



2. The Townhouse is immediately adjacent to another residential structure, 319 West 77th Street (the “Adjacent Property”), on which roof Sprint mounted and has thereafter continuously maintained a cell tower installation. In 2012, Ninety Sixty informed Sprint that without any right or colorable basis it had installed its cell tower equipment on Plaintiff’s property and that its antennas had encroached on the Townhouse and were exposing the Townhouse’s occupants and the public to illegal levels of RF electromagnetic radiation in violation of permissible federal limits. Ninety Sixty and Sprint resolved the matter by contractual agreement dated July 31, 2012 (the “2012 Agreement”), signed by Sprint’s John Beaudoin, Senior Manager, National Contracts, and by which Sprint agreed to remove its offending equipment and not add equipment going forward that encroached upon the Townhouse. Plaintiff relied upon Sprint’s compliance with and performance of its contractual obligations.

3. In April 2019, Ninety Sixty discovered that Sprint, in breach both of the 2012 Agreement as well as Plaintiff’s independent legal rights, had failed to remove all of its equipment from the Townhouse, and thereafter also installed and affixed new equipment onto the Townhouse. Ninety Sixty also discovered that Sprint had caused significant damage to the Townhouse’s chimney and brickwork, creating danger of a collapse and physical harm to the Townhouse’s occupants as well as pedestrians walking below. Ninety Sixty promptly notified Sprint of its wrongful conduct, and demanded that corrective action be taken, including removal of the cell tower equipment attached to the Townhouse, installation of a protective sidewalk shed for pedestrian safety, and repair of the damage to the façade. Upon information and belief, as of April 1, 2020, T-Mobile is the successor in interest to Sprint resulting from its acquisition of Sprint (Sprint and T-Mobile are collectively referred to as “Sprint”).

4. After a year of Plaintiff's fruitless and repeated efforts seeking corrective action, Sprint's ongoing trespass, encroachment and contractual breaches continue unabated, no compensation has been paid, and the damages to the Townhouse remain unrepaired and have continued to accrete. Whereas Sprint did install a sidewalk shed and multistory scaffolding above the sidewalk in front of the Townhouse, it did so in a negligent and deficient manner, with the result that (i) despite prior warning of the danger, its scaffolding pulled loose from its façade anchors and threatened collapse, and (ii) emergency squads from the NYPD and the NYFD closed the street to cars and the sidewalks to pedestrians, the Townhouse's occupants were barred from entering their home, and the NYFD broke down the Townhouse door to attempt to stabilize Sprint's faulty structure using ropes tied to furnishings in the Townhouse, with significant additional damage to the Townhouse and its contents. Sprint's scaffolding firm has been charged with legal violations by the City of New York, asserting that it "failed to safeguard persons and property", and the scaffolding was "observed in state of collapse causing extreme and immediately hazardous condition to the public and adjacent properties. FDNY, NYPD and DOB required onsite." Multiple government officials have contacted Sprint to express the public's concern over its conduct, including the Chair of the NY State Assembly's Committee on Corporations, Authorities and Public Commissions, stating, in part, "I consider Sprint's ongoing conduct extremely disturbing, especially for a large corporate entity that does business throughout our State."

5. Sprint's ongoing unauthorized use of the Townhouse for its own business purposes was undertaken intentionally and surreptitiously, and constitutes both a breach of contract and a longstanding and continuing trespass. Despite due and repeated demands by

Ninety Sixty, and written assurance by Sprint that its breaches and encroachments would cease and be corrected, Sprint has failed to do so.

### **PARTIES**

6. Plaintiff Ninety Sixty LLC is a limited liability company organized under the laws of the State of New York. Ninety Sixty is wholly owned by two members, Gerald Kerner and Louise Kerner, both of whom, as described immediately below, are citizens of New York.

7. Non-party Gerald Kerner (“Kerner”) is an individual who is a citizen of New York, residing at 317 West 77th Street, New York, NY, which is a residential property wholly owned by Ninety Sixty. Gerald Kerner is the Managing Member and is one of two co-owners of Ninety Sixty.

8. Non-party Louise Kerner is an individual who is a citizen of New York, residing at 317 West 77th Street, New York, NY. Louise Kerner is one of the two co-owners of Ninety Sixty.

9. Defendant Sprint is, or was until it was acquired by T-Mobile on or about April 1, 2020, a limited partnership organized under the laws of the State of Delaware and maintains its headquarters in Overland Park, Kansas.

10. Upon information and belief, prior to becoming part of Sprint Spectrum Realty Company, L.P., Sprint Spectrum L.P. was jointly owned by Sprint Spectrum Holding Co., LP, an entity organized under the laws of the State of Delaware, and MinorCo. LP, an entity organized under the laws of the State of Delaware.

11. Upon information and belief, Defendant T-Mobile is a publicly traded corporation which acquired the entirety of Sprint on or about April 1, 2020 and thereby is the successor in

interest to Sprint's obligations. T-Mobile is organized under the laws of the State of Delaware and maintains its headquarters in Bellevue, Washington.

### **JURISDICTION & VENUE**

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

13. In particular, because Ninety Sixty is a limited liability company, its citizenship is measured by the citizenship of its members. Ninety Sixty is wholly owned by two individuals, Gerald Kerner and Louise Kerner, both of whom are citizens of New York who permanently reside at 317 West 77th Street, New York, NY. Neither of the Defendants are citizens of New York.

14. Venue is proper within this judicial district under 28 U.S.C. § 1391(b)(2), as the property in question is located in this judicial district and a substantial part of the events or omissions giving rise to the claims stated herein occurred in this district.

### **BACKGROUND**

15. Plaintiff Ninety Sixty is the owner of a single family townhouse at 317 West 77th Street in the Upper West Side of Manhattan, between West End Avenue and Riverside Drive.

16. Ninety Sixty entered into a purchase agreement for the Townhouse in October of 2011, the closing took place on March 27, 2012, and in July of 2012 the Kerners moved in.

17. The Townhouse offered many features which attracted the Kerners' interest. Among them, were space for a large family to visit and proximity to Kerner's offices. In addition, the house was built with a rooftop garden which has lovely views and is sunny enough to support gardening. From a safety and privacy standpoint, the entire roof is surrounded by a

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