousand Dollars and 00/100 (\$42,000.00) payable, except as herein otherwise provided, in installments of \$3,500.00 on the 1st day of every month in advance so long as this lease is in force and effect. This lease expires on May 31, 2020; except that it shall self-extend on a monthly basis as a Tenancy-At-Will unless either party has given a written thirty (30) day notice of terminating or changing the conditions of this agreement. A thirty (30) day notice is also required prior to the expiration of this lease; otherwise it is assumed the tenancy shall continue.

LESSOR AND LESSEE FURTHER COVENANT AND AGREE:

1. CARE OF PREMISES:

The Lessee shall not paint, decorate or otherwise embellish and/or change and shall not make nor suffer any additions or alterations to be made in or to the leased premises without the prior written consent of the Lessor, nor make nor suffer any strip or waste, nor suffer the heat or water to be wasted, and at the termination of this lease shall deliver up the leased premises and all property belonging to the Lessor in good, clean and tenable order and condition, reasonable wear and tear excepted. Soot from burning candles is not considered normal wear and tear and painting or cleaning required to remove soot will be charged to the Lessee.

2. CLEANLINESS:

The Lessee shall maintain the leased premises in a clean condition. He shall not sweep, throw, or dispose of, nor permit to be swept, thrown or disposed of, from said premises nor from any doors, windows, balconies, porches or other parts of said building, any dirt, waste, rubbish or other substance or article into any other parts of said building or the land adjacent thereto, except in proper receptacles and except in accordance with the rules of the Lessor.

3. DEFINITIONS:

The words "Lessor" and "Lessee" as used herein shall include their respective heirs, executors, administrators, successors, representatives and assigns, agents and servants; and the words "he", "his", and "him" where applicable shall apply to the Lessor or Lessee regardless of sex, number, corporate entity, trust or other body. If more than one party sign as Lessee hereunder, the covenants, conditions and agreements herein of the Lessee shall be the joint and several obligations of each such party.

4. DELIVERY OF PREMISES:

In the event the Lessor is not able to deliver the leased premises to the Lessee at the time called for herein, the rent shall be abated on a pro rata basis until such time as occupancy can be obtained, which abatement shall constitute full settlement of all damages caused by such delay, or the Lessor, at his election, shall be allowed reasonable time to recover possession of the leased premises by process of law, and if he cannot deliver such possession within 30 days from the beginning of said term, either the Lessor or Lessee may then terminate this lease by giving written notice to the other and any payment made under this lease shall be forthwith refunded. Lessee hereby authorizes and empowers Lessor to institute proceedings to recover possession of the premises on behalf of and in the name of Lessee.

5. DISTURBANCE:

The Lessee shall not make any disturbing noises in or around the building nor permit the making of any such noises therein by his family, friends, relatives, invitees, visitors, agents or servants; nor do, nor permit anything to be done by such persons that will interfere with the rights, comforts, or conveniences of other residents in the area. No electric or automatic washing machine, television or other arials, or other like equipment shall be installed without written consent from the Lessor. No Lessee shall play upon, nor suffer to be played upon, nor operate any musical instrument, radio, television or other like device in the leased premises in a manner offensive to other occupants of the building, nor between the hours of eleven o'clock PM and the following eight o'clock AM.

Lessee Initials MM

Lessor Initials [Signature]

REPAIRS:

The Lessee agrees with the Lessor that, during this lease and for such further time as the Lessee shall hold the leased premises or any part thereof, the Lessee will at all times keep and maintain the leased premises and all pipes, wires, glass, plumbing and other equipment and fixtures therein or used therewith repaired, whole and of the same kind, quality and description and in such good repair, order and condition as the same are at the beginning or, or may be put in during the term or any extension or renewal thereof, reasonable wear and tear and damage by unavoidable casualty only excepted. Notwithstanding anything herein to the contrary, Lessor reserves the right to make any and all repairs not made within a reasonable time or not properly made for which he shall be reimbursed by Lessee in full, upon demand. Note: Per conversation with Broker/Agent: Basically, if Lessee breaks something, or causes something to break, Lessee will pay for it; if it breaks for some other reason, Lessor will pay for it. If Lessee breaks something and does not repair it in a timely manner, Lessor has the right to repair it and charge the Lessee.

19. RIGHT OF ENTRY:

- (A) The Lessor may enter upon the leased premises in case of emergency to examine the condition thereof, or make repairs thereto; and
- (B) At his election, Lessor may replace or install pipes, wires, tubes, coverings, and plumbing and heating equipment therein.
- (C) Necessary exterior repairs to the property during the spring and summer seasons are weather permitting and shall only require 24 hour notice. This is in regards to exterior work only, property will not be entered.
- (D) Access to the mechanical room in the basement for non emergency scheduled services requires 48 hour advance notice.

20. NON-PERFORMANCE OR BREACH BY LESSEE:

If the Lessee shall fail to comply with any term, condition, covenant, obligation, or agreement expressed herein or implied hereunder, or if the Lessee shall be declared bankrupt, or insolvent according to law, or if any assignment of the Lessee's property shall be made for the benefit of creditors, or if the premises appear to be abandoned then, and in any of the said cases and notwithstanding any license or waiver of any prior breach of any of the said terms, conditions, covenants, obligations, or agreements, the Lessor, without necessity or requirement of making any entry may (subject to the Lessee's rights under applicable law) terminate this lease by:

- (A) A seven (7) day written notice to the Lessee to vacate said leased premises in case of any breach. Any termination under this section shall be without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of any of the said terms, conditions, covenants, obligations or agreements.

21. LESSEE'S COVENANTS IN EVENT OF TERMINATION:

The Lessee covenants that in case of any termination of this lease, or in case of termination under the provisions of statute by reason of the default of the Lessee, then at the option of Lessor:

- (A) The Lessee will forthwith pay to the Lessor as damages hereunder a sum equal to the amount by which the rent and other payments called for hereunder for the remainder of the term or any extension or renewal thereof exceed the fair rental value of said premises for the remainder of the term or any extension or renewal thereof; and
- (B) In addition thereto, the Lessee covenants that he will furthermore indemnify the Lessor from and against any loss and damage sustained by reason of any termination however caused. Lessor's damages hereunder shall include, but shall not be limited to, any loss of rent; 65% of the rental amount for the re-letting of the leased premises; advertising costs; the reasonable cost of cleaning and repainting the premises in order to re-let the same; moving and storage charges incurred by Lessor in moving Lessee's belongings pursuant to eviction proceedings; legal costs and reasonable attorney's fees incurred by the Lessor in collecting and damages hereunder or in obtaining possession of the leased premises by summary process or otherwise; or
- (C) at the option of Lessor, however, Lessor's cause of action under this article shall accrue when a new tenancy or lease term first commences subsequent to a termination under this lease, in which event Lessor's damages shall be limited to any and all damages sustained by him prior to said new tenancy or lease date. Lessor shall also be entitled to any and all other remedies provided by law. All rights and remedies are to be cumulative and not exclusive.

22. REMOVAL OF GOODS:

Lessee further covenants and agrees that if Lessor shall remove Lessee's goods or effects, pursuant to the terms hereof or of any court order, Lessor shall not be liable or responsible for any loss of or damage to Lessee's goods or effects and the Lessor's act of so removing such goods or effects shall be deemed to be the act of and for the account of Lessee.

23. NON-SURRENDER:

Neither the vacating of the premises by Lessee, nor the delivery of keys to the Lessor shall be deemed a surrender or an acceptance of surrender of the leased premises, unless so stipulated in writing by Lessor.

24. SUBLETTING:

The Lessee shall not underlet any part or the whole of the leased premises nor permit any other person or persons to occupy the same, nor rent any room therein without first obtaining on each occasion the assent in writing of the Lessor.

25. TRUSTEE:

PAGE 3 OF 4

Lessor Initials

MM

Lessor Initials

[Handwritten signature]

In the event that the Lessor is a trustee, no such trustee nor any beneficiary nor any shareholder of said trust shall be personally liable to anyone under any term, condition, covenant, obligation, or agreement expressed herein or implied hereunder or for any claim of damage or cause at law or in equity arising out of the occupancy of said leased premises, the use or the maintenance of said buildings or its approaches and equipment.

25. **WAIVER:**

The waiver of one breach of any term, condition, covenant, obligation, or agreement of this lease shall not be considered to be a waiver of that or any other term, condition, covenant, obligation, or agreement or of any subsequent breach thereof.

27. **SEPARABILITY CLAUSE:**

If any provisions of this lease or portion of such provision or the application thereof to any person or circumstance is held invalid, the remainder of the lease (or the remainder of such provision) and application thereof to other persons or circumstances shall not be affected thereby.

28. **SECURITY DEPOSIT:**

See Security Deposit Endorsement addendum.

