

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

T-MOBILE NORTHEAST LLC, f/k/a Omnipoint  
Communications, Inc.,

Plaintiff,

-against-

USEIN SULJONIC, REMZIJA SULJONIC, SAL  
MURATOVIC, successor-in-interest to RIZO  
MURATOVIC, and BRAHIM MURATOVIC,

Defendants.

Civil Action No. 1:21-cv-2722

**COMPLAINT**

Plaintiff, T-Mobile Northeast LLC, f/k/a Omnipoint Communications, Inc. ("T-Mobile"), by its attorneys Porzio, Bromberg & Newman, P.C., as and for its Complaint against Defendants Usein Suljonic, Remzija Suljonic, Sal Muratovic, successor-in-interest to Rizo Muratovic, and Brahim Muratovic (collectively "Landlord" or "Defendants"), alleges as follows:

**INTRODUCTION**

1. This action concerns a rooftop lease between a real property owner and a telecommunications company regarding. The dispute arises over the owners' refusal to let the telecommunications company perform upgrades to its equipment at this site in Bayside, NY, even though the lease allows it, to try and extract additional moneys.

2. T-Mobile, as tenant, and Defendants, entered into a Rooftop Lease with Option Agreement (the "Lease") on property owned by Defendants located at 47-10 Laurel Hill Road, Bayside, New York ("Property"). The Lease expressly permits T-Mobile to use parts of the Property to install and maintain a wireless facility that consists of telecommunications

equipment, including radio transmitting and receiving antennas, equipment cabinets and related cables and utility lines (collectively “Antenna Facilities”).

3. The Antenna Facilities have been in use at the Property since 2009 as part of T-Mobile’s expansive network of wireless communications equipment to serve T-Mobile customers and provide mandated 911 services in the area.

4. As the ever-changing technology requires frequent upgrades and enhancements to such Antenna Facilities, T-Mobile expressly provided clear language in its Lease allowing it to make upgrades and enhancements as needed. The Lease grants T-Mobile the right to “alter, replace, expand, enhance and upgrade the Antenna Facilities” without condition.

5. T-Mobile has repeatedly sought Landlord's permission to perform necessary upgrades to its Antenna Facilities on the Property since mid-2019. The upgrades entail replacement of the existing nine antennas and addition of three more, one at each of the three existing sectors in the leased area on the roof. The replacement and additional antennas are all slated to be installed behind an existing screen on the roof, resulting in no additional space taken or interference with any other uses on the Property.

6. The upgrades are needed to meet the ever-growing technological demands of ubiquitous voice and data communications demanded by the consuming public. The upgrades, routine in nature, will improve speed, quality, and continuity of wireless communications. This includes telephone calls placed by T-Mobile's customers, law enforcement officials, and emergency 911 personnel who use and benefit from T-Mobile’s Antenna Facilities.

7. Nationwide deployment of technologies to allow effective and faster wireless communications is a critical mission of the federal government. The Federal Communications

Commission, for example, has recognized this vital need, and requires that wireless networks of which T-Mobile's Antenna Facilities are a part must service municipal emergency personnel and allow the public to access 911-services in the event of an emergency.

8. Despite federal policy, the importance of maintaining and upgrading wireless antenna facilities, and the express Lease provisions at issue that unambiguously allow for upgrades, Defendants have repeatedly denied T-Mobile the right to perform the needed upgrades and enhancements. Rather, Landlord has unreasonably conditioned its consent on a new lease that would require T-Mobile to pay Landlord substantially higher monthly rent than required under the Lease.

9. In denying access to T-Mobile for purposes of making its upgrades, Landlord is in willful breach of the Lease's terms and Landlord's obligations thereunder. Accordingly, T-Mobile requires a decree of specific performance and declaratory and injunctive relief enjoining Landlord from denying T-Mobile the right to upgrade its Antenna Facilities, 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 York.

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, Defendants are each citizens of the State of New York and owners of the Property located in Bayside, New York.

13. Upon information and belief, defendant Sal Muratovic is successor-in-interest to Rizo Muratovic pursuant to the conveyance deed dated June 13, 2014 and distribution of the late Rizo Muratovic's estate.

### **JURISDICTION AND VENUE**

14. Plaintiff T-Mobile Northeast, LLC, is a citizen of the State of Delaware and is authorized to do business in New York. The sole member of T-Mobile Northeast, LLC, is T-Mobile USA, Inc., a citizen of the State of Delaware with its principal place of business in Bellevue, Washington.

15. Upon information and belief, Defendants are each citizens of the State of New York.

16. 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 seriously compromised as a result of Defendants' conduct, which valuable rights were bestowed upon T-Mobile in exchange for monthly payments made, and to be made, to Landlord, that far exceed \$75,000 over the course of the Lease term, including lease renewal terms through 2039. T-Mobile also generates substantial revenue from the use of the Antenna Facilities at issue in excess of \$75,000.

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

18. Venue is proper in the Eastern District of New York 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 Bayside), and the property that is the subject of this action is situated in this judicial district (in Bayside).

### LEASE TERMS

19. On or about April 29, 2008, T-Mobile and Landlord entered into a Rooftop Lease with Option Agreement that expressly grants T-Mobile the right to install, operate and maintain a wireless communications facility on the roof of Landlord's building at 47-10 Laurel Hill Road, Bayside, New York (i.e., the Property). (See Lease, a true copy of which is attached hereto as **Ex. A.**)

20. The Lease option was exercised in mid-March 2009, thereby commencing the initial five-year term under the Lease through March 2014.

21. The Lease provides that T-Mobile shall operate its Antenna Facilities for the initial five-year term, plus five successive five-year renewal periods, potentially running, at T-Mobile's option, through March 2039. (Lease, ¶¶ 2, 3). T-Mobile is currently in its second renewal term, and pays Landlord monthly rent each month as required under the Lease (See Lease, ¶ 4).

22. T-Mobile has the unconditional right to install, maintain, and enhance its Antenna Facilities:

#### **7. Improvements; Utilities; Access.**

(a) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines and a location based system, as such location based system may be required by any county, state or federal agency/department including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment (collectively, the "Antenna

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