

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

T-MOBILE NORTHEAST LLC,

Plaintiff,

-against-

390 GEORGE STREET ASSOCIATES L.L.C.,
f/k/a 390 GEORGE STREET ASSOCIATES, INC.,

Defendant.

Civil Action No.: 3:21-cv-20012

COMPLAINT

The Plaintiff T-Mobile Northeast LLC, successor in interest to Omnipoint Communications, Inc. ("T-Mobile"), by its attorneys Porzio, Bromberg & Newman, P.C., as and for its Complaint against Defendant 390 George Street Associates L.L.C., f/k/a 390 George Street Associates, Inc., ("Lessor" or "Defendant"), alleges as follows:

SUMMARY OF THE CASE

1. This action concerns a rooftop lease between a real property owner (Defendant) and a telecommunications company (T-Mobile). The dispute arose due to Defendant's refusal to let T-Mobile perform needed modifications to its equipment located on Defendant's building in New Brunswick, New Jersey, even though the rooftop lease between the parties expressly allows for such modifications. Defendant is unreasonably denying access and conditioning the modifications by making arbitrary demands far beyond anything ever agreed.

2. T-Mobile, as lessee, and Defendant, as lessor, entered into a Standard Lease Agreement dated May 22, 1997, as amended (collectively the "**Lease**"), whereby T-Mobile leases space on the rooftop and within the building (the "**Premises**") located at 390 George Street, New Brunswick, New Jersey (the "**Property**"). The Lease expressly permits T-Mobile to

use the Premises to install, operate and maintain a wireless facility that consists of telecommunications equipment, including transmitting and receiving antennas, equipment cabinets and related cables and utility lines (collectively, the “**Wireless Facility**”).

3. T-Mobile has continuously used and operated the Wireless Facility at the Property since 1997 as part of T-Mobile’s expansive network that provides wireless communications services to T-Mobile customers and provides mandated 911 emergency services in and around the Property.

4. The wireless industry is fast evolving and ever-changing, and requires frequent upgrades and modifications to the wireless facilities that support the network. Accordingly, pursuant to the Lease, as amended, T-Mobile has the express right to “modify and/or improve” its Wireless Facility “from time to time.” Additionally, a significant increase in rent was agreed upon in exchange for both additional rooftop space, and the right to add additional equipment to modify and/or improve its Wireless Facility from time to time.

5. Since early 2020, just before the global pandemic erupted, T-Mobile has repeatedly attempted to perform the necessary modifications to its Wireless Facility, as permitted under the Lease. The modifications entail replacing six antennas and adding three more, plus installing fiber cables, all authorized under the Lease as modifications and improvements.

6. The modifications are needed to meet the ever-growing technological changes and demands of ubiquitous voice and data communications demanded by the consuming public. The modifications, routine in nature, will improve speed, quality, and continuity of T-Mobile’s wireless services. This includes enhancing voice and data services for T-Mobile's customers, law enforcement, and anyone attempting to make an emergency 911 call in the vicinity of the Property.

7. Nationwide deployment of next-generation wireless technologies to allow effective and faster wireless communications is an important mission of the federal government. According to the Federal Communications Commission ("FCC"), which has primary jurisdiction to regulate the telecommunications industry in the United States, “mobile wireless services are an essential part of Americans’ daily lives.”¹ Further, “mobile wireless serves a critical role in public safety, enabling users to summon lifesaving help, receive timely alerts, and access pertinent information. These developments have made mobile wireless one of the most important sectors in the national economy.” (*Id.*, pp. 2-3.)

8. Despite well-established federal policy, and the express Lease provisions at issue that permit modifications, Defendant has denied T-Mobile access to the Premises to perform the needed modifications. Defendant’s refusal is grounded in its unreasonable demand that T-Mobile remove certain FCC required radio frequency (“RF”) signage that is properly placed in and around the Wireless Facility. Defendant's refusal is also based on its arbitrary demand that T-Mobile, which retained an independent company at Defendant's request to evaluate the RF exposure levels at the Property and confirmed that T-Mobile is in compliance with all applicable FCC rules and regulations, must perform further RF exposure testing at a separate, nearby building that T-Mobile has nothing to do with. That arbitrary demand is made because Defendant's owners own the nearby building.

