

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

Middlesex, ss.

Docket No. 03-2512

CROWN CASTLE ATLANTIC, LLC, *
Plaintiff *
vs. *
GUY A. MCKAY and SHERYLL MCKAY, *
Defendants *

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DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

NOW COME the Defendants, Guy A. McKay and Sheryll McKay (hereinafter referred to as the "Defendants"), and herein answer the Complaint of the Plaintiff, Crown Castle Atlantic, LLC (hereinafter referred to as the "Plaintiff"), as follows:

COMPLAINT AND DEMAND

INTRODUCTION

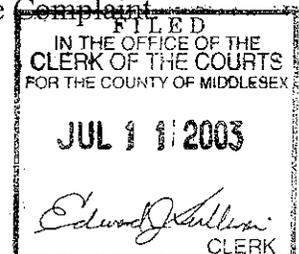
1. The introductory information contained in paragraph 1 of the Complaint does not require a response from the Defendants. To the extent that paragraph 1 of the Complaint makes certain allegations of fact and claims which are subsequently repeated in certain other paragraphs of the Complaint, the Defendants respond to each such allegation as set forth in the corresponding paragraphs of this Answer.

PARTIES

2. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

L. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
MILMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057



3. The Defendants admit the allegations contained in paragraph 3 of the Complaint.

STATEMENT OF FACTS

4. The Defendants admit the allegations contained in paragraph 4 of the Complaint.
5. The Defendants admit the allegations contained in paragraph 5 of the Complaint.
6. The Defendants admit the allegations contained in paragraph 6 of the Complaint.
7. The Defendants admit that both of the quoted sentences in paragraph 7 of the Complaint is language in the Lease, however, the Plaintiff has omitted the end of the first sentence, which states "said Property and right-of-way for access being substantially as described herein in the attached Exhibit "A1"." Furthermore, the Plaintiff has attached the Lease at Exhibit 1 to its Complaint, but has omitted the Exhibit "A1" referenced in said Lease. Page 1 of said Exhibit A1 is a plot plan of the Defendants' property; page 2 is a topographic plan showing the Right-of-Way on the property granted in the Lease. The plans were prepared by R.E. Cameron & Associates, Inc. for Bell Atlantic NYNEX Mobile and are dated July 1996.
8. The Defendants admit the allegations contained in paragraph 8 of the Complaint.
9. The Defendants admit the allegations contained in paragraph 9 of the Complaint.
10. The Defendants admit the allegations contained in paragraph 10 of the Complaint.
11. The Defendants admit the allegations contained in paragraph 11 of the Complaint.
12. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.
13. The Defendants admit the allegations contained in paragraph 13 of the Complaint. The Defendants further answer that they signed said Amendment on October 7, 1997.

I. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
LMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

14. The Defendants admit the allegations contained in paragraph 14 of the Complaint.
15. The Defendants admit the allegations contained in paragraph 15 of the Complaint.
16. The Defendants admit the allegations contained in paragraph 16 of the Complaint.
17. The Defendants deny the allegations contained in paragraph 17 of the Complaint.
The Defendants further answer that, during construction of the communications tower facility, the Defendants consulted with the Plaintiff 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 the Defendants' use of the remainder of their property.
18. The Defendants deny the allegations contained in paragraph 18 of the Complaint.
The Defendants further answer that, during construction of the communications tower facility, the Defendants consulted with the Plaintiff as to where the underground conduit running under the Right-of-Way from Main Street to the Property should be constructed, given the constraints of zoning including setback requirements, as well as the Defendants' use of the remainder of their property.
19. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint.
20. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint.
21. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint.
22. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint.

J. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
BILMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

23. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.
24. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.
25. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.
26. The Defendants admit the allegations contained in paragraph 26 of the Complaint. The Defendants further answer that they also signed the sublease agreement between the Plaintiff and Omnipoint Communications MB Operations, Inc., as Lessors confirming the direct payment obligation pursuant to the terms of paragraph 1 of said sublease agreement.
27. The Defendants deny the allegations contained in paragraph 27 of the Complaint. The Plaintiff entered into a License Supplement Agreement with Nextel Communications of the Mid-Atlantic, Inc. on June 1, 1998. Said Supplement references a Master License Agreement that was entered into on April 9, 1997. The Defendants further answer that they also signed both the Master License Agreement and the License Supplement Agreement as Owners agreeing and consenting to the agreement.
28. The Defendants admit the allegations contained in paragraph 28 of the Complaint. The Defendants further answer that they were asked to sign the Site License agreement entered into between the Plaintiff and AT&T Wireless PCS, Inc. ("AT&T"), but the Defendants declined to do so because they were involved in negotiations with AT&T for a Lease Agreement themselves.

29. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint. The Defendants further answer that they entered into a Lease Agreement with AT&T on April 5, 1999, for ground space outside the property which is the subject of the Lease with the Plaintiff.

30. The Defendants admit the allegations contained in paragraph 30 of the Complaint.

31. The Defendants admit the allegations contained in paragraph 31 of the Complaint.

32. The Defendants admit the allegations contained in paragraph 32 of the Complaint.

33. The Defendants admit the allegations contained in paragraph 33 of the Complaint.

34. The Defendants admit the allegations contained in paragraph 34 of the Complaint.

The Defendants further answer that they were not asked to sign the License Agreement between the Plaintiff and Sprint Spectrum, L.P. ("Sprint"), even though they are named in said Agreement as Lessors. Prior to Bell Atlantic Mobile's assignment of the Lease to Crown Castle International Corp., the Defendants were signatories on the sublease agreements entered into between Bell Atlantic and the subtenants, as per paragraph 4 of the First Amendment to Land Lease Agreement between the Plaintiff and the Defendants. Subsequent to the assignment of the Lease to Crown Castle, the Plaintiff has not continued this practice. The Plaintiff is in breach of said Amendment, also at paragraph 4, for failure to "provide written notification to Lessor of commencement of sublease" in that the Defendants had to request a copy of the Sprint License Agreement from the Plaintiff after having personally observed that a new subtenant was located at the Property.

LL. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

35. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint.
36. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint.
37. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.
38. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.
39. The Defendants deny the allegations contained in paragraph 39 of the Complaint. The Defendants further answer that, as explained in paragraph 34 of this Answer, the Plaintiff did not provide a sublease agreement in which the subtenant, Sprint, contracted with the Plaintiff *and* the Defendants, as the other sublease agreements had been executed prior to Bell Atlantic assigning the Lease to Crown.
40. The Defendants admit that the Plaintiff stated that the Lease permitted the Plaintiff to upgrade the telephone lines at the Property. The Defendants also admit that the Plaintiff requested that the Defendants sign an Easement Agreement. The Defendants do not recall the date on which this conversation took place. The Defendants further answer that they asked the Plaintiff during said conversation why an easement was necessary if the Plaintiff was already permitted to do the work it wanted to do under the Lease.
41. The Defendants admit that they refuse to execute an Easement Agreement, but the Defendants deny that this is in violation of the Lease.
42. The Defendants deny the allegations contained in paragraph 42 of the Complaint.

L.L. FINNEGAN, AHERN
& DESCHENES P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

The letter dated April 3, 2000, from James P. Donahue, Vice President/General Manager for Crown's New England Region to the Defendants does not inform the Defendants that the Easement Agreement is necessary for the installation of fiber optic telephone lines in the existing conduit.

43. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.
44. The Defendants admit that they refuse to execute an Easement Agreement, but the Defendants deny that this is in violation of the Lease.
45. The Defendants admit that paragraph 45 of the Complaint accurately quotes what the February 14, 2002, letter from Attorney Duval to the Defendants states.
46. The Defendants admit that paragraph 46 of the Complaint accurately quotes what the February 28, 2002, letter from Attorney Duval to the Defendants states.
47. The Defendants admit the allegations contained in paragraph 47 of the Complaint.
48. The Defendants admit that paragraph 48 of the Complaint accurately quotes what the February 25, 2002, letter from Jeffrey Barbadora, Asset/Operations Manager, Crown Castle to Attorney Duval states.
49. The Defendants admit that on or about March 20, 2002, they met with Jeffrey Barbadora, James Donahue, Kristian Zoeller and Attorney Duval at the Property. The Defendants further answer that none of these parties had the power to bind the Plaintiff in an agreement with the Defendants, least of all James Donahue, who at the time of the meeting was no longer employed with the Plaintiff, but claimed to be "consulting" for them.
50. The Defendants deny the allegations contained in paragraph 50 of the Complaint.

J.L. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
HELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

51. The Defendants admit the allegations contained in paragraph 51 of the Complaint.
52. The Defendants admit the allegations contained in paragraph 52 of the Complaint.
53. The Defendants admit the allegations contained in paragraph 53 of the Complaint.
54. The Defendants admit the allegations contained in paragraph 54 of the Complaint.
55. The Defendants admit the allegations contained in paragraph 55 of the Complaint.

The Defendants further answer that, on August 5, 2002, Attorney DiLuna sent a reply to Attorney Duval's July 12, 2002, letter, seeking to resolve the outstanding issues and asking, inter alia, that at any meeting between the parties to accomplish that, the Plaintiff send a corporate official who has the authority to make decisions and bind the corporation, in contrast to the meeting of March 20, 2002, referenced in paragraph 49 of this Answer.

56. The Defendants admit the allegations contained in paragraph 56 of the Complaint.

The Defendants further answer that, paragraph 1 of the proposed easement that was included with Attorney Duval's November 7, 2002, letter states that the proposed easement is "substantially shown on a sketch which is incorporated herein by reference, a copy of which is in possession of each party." The Defendants are not in possession of this "sketch" and the Plaintiff has not attached it with Exhibit 9 of its Complaint as it has the letter and the proposed easement.

57. The Defendants admit the allegations contained in paragraph 57 of the Complaint.
58. The Defendants admit the allegations contained in paragraph 58 of the Complaint.
59. The Defendants deny the allegations contained in paragraph 59 of the Complaint.

The letter from Attorney DiLuna on February 11, 2003, to Attorney Daniel Klasnick, was in response to e-mails from Attorney Klasnick, but those e-mails

were not in regard to the Defendants' requesting "a conditional meeting" with the Plaintiff to discuss the easement issue. Those e-mails were regarding Attorney Klasnick's inquiring of Attorney DiLuna as to whether he had spoken to the Defendants about the proposed revised easement.

60. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the Complaint.

61. The Defendants admit the allegations contained in paragraph 61 of the Complaint.

62. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the Complaint.

STATEMENT OF CLAIMS

COUNT I BREACH OF CONTRACT

63. The statement contained in paragraph 63 of the Complaint does not require a response from the Defendants.

64. The Defendants admit the allegations contained in paragraph 64 of the Complaint.

65. The Defendants admit the allegations contained in paragraph 65 of the Complaint.

66. The Defendants admit the allegations contained in paragraph 66 of the Complaint.

67. The Defendants admit the allegations contained in paragraph 67 of the Complaint.

68. The Defendants deny the allegations contained in paragraph 68 of the Complaint.

69. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint.

70. The Defendants admit that paragraph 1 of the Lease permits the Plaintiff to install and maintain underground utility wires, cables, conduits and pipes under, or along

LL. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

a fifteen (15) foot wide right-of-way that extends from Main Street to the demised premises. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegation that this includes the proposed fiber optic lines.