29. **SUBJECT TO:**

- Security Deposit Endorsement
- Late Fee Form
- Addendum A
- Addendum B

30. **ADDITIONAL PROVISIONS:**

- Lessee acknowledges and agrees that trespass down the hill by occupants or guests is not allowed. In the backyard, the edge of the crushed stone closest to the house is the boundary of the lease premises.
- Due to cliff proximity, visiting children should not be left unsupervised in the back yard.
- No motorcycles, all-terrain vehicles, snowmobiles, etc., are permitted.
- No storage of any type is permitted on Lessor's property except within the home or storage area.
- No clotheslines other than the one provided (if appropriate).
- No ceiling hangers, toggle bolts, etc.
- Parking of no more than 3 vehicles fully registered and inspected and in current, regular use.
- This is a SMOKE FREE property; no smoking is allowed in the building, or on the property at anytime.
- Washer & Dryer, 3 microwaves, and 2 under counter fridges are left for the use of the lessee; should they break down, Lessor will not repair them. These items are not built-ins. Gas Dryer not allowed.
- Tenant shall be responsible for regular lawn care to keep the property in a neat and clean manner. Tenant shall be responsible for all snow and ice removal from driveway, entrance way, deck(s) and steps. Access to all fill pipes must be maintained. Lessor shall be responsible for pruning of trees and shrubs.
- Maximum occupancy at all times shall not exceed 4 (four) people.
- Lessor shall have the right to use the shared driveway to access the property located at 148 Colburn Road and 247 Federal Hill Road Milford, NH.
- Lessor shall notify Lessee that heat tape use is necessary if there is heavy snow.
- Property belonging to the Landlord and left for the personal use of the Lessee shall include 2 bar stools in kitchen and wicker furniture for breakfast porch.
- Should the Lessee wish to utilize the irrigation system, lessee is responsible for the activation and blowout procedure and costs. Landlord participation is required at turn on.
- Felt pads and carpets shall be used at all times to protect the wood floors from scratches and damage.
- Fuel in storage shall be charged at cash price due and payable at time of move-in, fuel-in storage at move-out will be reimbursed to the lessee at cash price of the day of move-out.
- Radiant heat in main house can take 24 to 36 hours to recover from large swings in heat adjustments, especially in winter. It is important to keep drapes closed on winter nights to prevent heat loss.
- 2 large area rugs shall be left for the lessees use during tenancy. Photos on file with management.
- Lower level basement interior and patio area shall be used as living space only and is not for entertaining or loud gatherings.
- NO HUNTING ON THE PROPERTY AT ANYTIME

Lessee Initials MM

Lessor Initials [Signature]

IN WITNESS WHEREOF, the said parties hereunto and to another instrument of like tenor, have set their hands and seals on the day and year first above written: and Lessee as an individual states under the pains and penalties of perjury that said Lessee is over the age of 21 years.

Maia Magee
Lessee

5/22/19
Date

Maia Magee
Sunfire LLC, Maia Magee
Manager

5/24/19
Date

Lessor
Andrea Chappell 5.29.19
Date
Trustee of Agent
KOKKO REALTY, Inc. Managing Agent

LESSEE: MAKE SURE YOU GET A SIGNED COPY OF YOUR LEASE PROMPTLY.

GUARANTY

This Guaranty made this 21th day of May 2019, by MAIA MAGEE of 21 Mohawk Trail, PMB 169, Greenfield Mass 01301, herein referred as GUARANTOR agrees to the following:

1. A one (1) year Lease has been entered between Kokko Realty, Inc Agent for Utopia Revocable Trust (LESSOR) and Sunfire, LLC (LESSEE) relative to the premises located at 245 Federal Hill Road, Milford, Hillsborough County, New Hampshire 03055.
2. As consideration for entering into the hereinabove referred to Lease, the Guarantor named above herein agrees to individually guarantee and assume responsibility and liability for the performance of all the terms of said lease, including payment of rent should the LESSEE default in payment.

Date this 21th day of May 2019.

Sean Mulken

Witness

Maia Magee
Maia Magee

SERVICE COPY

COPY FOR [REDACTED]

SERVICE COPY

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

TEMPORARY ORDERS AND NOTICE OF HEARING

Pursuant to RSA 540-A:4

Maia Magee
245 Federal Hill Rd
Milford, NH 03055

V.

Vita Cooper
Utopia Revocable Trust
148 Colburn Road
MILFORD NH


Case Name: Maia Magee v. Vita Cooper
Case Number: 458-2020-LT-00068

The Court having considered the plaintiff's petition pursuant to RSA 540-A:4 dated August 11, 2020 hereby finds and orders as follows:

- The plaintiff is in immediate threat of irreparable harm due to the action of the defendant set forth in plaintiff's petition.
- The defendant is ordered to immediately restore and maintain all utility services as provided by the tenant's rental agreement with the owner.
- The defendant is ordered to permit the plaintiff to have full and immediate access to plaintiff's premises forthwith.
- The defendant is ordered to immediately return any and all of plaintiff's personal property to the plaintiff.
- The defendant is restrained from taking, converting or damaging property in which plaintiff has legal or equitable interest.
- The defendant is ordered to immediately investigate the plaintiff's report of an infestation of insects, including bed bugs or rodents, in my leased premises.
- The defendant is ordered to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.
- The defendant is ordered to immediately remediate an infestation of insects, including bed bugs or rodents, in my leased premises.
- The defendant is restrained from harassing, intimidating or threatening plaintiff's relative or other household members.
- OTHER: With the exception of site work permitted by the final order in 458-2020-LT-00031, the landlord is enjoined from allowing any noise to be made on any of landlord's adjoining land that can be heard at the leased premises, where the noise did not occur at a similar volume and frequency during the initial one-year term of the lease and prior to August 4, 2020.

These orders are effective immediately and remain in effect until further orders of the Court. A WILLFUL VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN THE IMPOSITION OF CIVIL PENALTIES, FINES AND/OR IMPRISONMENT.

8-12-2020
Date


Signature of Judge
Mark S. Derby
Printed Name of Judge

Case Name: Mala Magee v. Vita Cooper

Case Number: 45B-2020-LT-00068

TEMPORARY ORDERS AND NOTICE OF HEARING

NOTICE OF HEARING

A hearing on the above-entitled matter will be held at the above court on SEPT. 10, 2020 at 8:15 am/pm. aw
The defendant is hereby summoned to appear to show why the above orders should not remain in full force and effect, and why further final orders should not issue.

Date

AUG. 11, 2020

Lynn R. KillKelley
Judge/Clerk of Court

NOTICE TO DEFENDANT (Pursuant to RSA 540-A:4 VIII)

You have a right to a hearing on these temporary orders within five days after you file a written request with the Clerk of Court. Unless you request this hearing in writing, the case will be heard on the date shown above.

RETURN OF SERVICE (To be completed by officer making service)

_____ County _____ Date

Service was completed to the within named _____ by giving in hand
 leaving at the abode at _____ on _____ an attested copy of
this order.

Date _____

Police Officer/Sheriff

Department with Jurisdiction

Date _____

Lynn R. KillKelley, Clerk of Court

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

http://www.courts.state.nh.us

Court Name: 9th Circuit - District Division - Milford
Case Name: Maia Magee and Sunfire, LLC v. Vita Cooper, Trustee, Utopia Revocable Trust
Case Number: 458-2020-LT-68
(if known)

PETITION UNDER RSA 540-A:4

Maia Magee and Sunfire, LLC

Plaintiff's Name

245 Federal Hill Road

Street Address

Milford, NH 03055

City/Town

V. Vita Cooper, Trustee, Utopia Revocable Trust

Defendant's Name

480 Nashua Street 148 Colburn Road

Street Address

Milford, NH 03055

City/Town

I complain that I am in immediate threat of irreparable harm because:

- My landlord willfully caused my utility service water gas electric to be shut off without prior permission from the court.
- My landlord willfully locked me out of my apartment without prior permission from the Court.
- My landlord willfully seized my personal belongings without prior permission from the Court.
- My landlord is entering my apartment without my permission.
- My landlord willfully refuses to investigate my report of an infestation of insects, including bed bugs or rodents, in my leased premises and it has been more than seven days since my landlord has received notification of the infestation.
- My landlord willfully refuses to take reasonable measures to remediate an infestation of insects, including bed bugs or rodents, in my leased premises.
- My tenant refuses to permit me to enter the apartment to make necessary repairs to the premises.
- My tenant refuses to permit me to enter the apartment to evaluate whether bed bugs are present as I have received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit directly above or below the premises. I have provided 48 hours written notice to the tenant; however the tenant refuses to permit me to enter.
- My tenant refuses to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs. Instructions were given to an adult member of the tenant household and were given at least 72 hours prior to remediation.
- My tenant is willfully damaging my property.
- OTHER: See attached supplement.

This occurred on _____ and continues through this day.

The defendant is my landlord tenant.

I RESPECTFULLY REQUEST THAT THE COURT ISSUE THE FOLLOWING TEMPORARY ORDERS

- Find that I am in immediate threat of irreparable harm due to the actions of the defendant set forth above.
- Order the landlord to immediately restore all of my utility services.
- Order the landlord to immediately allow me full access to the premises, which I rent.
- Order the landlord to immediately investigate my report of an infestation of insects, including bed bugs or rodents.
- Order the landlord to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.
- Order the landlord to immediately return all of my personal property.

Case Name: Maia Magee and Sunfire, LLC v. Vita Cooper, Trustee, Utopia Revocable Trust

Case Number: 458-2020-LT-68

PETITION UNDER RSA 540-A:4

- Restrain the landlord from entering the property that I am renting from the landlord without my permission; except to make emergency repairs to include the formulation of a plan for remediation of, or to engage in emergency remediation of, an infestation of insects, including bed bugs or rodents.
- Order the tenant to allow me reasonable access to the property I am renting to the tenant in order to make emergency repairs to the property.
- Order the tenant to allow me reasonable access to the property I am renting to the tenant in order to evaluate whether bed bugs are present as I have received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit directly above or below the premises.
- Order the tenant to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.
- Restrain the tenant from further damaging the rented premises.
- OTHER: See attached supplement.

I RESPECTFULLY REQUEST THESE ADDITIONAL FINAL ORDERS

- Find that my landlord willfully shut off my utility water gas electric service without prior permission from the court.
- Find that my landlord willfully locked me out of my apartment without prior permission from the Court.
- Find that my landlord willfully seized my personal belongings without prior permission from the Court.
- Find that my landlord is entering my apartment without my permission.
- Find that my landlord deprived me of quiet enjoyment of my property.
- Find that my landlord willfully attempted to evict me without legal process.
- Find that my landlord willfully refused to investigate my report of an infestation of insects, including bed bugs or rodents.
- Find that my landlord willfully failed to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.
- Find that my tenant refuses to permit me to enter the premises to make necessary repairs.
- Find that my tenant refuses to permit me to enter the premises to evaluate whether bed bugs are present as I have received notice that bed bugs are present in a dwelling unit adjacent to the premises or a dwelling unit directly above or below the premises.
- Find that my tenant is willfully refusing to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.
- Find that my tenant is willfully damaging my property.
- Award damages to me in the amount of \$ at least \$1,000
- Award me reasonable attorney's fees.
- OTHER:

Date August 10, 2020

Subscribed and sworn to by Plaintiff, before me,

Date

Petition is: Granted Denied for the following reason(s):

Maia Magee
Plaintiff's Signature

Christine M Gagnon-Tromble
Notary Public, State of New Hampshire
My Commission Expires Oct 11, 202

[Signature]
Justice of the Peace / Notary Public

Date

Signature of Judge

Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
9TH CIRCUIT COURT DISTRICT DIVISION – MILFORD

Docket No. _____

MAIA MAGEE AND SUNFIRE, LLC

V.

