

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT

Middlesex, SS.

Docket No. 03-2512

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**CROWN CASTLE ATLANTIC, LLC,**  
**Plaintiff**

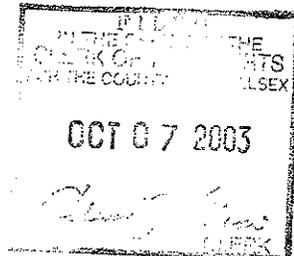
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vs.

**GUY A. MCKAY and SHERYLL MCKAY,**

**Defendants**

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**AFFIDAVIT OF GUY A. MCKAY and SHERYLL E. MCKAY**

We, Guy A. McKay and Sheryll E. McKay, being first duly sworn, on personal knowledge depose and say:

1. We own the Premises, as tenants by the entirety, located at 982-988 Main Street, Acton, Massachusetts (the "Premises"), granted by two deeds, the first dated May 22, 2001, and recorded at Middlesex South Registry of Deeds at Book 32911, Page 92, and the second dated May 23, 2001, and recorded at Middlesex North District Registry of Deeds at Book 11674, Page 23.
2. On August 12, 1996, we entered into a Land Lease Agreement (the "Lease") for a certain parcel of those Premises (the "Property") to Cellco Partnership d/b/a Bell Atlantic NYNEX Mobile ("BANM"), Crown Castle Atlantic, LLC's ("Crown") predecessor in interest. This Lease was drafted by BANM.
3. We have no knowledge or information about any contract between BANM and Mirra Construction ("Mirra") to install an existing underground conduit as we

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were not parties to this contract.

4. We have no knowledge or information as to whether New England Telephone Company ("NETC") installed its copper wire telephone line through the underground conduit at the Property as we did not oversee this installation.
5. We have no knowledge or information about whether Mirra installed the underground conduit running under the right-of-way from Main Street across the Property to the communications tower facility, as we were not parties to this contract.
6. We have no knowledge or information about whether NETC installed the telephone line in the underground conduit running under the right-of-way from Main Street across the Property to the tower, as we were not parties to this contract.
7. We did not request that the underground conduit running under the right-of-way from Main Street to the Property be located in a certain location. Rather, during construction of the communications tower facility, we consulted with Crown's predecessor as to where the right-of-way granted in the Lease running from Main Street to the Property should be constructed, given the constraints of zoning including setback requirements, as well as our use of the remainder of the Premises.
8. We have no knowledge or information as to whether the tower is currently serviced by a copper wire telephone line that had been installed in the underground conduit, as we did not oversee the installation.
9. We have no knowledge or information as to whether Bell Atlantic n/k/a Verizon

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Communications ("Verizon") informed Crown that its predecessor, NETC, had not obtained an easement agreement with us prior to initially installing the underground conduit and copper wire telephone lines as we were not privy to the conversations between these parties.

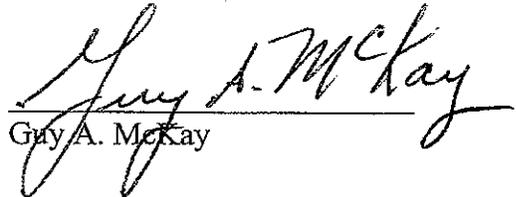
10. We have no knowledge or information that the easement agreement that Crown is demanding from us would be necessary to install fiber optic telephone lines.
11. We have no knowledge or information as to whether Verizon has installed the fiber optic telephone line to the Property, nor do we have knowledge or information as to whether such is needed by Crown's subtenants.
12. We are not now, nor have we ever been, in breach of the Lease.
13. Since the beginning of the Lease until the present day, we have never obstructed Crown's use of the existing right-of-way granted under the Lease. Nor have we prevented Crown from upgrading the existing underground landline telephone service to the telecommunications tower.
14. We have repeatedly told Crown that, if they claim they have the right to do something under the Lease, then they are free to do so.
15. From the beginning of the Lease period, and continuing to the present time, we have personally observed various personnel including cell technicians, repair technicians, and people delivering propane for the backup generator at the cell tower, performing work at the Property. We have observed that these people access the Property by cars and trucks through the existing right-of-way.
16. We stand ready, willing and able to allow Crown to continue to use the existing right-of-way granted under the Lease as they always have in the past.

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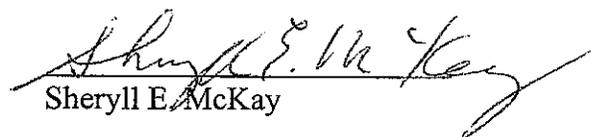
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17. From the beginning of the Lease period up until the time Crown filed suit in June 2003, and especially at the March 20, 2002, meeting, various parties representing Crown have threatened to sue us if we did not grant an easement. These parties include but are not limited to James Donahue, Jeffrey Barbadora, Earl Duval and Daniel Klasnick. When we were originally approached in 2000 regarding Crown's demands for an easement, we attempted to negotiate with Crown changes to the existing Lease. Crown, through its representatives, cut off negotiations with us by simply stating that if we did not grant an easement, we would be sued, even though Crown did not offer any additional consideration for our granting the easement.
18. During the summer of 2003, we were approached by the Town of Carlisle Police Department about the possibility of the Department installing a police antenna to the communications tower so that they would be able to obtain 911 coverage in the Curve Street area of Carlisle. We were agreeable to that arrangement, but we referred the Department to Crown because it is their tower. At this time, we have not heard back from the Department or Crown regarding this issue.

Signed under the pains and penalties of perjury this 23rd day of September, 2003.

  
Guy A. McKay

Signed under the pains and penalties of perjury this 23rd day of September, 2003.

  
Sheryll E. McKay

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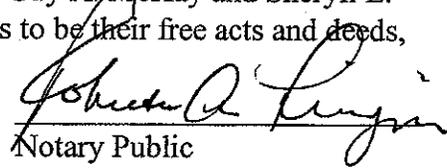
COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

September 23, 2003

Then personally appeared the above-named Guy A. McKay and Sheryll E. McKay, and acknowledged the foregoing signatures to be their free acts and deeds,

Before me,

  
Notary Public

My commission expires: 2/14/08

**ROBERTA A. LIVINGSTON**  
**NOTARY PUBLIC**  
**HALL, FINNEGAN, AHERN & DESCHENES, P.C.**  
**MY COMMISSION EXPIRES 2/14/08**

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