9. Pursuant to the Lease, Defendant is required to provide T-Mobile with access to the Premises 24 hours a day, 7 days a week without charge (Lease ¶ 2(d)). Nonetheless, Defendant has unreasonably and arbitrarily denied access to the Premises, and T-Mobile has been unable to perform the needed modifications to its Wireless Facility forcing T-Mobile to

¹ See Federal Communications Commission Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eighteenth Report, WT Docket No. 15-125, adopted Dec. 23, 2015, at p. 2.

commence this action. T-Mobile seeks a decree of specific performance and declaratory and injunctive relief enjoining Lessor from denying T-Mobile the right to modify and improve its Wireless Facility as specifically provided for in the Lease.

PARTIES

10. Plaintiff T-Mobile is a Delaware limited liability company, authorized to do business in the State of New Jersey.

11. T-Mobile is in the business of leasing, installing and/or maintaining communications equipment necessary to provide cellular telephone service to the public. T-Mobile is a wholly-owned subsidiary of T-Mobile USA, Inc., a provider of cellular telecommunications services in the United States.

12. Upon information and belief, Defendant is a New Jersey limited liability company and is the fee owner of the Property. The Property was originally owned by 390 George Street Associates, Inc., formed in 1995, and as of June 22, 2000, has been owned by 390 George Street Associates, L.L.C.

JURISDICTION AND VENUE

13. Plaintiff T-Mobile Northeast LLC, is a citizen of the State of Delaware and is authorized to do business in New Jersey. The sole member of T-Mobile Northeast LLC, is T-Mobile USA, Inc., a corporation duly organized under the laws of the State of Delaware with its principal place of business in Bellevue, Washington. As such, for diversity purposes, T-Mobile is a citizen of Delaware and Washington state.

14. Upon information and belief, Defendant is owned by members of the Boraie family, all citizens of the State of New Jersey. As such, for diversity purposes, Defendant 390 George Street Associates L.L.C. is a citizen of New Jersey.

15. The matter in controversy concerns a subject matter in excess of the sum of \$75,000, exclusive of interest and costs. T-Mobile's Lease rights are being impeded, interfered with, and compromised as a result of Defendant's arbitrary demands, which valuable rights were bestowed upon T-Mobile in exchange for monthly payments made, and to be made, to Lessor, that exceed \$75,000 over the course of the Lease term.

16. This Court has subject matter jurisdiction over the instant matter pursuant to 28 U.S.C. §1332(a)(1) (diversity of citizenship).

17. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. §1391 in that jurisdiction is founded solely on diversity of citizenship, a substantial part of the events or omissions giving rise to the claim occurred in this judicial district (in New Brunswick), and the property that is the subject of this action is situated in this judicial district.

BACKGROUND

18. T-Mobile is in the business of leasing, installing, and maintaining wireless facilities to provide necessary and essential wireless services to its customers and to the general public.

19. T-Mobile provides wireless services through a network of antennas and related equipment mounted and/or installed on towers, buildings, or other structures, often referred to as "cell sites" or "wireless facilities," which broadcast signals to and from wireless phones and devices.

20. T-Mobile's Wireless Facility enables T-Mobile USA, Inc. to broadcast signals over frequencies licensed by the FCC to provide wireless cellular service to thousands of customers in the vicinity of the Property. Additionally, as required by the FCC, T-Mobile's Wireless Facility supports emergency personnel and allows the public to access 911 services in

the event of an emergency, and permit emergency first responders to communicate in the performance of life-saving activities. T-Mobile's network also provides GPS services to emergency personnel and supports local and national law enforcement agencies.