VITA COOPER, TRUSTEE, UTOPIA REVOCABLE TRUST

PLAINTIFFS' SUPPLEMENT TO PETITION UNDER RSA 540-A

NOW COME Plaintiffs, Maia Magee and Sunfire, LLC, by and through undersigned counsel, and hereby provide this supplement to their Petition under RSA 540-A being filed simultaneously herewith:

1. The Plaintiffs lease from the Defendant certain residential property located at 245 Federal Hill Road in Milford, New Hampshire.
2. The parties have been engaged in a protracted legal battle concerning the property at issue, with two prior petitions under RSA 540-A having been filed by the Plaintiffs against the Defendant in this Court (one of which was adjudged in Plaintiffs favor). The Defendant has also initiated an eviction action against the Plaintiffs, which action is still pending and is currently scheduled for a final hearing on September 10, 2020. See Vita Cooper, Trustee, Utopia Revocable Trust v. Maia Magee and Sunfire, LLC, 9th Circuit Court, District Division, Milford, Docket No. 458-2020-LT-00032.
3. Subsequent to a recent hearing held on August 4, 2020 in the eviction action mentioned above, the Defendant began – on Friday, August 7, 2020 – blaring loud rock music from Defendant's home, which is adjacent to the residence that the Plaintiffs are leasing. In fact,

the Defendant's home is approximately 400 feet away from the premises leased by the Plaintiffs.¹ In blasting this music, the Defendant necessarily used a professional sound system and intentionally directed the extremely loud music straight at the leased premises where Plaintiffs reside. Although the two homes are approximately 400 feet apart, it appears that the Defendant has placed the speakers about 300 feet south of the Defendant's home, so as to position the speakers closer to the residence leased by the Plaintiffs and to ensure that the loud music is heard by Plaintiffs though the woods separating the two properties.

4. The loud music began early Friday morning, and, thus started substantially and materially interfering with the Plaintiffs' quiet enjoyment of the property at that time.

5. The Plaintiffs left the leased premises on Friday and returned Saturday night (August 8th). The Defendant's loud music continued on Sunday August 9th, starting at 8:30am that day and continuing all day until approximately 8:30pm.

6. On Monday, August 10th, the loud rock music began once again, this time starting at approximately 6:00pm and continuing for several hours into the night.

7. In addition to statutes and common law that protect Plaintiffs' right to the quiet enjoyment of the leased premises, Section 5 of the Lease entered into by the parties prohibits any "disturbing noises" and explicitly states that the Plaintiffs shall not "play upon, nor suffer to be played upon[] . . . any musical instrument, radio, television, or other like device in the leased premises in a manner offensive to other occupants of the building," nor between certain hours of the day. Thus, the loud rock music necessarily is a breach of the Lease by the Defendant.

¹ The calculation of distance between the two residences derives from a review of the Milford, New Hampshire GIS map, and the approximation noted above reflects the distance on said map between the closest corners of the two residences.

8. Prior to the commencement of the loud music on August 7th, which followed the latest hearing in the eviction action, the Defendant had never once played such loud music. Additionally, upon information and belief, Vita Cooper, the Trustee of the Utopia Revocable Trust, considers loud music to be offensive, which is why there was a prohibition in the Lease against the same. Accordingly, Plaintiffs believe that the Defendant is constantly playing this loud music intentionally and solely with the intent to disrupt the Plaintiffs' quiet enjoyment of the property and constructively evict the Plaintiffs.

9. This is especially so given that, in addition to the loud rock music, on Monday night (August 10th), Vita Cooper yelled loudly at Plaintiffs to "GET OUT OF MY HOME!" This is not the first time that she has yelled such a statement to the Plaintiffs but is, in fact, at least the third such time.

10. Importantly, on Sunday night (August 9th), the Defendant began shooting off firecrackers and/or shooting guns near the leased premises, which were very loud. Given the contentious history between the parties, the Plaintiffs feared for their safety and, thus, called the police to investigate. The police arrived and they eventually talked to the Defendant.

11. Despite the same, on Monday (August 10th), the Defendant began shooting firecrackers and/or guns again near the leased premises. Such started around 7:00am, thereby further disrupting the Plaintiffs' quiet enjoyment of the leased premises. Although the firecrackers/guns stopped going off for a period of time on Monday, the Defendant started shooting them once again at around 8:30pm on August 10th.

12. Although Plaintiffs cannot be entirely sure about whether such noises Sunday night and Monday derived from firecrackers or from gunshots, the noises were more reminiscent of firearms going off rather than firecrackers; moreover, Plaintiffs never saw any light emitting

therefrom as would typically accompany a firecracker, thus providing more evidence that the noises derived from gunshots. Moreover, the sounds appeared to be directed specifically at the leased residence, thus suggesting that the Defendant was firing upon the Plaintiffs. Such is consistent with the fact that the Defendant has already been sanctioned by this Court for threatening to shoot the Plaintiffs (see the prior action under RSA 540-A). Given this, and the contentious dealings between the parties throughout this year, the Plaintiffs are, understandably, in great fear for their safety. Additionally, the quiet enjoyment of the property is obviously disturbed by such loud noises.

13. Further, on Sunday August 9th, a man, who purported to be a neighbor, walked onto the leased land surrounding the home that the Plaintiffs are currently residing in. This man had no legitimate reason, or any sort of invitation to enter, the leased premises. Additionally, he carried with him a camera that had a zoom lens, and although this man alleged that he was there only to take pictures of insects, upon information and belief, he is connected to the Defendant and may have been acting as an agent of the Defendant so as to effectively spy on the Plaintiffs. Suffice it to say, such trespassing onto the leased premises unnerved the Plaintiffs, who greatly value their privacy.

14. None of the activities described above – the loud rock music, the firecrackers/gunshots, or the trespassing on the property by the purported neighbor – had ever occurred at any point during the tenancy prior to the hearing in the eviction matter on August 4th. Thus, such activities started only after that hearing, in which the Defendant was ordered to provide substantive responses to certain discovery requests, and the final eviction hearing was continued to September 10th.

15. Accordingly, the timing of the above-mentioned activities is suspicious, reeks of retaliatory intent, and demonstrates a deliberate attempt to harass and intimidate the Plaintiffs.

16. It is important to note that the Plaintiffs have video and/or audio recordings of each of the above-described actions to substantiate the allegations contained herein.

17. Given all of the above, and with the great stress and anxiety that it has caused the Plaintiffs, the Plaintiffs were forced by the Defendant on Monday night (August 10th) to leave the leased premises and stay in a hotel – where the Plaintiffs knew that they would be safe.

18. Accordingly, it is abundantly clear that the Defendant is intentionally and/or willfully violating the Plaintiffs' right to quiet enjoyment of the leased premises, in violation of RSA 540-A:2.

19. Additionally, the above actions demonstrate that the Defendant is attempting to circumvent lawful procedures for eviction pursuant to RSA 540, thereby violating RSA 540-A:2 once again. By playing the loud music constantly, lighting off firecrackers and/or shooting guns near the property over the past couple of days, and having someone snoop on the Plaintiffs, the Defendant is attempting to effectively and constructively evict the Plaintiffs by creating such an inhospitable and hostile environment that the Plaintiffs feel unsafe. In fact, such has caused the Plaintiffs to seek shelter at a hotel, given the situation caused by the Defendant.

20. Accordingly, the Plaintiffs are entitled to various relief. In particular, the Plaintiffs request that this Court: (1) find that the Defendant has deprived the Plaintiffs of the quiet enjoyment of the leased property; (2) find that the Defendant has willfully attempted to evict the Plaintiffs without proper legal process; (3) prohibit the Defendant from continuing any of the various actions described above; (4) award appropriate damages to the Plaintiffs, including at least

statutory damages of \$1,000, see RSA 540-A:4, VII, RSA 540-A:4, IX, RSA 358-A:10; and (5) award the Plaintiffs reasonable attorney's fees and costs.

WHEREFORE, the Plaintiffs respectfully request that this Court:

- A. Grant the Plaintiffs' Petition under RSA 540-A;
- B. Grant all of the relief requested above; and
- C. Grant such other and further relief as is necessary and just.

Respectfully submitted,

MAIA MAGEE AND SUNFIRE, LLC

By their Attorneys,

WADLEIGH, STARR & PETERS, P.L.L.C.

Date: August 11, 2020

By: /s/ Craig Donais

Craig Donais, Esq., NH Bar #12466

Stephen Zaharias, Esq., NH Bar #265814

95 Market Street

Manchester, NH 03101

(603) 624-7100

cdonais@wadleighlaw.com

szaharias@wadleighlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this date to Silas Little, Esq. by email and first-class mail, postage prepaid.

/s/ Craig Donais

Craig S. Donais, Esq.

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

September 18, 2020

**BRUCE J. MARSHALL, ESQ
BRUCE J MARSHALL LAW OFFICES PLLC
48 GRANDVIEW RD STE 3
BOW NH 03304**

Case Name: **Maia Magee v. Vita Cooper**
Case Number: **458-2020-LT-00068**

Enclosed please find a copy of the Court's Order dated September 18, 2020 relative to:
Final Order (Pursuant to RSA 540-A:4)

Lynn R. KillKelley
Clerk of Court

(458939)

C: Craig S Donais, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

**FINAL ORDER
(Pursuant to RSA 540-A:4)**

Case Name: **Maia Magee v. Vita Cooper**
Case Number: **458-2020-LT-00068**

On September 10, 2020, a hearing was held on the above entitled matter at said Court.

Defendant was present was not present.