71. The Defendants deny the allegations contained in paragraph 71 of the Complaint.

72. The Defendants deny the allegations contained in paragraph 72 of the Complaint.

Paragraph 7 of the Lease does not state that the Plaintiff "shall have the right to use the Property for the purpose of constructing, maintaining and operating a Communications Facility and uses incidental thereto together with one tower and all necessary connecting appurtenances" as alleged in paragraph 72 of the Complaint. Paragraph 7 of the Lease states that the Plaintiff "shall use the Property for the purpose of constructing, maintaining and operating a Communications Facility and uses incidental thereto together with one (1) antenna structure and all necessary connecting appurtenances."

73. The Defendants deny the allegations contained in paragraph 73 of the Complaint.

Paragraph 7 of the Lease does not permit the Plaintiff to make improvements "on the Property" at its discretion and option. Paragraph 7 of the Lease states that, "All improvements shall be at Lessee's expense and the installation of all improvements shall be at the discretion and option of the Lessee." Paragraph 7 does not specify whether the improvements are on the Property itself, or only on the antenna structure and all necessary connecting appurtenances.

74. The Defendants admit the allegations contained in paragraph 74 of the Complaint.

75. The Defendants admit the allegations contained in paragraph 75 of the Complaint.

LL. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

76. The Defendants deny the allegations contained in paragraph 76 of the Complaint. The Defendants admit that they refuse to execute an easement agreement with the landline telephone company, but deny that this is in violation of the Lease. The Defendants also deny that they have refused to otherwise perform their obligations under the Lease. The Defendants have allowed the Plaintiff to install and maintain utility lines in the existing conduit located under the existing Right-of-Way. The Defendants further answer that the Plaintiff contradicts itself in paragraph 76 of the Complaint in that it states that it needs an easement from the Defendants, yet it claims to already have one under the Lease.
77. The Defendants deny the allegations contained in paragraph 77 of the Complaint. The Defendants have not breached the Lease.
78. The Defendants deny the allegations contained in paragraph 78 of the Complaint. The Defendants have not breached the Lease.
79. The Defendants deny the allegations contained in paragraph 79 of the Complaint. The Defendants have not breached the Lease.
80. The Defendants deny the allegations contained in paragraph 80 of the Complaint. The Defendants have not breached the Lease.

COUNT II
INTERFERENCE WITH ADVANTAGEOUS RELATIONS

81. The statement contained in paragraph 81 of the Complaint does not require a response from the Defendants.
82. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the Complaint.

L. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
MILMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

90. The Defendants deny the allegations contained in paragraph 90 of the Complaint. The Defendants further answer that they have not refused to perform their obligations under the Lease. Nowhere in the Lease or the First Amendment to Land Lease Agreement are the Defendants required to grant an easement agreement. Moreover, the Lease at paragraph 15 states that "this Agreement contains all agreements, promises and understandings between the Lessor and Lessee and that no verbal or oral agreements, promises or understandings shall be binding upon either the Lessor or Lessee in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties." The Amendment did not change paragraph 15 of the Lease in any way. The Supreme Judicial Court of Massachusetts has defined an easement to be "a right which one proprietor has to some profit, benefit or lawful use, out of or over the estate of another proprietor." Owen v. Field, 102 Mass. 90, 103 (1869). In paragraph 90 of the Complaint, the Plaintiff's state that they require the Defendants to execute an easement agreement "to document the landline telephone company's use of the easement granted in the Lease." This circular reasoning is inconsistent with law and not based on any legitimate legal theory.

91. The Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the Complaint.

92. The Defendants deny the allegations contained in paragraph 92 of the Complaint. The Defendants have not intentionally interfered with the Plaintiff's relations with its subtenants. The Defendants further answer by stating that if what the Plaintiff

LL, FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

is proposing to do is "expressly permitted by the Lease" then there would be no need for the Plaintiff to sue the Defendants to do it.

93. The Defendants deny the allegations contained in paragraph 93 of the Complaint.

The Defendants have not intentionally interfered with the Plaintiff's relations.