THE LEASE

21. On or about May 22, 1997, T-Mobile and Lessor entered into a Standard Lease Agreement that granted T-Mobile the right to install and maintain a communications facility on the rooftop of Defendant's building located at 390 George Street, New Brunswick, New Jersey (i.e., the Property). (See Lease, a true copy of which is attached hereto as **Ex. A.**)

22. The Lease initially provided that the space to be leased on the roof was 56 square feet to be used for the "installation, operation and maintenance" of telecommunications equipment and personal property. (Lease, ¶¶ 1-2)

23. The Lease provides for an initial ten-year term, plus three successive five-year, renewal terms after the initial ten-year term expires. (Lease, ¶ 5). T-Mobile has maintained its leasehold rights through each renewal term and is now in the third renewal term. T-Mobile has paid Lessor hundreds of thousands of dollars over the Lease term and is in full compliance with all of its obligations.

24. The parties entered into "Amendment No 1" on or about June 11, 1997 addressing certain issues not relevant here, followed by "Amendment No. 2" on or about December 6, 2000. Amendment No. 2 is directly relevant. True copies of the two Lease amendments are annexed hereto as **Exs. B** and **C**, respectively.

25. Pursuant to Amendment No. 2, the parties agreed to expand T-Mobile's space on the roof, specifically providing for: (a) 120 square feet on the roof for cabinets, and (b) additional space on the roof for associated antennas (Amendment No. 2 at ¶ 1(a)). Amendment No. 2 also

states that T-Mobile shall "have the right to modify and/or improve the Wireless Facility within the area allocated in the Lease." (*Id.*, ¶ 1(c)).

26. Amendment No. 2 also states that the location of the equipment is to be approved by the Lessor, which equipment is described in Exhibit B to Amendment No. 2, which exhibit "may be amended from time to time in accordance with subparagraph 1(c)." (Amendment No. 2, ¶ 1(b)). Subparagraph 1(b) further states that Lessor's approval as to equipment location "shall not be unreasonably withheld, delayed, or conditioned."

27. In other words, under the language in Amendment No. 2, if the location of the equipment does not change, Lessor's approval is not needed. A simple swap of equipment, for example, requires no approval. If the location does change, Lessor's approval is needed before the equipment is installed. But that approval is not to be "unreasonably withheld, delayed or conditioned."

THE EXISTING WIRELESS FACILITY AND PROPOSED MODIFICATIONS

28. T-Mobile's Wireless Facility on the rooftop of the building at the Property provides wireless services to customers of T-Mobile, USA, Inc. (T-Mobile's parent company) in the Property's vicinity. T-Mobile's ability to access its Premises and the Property to maintain and improve its Wireless Facility is critical to ensure that T-Mobile provides its thousands of customers and emergency services personnel with the highest quality service.

29. The Wireless Facility currently includes nine existing antennas located on the rooftop. The antennas were installed, as is standard, at three "sectors" on the roof (three at each sector), each sector spaced apart at the edge of the roof and pointing outward in different directions to transmit and receive radio waves accordingly.

30. The Federal Government declared the COVID-19 pandemic a national emergency and has reiterated that wireless facilities, such as this one, are critical and necessary to ensure first responder, emergency responders, public messaging, and 911 communications are functional. This sentiment was echoed in a joint letter from the FCC and the CISA (Cybersecurity and Infrastructure Security Agency) to Governor Philip Murphy, which stated, in part, that reliable wireless service is an essential lifeline during emergencies – from enabling Americans to call 911 for help to keeping communities connected by making possible services such as telehealth, telework, and distance learning. The letter goes on to emphasize the importance of facilitating the deployment of new and existing technology and ensuring the maintenance, repair and provisioning of wireless facilities and infrastructure to address unprecedented levels of customer usage.

31. Therefore, T-Mobile must provide and maintain wireless service and keep each wireless facility operational to support the health and well-being of every community.