After hearing the evidence presented, the Court,

- Finds that the Defendant has violated RSA 540-A: _____
- Orders the defendant to restore and maintain all utility services provided as part of the rental agreement with the plaintiff until such time as the rental agreement is lawfully modified or the plaintiff's tenancy is lawfully terminated.
- Orders the defendant not to interfere directly or indirectly with plaintiff's access to or use and enjoyment of the premises rented by the plaintiff (or any part thereof) without prior judicial authorization.
- Orders the defendant not to interfere directly or indirectly with plaintiff's access to a possession of his/her personal property without prior judicial authorization.
- Orders the defendant not to enter the premises rented by the plaintiff without permission from the plaintiff or a court of competent jurisdiction, except to make emergency repairs which include the formulation of a plan for remediation of, or to engage in emergency remediation of, an infestation of insects, including bed bugs or rodents.
- Orders the defendant not to interfere with the quiet enjoyment of the premises by the plaintiff or members of his/her household.
- Orders the defendant not to damage or permit any damage to any part of the premises he/she is renting from the plaintiff.
- Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to make necessary repairs.
- Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to evaluate whether bed bugs are present.
- Orders the defendant to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.
- Orders the defendant to investigate the plaintiff's report of an infestation of insects, including bed bugs or rodents.

Case Name: Maia Magee v. Vita Cooper

Case Number: 458-2020-LT-00068

FINAL ORDER PURSUANT TO RSA 540-A:4

- Orders the defendant to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.
- Orders plaintiff defendant to pay damages to the plaintiff defendant in the amount of \$ _____
- Orders plaintiff defendant to pay attorney's fees in the amount of \$ _____ to the plaintiff defendant
- Other orders:

By way of background, the landlord came to what would have been the merits hearing on August 4, 2020 in Docket No. 458-2020-LT-00032 ("Case #32), having objected to and declined to answer any of the tenant's interrogatories except for her name and address. The court reviewed the interrogatories and determined that some of the interrogatories were reasonably calculated to lead to discoverable information and should have been answered. The hearing was continued to September 10, 2020 to allow the discovery to occur.

The tenant claims that the landlord retaliated against her because the landlord was unhappy with the outcome of the August 4, 2020 hearing.

The court has considered all of the evidence presented and finds that the tenant has failed to carry her burden of proof that the alleged gun shots and firecrackers were in retaliation against the tenant for the outcome of the hearing on August 4, 2020. The credible evidence at the hearing was that occasional fireworks are common during the summer in Milford. The tenant has also not demonstrated that the alleged snooping photographer had any connection to the landlord, though the conversation was awkward from start to finish.

The remaining issue is the landlord's use of an outdoor stereo system to play music between August 8 and August 10, as well as the landlord shouting "get out of my house" from her home, both of which were loud enough that the tenant could hear it from the outside of the leased premises.

The leased premises include a single family home located close to the top of an abandoned quarry filled with water. The landlord's primary residence is a single-family home located on the adjacent real property, which is also owned by the landlord. This residence is located to the north of the quarry/pond and at a significantly lower elevation than the leased premises. As the crow flies, the landlord's residence is approximately 400 feet northwest of the leased premises. Exhibits 5-I and 5-J in Case #32 depict the general layout of the area. The court can take judicial notice of the basic scientific fact that sound waves travel more easily across open water than they do through a wooded area, hence the description of the quarry as a "natural amphitheater". Most of the neighborhood is wooded. The court viewed videos taken outside of the leased premises, where the sound of the landlord's outdoor stereo could clearly be heard. The sounds included identifiable classic rock with DJ announcements and radio advertisements between songs. The voice of the

person who was taking the video was louder than the music recorded coming from the landlord's property, but the music and spoken words were easily recognizable from the video.

Based on Exhibit C, the outdoor stereo system on the landlord's property appears to have been in place for some time. The landlord said without contradiction that it had been there since 2008. There was some suggestion that in the past the outdoor stereo system had been used for outdoor concerts in the "natural amphitheater" created by the quarry walls in the area. The tenant testified credibly that at no time during the summer of 2020 did the landlord use that outdoor stereo system. The tenant also testified credibly that, for all times when they were present at the leased premises in the summer of 2019 after moving in at the end of May, 2019, they never heard the landlord use the outdoor stereo system. The landlord agreed that August 8, 2020 was the first time she had use the outdoor stereo system during the summer of 2020, and she further could not recall how many times she used the outdoor stereo system during the summer of 2019. The landlord further admitted that she felt the need to turn on the outdoor stereo system in order to relax while she was working outdoors on her property, because of all the stress associated with the litigation with the tenant. This confirms a connection between the dispute with the tenant and the decision to use the outdoor stereo for the first time on August 8, 2020. The tenant claims that this playing of loud music and the audible demand that she get out of the landlord's house, impairs her quiet enjoyment of the leased premises and is an effort by the landlord to constructively evict her.

With the landlord having previously admitted that there is a connection between her decision to use the outdoor stereo and the litigation with the tenant, it falls to the court to determine whether that decision interferes with the tenant's quiet enjoyment of the leased premises.

Much could be said about whether the noise terms in the lease binding the tenant somehow also apply to the landlord, and whether the landlord's conduct, if done by the tenant to the landlord, would violate the terms of the lease. However, RSA 540-A:2 adopts the common law definition of quiet enjoyment. The court does not believe that RSA 540-A was intended as an expedited lease interpretation and enforcement mechanism. At common law, a breach of the covenant of quiet enjoyment requires a substantial interference with the beneficial use of the leased premises. On balance, and acknowledging the admitted link between the music and the pending eviction, as well as the prior RSA 540-A finding against this same landlord, the landlord's playing music and talking to herself from her own porch, even where the noise is carried across open water, is not a substantial interference with the tenant's quiet enjoyment or constructive eviction.

The tenant produced no evidence that the music violated any local sound ordinances, nor was there any evidence of whether the music could be heard from inside the building. The music was played during a summer weekend when people generally listen to music outside, and it did not appear to overpower regular conversation. Finally, some of the videos appear to have been taken at the very edge of, if not over, the property line separating the leased premises from the landlord's 'home' lot, and/or the crushed stone that forms the boundary under Section 30 of the lease. Case dismissed.

Case Name: Maia Magee v. Vita Cooper

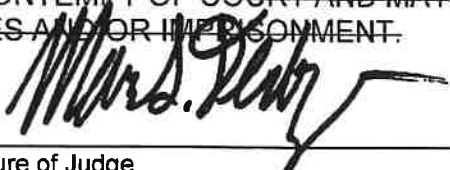
Case Number: 458-2020-LT-00068

FINAL ORDER PURSUANT TO RSA 540-A:4

Orders plaintiff defendant to pay the following fees to the sheriff/police:
Service: _____ \$ _____ Travel: _____ \$ _____
Other: _____ \$ _____ **TOTAL** _____ \$ _____

~~WILLFUL VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN THE IMPOSITION OF CIVIL PENALTIES, FINES AND/OR IMPRISONMENT.~~

September 18, 2020
Date



Signature of Judge
Mark S. Derby

Printed Name of Judge

RECEIVED *maia uo*
elene 12.07

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

JUN 15 2020

F.T.F. & L. PA.

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

June 11, 2020

**SILAS LITTLE III, ESQ
FERNALD TAFT FALBY & LITTLE PA
14 GROVE STREET
PO BOX 270
PETERBOROUGH NH 03458**

Case Name: **Maia Magee and Sunfire, LLC v. Utopia Revocable Trust/Kokko Realty, Inc.**
Case Number: **458-2020-LT-00031**

To all parties,

See enclosed Judge's order dated June 11, 2020.

Final orders issued .

Kokko Realty's Motion to Dismiss (as a party)- Granted .

So ordered ,

Judge Mark S Derby

Lynn R. KillKelley
Clerk of Court

(371)

C: Maia Magee; Kokko Realty; Utopia Revocable Trust

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

9th Circuit - District Division - Milford
4 Meadowbrook Drive
Milford NH 03055

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

FINAL ORDER
(Pursuant to RSA 540-A:4)

Case Name: **Maia Magee and Sunfire, LLC v. Utopia Revocable Trust/Kokko Realty, Inc.**
Case Number: **458-2020-LT-00031**

On June 08, 2020, a hearing was held on the above entitled matter at said Court.

Defendant was present was not present.

After hearing the evidence presented, the Court,

Finds that the Defendant has violated RSA 540-A: By commencing a major non-emergency logging operation on the leased premises, that is not expressly permitted by the terms of the parties' written lease, coupled with an offensive "no trespassing" sign designed to intimidate the tenant, in a manner and at a pace that did not respect the tenant's legal status as a holdover tenant at sufferance pursuant to COVID-19 Emergency Orders #4 and #24. See narrative for further discussion. This is a violation of RSA 540-A:2.

- Orders the defendant to restore and maintain all utility services provided as part of the rental agreement with the plaintiff until such time as the rental agreement is lawfully modified or the plaintiff's tenancy is lawfully terminated.
- Orders the defendant not to interfere directly or indirectly with plaintiff's access to or use and enjoyment of the premises rented by the plaintiff (or any part thereof) without prior judicial authorization.
- Orders the defendant not to interfere directly or indirectly with plaintiff's access to a possession of his/her personal property without prior judicial authorization.
- Orders the defendant not to enter the premises rented by the plaintiff without permission from the plaintiff or a court of competent jurisdiction, except to make emergency repairs which include the formulation of a plan for remediation of, or to engage in emergency remediation of, an infestation of insects, including bed bugs or rodents.
- Orders the defendant not to interfere with the quiet enjoyment of the premises by the plaintiff or members of his/her household. See narrative for further discussion.
- Orders the defendant not to damage or permit any damage to any part of the premises he/she is renting from the plaintiff.
- Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to make necessary repairs.
- Orders the defendant to permit the plaintiff to have access to the premises at reasonable times with reasonable prior notice in order to evaluate whether bed bugs are present.