94. The Defendants deny the allegations contained in paragraph 94 of the Complaint.

The Defendants have not intentionally interfered with the Plaintiff's relations.

AFFIRMATIVE DEFENSES

By way of answering further, the Defendants assert the following Affirmative Defenses:

FIRST AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice for its failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice for the reason that it has not been advanced in good faith.

THIRD AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice under the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because the claims are frivolous.

LL, FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because the Plaintiff breached the First Amendment to Land Lease Agreement.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff has not suffered any damages attributable to the Defendants' conduct, and therefore, the Plaintiff is not entitled to any recovery from the Defendants.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because the Plaintiff failed to mitigate its damages.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because of the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because of the doctrine of waiver.

TENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because of the Statute of Frauds.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because it fails to join a necessary party pursuant to Mass. R.Civ.P. 19, namely Verizon New England, Inc. or whatever party the Plaintiff claims failed to have obtained an easement agreement from the Defendants initially.

J.L. FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
BELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
FAX (978) 250-0057

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff's Complaint against the Defendants should be dismissed with prejudice because of the statute of limitations.

WHEREFORE, the Defendants hereby respectfully request this Court to:

1. Dismiss the Plaintiff's Complaint with prejudice;
2. Award the Defendants the reasonable costs, expenses and attorneys' fees incurred by the Defendants in defending against the Plaintiff's frivolous and bad faith claims, pursuant to M.G.L. Chapter 231, section 6F; and
3. Award the Defendants whatever relief this Court deems just and proper.

Respectfully submitted,
Guy A. McKay and Sheryll McKay,
By their attorney:

Dated: 7-10-03



Julie A. McNeill
Hall, Finnegan, Ahern & Deschenes, P.C.
One Billerica Road
Chelmsford, MA 01824
Tel. (978) 250-8877
BBO # 653919

LL, FINNEGAN, AHERN
& DESCHENES, P.C.
ATTORNEYS AT LAW
THE FISKE HOUSE
AT CENTRAL SQUARE
ONE BILLERICA ROAD
ELMSFORD, MA 01824-3010

TELEPHONE (978) 250-8877
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Plaintiff

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Defendants

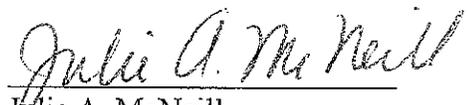
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NOTICE OF APPEARANCE

Please enter my appearance in the above-captioned matter as the attorney representing the Defendants, Guy A. McKay and Sheryll McKay, on whose behalf I am duly authorized to participate, appear and accept service of papers, decisions and orders in this matter.

Respectfully submitted,

Dated: 7-10-03



Julie A. McNeill
Hall, Finnegan, Ahern & Deschenes, P.C.
One Billerica Road
Chelmsford, MA 01824
Tel. (978) 250-8877
BBO # 653919

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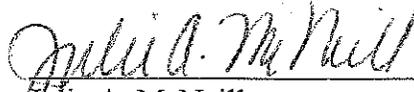
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CERTIFICATE OF SERVICE

I, Julie A. McNeill, Esq., hereby certify that on July 10, 2003, I caused a true and accurate copy of the attached Notice of Appearance and Defendants' Answer to Plaintiff's Complaint to be served by hand delivery and by mailing same, postage prepaid, to:

Earl W. Duval, Jr., Esq.
Daniel D. Klasnick, Esq.
Duval, Bellone, Cranford & Celli, P.C.
Boott Cotton Mills
100 Foot of John Street
Lowell, MA 01852

Co-counsel for Plaintiff Crown Castle
Atlantic, LLC


Julie A. McNeill

J. FINNEGAN, AHERN
& DESCHENES, P.C.

ATTORNEYS AT LAW

THE FISKE HOUSE

AT CENTRAL SQUARE

ONE BILLERICA ROAD

BELMONT, MA 01824-3010

TELEPHONE (978) 250-8877

FAX (978) 250-0057