32. T-Mobile has been seeking to replace existing antennas and add three more antennas since the beginning of 2020, just before the Covid-19 Pandemic erupted. The parties' written exchanges evidence that T-Mobile has made repeated good faith efforts to address Lessor's concerns and to obtain access to the Property to perform the necessary modifications to its Wireless Facility as permitted under Amendment No. 2.

33. T-Mobile shared with Lessor construction drawings prepared by its architects, French and Parrello, detailing the proposed modifications. The drawings, last revised January 2020, provide all needed construction detail to show that the proposed modifications include "updating the network" to replace (or swap) six antennas in the same location, and to install three

new antennas and associated fiber cables, all within the Premises. (*See* Sheet A-01 of the construction drawings, true copies of which are annexed hereto as **Ex. D**).

34. By email dated March 30, 2020, Lessor's property manager wrote T-Mobile and imposed several conditions on performing the modifications. This included performing more rooftop RF exposure studies beyond those already done at Lessor's request; agreeing to not post any signage without Lessor's consent; performing RF studies at 120 Albany Street Plaza, a nearby property owned by Lessor's principals, even though T-Mobile has no connection to that property; Lessor must be provided documentation as to possible health consequences; and T-Mobile must pay a charge of \$1,000 to work on the roof. (*See Ex. E*)

35. T-Mobile responded by email dated April 8, 2020. (*See Ex. F*). It stated that T-Mobile had previously addressed all RF exposure concerns raised by Lessor through on-site assessments performed by Pinnacle Telecom Group LLC ("Pinnacle"), an outside technical firm. Pinnacle performed RF readings at street level, on the roof, and on the 8th Floor of the building at the Property at various times. Pinnacle had been retained by T-Mobile to address Lessor's concerns, even though the Lease imposes no such obligation.

36. Each of Pinnacle's on-site RF assessments confirmed that T-Mobile was in compliance with all federal rules and regulations, including proper placement of RF signage in and around the Wireless Facility and at the rooftop access point.

37. T-Mobile also stated in its April 8 response that additional payments will not be made as arbitrarily demanded and that no RF readings will be done at a nearby building where T-Mobile has no equipment or relationship with the owner.

38. By email dated April 13, 2020, Sam Boraie, on Lessor's behalf, wrote an email to T-Mobile's representatives saying that T-Mobile "does not have permission" to gain access "as

some of our questions remain [un]answered." He also said that he does not agree that T-Mobile has the right to maintain a total of 12 antennas. (See Ex. G.)

39. The relevant exhibit to Amendment No. 2 (*see* Amended Exhibit B, referenced in and attached to Amendment No. 2) shows that 12 antennas are permitted. At present, there are nine antennas, so three more may be added.

40. Equally without merit is Lessor's repeated denial of access to the Premises due to alleged "unanswered questions." T-Mobile repeatedly addressed all of Lessor's concerns regarding RF emissions.

41. There is no lawful basis to assert that T-Mobile is not in compliance or that the standard RF signage is objectionable to Lessor. Such RF signage is reasonable and routine.

42. Upon completion of the proposed modifications, 12 antennas (four at each sector rather than the current three) will be installed in the same general location as the existing equipment and within the Premises as authorized under Amendment No. 2. This means that any additional space taken on the roof by the additional three antennas, while permitted and anticipated by Amendment No. 2, will be negligible. No meaningful visible change will occur.

43. The modifications at all three sectors will enhance the quality and efficacy of the wireless communications, all consistent with T-Mobile's modifications and improvements at like wireless facilities within T-Mobile's nationwide network.

LESSOR HAS BREACHED THE LEASE

44. T-Mobile notified Lessor that it was going to perform the modifications depicted in the relevant construction drawings. In emails exchanged between T-Mobile's representatives and Lessor, Lessor has made it clear that no upgrades are permitted, regardless of whether the equipment will replace existing equipment in the same location. Lessor conditioned access due

to alleged RF emission issues, all of which are unsubstantiated and ultimately under the province of the FCC to regulate. Instead, even after T-Mobile provided Lessor with confirmation of compliance with the FCC rules and regulations (although under no obligation to do so), the Lessor continued to make unsubstantiated claims and arbitrary demands upon T-Mobile.