- Orders the defendant to comply with reasonable written instructions to prepare the dwelling unit for remediation of an infestation of insects or rodents, including bed bugs.
- Orders the defendant to investigate the plaintiff's report of an infestation of insects, including bed bugs or rodents.
- Orders the defendant to immediately take reasonable measures to remediate an infestation of insects, including bed bugs or rodents.
- Orders plaintiff defendant (Utopia Realty Trust only) to pay damages to the plaintiff defendant in the amount of \$ 1,000. ✓
- Orders plaintiff defendant (Utopia Realty Trust only) to pay attorney's fees in the amount of \$ Affidavit to be submitted by Attorney Donais within 14 days of clerk's notice of decision, and defendant will have 10 days within to file an objection as to the reasonableness of the fees claimed. The court will then either rule on the pleadings or schedule a hearing on the reasonableness of the fee request. ✓
to the plaintiff defendant
- Other orders:

Narrative:

The parties and counsel appeared telephonically and in person for a final hearing on the 540-A petition against the defendants stemming from the June 1, 2020 commencement of logging activities on the real property at 245 Federal Hill Road in Milford (the "property" or the "leased premises". The corporate and individual tenants (collectively, the "tenant") were represented by Attorney Craig Donais, and the Utopia Revocable Trust ("landlord") was represented by Attorney Silas Little. The former property manager, Kokko Realty, Inc. ("Kokko"), was represented by its principal, Andrea Chappell.

245 Federal Hill Road in its present configuration consists of a relatively new antique reproduction-style single family home on a secluded lot of approximately 6.5 acres. The area can be described as low-density rural residential. The parties have a one-year lease that was set to automatically renew as a month-to-month tenancy at will on May 31, 2020 unless either party gave 30 days' notice that she did not want the renewal. The tenant paid the full year's rent in advance, and the landlord and tenant have had ongoing friction over the maintenance and repair of the heating and water systems in the property. See Docket No. 458-2020-LT-00015 (the "March 540-A"). While the court issued ex parte orders in the March 540-A directing the landlord to address some of the issues identified by the plaintiff, it ultimately did not find the landlord liable for a violation of RSA 540-A. Neither party appealed that decision and it is now final.

It was evident to the court before and during the March 9, 2020 final hearing on the March 540-A that the landlord and Kokko did not get along and probably never would get along. The tenant was effectively trapped in the lease because she had paid a full year's rent in advance, so she had limited leverage over the landlord. With the warmer weather coming (where the hot/cold water and radiant heat issues would not matter) and the end of the lease in

not in NH

error

sight, both parties left the March 9, 2020 hearing looking forward to the end of the lease term. They did so with the expectation that the tenant planned to leave by May 31, 2020, if not sooner if a compromise could be reached.

Shortly thereafter, the Governor declared a state of emergency in response to the COVID-19 outbreak. On March 17, 2020, the Governor issued Emergency Order #4, which prevented landlords from initiating "eviction proceedings under RSA 540". On March 26, 2020, Kokko gave notice to the tenant that the lease would not be extended beyond May 31, 2020. On March 27, 2020, this court dismissed the March 540-A.

The offers of proof and exhibits presented at the June 8, 2020 hearing in this case demonstrated that the landlord has been planning since January of 2020 to reconfigure the lot at 245 Federal Hill Road and move the residence to a new location to the southeast of its present location. There was no evidence to suggest that this move was an emergency, such that keeping the house where it had been since its construction, presented any kind of danger or safety hazard.

As the state of emergency and stay-at-home orders continued through April and May, the tenant told Kokko or the landlord that she would not be leaving by May 31, 2020. The landlord had plans to move the building in August of 2020, and this was to be one of the last jobs that will be done by the building mover before retirement, so time was of the essence to the landlord. The tenant wanted to find a new place to live, but she has not been able to locate something that suits her needs because of the COVID-19 shut down.

Based on Ms. Chappell's credible testimony and the state of affairs at the end of the March 9, 2020 hearing on the March 540-A, the court does not find that the March 26, 2020 letter and eviction notice (Exhibits B and C) or the May 1, 2020 eviction notice (Exhibit K) were retaliatory. They were good faith housekeeping efforts to hold the tenant to the representations she made at the March 9, 2020 hearing that she did not want to stay past May 31, 2020, and clear the way for the August building move.

As May 31, 2020 approached, the landlord ratcheted up the pressure. Without physically invading the dwelling, the landlord started acting as if the tenant was a trespasser as of June 1, 2020.

A tenant under a written lease who holds over without an extension is a tenant at sufferance who must be evicted under RSA 540, and not a trespasser. *See, e.g., Hill v. Dobrowski*, 125 N.H. 572, 575 (1984). Self-help is not available under these circumstances, and the court finds that pressing forward with non-emergency logging to remove part of the wooded buffer around the house and clear a path wide enough for the entire house to be picked up and moved to a new location, is a substantial interference with the tenant's quiet enjoyment of the home. *See Diminico v. Centennial Estates Co-Op, Inc.*, ___ N.H. ___, 2020 WL 1160756 at *4 (N.H. March 11, 2020). This attempted removal of vegetation up to the tenant's doorstep, with the logging operation moving closer to the tenants every day,

substantially materially interfered with the tenant's quiet enjoyment of the property. This, coupled with the reported comments made by Ms. Cooper directly to the tenant, and the intimidating signs on the landlord's abutting property visible from driveway used by the tenant, underscores the willful nature of the landlord's conduct.

Given how far from the main road this property is, and the timing of the appearance of the signs, the signs can have no purpose other than to intimidate the tenant. The offers of proof at trial also suggested that the logging plan was to clear a path (and a line of sight) from the building's current location to the new location. Once the path was clear, there would be site work at the new location in view of the house. Exhibit I anticipates at least a new septic system and a new well at the new location, and there will presumably be some kind of concrete slab or foundation.

The terms of the lease suggest that the tenant at least had the right to make passive recreational use (that did not include hunting) of the whole 6.5 acres as they existed at the time the parties executed the lease. There were more detailed rights and responsibilities in the curtilage of the home. Given the nature of the tenancy and the property involved, the court finds that the tenant's leasehold rights extend beyond the footprint of the home.

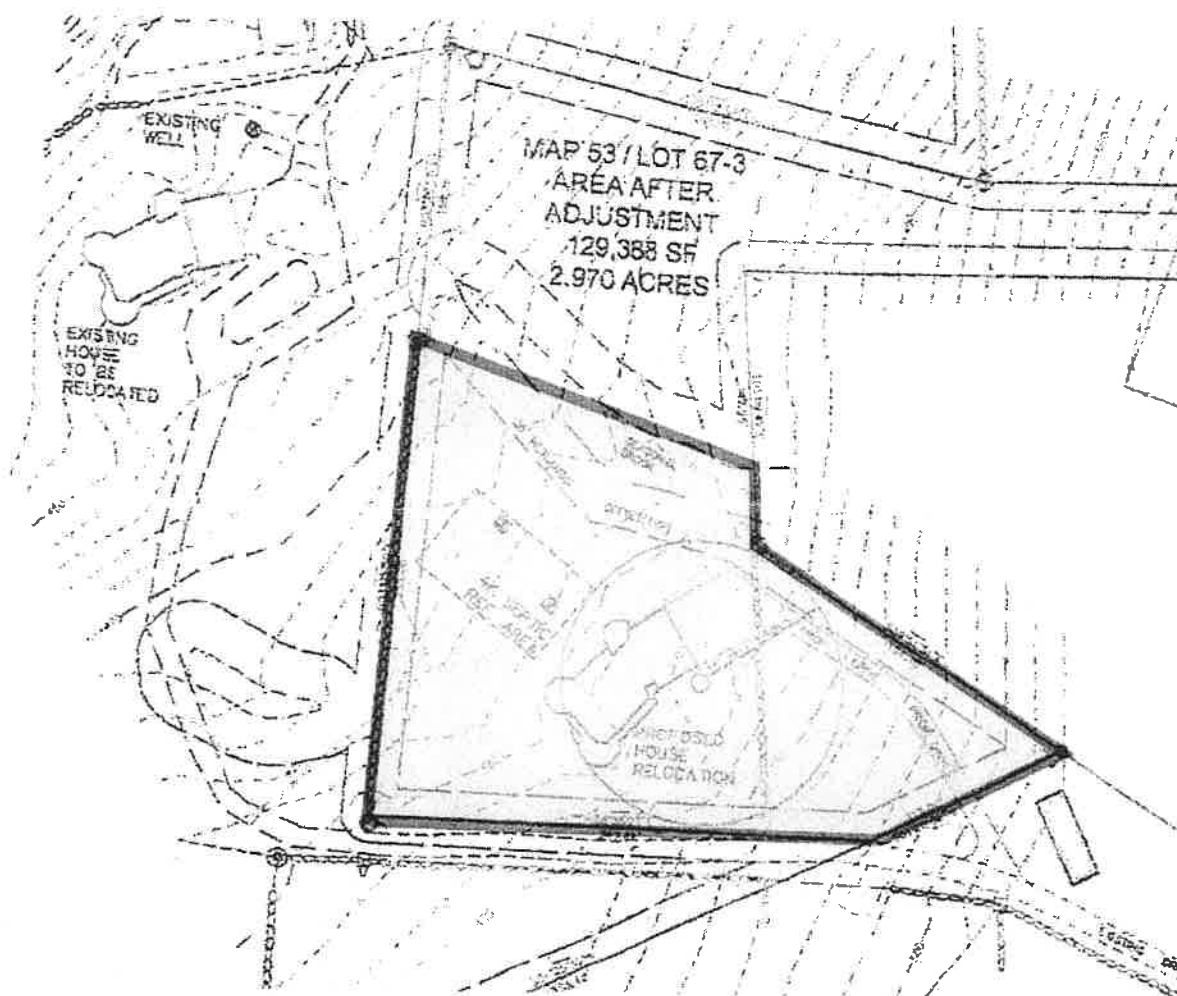
Having found a violation of RSA 540-A:2, the court will award the plaintiff \$1,000 for the initial violation and attorney's fees pursuant to RSA 540-A:4, IX(a). The court is satisfied that the landlord complied with the temporary order and stopped work once served. This includes the June 4, 2020 allegations. The temporary order also appears to have stopped the work somewhere east of the stone wall and before disrupting the buffer immediately around the house.

