

# ABDELLA LAW OFFICES



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June 28, 2019

Linda Gilbert  
Town Clerk  
1840 State Highway 10  
Caroga Lake NY 12032

RECEIVED

JUN 28 2019

By Linda Gilbert  
11:15 AM

RE: Balboaa Land Development Corporation v. Town of Caroga

Dear Ms. Gilbert:

Please find enclosed a notice of claim in relation to the afore-captioned matter.

If you have any questions or would like to discuss the matter, please contact me.

Sincerely,

  
George Abdella  
President of the Balboaa Land Development Corporation



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In the Matter of the Claim of  
BALBOAA LAND DEVELOPMENT CORPORATION.

Claimant,  
-against-

**NOTICE OF CLAIM**

TOWN OF CAROGA,

Respondent.

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TO THE CLERK OF THE TOWN OF CAROGA, NEW YORK:

PLEASE TAKE NOTICE that the undersigned, George Abdella as the President and sole stock holder of the Balboaa Land Development Corporation, hereby makes claim against the Town of Caroga, New York, for breach of contract and other causes of action hereinafter mentioned.

1. That the claimant, Balboaa Land Development Corporation, is duly licensed and authorized to conduct business in the State of New York, and has its principal place of business at 8 West Fulton Street, Gloversville, NY 12078.

2. That the attorneys for the claimant are the Abdella Law Offices, whose offices are located at 8 West Fulton Street in the City of Gloversville, County of Fulton, State of New York.

3. Upon information and belief, the respondent, the Town of Caroga, New York, is a municipal corporation duly organized under the laws of the State of New York, with its main office located on 1840 State Highway 10, Town of Caroga, County of Fulton, New York.

4. Upon information and belief, at all relevant times prior to December 31<sup>st</sup>, 2014, the petitioner, Balboaa Land Development Corporation, was the sole and unencumbered owner

of the subject premises, located on the south side of the town of Caroga, commonly referred to as Sherman's Amusement Park.

5. That the claimant was approached by Town of Caroga Supervisor, Ralph Ottuso, concerning the possibility of the claimant donating a portion of the subject property to the Town of Caroga.

6. That the claimant advised said supervisor that the waterline providing water to a building commonly referred to as the main pavilion had been damaged by the Caroga Town Highway department and was in need of repair. That said Town Supervisor assured the claimant that the repair would be made promptly.

7. The waterline was the sole source of water for various buildings, structures and lawn maintenance.

8. Negotiations were entered into between the claimant and the Town Supervisor with the participation of the Director of the Fulton County Planning Board, James Mraz.

9. That the claimant agreed to donate a portion of the realty, outbuildings and personality of the aforesaid Sherman's Amusement park on condition that the Town of Caroga would hold the property in perpetuity, never sell the aforesaid property or otherwise dispose of the aforesaid property, and that the Town of Caroga "shall, at all times, maintain the Property to the highest of standards."

10. That the Town Supervisor represented to the claimant that he, the Town Supervisor, had the support of the Town Board and that the terms and conditions of the donation would be fully complied with.

11. That the claimant would not have donated any portion of the aforesaid lands or appurtenances without the aforesaid conditions and express representations from the Town of Caroga visa-via its elected officials.

12. That in furtherance of this proposal, the office of the Fulton County Planning Board drafted a donation agreement was and presented it to the claimant and the Town Supervisor for approval and signature.

13. That the said donation agreement, which is annexed hereto as Exhibit "A" and made a part hereof provided the terms agreed upon by the parties and further provided that said agreement could not be changed except by the written agreement of the claimant and the Town of Caroga.

14. That the agreement was signed by the claimant and the Town Supervisor on December 31<sup>st</sup>, 2014.

15. In conformance with the aforesaid donation agreement, the claimant executed the deed as prepared by the Town of Caroga Attorney on December 31<sup>st</sup>, 2014.

16. That the claimant would not have agreed to donate the said property without the representation and terms agreed to by the Town of Caroga and the claimant in the donation agreement.

17. On or about and in March 2015, the entire board voted and accepted all of the terms and conditions contained in the donation agreement.

18. That since the agreement and affirmation thereof, the said Town of Caroga failed to obey by the terms of the agreement as hereinafter alleged, constituting a continuing breach of the aforesaid donation agreement.

19. That any applicable statute of limitation continues to accrue every day since the agreement was signed and affirmed by the Town of Caroga Board.

20. The aforesaid breach among other things, is as follows: That the injuries complained of were sustained by the claimant on April 25, 2019.

21. That the circumstances giving rise to this claim are as follows:

- a.) Failure to maintain the buildings and grounds;
- b.) Allowing the sewer system to deteriorate to the point where it cannot obtain approval from the New York State Department of Health;
- c.) Failing to properly groom the landscape of the aforesaid property;
- d.) Failing to maintain the interior of the aforesaid property;
- e.) Failing to repair the aforesaid waterline;
- f.) Failing to maintain the donated portion of the beach front and allowing it to become overgrown.

22. That the value of the donated property was assessed at the time of the transfer at Three Million One Hundred and Five Thousand Dollars (\$3,105,000.00).

23. That presently the aforesaid property is worth substantially less than it was at the time of the transfer due to the misfeasance of the respondent.

24. That the claimant hereby gives notice to the respondent of the following

causes of action, while reserving his right to maintain any and all related causes of action:

- a.) The respondent breached the terms and conditions of the donation agreement thereby giving rise to a claim for breach of contract;
- b.) The Town never intended to abide by the terms of the donation agreement thereby making the terms and conditions of the donation agreement a fraudulent representations by the town giving rise to a cause of action for fraud;
- c.) The respondent made affirmative representations to the claimant through the terms and conditions of the donation agreement, which the claimant detrimentally relied on thereby giving rise to a cause of action for promissory estoppel;

25. That the claimant hereby gives notice to the respondent that as a result of the aforesaid causes of action, the claimant seeks the following relief:

- a) Rescission of the aforesaid donation agreement;
- b) An order directing the respondent to transfer the deeds back to the claimant;
- c) Compensatory money damages; and
- d) Any other relief as the Court deems just and proper.

WHEREFORE, the claimant respectfully requests that this, his claim, be adjusted and paid as provided by law.



GEORGE ABDELLA

STATE OF NEW YORK )  
COUNTY OF FULTON ) ss.:

George Abdella, being duly sworn, deposes and says that she is the claimant in the within Notice of Claim; that he has read the foregoing Notice of Claim and knows the contents thereof; that the same is true to her own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, she believes them to be true.

  
GEORGA ABDELLA  
As President and Sole Shareholder of the Balboaa  
Land Development Corporation

Sworn to before me, this 28  
day of June, 2019.

  
Notary Public