45. Lessor is acting in bad faith and in defiance of its Lease obligations. In furtherance of federal policy and the public good, T-Mobile seeks to modify and improve its Wireless Facility.

46. If T-Mobile is not permitted to modify and improve its Wireless Facility, it will be unable to service the ever-increasing volume of voice and data signals for its customers, a service for which its customers pay fees. As a result, T-Mobile's customers, as well as emergency service personnel who use wireless devices in performing their important life-saving services, may experience dropped calls, loss of data service, and a slowdown of voice and/or data transmissions. T-Mobile could consequently experience a loss of goodwill, business, and customers in an amount that cannot be quantified.

47. Rather than face any false charge of wrongful entry onto the Property to perform the modifications, T-Mobile brings this action for equitable and declaratory relief from this Court.

FIRST CLAIM FOR RELIEF
(Specific Performance)

48. Plaintiff repeats each and every allegation aforementioned as if set forth at length herein.

49. Under the Lease as amended, T-Mobile has the express right to install, operate, maintain, modify and improve its Wireless Facility during the term of the Lease.

50. No consent is needed from Lessor for the proposed modifications.

51. Consent is needed only if new equipment is added in a new location, but then, such consent is not to be unreasonably withheld, delayed, or conditioned.

52. Lessor's refusal to allow T-Mobile to upgrade its Wireless Facility as part of its wireless network, which enhancement will virtually replicate the equipment there now, is unreasonable and based on RF emission issues that are within the FCC's province. Nothing in the Lease allows Lessor to make any demands or deny access to the Premises based on RF emission issues.

53. The remedy of specific performance is appropriate to require Lessor to honor its contractual obligations under the Lease, for which it receives monthly rent and voluntarily entered into.

54. The terms of the Lease are unambiguous, and specific performance poses no undue, disproportionate, or inequitable burden upon Lessor.

55. Money damages are an inadequate remedy in light of the unique nature of the real property and the services that the Wireless Facility on the Property provide to the general public, law enforcement, and emergency first responders.

56. By reason of the foregoing, T-Mobile demands a decree in its favor and against Defendant in the form of specific performance to enforce the Lease terms, and particularly, granting T-Mobile immediate access to the Premises and Property so it can install, maintain, and modify its Wireless Facility without further delay.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment)

57. Plaintiff repeats and realleges each and every allegation aforementioned as if set forth at length herein.

58. The express provisions of the Lease require Lessor to permit T-Mobile to access the Property and modify and improve its Wireless Facility.

59. T-Mobile has made numerous requests for such access, and Lessor has repeatedly denied the right to add any antenna, conditioning such right on unreasonable demands.

60. Accordingly, an actual controversy of a justiciable issue exists between T-Mobile and Lessor within the jurisdiction of this Court, involving the rights and obligations of the parties under the Lease.

61. Antagonistic claims exist between the parties with respect to whether or not T-Mobile is entitled to upgrade its Antenna Facilities.

62. By reason of the foregoing, T-Mobile seeks a declaration that the Lease requires Defendant, and its agents and representatives, to permit T-Mobile and its agents, contractors, and representatives to have unimpeded access to the Property to replace, improve, upgrade, and enhance its Antenna Facilities, which work is detailed on the shared construction drawings, and includes replacing six antennas and installing three new antennas, one at each of the existing three sectors on the roof.

THIRD CLAIM FOR RELIEF
(Injunction)

63. Plaintiff repeats and realleges each and every allegation aforementioned as if set forth at length herein.

64. The equities here require that Defendant, and its agents and representatives, be enjoined from interfering with T-Mobile's Lease rights, and be directed to permit the needed modifications and enhancements to its Wireless Facility.

65. The public and first responders will benefit from such injunctive relief.