The problem with this case is that the COVID-19 emergency orders have upended the settled expectations of both parties, picking "winners" and "losers", to quote the tenant's counsel. In ordinary times, the benefit of the parties' bargain was that up to and after May 31, 2020, the month-to-month tenancy at will could be terminated by either party with 30 days' notice. The Supreme Court's May 21, 2020 order has closed the courthouse door to all but 540-A petitions and evictions based on RSA 540:2, II(b) or (d), at least until June 15, 2020.

The court takes judicial notice of the fact that the COVID-19 outbreak has caused an unprecedented disruption of everyday life. Everybody has been ordered to make radical changes to their lifestyles while enduring significant inconveniences and indignities. Emergency Order #24, issued on April 3, 2020, encouraged landlords and tenants to cooperate and work together under these circumstances. Though this cooperation was urged in the context of payment, Emergency Order #24 states that "nothing in this Order or Order #4 relieves a tenant of an obligation to pay rent or comply with any other provisions of their lease agreements. *Tenants are strongly encouraged to work with their landlords to pay all rent they can afford . . .*" (Emphasis added).

RSA 540-A:4, VII states that “[u]pon a showing of a violation of RSA 540-A:2 or RSA 540-A:3, I, II, or III, the court shall grant such relief as is necessary to *protect the rights of the parties*. Such relief may include: (a) An order prohibiting the defendant from continuing the activity or activities which violate RSA 540-A:2 or RSA 540-A:3 . . .” (Emphasis added). The injunction against the logging operation issued on June 2, 2020 and continued on Page 1 of this order, is modified as follows, and it shall remain in effect until possession of the entire property has been restored to the landlord, or further order of this court:

1. The landlord shall keep the access road from Federal Hill Road to the building free and passable at all times, such that all vehicles or equipment on the access road shall be in motion at all times either passing to or from the construction site;
2. The landlord and any agents, workers, contractors, etc. on the site shall have no contact with the tenants;
3. The tenants may at their own expense install monitoring cameras west of the stone wall to monitor compliance at the construction site
4. The landlord may not video or photograph the tenants or the property outside the shaded area, nor may the landlord direct cameras at the leased premises from the shaded area or from any of the landlord’s surrounding property, nor may the landlord create a nuisance or in any way monitor the tenants from any portion of the landlord’s surrounding property.
5. Consistent with all applicable local, state and federal ordinances, statutes and regulations governing the construction project, all of which shall supersede any inconsistent portions of this order, the landlord may work in the area shaded below between the hours of 7:00 AM and 7:00 PM, Monday through Friday:



6. Neither the landlord, nor her agents, workers, contractors, etc., may travel to the west of the stone wall or the line extending north from the stone wall to the northern boundary of 245 Federal Hill Road, nor may the landlord, her agents, workers, contractors, etc. travel up to or through the western part of the property where the tenants live via the "woods road" or any other route. Put differently, the *only* part of the premises the landlord may access is shaded in gray above and nothing else except for legitimate emergency repairs to the building that go to the habitability of the building, etc., with reasonable advance notice to the tenant as set forth in the lease.

This is an imperfect temporary solution that seeks to balance "the rights of the parties" under RSA 540-A:4, VII during these extraordinary times and consistent with the spirit of Emergency Order #24. It will retain what is left of the vegetative buffer between the stone wall and the occupied house, prohibit contact between the parties, and allow the landlord to use the summer months to do site work in a defined area. If all of the logging was planned to be complete in a week (Exhibit D), the balance of the logging should not substantially delay the move if the landlord regains possession during the summer.

The guiding principle behind this order is that the tenant cannot expect perfect peace and quiet during a hold-over tenancy at sufferance, while she seeks out the ideal replacement for this somewhat atypical rental arrangement. Additionally, while the court found that the tenant's leasehold interest covers all of the real property, the tenant's privacy expectations are stronger in the building and its curtilage, and weaker further away from the building. At the same time, the court will not allow the landlord's work to cross the stone wall and disrupt the remaining vegetative barrier shielding the building from the site work, unless and until she regains possession by lawful means or obtains court permission.


Kokko's motion to dismiss it as a party to the case is granted. As set forth above, the court finds that Kokko's issuance of the two eviction notices (Exhibits B, C and K) was undertaken in good faith and not retaliatory. A finding on Exhibit L is not necessary to decide the 540-A issue before the court, so this order is without prejudice to the claims and defenses the parties may have arising from it.

The court considered the evidence and drafted this order in Merrimack before it received the tenant's June 10, 2020 affidavit with attachments. This was submitted after the evidence was closed and the case was taken under advisement, and it does not contain a certificate of service. The court will not act on it or consider the contents, though this is without prejudice to the tenant's right to file a procedurally proper pleading with notice to the opposing party.

Orders plaintiff defendant to pay the following fees to the sheriff/police:
Service: _____ \$ _____ Travel: _____ \$ _____
Other: _____ \$ _____ **TOTAL** _____ \$ _____

WILLFUL VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT AND MAY RESULT IN THE IMPOSITION OF CIVIL PENALTIES, FINES AND/OR IMPRISONMENT.

06/11/2020
Date



Signature of Judge
Mark S. Derby
Printed Name of Judge

44

For Date: 04/04/2020 - Saturday

Call Number Time Call Reason Action Priority Duplicate

20-14752 1419 Phone - SHOTS FIRED Services Rendered 3

Call Taker: JAH - Hall, Jon

Location/Address: [MIL] 245 FEDERAL HILL RD

Jurisdiction: MILFORD

Party Entered By: 04/04/2020 1420 JAH - Hall, Jon

Calling Party: MAGEE, MAIA @ - MILFORD, NH 03055

Home Phone: SSN: DOB: Race: W Sex: F

Party Entered By: 04/04/2020 1442 721 - GOODWIN, TAYLOR

Modified By: 04/04/2020 1530 JAH - Hall, Jon

Involved Party: GRIFFIN, MATTHEW PETER @ - MILFORD, NH 03055

CallBack Number:

Cell Phone:

E-Mail Address:

Home Phone:

Work Phone: SSN: DOB: Race: W Sex: M

ID: 721 - GOODWIN, TAYLOR

Disp-14:23:10 Enrt-14:24:11 Arvd-14:32:27 Clrd-14:42:21

Location Change: [MIL] 271 FEDERAL HILL RD [Modified: 04/04/2020 1433]

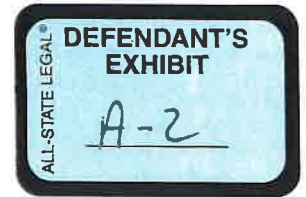
Jurisdiction: MILFORD

ID: 595 - RUSH, STEPHEN

Disp-14:29:09 Enrt-14:29:13 Clrd-14:43:47

Cleared By: 595 - RUSH, STEPHEN

Narrative: 04/04/2020 1420 Hall, Jon



yellow house two houses dow shooting int he woods

Narrative: 04/04/2020 1445 GOODWIN, TAYLOR
Upon arrival, I spoke to the Matt at 271 Federal Hill about target shooting in his back yard.

Matt was over 300 Feet from other residents houses, he showed me where he was shooting, there were no barriers and he was shooting into a pill of wood and behind that was a stone wall.

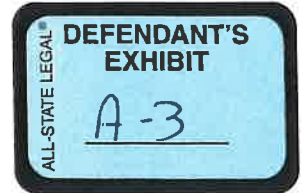
I advised Matt that he should have some dirt securing where he was shooting so it did not ricochet.

Clear

S. P. [Signature]

For Date: 04/05/2020 - Sunday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>	<u>Priority</u>	<u>Duplicate</u>
20-14913	1318	Phone - SHOTS FIRED	Services Rendered 3		
Call Taker:		MRP - Pepler, Mark			
Location/Address:		[MIL] 245 FEDERAL HILL RD			
Jurisdiction:		MILFORD			
Party Entered By:		04/05/2020 1321 MRP - Pepler, Mark			
Calling Party:		MAGEE, MAIA @			
CallBack Number:					
Home Phone:					
SSN:		DOB:	Race: W Sex: F		
Party Entered By:		04/06/2020 0022 19759 - JOHNSON, DANA			
Involved Party:		GRIFFIN, MATTHEW PETER @			
CallBack Number:					
Cell Phone:					
E-Mail Address:					
Home Phone:					
Work Phone:					
SSN:		DOB:	Race: W Sex: M		
ID:		19759 - JOHNSON, DANA			
Disp-13:32:50			Arvd-13:51:11 Cld-14:06:38		
Arrived By:		JAH - Hall, Jon			
Location Change:		[MIL] 271 FEDERAL HILL RD [Modified: 04/05/2020 1351]			
Jurisdiction:		MILFORD			
Narrative:		04/05/2020 1319 Pepler, Mark			
Modified By:		04/05/2020 1322 Pepler, Mark			



shooting 2 doors down from the residence; caller has no further info, but believes that "they" are shooting at her house

Narrative: 04/05/2020 1355 Pepler, Mark
out at 245 Federal Hill

Narrative: 04/06/2020 0031 JOHNSON, DANA

1. I received a call from MACC Base to respond to 245 Federal Hill Rd for a report of shooting towards the reporting party's residence. As I was en route I was made aware that the shots were coming from 271 Federal Hill Rd. I responded there first. I was further made aware that this same situation happened yesterday.

2. Upon arrival I met with Matthew GRIFFIN who showed me where he was shooting. I could see that they were not shooting in the direction of #245, but they were shooting into a wood/brush pile to the left side of the residence, towards Colburn Rd. When asked what type of guns they were shooting, I was told that they were shooting a 9mm and a 20 gauge shotgun. After confirming that they were not shooting in the direction of the residence of #245, I responded there.

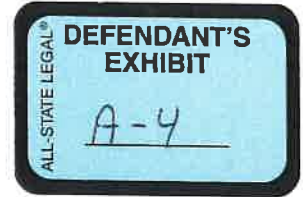
3. At #245, I met with Maia MAGEE who stated that the subjects did the same thing yesterday and that they were shooting in the direction of their residence. I advised that they were not. I was shown a video. In that video, I could see the backs of the subjects shooting, at the same location that I was shown. I advised that this was not in the area of their residence. I further advised that I would look to see what GRIFFIN was told previously.

4. After checking the report, I could see that GRIFFIN was shooting in the same area but was told that he may want a better back stop to prevent ricochets. I called GRIFFIN and again said that he should have a better back stop as he was ultimately responsible for where the bullets went. GRIFFIN advised that he understood. After speaking with GRIFFIN, I called MAGEE and told her to call should there be any other issues.

[Handwritten signature]
47

For Date: 04/10/2020 - Friday

Call Number	Time	Call Reason	Action	Priority	Duplicate
20-15643	0852	Phone - ESCORT / TRANSPORT	Services Rendered 3		
Call Taker: JAH - Hall, Jon Location/Address: [MIL] 245 FEDERAL HILL RD Jurisdiction: MILFORD Party Entered By: 04/10/2020 1013 19698 - FRYE, CRAIG Calling/Inv. Party: KOKKO CHAPPELL, ANDREA M @ - MILFORD, NH 03055 CallBack Number: CallBack Number: Home Phone: Home Phone: Work Phone: Work Phone: SSN: DOB: Race: W Sex: F Party Entered By: 04/10/2020 1017 19698 - FRYE, CRAIG Modified By: 04/10/2020 1021 JAH - Hall, Jon Involved Party: MAGEE, MAIA @ - MILFORD, NH 03055 CallBack Number: Home Phone: SSN: DOB: Race: W Sex: F ID: 19698 - FRYE, CRAIG Disposition: 08:53:27 Enrt-08:53:32 Arvd-09:10:15 Clrd-09:13:50 Narrative: 04/10/2020 0853 Hall, Jon escorting Andrea Coco to residence					



Narrative: 04/10/2020 1120 FRYE, CRAIG
 Modified By: 04/10/2020 1701 FRYE, CRAIG

On 04-10-2020 at approximately 0900 I escorted Andrea Kokko to 495 Federal Hill.

Prior to going to the above address, Kokko told me that her tenants had no heat in one of the rooms in the house that is rented by Magee. Kokko said that she had sent Magee a text message telling her that she was coming up to the house to drop off two space heaters for that room and wanted to look to see if she could find the problem as to why they did not have heat in that room. She said that she then would call for a plumber to work on the heat. There was no reply from Magee.

Kokko met me at the top of the driveway and we drove down to the front of the house, Kokko stepped out of her car and took the two space heaters one at a time from her trunk walking the heaters to the front deck area. She then drove out of the driveway with me following her. There was no contact with Magee.

Once back at the station Magee called to ask why the police had come to her house and why were we part of the harassment and bullying that Kokko is doing to them. I talked to her on the phone. Magee told me that we were harassing her and bullying them. I asked her how we did that when we had no contact with her. A male started to talk to me and identified himself as Shawn. I explained that we went to the house to keep the piece and there was nothing that had happened because there was no contact between parties. I asked Magee if it would help if we called her prior to the police and Kokko coming to the house. She said that would be better. Magee also told me that the reason why she is being harassed was because she has been served eviction paperwork but has paid her rent for a year so she doesn't want anyone there. She also explained why the space heaters had to be brought up to the house. I explained that the no heat problem was civil in nature.

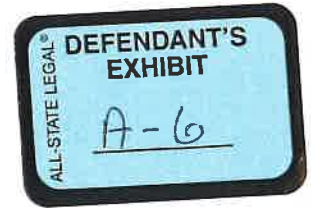
Our conversation ended and the police will call ahead of time if we are to go back to the house again with Kokko.

Capt. Frye

[Handwritten signature]

For Date: 05/31/2020 - Sunday

Call Number	Time	Call Reason	Action	Priority	Duplicate
20-24152	2002	Phone - POLICE INFO/ADVICE	Services Rendered 3		
Call Taker:		MRP - Pepler, Mark			
Location/Address:		[MIL] 245 FEDERAL HILL RD			
Jurisdiction:		MILFORD			
Party Entered By:		05/31/2020 2004 MRP - Pepler, Mark			
Modified By:					
Calling Party:		MAGEE, MAIA @			
CallBack Number:		603-479-2204			
Home Phone:		508-981-0701			
ID:		SSN: 000119831 DOB: 11/02/1971 Race: W Sex: F			
Arrived By:		19759 - JOHNSON, DANA			
ID:		720 - CONNERY, DEREK	Arvd-20:12:57 Clrd-20:22:07		
Dispatched By:		720 - CONNERY, DEREK			
Enroute By:		720 - CONNERY, DEREK			
Arrived By:		720 - CONNERY, DEREK			
Cleared By:		720 - CONNERY, DEREK			
Narrative:		05/31/2020 2005 Pepler, Mark			



RP adv that the landlord put up a sign that trespassers will be shot. RP feels that they are the intended target for this warning.

Narrative: 05/31/2020 2244 JOHNSON, DANA

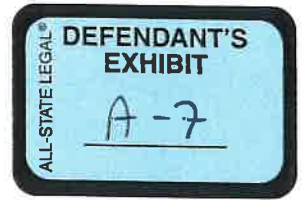
1. I received a call from MACC Base to respond to 245 Federal Hill Road for a subject reporting that the landlord placing signs saying that trespassers would be shot. The reporting party felt that they were targetting her.
2. Upon arrival I met with the reporting party, Maia MAGEE. I could further see the signs at the entrance to the driveway. I advised that the owner of the property could post any signs that they wish as it is their property. MAGEE stated that she has been served eviction notices, but that they were illegal and feels that the signs are meant to intimidate her. I advised that maybe the owner did not want people going down to check out the property and wanted to try to scare them away.
3. I advised that this is an issue that needs to be brought up with the property owner as it is not criminal in nature. MAGEE advised that she disagreed and was afraid for her life. I advised that I would contact the property manager.
4. I called and spoke with Andrea KOKKO-CHAPPELL. She advised that she would contact the property owner. After a short time, she called back and advised that she spoke with the property owner who advised that she did put the sign there to keep people from driving down to check on the construction that is beginning tomorrow, 6/1/20. I was told that the owner had no intentions on shooting MAGEE or anyone. I was also told that MAGEE was served eviction notices, but was refusing to leave the property. All of that is being dealt with through the court system.
5. MAGEE called very shortly after and I explained about the signs. I advised that they were not meant to keep her off of the property, but others from looking at the construction.

Nothing further

A handwritten signature in black ink, appearing to be "S. Pepler".

For Date: 06/02/2020 - Tuesday

Call Number	Time	Call Reason	Action	Priority	Duplicate
20-24380	1235	Phone - CIVIL STANDBY	Assisted Citizen	1	
Call Taker: JEH - Hyde, Jared					
Call Modified By: 286 - PALMER, JASON					
Location/Address: [MIL] 245 FEDERAL HILL RD					
Jurisdiction: MILFORD					
Party Entered By: 06/08/2020 0722 286 - PALMER, JASON					
Modified By: 06/08/2020 0723 286 - PALMER, JASON					
Calling/Inv. Party: MAGEE, MAIA @ - MILFORD, NH 03055					
CallBack Number:					
Home Phone:					
SSN: DOB: Race: W Sex: F					
Party Entered By: 06/08/2020 0726 286 - PALMER, JASON					
Involved Party: CHAPPELL, DUANE C @ - MILFORD, NH 03055					
Cell Phone:					
Cell Phone:					
Home Phone:					
SSN: DOB: Race: W Sex: M					
ID: 286 - PALMER, JASON					
Disp-12:35:23 Arvd-12:35:24 Clrd-13:57:35					
Location Change: [MIL] 245 FEDERAL HILL RD [Modified: 06/02/2020 1246]					
Jurisdiction: MILFORD					
ID: 663 - PARMETER, SETH					
Disp-12:46:14 Arvd-12:46:17 Clrd-13:57:35					
Dispatched By: JRJ - JOHNSON, JASON					
Arrived By: JRJ - JOHNSON, JASON					
Location Change: [MIL] 245 FEDERAL HILL RD [Modified: 06/02/2020 1246]					
Jurisdiction: MILFORD					
Narrative: 06/08/2020 0723 PALMER, JASON					
Modified By: 06/08/2020 0733 PALMER, JASON					

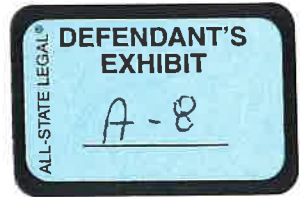


On 06-02-20 at about 12:35 PM, Maia came to the Milford Police Department and asked for a civil stand by. Maia handed me a copy of a civil court order from the Milford District Court and stated that she would like a civil stand by to serve the order. Officer Parmeter and I accompanied Maia to 245 Federal Hill Road where she served the civil order to Duane Chappell who was logging the property. This ended my involvement with this call.

[Handwritten signature]

Call Date: 06/04/2020 - Thursday

Call Number	Time	Call Reason	Action	Priority	Duplicate
20-24709	0831	Phone - POLICE INFO/ADVICE	Services Rendered 3		
Call Taker: JEH - Hyde, Jared Primary Id: 720 - CONNERY, DEREK Call Closed By: 720 - CONNERY, DEREK 06/04/2020 0854 Call Modified By: 720 - CONNERY, DEREK Location/Address: [MIL] 245 FEDERAL HILL RD Jurisdiction: MILFORD Party Entered By: 06/04/2020 0832 JEH - Hyde, Jared Modified By: 06/04/2020 0901 720 - CONNERY, DEREK Calling Party: MAGEE, MAIA @ - MILFORD, NH 03055 CallBack Number: Home Phone: SSN: DOB: Race: W Sex: F Party Entered By: 06/04/2020 0904 720 - CONNERY, DEREK Modified By: 06/04/2020 1133 485 - CAMPBELL, DANIEL Involved Party: CHAPPELL, DUANE C @ MILFORD, NH 03055 Cell Phone: Cell Phone: Home Phone: SSN: DOB: Race: W Sex: M ID: 720 - CONNERY, DEREK Disp-08:36:08 Arvd-08:45:07 Clrd-08:54:03 Arrived By: 720 - CONNERY, DEREK Cleared By: 720 - CONNERY, DEREK ID: 485 - CAMPBELL, DANIEL Disp-08:36:11 Arvd-08:36:12 Clrd-08:52:30 Cleared By: 485 - CAMPBELL, DANIEL Narrative: 06/04/2020 0832 Hyde, Jared					



RP reporting she has a court order stating there is no logging on her property and she states they just showed up.

Narrative: 06/04/2020 1144 CAMPBELL, DANIEL
I responded to 245 Federal Hill Road to check on the status of tree work being done in defiance of a court order. I knew this to be an ongoing issue.

Upon my arrival I observed a Chappell truck attempting to leave the area. There was no logging work being done. I met with Duane Chappell who told me he was just collecting his equipment and leaving the area.

As I was talking to Duane, the RP drove up to us. The rear window was rolled down and a male subject tried handing me the court order. I explained to the male subject Chappell was just there to collect their equipment and leave the area. While speaking with the male subject he looked around me and asked Duane "why are you staring at me," almost in a manner to try and invoke a reaction out of him. Duane calmly told the male subject he was not staring he just wanted to get his equipment and leave.

I told the male subject I didn't want him engaging Duane and told him I would standby until the equipment was removed. The RP then pulled up and they turned around and drove back towards the residence. As they drove back by us the male subject in the back seat was video recording us simply just standing there.

There was no illegal logging work being done in my presence. Duane collected his equipment and left the area without incident.

Sgt. Campbell

Sgt. Campbell

For Date: 06/04/2020 - Thursday

Call Number Time Call Reason Action Priority Duplicate

20-24723 1111 Phone - POLICE INFO/ADVICE Services Rendered 3

Call Taker: JAH - Hall, Jon
Primary Id: 720 - CONNERY, DEREK
Call Closed By: 720 - CONNERY, DEREK 06/04/2020 1211
Call Modified By: 720 - CONNERY, DEREK
Location/Address: [MIL] 245 FEDERAL HILL RD
Jurisdiction: MILFORD
Party Entered By: 06/04/2020 1114 JAH - Hall, Jon
Modified By: 06/04/2020 1156 720 - CONNERY, DEREK
Calling Party: COOPER, VITA L @ - MILFORD, NH 03055

Home Phone:

Work Phone:

SSN: DOB: Race: W Sex: F

ID: 720 - CONNERY, DEREK

Disp-11:50:39

Arvd-11:56:09 Clrd-12:07:43

Arrived By: 720 - CONNERY, DEREK

Cleared By: 720 - CONNERY, DEREK

Narrative: 06/04/2020 1114 Hall, Jon

RP would like to follow up with MPD25 regarding prev call @245 fed hill road

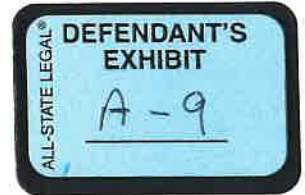
Narrative: 06/04/2020 1548 CONNERY, DEREK

Modified By: 06/04/2020 1648 CONNERY, DEREK

I spoke with the calling party/property owner of 245 Federal Hill Road, Vita Cooper, regarding call 20-24709.

During my conversation with Vita she inquired where Duane Chappell's logging truck was located on the property upon my arrival to call 20-24709. I advised Vita at this time that Duane's logging truck as well as the logging skidder was located directly off of the pavement next to the driveway in the area of the barn.

-Clear,
Connery #25

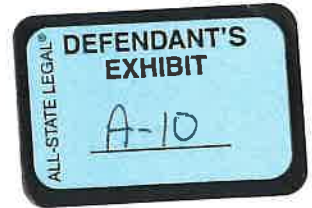


[Handwritten signature]

For Date: 08/09/2020 - Sunday

Call Number	Time	Call Reason	Action	Priority	Duplicate
20-35844	2139	Phone - POLICE INFO/ADVICE	Investigation Report		3

Call Taker: FAD - DICKSON, FRED
 Location/Address: [MIL] 245 FEDERAL HILL RD
 Jurisdiction: MILFORD
 Party Entered By: 08/09/2020 2142 FAD - DICKSON, FRED
 Modified By: 08/13/2020 0931 358 - WORKS, VALERIE
 Calling Party: MULKERN, SEAN G @ 245 FEDERAL HILL RD - MILFORD, NH 03055
 CallBack Number:



SSN:
 ID: 850 - HICKERSON, WILLIAM
 Disp-21:42:59 Arvd-21:50:22 Clrd-22:27:21
 Arrived By: 850 - HICKERSON, WILLIAM
 ID: 19759 - JOHNSON, DANA
 Disp-21:43:44 Arvd-21:49:21 Clrd-22:27:19
 Arrived By: 19759 - JOHNSON, DANA
 Vehicle Entered By: 08/09/2020 2213 FAD - DICKSON, FRED
 Modified By: 08/13/2020 0931
 Vehicle: BRZ 2007 ACUR LL RDX-TECH Reg: PC NH UTOPIAN VIN: 5J8TB18527A013870
 Owner: COOPER, VITA L @ - MILFORD, NH 03055
 SSN: Race: W Sex: F OLN:

Insurance Co:
 Policy No:
 Narrative:

08/09/2020 2142 DICKSON, FRED
 RP REPORTS INVOLVED IN A LANDLORD/TENANT DISPUTE AND FEELS THAT THE LANDLORD MAYBE RESPONSIBLE FOR WHAT SOUNDED LIKE PISTOL CRACKS IN THE IMMEDIATE AREA.

Narrative: 08/09/2020 2241 HICKERSON, WILLIAM
 Spoke with the RP who advised he heard what he felt were gunshots in the area and that his landlord, Vida, was responsible for the shots in an attempt to intimidate him. I spoke with Vida who advised that earlier in the evening she and husband had been lighting off firecrackers, but that nothing was directed towards the RP.

ALL-STATE LEGAL
DEFENDANT'S
EXHIBIT
C-1



ALL-STATE LEGAL®
DEFENDANT'S
EXHIBIT
C-2



WARNING
NO TRESPASSING
You quite possibly could
get shot or hurt and
then try to sue resulting
in a long drawn out
court battle.
You Will Lose.
Because this sign
will be:
EXHIBIT A

1⁺ yrs. posted
Faded red

ALL-STATE LEGAL®
**DEFENDANT'S
EXHIBIT**
D-2

148

#2 From Colburn Rd
Same Sign For Trespassers

From: Maia <mageemaia@gmail.com>
Sent: Wednesday, February 12, 2020 11:55 AM
To: Andrea Kokko Chappell <andreakokko@kokkorealty.com>
Subject: RE: Heat, hot water, furnace



Hi Andrea,

Yes, we should be released from the contract and reimbursed from November, when it got cold and the hot water wasn't working.

Yes, you have brought in people to try to fix the problems, however they've been unable to fix anything - the result is the same: They tinker around and don't fix anything. The first tech actually made it worse. The problems remain, and we've been paying luxury prices for months of inconsistent hot water.

You should not have rented this house in this condition.

Please let me know.

Until we have an agreement I will be looking at legal options.

M

From: Andrea Kokko Chappell
Sent: 2/12/2020 10:39 AM
To: Maia
Subject: Re: Heat, hot water, furnace

Hi Maia,

I have tried to fix every issue you have presented me with.

You have restricted access to the house and now you think you can tell me what contractors to use.

Are you requesting to be released from the lease agreement?

Andrea

Kokko Chappell, Realtor Andrea®
Associate Broker | Managing Agent
Kokko Realty, Inc.
603.673.7000 x12 | 603.801.5213
www.kokkorealty.com



[The entire original message is not included.]

Your prompt response is appreciated.

Andrea



Kokko Chappell, Realtor Andrea®
Associate Broker | Managing Agent
Kokko Realty, Inc.
603.673.7000 x12 | 603.801.5213
www.kokkorealty.com



This e-mail contains privileged and confidential information. It is intended only for the recipient(s) listed above. Any unauthorized distribution or copying of this message is prohibited. If you received this transmittal in error, please notify the sender immediately by reply e-mail and delete it from your files. Emails sent or received shall neither constitute acceptance of conducting transactions via electronic means nor create a binding contract until and unless a written contract is signed by the parties. Before our 1st meeting to see a specific property, please click the link below to preview the document I'm required to give you per the NH Real Estate Commission. Please note, This is not a contract - It is a Disclosure of Agency and Real Estate Terms.
[New Hampshire Brokerage Relationships Disclosure](#)

From: Maia <mageemaia@gmail.com>
Sent: Thursday, February 13, 2020 1:24 PM
To: Andrea Kokko Chappell <andreakokko@kokkorealty.com>
Subject: RE: Heat, hot water, furnace

Andrea,

Many of the statements you make in your long email are not true--it is just another legal positioning letter to cover for gross negligence.

This house is broken. You want to keep our rent money, but you don't want to fix the house. This has been proven many times.

On top of this you want to force some pervert into our house, because you think it's okay. And you still think you can push him on us, after we've clearly said we don't want him here for the stated reason.

Andrea, you're the property manager, however we are the tenants. No one can come into our leased property without our consent. To do so would violate state law, the penalties of which are fines, restraining orders, and even jail time. You are notified.

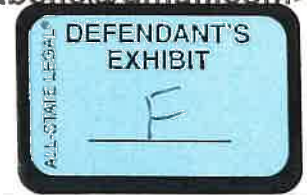
Why not let us find someone competent? Then you can be here, and Vita van pay the bill.

Let me know.

M



THE UPS Store Labelle <theupsstorelabelle@gmail.com>



Fwd: More

Vita Cooper <utopia.vita@gmail.com>
To: theupsstorelabelle@gmail.com

Mon, Feb 24, 2020 at 1:56 PM

From: Vita Cooper <utopia.vita@gmail.com>
Date: February 18, 2020 at 10:12:40 AM EST
To: "Kokko Realty Andrea, Brenda Nadeau"
<andreakokko@kokkorealty.com>
Subject: More

Hi A.

Meeting with contractors

Dave Asselin advises to give 90 days written/certified notice that due to major construction plans beginning June first, the lease will not be renewed.

This is a wildy busy day for me

V

Sent from my iPhone

0040

61